

## **NOTICE OF CITY COUNCIL SPECIAL MEETING**

**NOTICE IS HEREBY GIVEN THAT THE CITY COUNCIL OF THE CITY OF ROSENBERG, FORT BEND COUNTY, TEXAS, WILL MEET IN SPECIAL SESSION OPEN TO THE PUBLIC AS FOLLOWS:**

**DATE:** Tuesday, August 26, 2014

**TIME:** 6:00 p.m.

**PLACE:** Rosenberg City Hall  
City Hall Council Chamber  
2110 4<sup>th</sup> Street  
Rosenberg, Texas 77471

**PURPOSE:** City Council Special Meeting, agenda as follows.

The City Council reserves the right to adjourn into Executive Session at any time during the course of this meeting to discuss any of the matters listed below, as authorized by Title 5, Chapter 551, of the Texas Government Code.

Call to order: City Hall Council Chamber

### GENERAL COMMENTS FROM THE AUDIENCE.

*Citizens who desire to address the City Council with comments of a general nature will be received at this time. Each speaker is limited to three (3) minutes. In accordance with the Texas Open Meetings Act, the City Council is restricted from discussing or taking action on items not listed on the agenda. It is our policy to have all speakers identify themselves by providing their name and residential address when making comments.*

### COMMENTS FROM THE AUDIENCE FOR CONSENT AND REGULAR AGENDA ITEMS.

*Citizens who desire to address the City Council with regard to matters on the Consent Agenda or Regular Agenda will be received at the time the item is considered. Each speaker is limited to three (3) minutes. Comments or discussion by the City Council Members will only be made at the time the agenda item is scheduled for consideration. It is our policy to have all speakers identify themselves by providing their name and residential address when making comments.*

## **AGENDA**

1. Hold second public hearing to consider comments relating to the proposed Ad Valorem Tax Rate for the Fiscal Year beginning October 01, 2014, and ending September 30, 2015, and take action as necessary. (Joyce Vasut, Executive Director of Administrative Services)
2. Hold second public hearing to consider comments relating to Fiscal Year 2014-2015 Proposed Budget, which includes the City of Rosenberg's Capital Improvement Plan (CIP), and take action as necessary. (Joyce Vasut, Executive Director of Administrative Services)
3. Hold discussion by City Council on the Fiscal Year 2014-2015 Proposed Budget, which includes the City of Rosenberg's Capital Improvement Plan (CIP), and take action as necessary. (Joyce Vasut, Executive Director of Administrative Services)
4. Consideration of and action on Ordinance No. 2014-33, an Ordinance approving the creation of Municipal Utility District No. 184 of Fort Bend County, Texas, within both the Extraterritorial Jurisdiction and the corporate boundaries of the City, as further provided for herein; making certain findings of fact and other conclusions as herein set out. (Travis Tanner, Executive Director of Community Development)

5. Consideration of and action on Resolution No. R-1845, a Resolution authorizing the Mayor to execute, for and on behalf of the City of Rosenberg, a Water Supply and Wastewater Services Agreement between the City and Dry Creek (Houston) ASLI VII, LLC, a Delaware limited liability company, in association with Fort Bend County Municipal Utility District No. 184. (Travis Tanner, Executive Director of Community Development)
6. Consideration of and action on Resolution No. R-1846, a Resolution authorizing the Mayor to execute, for and on behalf of the City, a Development Agreement by and between the City and Dry Creek (Houston) ASLI VII, LLC, a Delaware limited liability company, in association with Fort Bend County Municipal Utility District No. 184. (Travis Tanner, Executive Director of Community Development)
7. Consideration of and action on Resolution No. R-1847, a Resolution authorizing at least one (1) member of the initial Board of Directors of Municipal Utility District No. 184 of Fort Bend County, Texas. (Travis Tanner, Executive Director of Community Development)
8. Adjournment.

[EXECUTION PAGE TO FOLLOW]

DATED AND POSTED this the \_\_\_\_\_ day of \_\_\_\_\_ 2014, at \_\_\_\_\_ m.

by \_\_\_\_\_.

\_\_\_\_\_  
Attest:  
Linda Cernosek, TRMC, City Secretary

\_\_\_\_\_  
Approved for Posting:  
Robert Gracia, City Manager

\_\_\_\_\_  
Approved:  
Vincent M. Morales, Jr., Mayor

Reasonable accommodation for the disabled attending this meeting will be available; persons with disabilities in need of special assistance at the meeting should contact the City Secretary at (832) 595-3340.

Executive Sessions: The City Council may retire to executive session in accordance with the Texas Government Code, any time between the meeting's opening and adjournment for the purposes of:

- consultation with legal counsel (Section 551.071);
- deliberation regarding real property (Section 551.072);
- deliberation regarding economic development negotiations (Section 551.087)
- deliberation regarding the deployment or specific occasions for implementation of security personnel or devices (Section 551.076)

Attendance by other elected or appointed officials: It is anticipated that members of other city boards, commissions or committees whose meetings may be governed by the Texas Open Meetings Act may attend this meeting in numbers that may constitute a quorum of the other city boards, commissions or committees. Notice is hereby given that the meeting, to the extent required by law, is also noticed as a possible quorum/meeting of the other boards, commissions or committees of the City, whose members may be in attendance. The members may speak as recognized by the presiding officer, but no action may be taken by any board, commission or committee unless such item is specifically provided for on an agenda designated for that board, commission or committee and posted in compliance with the Texas Open Meetings Act.

This Agenda has been reviewed and approved by the City's legal counsel and the presence of any subject in any Executive Session portion of the agenda constitutes a written interpretation of Texas Government Code Chapter 551 by legal counsel for the governmental body and constitutes an opinion by the attorney that the items discussed therein may be legally discussed in the closed portion of the meeting considering the available opinions of a court of record and opinions of the Texas Attorney General known to the attorney. This provision has been added to this agenda with the intent to meet all elements necessary to satisfy Texas Government Code Chapter 551.144(c) and the meeting is conducted by all participants in reliance on this opinion.

## **General Comments from the Audience:**

**Citizens who desire to address the City Council with comments of a general nature will be received at this time. Each speaker is limited to three (3) minutes. In accordance with the Texas Open Meetings Act, the City Council is restricted from discussing or taking action on items not listed on the agenda. It is our policy to have all speakers identify themselves by providing their name and residential address when making comments.**

## **Comments from the Audience for Consent and Regular Agenda Items:**

**Citizens who desire to address the City Council with regard to matters on the Consent Agenda or Regular Agenda will be received at the time the item is considered. Each speaker is limited to three (3) minutes. Comments or discussion by the City Council Members will only be made at the time the agenda item is scheduled for consideration. It is our policy to have all speakers identify themselves by providing their name and residential address when making comments.**



# CITY COUNCIL COMMUNICATION

## August 26, 2014

ITEM #	ITEM TITLE
1	Second Public Hearing on Proposed Ad Valorem Tax Rate
<b>ITEM/MOTION</b>	
Hold second public hearing to consider comments relating to the proposed Ad Valorem Tax Rate for the Fiscal Year beginning October 01, 2014, and ending September 30, 2015, and take action as necessary.	
<b>FINANCIAL SUMMARY</b>	<b>ELECTION DISTRICT</b>

**Annualized Dollars:**

One-time  
 Recurring  
 N/A

**Budgeted:**

Yes  No  N/A

**Source of Funds:** N/A

District 1  
 District 2  
 District 3  
 District 4  
 City-wide  
 N/A

**SUPPORTING DOCUMENTS:**

**MUD #:** N/A

1. Notice of Proposed Tax Rate

**APPROVALS****Submitted by:**

Joyce Vasut  
 Executive Director of  
 Administrative Services

**Reviewed by:**

Exec. Dir. of Administrative Services  
 Asst. City Manager of Public Services  
 City Attorney  
 City Engineer  
 (Other)

**Approved for Submittal to City Council:**

Robert Gracia  
 City Manager

**EXECUTIVE SUMMARY**

Chapter 26 of the Property Tax Code requires that taxing units comply with Truth-in-Taxation laws during the tax rate adoption process. These laws were designed to make taxpayers aware of tax rate proposals and to provide an avenue for comment. On Saturday, August 09, 2014, City Council set two (2) public hearing dates for Tuesday, August 19, 2014, at 7:00 p.m., and Tuesday, August 26, 2014, at 6:00 p.m., to receive public comment regarding the proposed Ad Valorem Tax Rate for the fiscal year beginning October 1, 2014, and ending September 30, 2015.

The required notice was published in the newspaper on August 12, 2014, to give the public the proper notification.

The Truth-in-Taxation laws also require that at each public hearing, the governing body must announce the date, time and place of the meeting at which it will vote on the tax rate. The meeting to vote on the tax rate has been set for Tuesday, September 02, 2014, at 7:00 p.m., at the Rosenberg City Hall Council Chamber at 2110 4<sup>th</sup> Street, Rosenberg, Texas 77471.

# NOTICE OF 2014 TAX YEAR PROPOSED PROPERTY TAX RATE FOR CITY OF ROSENBERG

A tax rate of \$0.490000 per \$100 valuation has been proposed for adoption by the governing body of City of Rosenberg. This rate exceeds the lower of the effective or rollback tax rate, and state law requires that two public hearings be held by the governing body before adopting the proposed tax rate.

PROPOSED TAX RATE	\$0.490000 per \$100
PRECEDING YEAR'S TAX RATE	\$0.500000 per \$100
EFFECTIVE TAX RATE	\$0.478172 per \$100
ROLLBACK TAX RATE	\$0.504526 per \$100

The effective tax rate is the total tax rate needed to raise the same amount of property tax revenue for City of Rosenberg from the same properties in both the 2013 tax year and the 2014 tax year.

The rollback tax rate is the highest tax rate that City of Rosenberg may adopt before voters are entitled to petition for an election to limit the rate that may be approved to the rollback rate.

YOUR TAXES OWED UNDER ANY OF THE ABOVE RATES CAN BE CALCULATED AS  
FOLLOWS:

$$\text{property tax amount} = (\text{rate}) \times (\text{taxable value of your property}) / 100$$

For assistance or detailed information about tax calculations, please contact:

Patsy Schultz  
City of Rosenberg tax assessor-collector  
1317 Eugene Heimann Circle, Richmond, TX 77469  
281-341-3735  
Patsy.Schultz@fortbendcountytexas.gov  
fortbendcountytexas.gov

You are urged to attend and express your views at the following public hearings on the proposed tax rate:

First Hearing: August 19, 2014 at 7:00 PM at Rosenberg City Hall at 2110 4th Street, Rosenberg, TX 77471.

Second Hearing: August 26, 2014 at 6:00 PM at Rosenberg City Hall at 2110 4th Street, Rosenberg, TX 77471.



# CITY COUNCIL COMMUNICATION

## August 26, 2014

<b>ITEM #</b>	<b>ITEM TITLE</b>
<b>2</b>	<b>Second Public Hearing for Fiscal Year 2014-2015 Proposed Budget</b>
<b>ITEM/MOTION</b>	
Hold second public hearing to consider comments relating to Fiscal Year 2014-2015 Proposed Budget, which includes the City of Rosenberg's Capital Improvement Plan (CIP), and take action as necessary.	
<b>FINANCIAL SUMMARY</b>	<b>ELECTION DISTRICT</b>

**Annualized Dollars:**

- One-time
- Recurring
- N/A

**Budgeted:**

- Yes  No  N/A

**Source of Funds:** N/A

- District 1
- District 2
- District 3
- District 4
- City-wide
- N/A

**SUPPORTING DOCUMENTS:****MUD #:** N/A

1. Notice of Public Hearing for FY2014-2015 Budget
2. Rosenberg City Charter Excerpt – Section 9.06

**APPROVALS****Submitted by:**

Joyce Vasut  
Executive Director of  
Administrative Services

**Reviewed by:**

- Exec. Dir. of Administrative Services
- Asst. City Manager of Public Services
- City Attorney
- City Engineer
- (Other)

**Approved for Submittal to City Council:**

Robert Gracia  
City Manager

**EXECUTIVE SUMMARY**

Section 9.06 of the Rosenberg City Charter requires the Rosenberg City Council to hold a public hearing on the proposed Budget submitted; and, all interested persons shall be given an opportunity to be heard for or against any item or the amount of any item contained in the proposed Budget.

Notice of this public hearing was published in the newspaper on Sunday, August 10, 2014. The first public hearing on the proposed Budget was held on Tuesday, August 19, 2014. This is the second public hearing on the Budget.

This public hearing is held to provide the citizens the opportunity to present their comments regarding the proposed FY2014-2015 Budget.

**CITY OF ROSENBERG**  
**NOTICE OF PUBLIC HEARING FOR 2014-2015 BUDGET**

The City of Rosenberg will hold two public hearings on the annual operating budget for fiscal year October 1, 2014 through September 30, 2015. The public hearings will be held on Tuesday, August 19, 2014 at 7:00 p.m. and on Tuesday, August 26, 2014, at 6:00 p.m. at the Rosenberg City Hall Council Chamber at 2110 Fourth Street, Rosenberg, Texas 77471. The proposed budget is available for review on the City's website at [www.ci.rosenberg.tx.us](http://www.ci.rosenberg.tx.us) or in the City Secretary's office at City Hall.

**Code of Ordinances, City of Rosenberg, Texas**  
**Part I - The Charter**  
**Article IX - Municipal Finance**

**Sec. 9.06. - Notice of public hearing on budget.**

At the meeting of the city council at which the budget is submitted, the city council shall cause to be published in a newspaper of general circulation published in the City of Rosenberg, a notice of the hearing setting forth the time and place thereof at least five days before the date of such hearing.



# CITY COUNCIL COMMUNICATION

## August 26, 2014

<b>ITEM #</b>	<b>ITEM TITLE</b>
<b>3</b>	<b>Proposed FY2014-15 Budget Discussion</b>
<b>ITEM/MOTION</b>	
Hold discussion by City Council on the Fiscal Year 2014-2015 Proposed Budget, which includes the City of Rosenberg's Capital Improvement Plan (CIP), and take action as necessary.	
<b>FINANCIAL SUMMARY</b>	<b>ELECTION DISTRICT</b>

**Annualized Dollars:**

- One-time
- Recurring
- N/A

**Budgeted:**

- Yes  No  N/A

**Source of Funds:** N/A

- District 1
- District 2
- District 3
- District 4
- City-wide
- N/A

**SUPPORTING DOCUMENTS:**

1. Rosenberg City Charter Excerpt – Section 9.08
2. Vasut Memorandum – 08-20-14

**MUD #:** N/A**APPROVALS****Submitted by:**

Joyce Vasut  
Executive Director of  
Administrative Services

**Reviewed by:**

- Exec. Dir. of Administrative Services
- Asst. City Manager of Public Services
- City Attorney
- City Engineer
- (Other)

**Approved for Submittal to City Council:**

Robert Gracia  
City Manager

**EXECUTIVE SUMMARY**

Section 9.08 of the Rosenberg City Charter states that after the conclusion of the public hearing on the proposed Budget, the City Council may insert new items or may increase or decrease the items of said Budget, except items in proposed expenditures fixed by law. However, if City Council requests to increase the total proposed expenditures, it shall also provide for an increase in the total anticipated revenue to at least equal such proposed expenditures. The second public hearing on the proposed FY2014-2015 Budget was held immediately preceding this Agenda item.

At this time, City Council shall have an opportunity to discuss the proposed FY2014-2015 Budget, any changes thereto, and by a majority vote direct staff to make such changes. The final FY2014-2015 Budget will be considered for adoption at the September 02, 2014 City Council Meeting.

**Code of Ordinances, City of Rosenberg, Texas**

**Part I - The Charter**

**Article IX - Municipal Finance**

**Sec. 9.08. - Proceedings on budget after public hearing.**

After the conclusions of such public hearing, the city council may insert new items or may increase or decrease the items of the budget, except items in proposed expenditures fixed by law, but where it shall increase the total proposed expenditures, it shall also provide for an increase in the total anticipated revenue to at least equal such proposed expenditures.

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# MEMORANDUM

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**To:** Honorable Mayor and City Council  
**CC:** Robert Gracia, City Manager  
**From:** Joyce Vasut, Finance Director   
**Subject:** FY2015 Proposed Budget Changes  
**Date:** August 20, 2014

During the recent Budget Workshops, City staff presented the proposed FY2015 Budget. Several recommendations for changes were considered and discussed. Based on these discussions, the following changes are recommended to be made to the FY2015 Proposed Budget:

1. Add \$8,000 to the Law Enforcement Fund for fuel costs to support Fort Bend County's helicopter program.
2. Remove funding for the assessment payable to Summer Park Property Owners Association, Inc. fee in the amount of \$22,090 from the Fire Station No. 3 budget and decrease the transfer from the General Fund to the Fire Station No. 3 Operating Fund by \$22,090.
3. Decrease the Auto Allowance for Human Resources, City Secretary and Finance Departments from \$4,800 to \$2,400 for each department.
4. Use the savings from item # 2 and item # 3 to increase the amount budgeted for Street Sweeping by \$29,290 for additional street sweeping services.

If you have any questions or need additional information, feel free to contact me.



# CITY COUNCIL COMMUNICATION

## August 26, 2014

ITEM #	ITEM TITLE
4	<b>Ordinance No. 2014-33 – Fort Bend County Municipal Utility District No. 184 Creation</b>

### ITEM/MOTION

Consideration of and action on Ordinance No. 2014-33, an Ordinance approving the creation of Municipal Utility District No. 184 of Fort Bend County, Texas, within both the Extraterritorial Jurisdiction and Corporate Boundaries of the City, as further provided for herein; making certain findings of fact and other conclusions as herein set out.

FINANCIAL SUMMARY	ELECTION DISTRICT
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**Annualized Dollars:**

- One-time
- Recurring
- N/A

**Budgeted:**

- Yes  No  N/A

**Source of Funds:** N/A

- District 1
- District 2
- District 3
- District 4
- City-wide
- N/A

**SUPPORTING DOCUMENTS:**

1. Ordinance No. 2014-33
2. Vicinity Map

**MUD #: 184**

### APPROVALS

**Submitted by:**

*Travis Tanner*  
 Travis Tanner, AICP  
 Executive Director of  
 Community Development

**Reviewed by:**

- Exec. Dir. of Administrative Services
- Asst. City Manager of Public Services *g.m.*
- City Attorney **DNRBHZ/rl**
- City Engineer
- (Other)

**Approved for Submittal to City Council:**

*Robert Gracia*  
 Robert Gracia  
 City Manager

### EXECUTIVE SUMMARY

Pursuant to the Texas Water Code, Section 54.016, and Code of Ordinances, Section 29-231, Dry Creek (Houston) ASLI VII, LLC has submitted a petition to the City for the creation of Fort Bend County Municipal Utility District No. 184 (District). Proposed District consists of 502.6 acres generally located southwest of the intersection of A. Meyers and Berdette Roads, immediately south of Bridlewood Estates. While largely in the Extraterritorial Jurisdiction (ETJ), proposed District contains a portion of the City Limits abutting Dry Creek. A vicinity map of the property is attached for reference.

Both the Texas Water Code and Local Government Code require the consent of the City for the creation of a MUD in its City Limits or ETJ. The District also must be authorized by the State Legislature, which has already taken place. Prior to consenting to the creation of MUD No. 184, the City's Code of Ordinances essentially requires finding that the District will not adversely impact the City and that it will comply with all applicable City Ordinances.

Pursuant to the representations and documentation provided by Dry Creek (Houston) ASLI VII, LLC, City staff believes the creation of the District will not have an adverse impact and that applicable requirements will be met as a result of the proposed Utility and Development Agreements in the following Agenda items. Entering into the Utility and Development Agreements are a requirement following the adoption of the Consent Ordinance. Staff recommends approval of Ordinance No. 2014-33 approving the creation of Fort Bend County Municipal Utility District No. 184. District representatives will be in attendance to address any questions you may have.

**ORDINANCE NO. 2014-33**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, APPROVING THE CREATION OF FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 184 WITHIN BOTH THE EXTRATERRITORIAL JURISDICTION AND THE CORPORATE BOUNDARIES OF THE CITY, AS FURTHER PROVIDED FOR HEREIN; MAKING CERTAIN FINDINGS OF FACT AND OTHER CONCLUSIONS AS HEREIN SET OUT.**

**WHEREAS**, the holder(s) of title to a majority in value of the underlying land ("Petitioner") has petitioned the City of Rosenberg (the "City") for consent to include such land in a Municipal Utility District and has represented and does represent, as evidenced by the acceptance of such consent, that Fort Bend County Municipal Utility District No. 184 ("MUD No.184"), has been created and organized under the terms and provisions of Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 54 of the Texas Water Code, as amended; and

**WHEREAS**, attached to this Ordinance as "Exhibit A," and made a part hereof, is a Petition for Consent to the Creation of a Municipal Utility District by Petitioner (the "Petition") requesting the City's consent to the creation of MUD No. 184, which encompasses the land described in "Exhibit 1" attached to said Petition; and

**WHEREAS**, Petitioner expressly stipulates and agrees that it will fully comply with Chapter 29 of the Code of Ordinances of the City, entitled "Utilities," Article V, entitled "Creation of Certain Special Districts," Section 29-230, *et. seq.*, and such other provisions of such Code as may be applicable and as amended from time to time; and

**WHEREAS**, the City Council desires to consent to the requested creation of MUD No. 184 in accordance with the provisions hereof; now, therefore,

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROSENBERG:**

Section 1. The facts and matters contained in the preamble of this Ordinance are hereby found to be true and correct and are hereby adopted.

Section 2. The City Council hereby finds, determines, recites, and declares that a sufficient written notice of the date, hour, place, and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Texas Open

Meetings Act, Texas Government Code, Chapter 551, and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council hereby further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 3. The City Council does hereby acknowledge that Petitioner has previously requested that the City Council give its formal consent, subject to the referenced conditions and applicable law, to creation of MUD No. 184 within both the extraterritorial jurisdiction and corporate boundaries of the City.

Section 4. The City Council, expressly subject to the condition that Petitioner fully comply with Chapter 29, entitled "Utilities," Article V, entitled "Creation of Certain Special Districts," Section 29-230, *et. seq.*, and such other provisions of the Code of Ordinances of the City as may be applicable and as amended, does hereby give its consent and approval to creation of MUD No. 184 to include all of that area and territory as set out in the Petition and the exhibit attached thereto marked Exhibit "1" to include all of the area and territory as therein set out. Such consent and approval herein provided shall be final and binding upon Petitioner and the Board of Directors of MUD No. 184.

Section 5. The City Council does hereby further direct that the Mayor and City Secretary, and such other officers of the City as may be necessary and required, shall execute such approvals and other documents that may be required from time to time in order to effectively place of record and acknowledge that the City Council has duly and properly approved and consented to this creation of MUD No. 184 pursuant to the conditions contained herein.

Section 6. In addition to the conditions and requirements otherwise set out herein, the Consent as herein provided shall be conditioned on the owners of the real

property within the geographical configuration of MUD No. 184 hereinafter referred to as "MUD No. 184 Property," fully complying with all rules, regulations and requirements that may be in existence or later provided as the same relates to any construction, configuration or use of land located within the MUD No. 284 Property, whether directly expressed or provided by the City in such other agreements and documents that may be executed relating to the development or use of the MUD No. 184 Property.

**PASSED AND APPROVED** by a vote of \_\_\_\_\_ "ayes" in favor and \_\_\_\_\_ "noes" against on this first and final reading in full compliance with the provisions of Section 3.10 of the Charter of the City of Rosenberg on the \_\_\_\_\_ day of \_\_\_\_\_ 2014.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**Linda Cernosek, City Secretary**

\_\_\_\_\_  
**Vincent M. Morales, Jr., Mayor**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Scott Tschirhart, City Attorney**  
**Denton Navarra Rocha Bernal Hyde & Zeck, P.C.**

PETITION FOR CONSENT TO THE CREATION  
OF A MUNICIPAL UTILITY DISTRICT

TO THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF  
ROSENBERG, TEXAS:

The undersigned (herein the "Petitioner"), acting pursuant to the provisions of Chapters 49 and 54, Texas Water Code, respectfully petitions the City Council of the City of Rosenberg, Texas, for its written consent to the creation of a municipal utility district and would show the following:

I.

The name of the District is FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 184 (the "District").

II.

The District was created by special act of the Texas Legislature pursuant to Senate Bill 1910 and House Bill 3954, 2013 Regular Session, under the terms and provisions of Article XVI, Section 59 of the Constitution of Texas and Chapters 49 and 54, Texas Water Code, together with all amendments and additions thereto.

III.

The District contains an area of 506.74 acres of land, more or less, situated in Fort Bend County, Texas. Some of the land included in the District is within the extraterritorial jurisdiction of the City of Rosenberg, Texas (the "City") and the remainder of the land included in the District is within the corporate limits of the City. All of the land included may properly be included in the District. The Board of Directors for the District intends to consider the exclusion of 4.28 acres of land from the District in accordance with Sections 49.303 through 49.308 of the Texas Water Code, as amended. Upon exclusion of this 4.28 acres of land, the land included within the District would consist of a 502.46 acre tract of land described by metes and bounds in Exhibit "A," which is attached hereto and incorporated herein for all purposes (the "Land").

IV.

Dry Creek (Houston) ASLI VII, LLC holds fee simple title to the Land. The Petitioner hereby represents that it owns a majority in value of the Land which is proposed to be included in the District, as indicated by the certificate of ownership provided by the Fort Bend Central Appraisal District.

V.

Dry Creek (Houston) ASLI VII, LLC represents that there are no lienholders on the Land and that there are no residents on the Land.

VI.

The general nature of the work to be done by the District at the present time is the design, construction, acquisition, maintenance and operation of a waterworks and sanitary sewer system for domestic and commercial purposes, the construction, acquisition, improvement, extension, maintenance and operation of works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District, and to control, abate and amend local storm waters or other harmful excesses of waters, and such other construction, acquisition, improvement, maintenance and operation of such additional facilities, systems, plants and enterprises, as shall be consistent with all of the purposes for which the District is created, including roads and park and recreational facilities. The work will not (a) adversely affect City water and sewer functions, (b) increase the City utility rates or (c) impact the City bond rating.

VII.

There is, for the following reasons, a necessity for the above-described work. The Land is urban in nature, is within the growing environs of the City, and is in close proximity to populous and developed sections of Fort Bend County, Texas. There is not now available within the area, which will be developed for single family residential and commercial uses, an adequate waterworks system, sanitary sewer system, or drainage and storm sewer system or adequate roads or park and recreational facilities. The health and welfare of the present and future inhabitants of the area and of the territories adjacent thereto require the purchase, design, construction, acquisition, ownership, operation, repair, improvement and extension of an adequate waterworks system, sanitary sewer system, drainage and storm sewer systems, roads and park and recreational facilities. A public necessity, therefore, exists for the creation of the District, to provide for the purchase, design, construction, acquisition, ownership, operation, repair, improvement and extension of such waterworks system, sanitary sewer system, drainage and storm sewer systems, roads and park and recreational facilities to promote the purity and sanitary condition of the State's waters and the public health and welfare of the community.

The Petitioner requests that the City Council grant its consent for the inclusion of the Land in a municipal utility district under the conditions set forth in City of Rosenberg Code of Ordinances and Article V, Division 1, Section 29-232, et seq., as applicable and as amended.

VIII.

A preliminary investigation has been made to determine the cost of the proposed District's waterworks system, sanitary sewer system, and drainage and storm sewer system projects, and it is now estimated by the Petitioner, from such information as it has at this time, that such cost will be approximately \$30,100,000.

IX.

A preliminary investigation has been made to determine the cost of the proposed District's road projects, and it is now estimated by the Petitioner, from such information as it has at this time, that such cost will be approximately \$24,900,050.

X.

A preliminary investigation has been made to determine the cost of the proposed District's park and recreational facilities, and it is now estimated by the Petitioner, from such information as it has at this time, that such cost will be approximately \$5,060,000.

XI.

The total cost of the proposed District's projects is estimated by the Petitioner to be approximately \$60,060,050.

WHEREFORE, the Petitioner prays that this petition be heard and that the City Council duly pass and approve an ordinance or resolution granting the consent to the creation of the District and authorizing the inclusion of the land described herein within the District.

WHEREFORE, the Petitioner prays that this petition be heard and that the City Council duly pass and approve an ordinance or resolution granting the consent to the creation of the District and authorizing the inclusion of the land described herein within the District.

[EXECUTION PAGES FOLLOW]

RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of August, 2014.

**DRY CREEK (HOUSTON) ASLI VII, LLC**  
a Delaware limited liability company

By: Avanti Strategic Land Investors VII, L.L.L.P.  
a Delaware limited liability limited partnership  
Its sole member

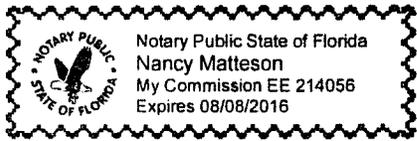
By: Avanti Properties Group II, L.L.L.P.  
a Delaware limited liability limited partnership  
its managing general partner

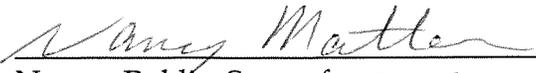
By: Avanti Management Corporation  
a Florida corporation  
Its sole general partner

By:   
Andrew Dubill  
Vice President

THE STATE OF FLORIDA §  
§  
COUNTY OF ORANGE §

This instrument was acknowledged before me on the 4 day of AUGUST, 2014, by Andrew Dubill, Vice President of Avanti Management Corporation, a Florida corporation and sole general partner of Avanti Properties Group II, L.L.L.P., a Delaware limited liability limited partnership and managing general partner of Avanti Strategic Land Investors VII, L.L.L.P., a Delaware limited liability limited partnership and sole member of **DRY CREEK (HOUSTON) ASLI VII, LLC**, a Delaware limited liability company, on behalf of said partnerships, company and corporation.



  
Notary Public, State of FLORIDA

(NOTARY SEAL)

## EXHIBIT A

Fort Bend County MUD 184  
502.46 Acres

Wiley Martin Survey, Abstract 56  
E. P. Everett Survey, Abstract 387

STATE OF TEXAS §

COUNTY OF FORT BEND §

A **METES & BOUNDS** description of a 502.46 acre tract of land in the Wiley Martin Survey, Abstract 56, and the E. P. Everett Survey, Abstract 387, Fort Bend County, Texas, being that certain called 371.8877 acre tract recorded under County Clerk's File Number 2013131554, Official Public Records, Fort Bend County, Texas, and that certain called 130.58 acre tract recorded under County Clerk's File Number 2005107303, Official Public Records, Fort Bend County, Texas, with all bearings based upon the Texas Coordinate System, South Central Zone, NAD83, based upon GPS observations.

**Beginning** at a ¾ inch iron rod with cap marked "EHR&A" found in the northwesterly right-of-way line of Berdett Road for the south corner of said called 371.8877 acre tract, for the most easterly south corner and **Place of Beginning** of the herein described tract, said point also being in the southwest line of said Wiley Martin Survey, Abstract 56, same being the northeast line of the adjoining Henry Wilcox Survey, Abstract 342, and the northeast line of an adjoining called 607.75 acre tract recorded in Volume 64, Page 109, Deed Records, Fort Bend County, Texas;

**Thence** North 67 degrees 27 minutes 46 seconds West along the common line of the herein described tract and said adjoining called 607.75 acre tract, same being the common line of said Wiley Martin Survey, Abstract 56, and said adjoining Henry Wilcox Survey, Abstract 342, being along the southerly line of said called 371.8877 acre tract and the upper south line of said called 130.58 acre tract, 5,064.24 feet to an angle point, said point being the northwest corner of said adjoining called 607.75 acre tract and said adjoining Henry Wilcox Survey, Abstract 342, same being the east corner of said E. P. Everett Survey, Abstract 387, and the northeast corner of an adjoining called 24.9524 acre tract recorded in Volume 1934, Page 712, Official Records, Fort Bend County, Texas;

**Thence** North 67 degrees 36 minutes 40 seconds West along the common line of the herein described tract and said adjoining called 24.9524 acre tract, same being the common line of said Wiley Martin Survey, Abstract 56, and said E. P. Everett Survey, Abstract 387, 547.46 feet to a reentry corner to the herein described tract and a reentry corner to said called 130.58 acre tract, said point being the northwest corner of said adjoining called 24.9524 acre tract;

**Thence** South 42 degrees 08 minutes 14 seconds West along the common line of the herein described tract and said adjoining called 24.9524 acre tract, 2,046.63 feet to a point in the northeast right-of-way line of Ricefield Road for the most westerly south corner of the herein described tract and the south corner of said called 130.58 acre tract, same being the west corner of said adjoining called 24.9524 acre tract;

**Thence** North 47 degrees 59 minutes 25 seconds West along the northeast right-of-way line of Ricefield Road, 344.35 feet to a point for the west corner of the herein described tract and the west corner of said called 130.58 acre tract, same being the south corner of the adjoining residue of a called 400.814 acre tract recorded under County Clerk's File Number 2006019259, Official Public Records, Fort Bend County, Texas;

**Thence** North 42 degrees 05 minutes 03 seconds East along the common line of the herein described tract and said adjoining residue of a called 400.814 acre tract, being the westerly line of said called 130.58 acre tract, 1,924.14 feet to an angle point;

**Thence** North 22 degrees 20 minutes 28 seconds East continuing along said line, and along the east line of an adjoining called 21.29 acre tract recorded under County Clerk's File Number 2008017096, Official Public Records, Fort Bend County, Texas, and the east line of an adjoining called 30.00 acre tract recorded under County Clerk's File Number 2007013845, Official Public Records, Fort Bend County, Texas, 3,225.31 feet to a point in the centerline of A. Myers Road for the northwest corner of the herein described tract and the northwest corner of said called 130.58 acre tract, same being the northeast corner of said adjoining residue of a called 400.814 acre tract, and being in the southerly line of an adjoining called 792.85 acre tract recorded under County Clerk's File Number 2001123289, Official Public Records, Fort Bend County, Texas, and described in Volume 510, Page 210, Deed Records, Fort Bend County, Texas;

**Thence** South 67 degrees 49 minutes 42 seconds East along the northerly line of the herein described tract, the northerly line of said called 130.58 acre tract, and the northerly line of said called 371.8877 acre tract, as located in A. Myers Road, 6,171.28 feet to the upper northeast corner of the herein described tract and the upper northeast corner of said called 371.8877 acre tract, same being the northwest corner of the adjoining residue of a called 376.1612 acre tract recorded in Volume 1934, Page 712, Official Records, Fort Bend County, Texas;

**Thence** South 21 degrees 34 minutes 18 seconds West along the common line of the herein described tract and said adjoining residue of a called 376.1612 acre tract, 470.17 feet to a reentry corner to the herein described tract and a reentry corner to said called 371.8877 acre tract, same being the southwest corner of said adjoining residue of a called 376.1612 acre tract;

**Thence** South 68 degrees 25 minutes 42 seconds East continuing along said common line, 397.73 feet to the lower northeast corner of the herein described tract and the lower northeast corner of said called 371.8877 acre tract, same being the southeast corner of said adjoining residue of a called 376.1612 acre tract, and being in the westerly right-of-way line of Berdett Road;

Fort Bend County MUD 184  
502.46 Acres

Wiley Martin Survey, Abstract 56  
E. P. Everett Survey, Abstract 387

**Thence** South 21 degrees 34 minutes 18 seconds West along the easterly line of the herein described tract and the easterly line of said called 371.8877 acre tract, same being the westerly right-of-way line of Berdett Road, 2,800.25 feet to the **Place of Beginning** and containing 502.46 acres of land, more or less.

This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

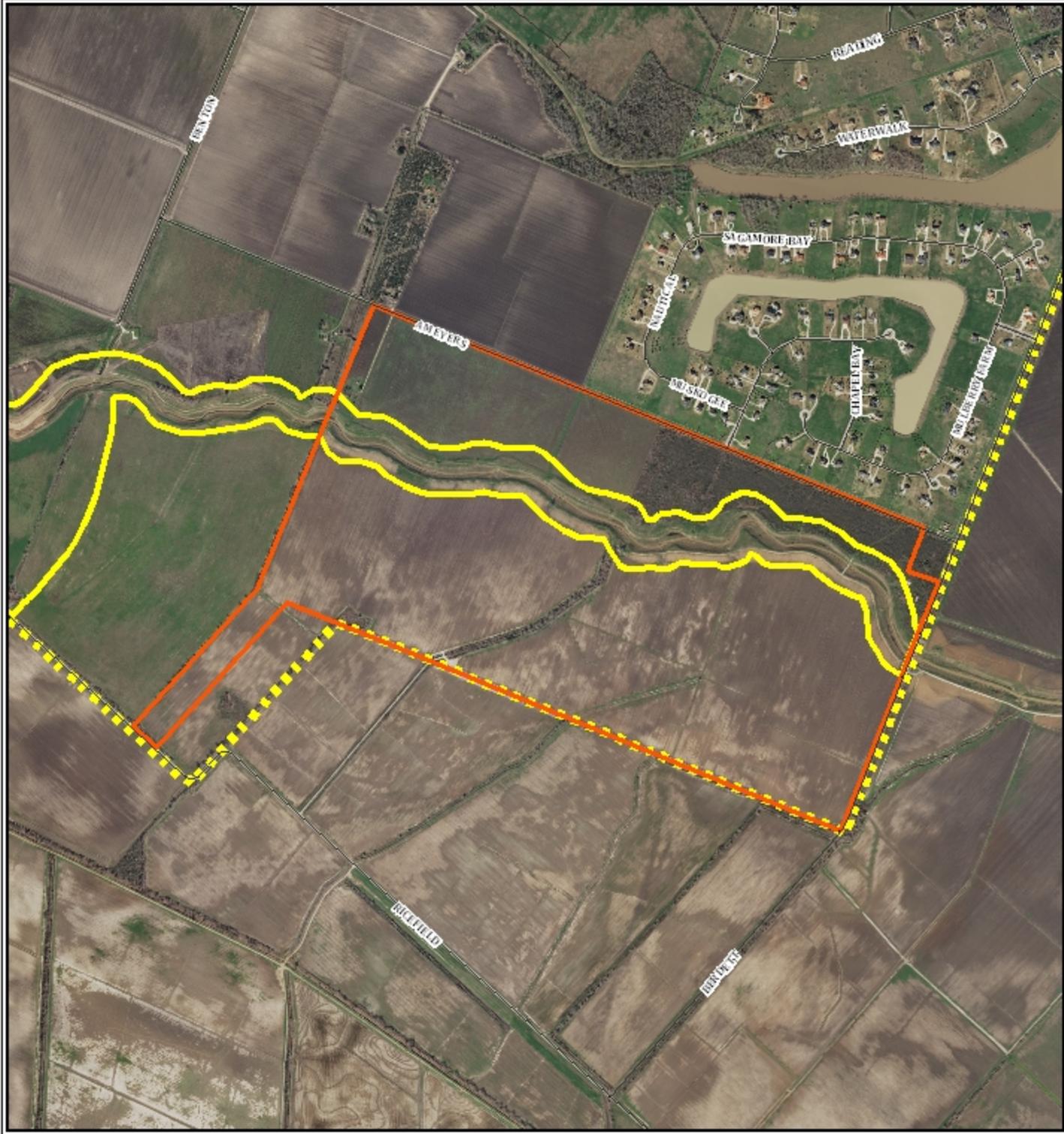
September 18, 2013

Job Number 11646-0769-00

Charlie Kalkomey Surveying, Inc.  
6415 Reading Road  
Rosenberg, TX 77471-5655  
(281) 342-2033



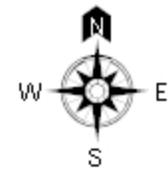
  
Acting By/Through Chris D. Kalkomey  
Registered Professional Land Surveyor  
No. 5869  
CDKalkomey@jonescarter.com



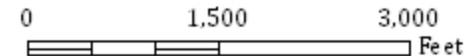
# Proposed MUD 184 Vicinity Map

City of Rosenberg, Texas

- Interstate
- US Highway
- State Highway
- Farm-to-Market
- Public Road
- Proposed MUD 184
- Rosenberg City Limits
- Rosenberg ETJ



Scale:  
1:18,000  
or  
1 Inch = 1,500 Feet



The 2012 Aerial Imagery Data is the sole property of Houston-Galveston Area Council, which reserves all rights thereto. Use or reproduction of this data is strictly prohibited absent written consent from the Houston-Galveston Area Council.

Created by: City of Rosenberg GIS - Paul M. Jones  
Date Created: August 13, 2014  
Original Size: 11" x 17"  
C:\GIS\MAPS\Planning\2014\MUD\_184\_VicinityMap.mxd

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of geographic features.





# CITY COUNCIL COMMUNICATION

August 26, 2014

ITEM #	ITEM TITLE
5	<b>Resolution No. R-1845 – Fort Bend County MUD No. 184 Water Supply and Wastewater Services Agreement</b>

**ITEM/MOTION**

Consideration of and action on Resolution No. R-1845, a Resolution authorizing the Mayor to execute, for and on behalf of the City of Rosenberg, a Water Supply and Wastewater Services Agreement between the City and Dry Creek (Houston) ASLI VII, LLC, a Delaware limited liability company, in association with Fort Bend County Municipal Utility District No. 184.

FINANCIAL SUMMARY	ELECTION DISTRICT
-------------------	-------------------

<b>Annualized Dollars:</b>	<b>Budgeted:</b>	<input type="checkbox"/> District 1
<input type="checkbox"/> One-time	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<input type="checkbox"/> District 2
<input type="checkbox"/> Recurring	<b>Source of Funds:</b> N/A	<input type="checkbox"/> District 3
<input checked="" type="checkbox"/> N/A		<input checked="" type="checkbox"/> District 4
		<input type="checkbox"/> City-wide
		<input type="checkbox"/> N/A

**SUPPORTING DOCUMENTS:** **MUD #: 184**

- Resolution No. R-1845

**APPROVALS**

<b>Submitted by:</b>	<b>Reviewed by:</b>	<b>Approved for Submittal to City Council:</b>
<i>Travis Tanner</i>	<input type="checkbox"/> Exec. Dir. of Administrative Services	<i>Robert Gracia</i>
Travis Tanner, AICP	<input checked="" type="checkbox"/> Asst. City Manager of Public Services <i>g.m.</i>	Robert Gracia
Executive Director of	<input type="checkbox"/> City Attorney	City Manager
Community Development	<input type="checkbox"/> City Engineer	
	<input type="checkbox"/> (Other)	

**EXECUTIVE SUMMARY**

Pursuant to Chapter 29, Article V of the Code of Ordinances, attached is the proposed Water Supply and Wastewater Services (Utility) Agreement between the City and Dry Creek (Houston) ASLI VII, LLC, for City Council's consideration. The proposed Utility Agreement establishes the criteria to provide utility services to the development on behalf of Municipal Utility District No. 184 (District). The Utility Agreement provides for the following:

- The City shall provide up to 1,700 equivalent single-family connections of water supply services to the District.
- Water, drainage, and wastewater systems shall be designed and constructed in accordance with the City's Design Standards for public infrastructure.
- The developer shall provide documentation that a good faith effort has been made to obtain wastewater services and capacity from Fort Bend County Municipal Utility District No. 152. If those services cannot be obtained within reason, the developer may construct an interim wastewater treatment plant as approved by the Texas Commission on Environmental Quality (TCEQ). If and when the City can provide wastewater services—defined by providing a point of connection within 0.75 miles of the District—the District shall discontinue use of the interim wastewater treatment plant in favor of wastewater services from the City.
- The District shall follow the plumbing code adopted by the City.
- The District agrees to participate in the City's Groundwater Reduction Plan before commencement of operating its water system.
- The District shall pay water impact fees due at the time of Final Plat.
- If and when the City can provide wastewater services, wastewater impact fees for the number of connections shall be paid in three (3) installments.
- The developer shall receive credit toward water impact fees for the construction of a 16-inch water line along Benton Road from Reading to A. Meyers Road.

Staff recommends approval of the Water Supply and Wastewater Services Agreement for Fort Bend County Municipal Utility District No. 184, attached as Exhibit "A" to Resolution No. R-1845. District representatives will be in attendance to address any questions you may have.

**RESOLUTION NO. R-1845**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE MAYOR TO EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, A WATER SUPPLY AND WASTEWATER SERVICES AGREEMENT BETWEEN THE CITY AND DRY CREEK (HOUSTON) ASLI VII, LLC, A DELAWARE LIMITED LIABILITY COMPANY, IN ASSOCIATION WITH FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 184.**

\* \* \* \* \*

**WHEREAS**, the City Council has deemed it appropriate to consent to the creation of Fort Bend Municipal Utility District No. 184 (“District”); and,

**WHEREAS**, a Water Supply and Wastewater Services Agreement (“Agreement”) is necessary and appropriate to establish certain criteria to provide utility services to a proposed development project in association with the District and Dry Creek (Houston) ASLI VII, LLC (“Developer”); and,

**WHEREAS**, the Developer desires to enter into this Agreement with the City to obtain water supply services from the City for the District on a permanent basis, and to set forth terms regarding wastewater services for the District; now, therefore,

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROSENBERG:**

Section 1. The City Council of the City of Rosenberg hereby authorizes the Mayor to execute a Water Supply and Wastewater Services Agreement, for and on behalf of the City, with Dry Creek (Houston) ASLI VII, LLC, a Delaware Limited Liability Company.

Section 2. A copy of said Agreement is attached hereto as Exhibit “A” and made a part hereof for all purposes.

**PASSED, APPROVED, AND RESOLVED** this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Linda Cernosek, **CITY SECRETARY**

\_\_\_\_\_  
Vincent M. Morales, Jr., **MAYOR**

**WATER SUPPLY AND WASTEWATER SERVICES AGREEMENT BETWEEN  
THE CITY OF ROSENBERG, TEXAS, AND  
DRY CREEK (HOUSTON) ASLI VII, LLC**

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**WATER SUPPLY AND WASTEWATER SERVICES AGREEMENT  
BETWEEN THE  
CITY OF ROSENBERG, TEXAS,  
AND DRY CREEK (HOUSTON) ASLI VII, LLC**

THIS WATER SUPPLY AND WASTEWATER SERVICES AGREEMENT (this “Agreement”) is entered into by THE CITY OF ROSENBERG, TEXAS (the “City”), and DRY CREEK (HOUSTON) ASLI VII, LLC, a Delaware limited liability company (the “Developer”).

**RECITALS**

The City is a home rule city and municipal corporation that provides a full range of governmental services to its citizens. The City owns and operates water supply and distribution facilities, wastewater collection and treatment facilities, and a fire department.

The Developer owns approximately 502.46 acres of land located partially within the City’s boundaries and partially within the City’s extraterritorial jurisdiction, which is more particularly described in **Exhibit A** attached hereto and incorporated herein (the “Tract”). Fort Bend County Municipal Utility District No. 184 (the “District”) is a municipal utility district duly created by special act of the Texas Legislature, effective September 1, 2013, that encompasses the Tract, and whose purposes are limited to supplying a public water supply, sanitary sewer services, drainage services, fire protection, roads, and/or parks and recreational services to the areas within its boundaries.

The Developer plans to request that the District construct, finance, own, and operate a water distribution system, a wastewater collection system, a storm water control and drainage system, recreational facilities and certain roads to serve the Tract. The development will occur in phases and the Developer anticipates that each phase will be platted separately.

The Developer, on behalf of the District, would like to enter into this Agreement with the City to obtain water supply services from the City for the District on a permanent basis and to set forth the terms regarding wastewater services for the District. The parties recognize that the District cannot approve and execute this Agreement until the District is confirmed by a majority of the votes cast at a confirmation election. The City has agreed to provide the services described herein under the conditions and terms set forth in this Agreement.

## AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, obligations, and benefits contained herein, the City and the Developer agree as follows:

### ARTICLE I. DEFINITIONS AND EXHIBITS

**1.1. Definitions.** Unless the context indicates others, the following words as used in this Agreement shall have the following meanings:

*City* means the City of Rosenberg, Texas.

*City Wastewater System* means all the wastewater treatment facilities, lines, components and equipment owned and used by the City to collect, convey, treat, monitor, regulate and dispose of wastewater.

*City Water System* means all the water production pumps, lines, meters, components, facilities, and equipment owned and used by the City to pump, treat, monitor, convey, supply, and distribute Water to the public.

*Commission* means the Texas Commission on Environmental Quality and any successor or successors exercising any of its duties and functions related to municipal utility districts.

*Developer* means Dry Creek (Houston) ASLI VII, LLC, a Delaware limited liability company.

*Development Agreement* means the Development Agreement between the City and the Developer, dated \_\_\_\_\_, 2014.

*District* means Fort Bend County Municipal Utility District No. 184 and all land currently and at any future time included in said District.

*District Drainage System* means the drainage facilities, including without limitation, detention ponds and stormwater collection system, constructed by the Developer to serve the District upon City approval as provided in Article II of this Agreement.

*District Wastewater Treatment Plant* means the wastewater treatment plant that may be constructed by the Developer to serve the District upon City approval as provided in Section 2.5.1 of this Agreement.

*District Wastewater System* means the wastewater system that will be constructed by the District to serve the District, including any wastewater treatment facilities, lines, components and equipment owned and used by the District.

*District Water System* means the water distribution system that will be constructed by the District to serve the District for the distribution of Water to serve its customers, which will be connected at the Point of Connection of Water.

*Equivalent Single-family Connection* means that daily measure of Water that is attributed to one single-family residential home, as determined by the City.

*Fort Bend Subsidence District* means that regulatory agency created in 1989 by the State Legislature (Act of May 26, 1989, 71st Leg., R.S., ch. 1045 Tex. Gen. Laws 4251) as a conservation and reclamation district to provide for the regulation of the withdrawal of groundwater within its boundaries to prevent subsidence that contributes to or precipitates flooding, inundation, or overflow of areas within its boundaries, including rising waters resulting from storms and hurricanes.

*Groundwater Reduction Plan* means that plan for the reduction of groundwater usage as required by the Fort Bend Subsidence District.

*HOA* means the homeowners association for the homes within the District.

*Impact Fee* means the fee that is a one-time charge to the Developer by the City for each Equivalent Single-family Connection platted to cover the capital costs incurred by the City related to the provision of water supply and related to sewage treatment facilities, provided that the City provides Wastewater Services to the District.

*Point of Delivery of Wastewater* means the point where the District Wastewater System connects to the City Wastewater System.

*Points of Connection of Water* means those mutually agreed upon points where the District Water System connects to the City's Water System.

*Tract* means all of the land described in **Exhibit A** and also means any other property annexed into the District and approved by City Council for such annexation, to be developed by the Developer.

*Wastewater* means the water-carried wastes, exclusive of ground, surface, and storm waters, normally discharged from the sanitary conveniences of residential or commercial structure of a domestic nature (not industrial), meeting the requirements of Chapter 29, Article III, Division 2 of the City Code of Ordinances, including any amendments.

*Wastewater Service Date* means the date that the City begins providing Wastewater Services to the Tract.

*Wastewater Services* means the services, if any, to be provided by the City in receiving, treating, testing, and disposing of Wastewater from the District Wastewater System.

*Water* means potable water that meets federal and state standards for consumption by humans.

*Water Supply Services* means the services provided by the City in treating, pumping, transporting, and delivering Water from the City Water System to the District Water System, in accordance with the terms of this Agreement.

**1.2. Exhibits.** The following exhibits attached to this Agreement are a part of the Agreement as though fully incorporated herein:

Exhibit A	Metes and Bounds Description of the Tract
Exhibit B	Operations Report
Exhibit C	City's Drought Contingency Plan
Exhibit D	Form of Fire Protection Services Agreement
Exhibit E	Form of Strategic Partnership Agreement

**ARTICLE II. AGREEMENT CONCERNING WATER SUPPLY SERVICES TO THE DISTRICT, WASTEWATER SERVICES AND DISTRICT DRAINAGE FACILITIES**

**2.1. City's Obligation to Provide Services.** The City agrees to provide Water Supply Services to the Tract in accordance with the terms and conditions of this Agreement. The City, in its sole discretion may elect to provide Wastewater Services to the Tract in accordance with the terms of this Agreement, and the District agrees to accept such services. If the City so elects, the City will provide Wastewater Services to the Tract in accordance with this Agreement, provided that all Wastewater discharged from the Tract and delivered to the Points of Delivery of Wastewater complies at the Points of Delivery of Wastewater with the quality and quantity restrictions set forth herein. In addition, if the District intends to construct a permanent wastewater treatment plant, the District will notify the City of such intent prior to beginning the design of the permanent wastewater treatment plant. Within sixty (60) days of receipt of such notice, the City will notify the District in writing whether the City elects to provide Wastewater Services to the Tract and notify the District of a Wastewater Service Date that is no sooner than two (2) years after the date of such notice.

**2.2. Assignment to District.** The parties agree that this Agreement will be assigned by the Developer to the District after confirmation of the District by a majority of votes cast at a confirmation election, and such assignment will be effective without the requirement of additional City Council approval. Any provision of this Agreement, whether referring to the Developer or the District, shall apply to the Developer until assigned to the District as provided by this Agreement; thereafter all provisions shall apply only to the District. As notice to the City, the District shall provide the City a copy of the assignment of this Agreement which has been signed by all parties to such assignment within thirty (30) days of such assignment.

**2.3. Standard of Service.** The Water Supply Services and Wastewater Services, if any, provided by the City to the Developer under this Agreement shall be substantially equivalent in

quality to the Water Supply Services and Wastewater Services the City provides to other similarly situated City customers. Nothing contained in this Agreement shall create or imply in the Developer or the District a preferential right to the Water Supply Services or Wastewater Services, if any, over the customers within the City. In the event of a shortage of Water supply due to drought or other conditions, the District and the customers of the City shall share and share alike in such shortfall in compliance with applicable Texas law.

**2.4. Maximum Number of Connections.** The City agrees to provide up to 1,700 Equivalent Single-family Connections of Water Supply Services to the District. The City will provide an initial 500 Equivalent Single-family Connections of Water Supply Services, subject to (1) compliance with the terms and conditions of this Agreement, (2) payment of the applicable Impact Fees as provided herein and any other applicable fees of the City, and (3) Developer's or District's actual completion of construction, and payment for construction, all of necessary water facilities required to connect the Tract to City water supply and distribution facilities. After providing the initial connections, additional connections will be provided upon the following conditions: (1) compliance with the terms and conditions of this Agreement, (2) payment of the applicable Impact Fees as provided herein and any other applicable fees of the City and (3) on written notice to the City received not later than twenty-four (24) months prior to the date the City is requested to approve the additional capacity, provided, however, in the event the additional capacity requires expansion or modification of the existing City Water System in order to provide such additional capacity and provide service due to anticipated City demands for Water Supply Services, then the City shall have such time as is required, to plan, design, expand, modify and finance such additional capacity, but the City agrees to work with Developer and the District and use reasonable efforts to have the additional connections available to serve the Tract by the date requested. Developer specifically hereby acknowledges and agrees that the City's final approval of a plat of any portion of the Tract, and in the absence of the satisfaction of the Developer's obligation to construct water and wastewater facilities described above, does not indicate, and shall not be construed to indicate, availability of water and wastewater capacity for the property included in the plat.

If the City elects to provide Wastewater Services to the District, the parties will enter into an amendment to this Agreement that will specify the maximum number of Equivalent Single-Family Connections of Wastewater Services, the initial number of connections available and the Points of Delivery of Wastewater. The City will provide connections to the District upon the following conditions: (1) the Developer's or District's actual completion of construction, and payment for construction, of all necessary wastewater facilities required to connect the Tract to the City Wastewater System, (2) compliance with the terms and conditions of this Agreement, and (3) payment by the District of the initial installment of the applicable Impact Fees for Wastewater as set forth herein and any other applicable fees of the City, as set forth in Section 2.14.1 below. After providing the initial connections, additional connections will be provided upon the following conditions: (1) compliance with the terms and conditions of this Agreement, (2) payment of the applicable impact fees as provided herein and any other applicable fees of the City and (3) on written notice to the City received not later than twenty-four (24) months prior to the date the City is requested to approve the additional capacity provided, however, in the event the additional capacity requires expansion or modification of the existing City Wastewater System in order to provide such additional capacity and provide

service due to anticipated City demands for Wastewater Services, then the City shall have such time as is required, to plan, design, expand, modify and finance such additional capacity, but the City agrees to work with Developer and the District and use reasonable efforts to have the additional connections available to serve the Tract by the date requested. Developer specifically hereby acknowledges and agrees that the City's final approval of a plat of any portion of the Tract, and in the absence of the satisfaction of the Developer's obligation to construct wastewater facilities described above, does not indicate, and shall not be construed to indicate, availability of water and wastewater capacity or pressure for the property included in the plat.

## **2.5. Construction of the District Water, Drainage and Wastewater Systems.**

**2.5.1. Construction of and Standards for Water and Wastewater Facilities Constructed in the District.** The District shall design, construct, own, operate, and maintain, at its sole cost and expense, a District Water System, the District Drainage System, and the District Wastewater System to serve the Tract. The District Water System shall include all facilities necessary to convey Water from the Points of Connection of Water to the District's customers and shall include a master meter at the Points of Delivery to allow the parties to measure the amount of Water provided to the District. The District Wastewater Treatment Plant may be designed and constructed only after agreement of the City as provided in this Section 2.5.1. The District Drainage System shall include all facilities necessary to provide adequate drainage and storm water control for the District.

Plans and specifications for the District Water System, the District Drainage System, and the District Wastewater System as well as any extensions, additions, or modifications thereto, shall be submitted to the City for review and approval prior to construction. The District Water System, Drainage System and Wastewater System and any extensions thereof shall be designed and constructed in accordance with City ordinances and design standards, the requirements of the Commission, and the requirements of any other governmental agency having or acquiring jurisdiction, all as they may be amended from time to time. All District facilities shall be constructed or installed within easements permanently dedicated to the installation of public utilities or for road right-of-way or within easements or fee parcels owned by the District.

The Developer may immediately apply for a wastewater discharge permit for an interim wastewater treatment plant to be located within the boundaries of the District, and the City will not object to this permit. The Developer acknowledges that the City prefers that the Developer not construct a wastewater treatment plant to serve the District, and the Developer agrees to negotiate in good faith with the owners of the multi-district wastewater treatment plant located within the boundaries of Fort Bend County Municipal Utility District No. 152 (the "Multi-District Plant") to obtain both interim wastewater service and wastewater service capacity to serve the ultimate wastewater needs of the District. If the Developer determines that Developer cannot reach an agreement for interim service or permanent capacity on reasonable economic terms and in a reasonable time frame, the Developer will notify the City in writing and will meet with the City to discuss the terms offered and the failure to reach agreement timely. If the City agrees that terms are not reasonable and/or that an agreement cannot be reached and service cannot be provided within a time frame that will allow the Developer to proceed with development in a timely manner, the City will agree that the District may construct an interim

wastewater treatment plant within the boundaries of the District, subject to approval of the wastewater discharge permit by the TCEQ.

In the event that Developer constructs an interim wastewater treatment plant, no later than the later to occur of (i) two (2) years after receipt of written notice from the City that the City intends to provide Wastewater Services to the District or (ii) the Wastewater Service Date, the District will discontinue using the interim wastewater treatment plant, contract with the City for Wastewater Services for the District, and send all wastewater discharges from the District to the City's wastewater treatment plant, provided it is economically feasible to do so. Furthermore, the District will remove such plant within six (6) months of the Wastewater Service Date. The parties acknowledge that it is not possible at this time to designate the Point of Connection of Wastewater as that point will be determined based upon development to occur in the future. Therefore, the parties agree that it will be considered economically feasible provided that the Point of Connection of Wastewater is no further than  $\frac{3}{4}$  of a mile from any point on the District's boundary. The parties further agree that a sewer line connecting the District Wastewater System to the Point of Connection of Wastewater will be constructed by the District in the City or County road right-of-way or, if it is not to be constructed in the City or County road right-of-way, the City will provide easements to the District that are necessary for construction of this sewer line but only if the needed easement is outside the District's boundaries.

With respect to either an interim wastewater treatment plant or a permanent wastewater treatment plant constructed by the District, if the District generates sufficient effluent to make it economically feasible for the District to provide Type 1 reclaimed water for its irrigation purposes, the District agrees to obtain authorization from the Commission for Type 1 Reuse pursuant to Chapter 210 of the Commission rules and will provide Type 1 reclaimed water for its irrigation purposes.

**2.5.2. District Water Meters.** The District shall install water meters of a type approved by the City to serve all customers that will be taking Water from the District Water System. The District agrees that no person may take Water from the District Water System unless the Water is metered, except that fire protection taps and routine water system flushing uses may be unmetered.

**2.6. Inspection by the City.** The City shall have access at all reasonable times to inspect the construction, operation, and maintenance of the District Water System, the District Drainage System and the District Wastewater System as the City deems necessary or desirable to assure compliance with this Agreement.

**2.7. District Maintenance and Operations.** The District will be responsible for operating and maintaining the District Water System, the District Drainage System and the District Wastewater System, including reading the meters, billing, collecting from, and responding to service calls from District customers. If the District determines from its investigation that a problem may exist in the City Water System or the City Wastewater System and not the District Water or Wastewater System, the District shall notify the City. The City will be responsible for investigating and determining if the problem is associated with the City system and for making any repairs, deemed appropriate by the City to the City system. The City will be responsible for operating and maintaining the City Water System and the City

Wastewater System, including responding to calls from the City's customers. If the City determines from its investigation that a problem may exist in the District Water or Wastewater System and not the City Water or Wastewater System, the City shall notify the District. The District will be responsible for investigating and determining if the problem is associated with a District system and for making any repairs, deemed appropriate by the District, to the District system.

The District Water and Wastewater Systems shall be operated, maintained, and repaired in accordance with the standard applicable to the City's maintenance and operation standards for the City Water and Wastewater Systems, set out in Chapter 29, Articles II and III of the City Code of Ordinances, including all amendments thereto. The District shall also make written reports to the City relating to the operations, maintenance, and repairs of the District Water and Wastewater Systems, as set forth in **Exhibit B**. The requirements of this paragraph shall apply to any contractor retained by the District or Developer to operate or maintain the District Water and Wastewater Systems.

If the City amends any of its standard operating procedures, the District shall comply with the amended standard or practice thirty (30) days after delivery of written notice of the amendment to the District. The District shall implement the amended standard or practice as soon as is reasonably possible after receipt of the notice. Any operations services contract with a third party operator shall require such operator to be duly certified, as required by regulations of the Texas Commission on Environmental Quality and, further, such contract shall be terminable at will by either party without cause with prior written notice to the other party. Furthermore, such operations services contract, if between the Developer and third party operator, shall be subject to review and approval by the City's Engineer. This requirement for approval by the City's Engineer shall not apply to an operations services contract between the District and a third party operator.

**2.8. Points of Delivery.** The City shall deliver Water to the District Water System at the Points of Connection of Water, to be mutually agreed upon by the District, Developer and the City. If the City elects to provide Wastewater Services, the District shall deliver all Wastewater to the Points of Delivery of Wastewater, to be mutually agreed upon by the District, Developer and the City.

**2.9. Responsibility for Water and Wastewater.** Responsibility for all Water delivered to the District shall remain in the City to the Points of Connection of Water and, upon passing through the Points of Connection of Water, responsibility for the Water shall pass to the District. Responsibility for all Wastewater shall remain in the District to the Points of Delivery of Wastewater, and upon passing through the Points of Delivery of Wastewater, responsibility for the Wastewater shall pass to the City, if Wastewater Services are provided to the District by the City.

## **2.10. District Wastewater Discharge Rules Adoption.**

**2.10.1. Wastewater Rules.** If the City provides Wastewater Services to the District, then within sixty (60) days of the date the District begins delivery of Wastewater to the Points of Delivery of Wastewater, the District shall adopt regulations that shall be at least as stringent as the provisions of Chapter 29, Articles II and III, of the City's Code of Ordinances regulating wastewater discharges into City Wastewater System, as they may be amended from time to time as part of the District's regulations governing wastewater discharges into the District Wastewater System.

**2.10.2 Plumbing Code.** The District agrees to adopt and follow the same plumbing code as adopted by the City, as it may be amended from time to time. The City agrees to notify the District of amendments or changes to the plumbing code and the District agrees to adopt such changes as to make the District's plumbing code consistent with the City's plumbing code within sixty (60) days of receipt of notice from the City of changes.

**2.10.3. Compliance with Laws and Regulations.** The District shall promptly, at its sole cost, take whatever action is necessary relating to the construction, reconstruction, repair, operation, regulation, testing, or maintenance of the District Water System and the District Wastewater System for the City to operate and maintain the City Water System and City Wastewater System in compliance with all federal and state law regulations and the City's discharge permits.

**2.10.4. Testing and Analysis.** The City shall have the right at all reasonable times to take samples from the District Wastewater System to determine whether the District is complying with the provisions of this Agreement. If the City is required to take wastewater samples for testing to investigate a possible violation of the District's wastewater discharge rules, the District agrees to pay the reasonable costs of the sampling and testing.

**2.10.5. Investigation and Enforcement.** If the City provides Wastewater Services to the District, the District shall be responsible for investigating violations of the District wastewater discharge rules. If the District determines that any District customer is violating the District wastewater discharge rules, the District shall promptly report the violation to the City in writing and seek compliance with the District wastewater discharge rules by one or more of the following:

- (a) Having the customer voluntarily take corrective action to comply with the District wastewater discharge rules;
- (b) Disconnecting the customer from the District Water System;
- (c) Seeking injunctive relief in a court of competent jurisdiction to prevent existing or further violations; or
- (d) Recovering civil penalties against the violator as authorized by Section 49.004 of the Texas Water Code, as amended.

**2.10.6. Fines, Penalties and Damages.** If wastewater received by the City Wastewater System from the District Wastewater System either does not satisfy the quality requirements or exceeds the quantity requirements and causes damage to the City Wastewater System or treatment process, causes the City to incur extraordinary costs in treating wastewater

from the District Wastewater System, or results in the City's incurring any fine or penalty by a regulatory agency, the District shall reimburse the City for the cost of any repairs, extraordinary treatment costs, fines or penalty after receipt of an invoice with supporting documentation from the City. The District shall have an opportunity to investigate to confirm that its wastewater was the cause of such damage, extraordinary costs, fines, or penalty and, if the District so desires, to appeal such finding to the City Council and to show cause why such costs should not be properly invoiced to the District.

## **2.11. Water Supply Services Rules.**

**2.11.1. Water Conservation Plan.** Within six (6) months of the date the District begins operation of the District Water System, the District shall adopt a drought contingency plan consistent with and no less stringent than the City's drought contingency plan then in effect. A copy of the City's current drought contingency plan is attached as **Exhibit C** to this Agreement. The City will provide the District with a copy of its Drought Contingency Plan promptly after any amendments, and the District shall amend its drought contingency plan to be consistent with and no less stringent than the City's plan within sixty (60) days of receipt of the amended City drought contingency plan.

**2.11.2. Water Emergency.** Under the City's Code of Ordinances, the City may declare a "water emergency period" if any condition or event occurs that interrupts the production, treatment, or transportation of Water in the City's Water System and may impose conditions on consumption or use of Water. If the City declares a "water emergency period" during the term of this Agreement and imposes conditions on Water consumption for its other customers under its then-current ordinance, the District agrees, upon notification by the City, to impose and enforce the same conditions of consumption on District customers. In the event of a water emergency, Water supplied under this Agreement will be rationed to the District on the same conditions as rationed to similarly situated City customers and in accordance with applicable state law.

**2.11.3. Alternative Water.** Prior to commencing operation of the District Water System, the District shall enter into a contract with the City to participate in the City's Groundwater Reduction Plan for the conversion to alternative water supply as required by the Fort Bend Subsidence District. Such contract shall be in the then-current standard form offered by the City to other similarly situated customers.

The District will install pipes, valves, spray heads and related appurtenances that have been approved by the Commission for effluent reclaimed water for all irrigation systems on at least 75% of the property within the boundaries of the District which can be served with effluent reclaimed water (such as irrigation in boulevards, parks, etc.). The District, the Developer and the City will mutually agree upon multiple points of connection. The City must approve the plans for such systems. The parties agree to work together to design and operate the District's irrigation systems so as to maximize the use of the effluent reclaimed water as such use affords credits against the groundwater reduction requirements of the Fort Bend Subsidence District. The District agrees to purchase effluent reclaimed water from the City if the City delivers effluent reclaimed water to a point of connection and in a sufficient amount to serve the

District's irrigation needs for areas served by that point of connection. The effluent reclaimed water will be pressurized or the parties will agree on an alternate effluent delivery system that is not pressurized. The District is allowed to install and use potable water systems for irrigation in an area until such time as the City delivers effluent to the point of connection serving such area in a sufficient amount to serve the District's irrigation needs for such area. Credits against the Groundwater Reduction Plan for the use of reclaimed water shall be the property of the City to use for the benefit of the participants in the City's Groundwater Reduction Plan.

**2.12. Other Service Providers.** The Developer shall not undertake to enter into an agreement with any party, other than the City, to provide or supply Water services for any portion of the Tract or to supply Water services outside the Tract, without the prior written approval of the City.

**2.13. Records and Reports.** The District shall promptly provide to the City upon written request, and without charge, copies of any District records or documents relating to the construction, operation, maintenance, or repair of the District Water System or District Wastewater System.

## **2.14. Water and Wastewater Charges**

**2.14.1. Impact Fees.** The payment of the Impact Fee for Water is due and payable for each Equivalent Single-family Connection prior to the final approval of a plat. No tap shall be made within a platted area unless and until the Impact Fee for Water for such tap has been duly paid to the City. After receipt of notice from the City as set forth in Section 2.5.1 above and in accordance therewith, the District shall pay the Impact Fee for Wastewater for all Equivalent Single-Family Connections that have tapped into the District Wastewater System (the "Accrued Impact Fees") in three (3) equal installments, with the first installment being due from the District to the City prior to the connection of the District Wastewater System to the City Wastewater System. The second installment will be paid by the District to the City one (1) year after the Wastewater Service Date, and the third installment will be paid by the District to the City two (2) years after the Wastewater Service Date. In the event that any installment payment owed by the District to the City under this paragraph is not timely paid, the City, in its sole discretion, may elect to charge the District a rate for Water Supply Services and Wastewater Services that is up to twice the amount of the rate charged for City wholesale customers, beginning on the date that the delinquent installment payment was due and continuing until commencement of the next billing period after all delinquent Accrued Impact Fees are paid. The revenue due to the increase in rates will not be applied to the Accrued Impact Fees. Impact Fees for Wastewater will be paid at the same time as the Impact Fees for Water for connections made after the Wastewater Service Date. The Impact Fees will be set in the City's Code of Ordinances as they may be amended from time to time by the City, provided that no amendment to the Impact Fee shall be effective against the District until thirty (30) days after written notice to the District of a change is provided by the City. The City acknowledges that the District will receive credits from the City against Impact Fees for Water due from the District under this Section 2.14.1 by virtue of the Developer's funding a certain water line. The City acknowledges and agrees that, upon either the Developer's payment of Impact Fees for Water

or receipt of a credit from the City against the payment of Impact Fees for Water as provided above, the City shall reserve capacity to the District in the water supply plant serving the Tract in the number of Equivalent Single-family Connections represented by such payment or credit of Impact Fees for Water, and that upon payment of Impact Fees for Wastewater Services, the City shall reserve capacity in the applicable Wastewater Services facilities serving the Tract in the number of Equivalent Single-family Connections represented by such payment of Impact Fees for Wastewater Services.

The Developer, on behalf of the District, will construct at its sole cost (i) the 16-inch water line along Benton from Reading to A. Meyers Road and related appurtenances sufficient to serve the District (the "Benton Water Line") within the Benton right-of-way, and (ii) a water line along A. Meyers Road from the connection point with the Benton Water Line to the District boundary and related appurtenances sufficient to serve the District (the "A. Meyers Water Line") within the A. Meyers Road right-of-way. The City agrees to credit the actual costs of the Benton Water Line against the Water Impact Fees owed by the District. After construction of the Benton Water Line is complete, the Developer shall submit a request for credit to the City together with detailed support documentation so that the City can verify the actual costs of the Benton Water Line. The City will then issue a letter to the Developer stating the amount of the credit. The Developer agrees to convey ownership and operation of the Benton Water Line to the City upon completion of the Benton Water Line, inspection by the City, and approval of the City that the Benton Water Line was constructed in accordance with the approved plans and specifications, subject to a security interest therein for the purpose of securing the performance of the City under this Agreement. At such time as the District's bonds issued to acquire, purchase and finance the Benton Water Line have been discharged, the District shall execute a release of such security interest and the City shall own the Benton Water Line free and clear of such security interest. The City may require the Developer to oversize the A. Meyers Water Line, provided that the City bears the incremental construction costs of such oversizing. The District will design and construct the A. Meyers Water Line and obtain the approval of the City for the plans and specifications for such line. Once the plans have been approved by the City and all entities having jurisdiction, the District will bid the project using alternate bids for the size of line needed to serve only the District and the size of line required by the City to clearly reflect the incremental construction costs to be paid by the City. The District must obtain City approval of the bids, the incremental construction costs to be paid by the City and the selected contractor prior to award of the contract for such line. The District will send the City notice of the award of the contract for the A. Meyers Water Line. Within thirty (30) days of the City's receipt of such notice, the City will pay the District the incremental construction costs of the oversizing as determined from the bid. Upon completion of the A. Meyers Water Line, the District will perform an accounting of the costs for such project including the portion to be paid by the City and deliver it to the City for approval. Upon City approval, the District will then either invoice the City for any shortfall or refund to the City any payments in excess of the incremental construction costs. The City agrees to accept the conveyance of the A. Meyers Water Line from the Developer and, if applicable, the District, at a time to be determined by the District, subject to completion of the A. Meyers Water Line, inspection by the City, and approval of the City that the A. Meyers Water Line was constructed in accordance with the approved plans and specifications, and subject to a security interest therein for the purpose of securing the

performance of the City under this Agreement if the District has not yet issued bonds to acquire, purchase and finance the A. Meyers Water Line. At such time as the District's bonds issued to acquire, purchase and finance the A. Meyers Water Line have been discharged, the District shall execute a release of such security interest and the City shall own the A. Meyers Water Line free and clear of such security interest.

**2.14.2. Monthly Use.** All water used within the Tract, except for water used for fire protection and normal system flushing, shall be metered. Each month, the District shall cause all the meters on the District's Water System to be read and shall provide a report to the City on the total amount sold and the amount of water sold through irrigation taps. The total amount of Wastewater discharged by the Tract to the City's Wastewater System for a month shall be deemed to be the same as the total amount of Water received by the District from the City Water System during the month as measured on the master meter, excluding water sold through irrigation only taps.

**2.14.3. Billing and Payment.** The District shall pay the City each month for the Water Supply Services and Wastewater Services provided under this Agreement. The District shall be treated as one wholesale customer, and the rates shall be those set out in the City's Code of Ordinances for City wholesale customers, as such rates may be amended from time to time. Billings for Water shall be based on the master meter readings. Billing for Wastewater Services shall be based on the amount Water delivered to the District through the master meters minus all water sold through irrigation only meters. Each month the District shall report the meter readings for each meter together with the amount sold through irrigation only meters. The City will then invoice the District for the Water Supply Services and the Wastewater Services. Payment is due within thirty (30) days of receipt of such invoice.

The City agrees that a change in the rates will not become effective against the District until thirty (30) days after effective written notice to the District of a change is provided by the City. The City shall have the right at any time, during regular business hours, to review the District's records to confirm meter readings and usage calculations reported to the City.

**2.14.4. Operating Expenses and Source of Payment.** The District agrees, represents and covenants that the monthly fee required to be paid by the District under this Agreement shall constitute a proper operating expense of the District's Water System and the District's Wastewater System if Wastewater Services are provided and shall be payable as an operating expense from the income derived from such systems. The District further agrees to adjust and maintain from time to time the rates charged to its customers (a) so that the total rate charged by the District for Water supply service and Wastewater treatment services shall never be less than those charged to in-City customers by the City for such services, and (b) so that the income to the District from such rates, in addition to other operating revenues of the District, shall at all times be sufficient to promptly pay all such charges when and as the same become due and payable to the City.

**2.15. District Drainage System.** The Developer will construct and maintain stormwater detention and drainage facilities to serve the District in accordance with the Fort Bend Drainage District requirements. The District will enter into an agreement with the HOA which provides for the HOA to assume maintenance of the facilities in the event that the District is dissolved.

**2.16. Term.** This Agreement shall take effect on the date of approval by City Council. This Agreement shall remain in effect for an initial term of twenty-five (25) years from the effective date of this Agreement and shall automatically renew for consecutive one-year terms thereafter unless terminated as provided for herein.

**2.17. Termination for Failure to Assign this Agreement to the District.** The City may terminate this Agreement after two (2) years from its effective date if the City has not, by that date, received an executed copy of the Agreement from the District and the assignment of the Developer's obligations relating to Water Supply Services and Wastewater Services to the District, or after three (3) years from its effective date if the Developer fails to file the first phase plat, acceptable to the City, and pay the Impact Fees attributable to such plat owed to the City in accordance with the terms of this Agreement. Notice shall be given by the City in writing to the Developer at least thirty (30) days prior to a termination date under this Section 2.16 before such termination shall take effect.

**2.18. Termination for Failure to Enter Into Fire Protection Services Agreement.** The District agrees to prepare a fire plan that will allow it to take fire protection services from the City and take all steps to have such plan approved by the Commission. After approval, the District agrees to hold an election on the approval of the fire plan. The District agrees within thirty (30) days of voter approval of the fire plan, to enter into a separate agreement for Fire Protection Services for the Tract in a form substantially similar to the form of agreement attached as **Exhibit D** to this Agreement. The District agrees to continue to call elections on the fire plan the next uniform election date two additional times if the fire plan is not approved by the voters. The City will not provide fire protection services to the District after July 1, 2014, unless and until the District enters into a Fire Protection Services Agreement with the City in accordance with all Commission rules applying to provision of fire protection services.

**2.19. Termination for Failure to Negotiate Strategic Partnership Agreement.** The District agrees to enter into a strategic partnership agreement between the City and the District in a form substantially similar to the form of agreement attached as **Exhibit E** to this Agreement, pursuant to the provisions of Section 43.0751, Texas Local Government Code, subject to all laws and regulations in effect at such time. The Developer agrees to use best efforts to cause the District to do so. The City may terminate this Agreement should the District fail to enter into a strategic partnership agreement with the City by the time the first preliminary plat within the Tract is submitted to the City.

**2.20. Termination upon Annexation of the District.** This Agreement shall automatically terminate on the date the District is annexed by the City and dissolved.

**2.21. Termination by Mutual Agreement.** The parties may enter a written agreement to terminate or replace this Agreement.

**2.22. Road Construction.** The Developer, on behalf of the District, will construct certain roads as set forth herein and in the Development Agreement. In the event that Fort Bend County (the "County") has not constructed the southern half (the two future eastbound lanes) of A.

Meyers Road (50-foot right-of-way width) adjacent to the boundary of the District (the “A. Meyers Road Portion”) in accordance with the following schedule, the District and/or the Developer will construct segments of the A. Meyers Road Portion as set forth below:

- a. Upon platting of 50% of the single-family lots, the District and/or the Developer will construct 50% of the length of the A. Meyers Road Portion prior to the recordation of the subsequent platted section of the Development.
- b. Upon platting of 75% of the single-family lots, the District and/or the Developer will construct an additional 25% of the length of the A. Meyers Road Portion prior to the recordation of the subsequent platted section of the Development.
- c. Upon platting of 90% of the single-family lots, the District and/or the Developer will construct the final 25% of the A. Meyers Road Portion prior to the recordation of the last platted section of the Development.

The Developer agreed in the Development Agreement to dedicate right-of-way to provide half of the ultimate proposed 100-foot right-of-way for A. Meyers Road and to dedicate half of the additional right-of-way to provide the ultimate 100-foot right-of-way with the remainder to be dedicated by the developer/owner of the tract north of A. Meyers Road. The Development Agreement provides that the dedication will be made as land containing such right-of-way is platted, provided that if the County elects to build the A. Meyers Road Portion and all right-of-way has not been dedicated by plat, the Developer agreed to convey such right-of-way within ninety (90) days of receipt of written request from either the City or the County.

The Developer will also construct the portion of A. Meyers Road (50-foot right-of-way width) from the west property line of the undeveloped tract located southwest of the intersection of A. Meyers Road and Berdett Road to Berdett Road (the “A. Meyers Road/Berdett Road Portion”) provided that the City or the County obtains the right-of-way for the A. Meyers Road/Berdett Road Portion. After the Developer’s receipt of written notice that the right-of-way has been acquired, the Developer will include the A. Meyers Road/Berdett Road Portion in the construction contract for the next segment of road to be constructed hereunder. If the Developer has not received written notice that the right-of-way has been acquired at least ninety (90) days before the District and/or the Developer awards a contract for the final segment of the A. Meyers Road Portion to the City or County, the Developer will not be required to construct the A. Meyers Road/Berdett Road Portion.

Neither the Developer nor the District will be required by the City to construct any roadway improvements outside of the boundaries of the District other than in accordance with this Agreement.

**2.23. Remedies upon Default.** The parties do not intend to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all remedies, other than termination of this Agreement or termination of Water and Wastewater Services at quantities current at the time remedy is sought, existing at law or in equity, including specific performance and mandamus, may be availed of by either party and shall be cumulative.

**2.24. Temporary Service to the Tract.** The City agrees that, if necessary, the Developer may serve the original voter house or mobile homes in the District from a potable water well and

septic system, for a period of no more than 18 months, while the District Water System and District Wastewater System are under construction. Any such well and septic system will be subject to the same restrictions, as such may be amended from time to time in the sole discretion of the City, as if the facilities were located within the City. The wells shall be abandoned and plugged in accordance with applicable local and state regulations. The septic systems shall also be abandoned and removed from the sites in accordance with applicable local and state regulations. The Developer acknowledges that this well is not part of the City's Groundwater Reduction Plan and that the City is in no way responsible for compliance with Fort Bend Subsidence District regulations in regard to such well. Developer is solely responsible for permitting, regulatory compliance and payment of all fees for such well(s).

**2.25. Wells for Amenities.** Neither the District nor the Developer may drill wells for amenities.

**2.26. Consent Ordinance.** Upon receipt of a petition requesting consent to the creation of the District from the owners of the land within the District, the City will adopt an ordinance consenting to the creation of the District and the issuance of water, sewer, drainage, park and road bonds by the District (the "City's Consent Ordinance"). The District shall be subject to the terms and conditions of the City's Consent Ordinance. In the event of a discrepancy between the City's Consent Ordinance and this Agreement, the City's Consent Ordinance shall control.

### **ARTICLE III. DEVELOPMENT AGREEMENT**

**3.1. Development Agreement.** The parties acknowledge that the City and the Developer have entered into the Development Agreement, which describes the development plans for the Tract and the City's and the Developer's obligations relating to such development, contemporaneously with the execution of this Agreement.

### **ARTICLE IV. FINANCING OF FACILITIES**

**4.1. Authority of District to Issue Bonds.** The District shall have authority to issue, sell and deliver bonds or other obligations (the "Bonds") from time to time, as deemed necessary and appropriate by the Board of Directors of the District, for the purposes, in such forms and manner and as permitted or provided by federal law, state law, Commission regulations, and the City's Consent Ordinance.

**4.2. Bonds as Obligation of District.** Unless and until the City shall dissolve the District and assume the properties, assets, obligations and liabilities of the District, the Bonds, as to both principal and interest, shall be and remain obligations solely of the District and shall never be deemed or construed to be obligations, liabilities or indebtedness of the City.

### **ARTICLE V. MISCELLANEOUS**

**5.1. Successors.** This Agreement shall be binding upon the successors or assigns of the parties hereto.

**5.2. Force Majeure.** If any party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, except the obligation to pay amounts owed or required to be paid pursuant to the terms of this Agreement, then the obligations of such party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the party whose contractual obligations are affected thereby shall give notice and full particulars of such force majeure to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure", as used herein, shall include without limitation of the generality thereof, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, acts of terrorism, orders of any kind of the government of the United States or the State of Texas or any civil or military authority other than the District, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, drought, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of Water supply resulting in an inability to provide Water necessary for operation of the District Water System or in an inability of the City to provide Water, and any other incapacities of any party, whether similar to those enumerated or otherwise, which are not within the control of the party claiming such inability, which such party could not have avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party when such settlement is unfavorable to it in the judgment of the party experiencing the difficulty.

**5.3. Law Governing.** This Agreement shall be governed by the laws of the State of Texas and no lawsuit shall be prosecuted on this Agreement except in a court of competent jurisdiction located in Fort Bend County.

**5.4. No Additional Waiver Implied.** No waiver or waivers of any breach or default (or any breaches or defaults) by any party hereto of any term, covenant, condition, or liability hereunder, or the performance by any party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults or any kind, under any circumstances.

**5.5. Addresses and Notice.** Unless otherwise provided in this Agreement, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made, or accepted by any party to the other (except bills), must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to such party, addressed to the party to be notified. Notice deposited in the mail in the manner herein above described shall be conclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the expiration of three (3) days after it is so deposited. Notice given in any such other manner

shall be effective when received by the party to be notified. For the purpose of notice, addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the City, to:

City of Rosenberg  
P. O. Box 32  
Rosenberg, Texas 77471-0032  
Attn: City Manager

If to the Developer, to:

Dry Creek (Houston) ASLI VII, LLC  
c/o Ersa Grae Corporation  
9801 Westheimer, Suite 250  
Houston, Texas 77042  
Attn: Vahid Tabrizi

If to the District, to:

Fort Bend County Municipal Utility District No. 184  
c/o Allen Boone Humphries Robinson LLP  
3200 Southwest Freeway, Suite 2600  
Houston, Texas 77027  
Attn: James A. Boone

The parties shall have the right from time-to-time and at any time to change their respective addresses and each shall have the right to specify any other address by at least fifteen (15) days written notice to the other.

**5.6. Merger and Modifications.** The exhibits attached to this Agreement are incorporated into the Agreement for all purposes. This Agreement shall be subject to change or modification only with the written mutual consent of the City and the Developer.

**5.7. Severability.** The provisions of this Agreement are severable, and if any part of this Agreement or the application thereof to any person or circumstances shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of part of this Agreement to other persons or circumstances shall not be affected thereby.

**5.8. Benefits of Agreement.** This Agreement is for the benefit of the City, the Developer, and the District, and shall not be construed to confer any benefit on any other person except as expressly provided for herein. In the event this Agreement is not approved by the District, the City shall have no obligations to the Developer.

**5.9 Additional Services.** The parties acknowledge that it may benefit the District to contract to receive services, in addition to Water Supply and Wastewater Services, from the City and that it may benefit the City as well to provide such additional services to the District. The parties agree that this Agreement is not meant to exclude the future cooperation and contracts between the parties regarding such additional services.

**5.10. Payment Guarantee.** The District will enter into contracts for the construction of the Benton Water Line and the A. Meyers Water Line and Developer will execute such contracts for the purpose of guaranteeing payments to the contractors thereunder.

[EXECUTION PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

CITY OF ROSENBERG, TEXAS

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ATTEST:

APPROVED:

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CITY SECRETARY

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CITY ATTORNEY

DRY CREEK (HOUSTON) ASLI VII, LLC, a  
Delaware limited liability company

By: Avanti Strategic Land Investors VII,  
L.L.L.P., a Delaware limited liability limited  
partnership, its sole Member

By: Avanti Properties Group II, L.L.L.P., a  
Delaware limited liability limited partnership, its  
Managing General Partner

By: Avanti Management Corporation, a Florida  
corporation, its sole General Partner

By: \_\_\_\_\_  
Andrew Dubill, Vice President



STATE OF TEXAS           §

COUNTY OF FORT BEND   §

A **METES & BOUNDS** description of a 502.46 acre tract of land in the Wiley Martin Survey, Abstract 56, and the E. P. Everett Survey, Abstract 387, Fort Bend County, Texas, being that certain called 371.8877 acre tract recorded under County Clerk's File Number 2013131554, Official Public Records, Fort Bend County, Texas, and that certain called 130.58 acre tract recorded under County Clerk's File Number 2005107303, Official Public Records, Fort Bend County, Texas, with all bearings based upon the Texas Coordinate System, South Central Zone, NAD83, based upon GPS observations.

**Beginning** at a  $\frac{3}{4}$  inch iron rod with cap marked "EHR&A" found in the northwesterly right-of-way line of Berdett Road for the south corner of said called 371.8877 acre tract, for the most easterly south corner and **Place of Beginning** of the herein described tract, said point also being in the southwest line of said Wiley Martin Survey, Abstract 56, same being the northeast line of the adjoining Henry Wilcox Survey, Abstract 342, and the northeast line of an adjoining called 607.75 acre tract recorded in Volume 64, Page 109, Deed Records, Fort Bend County, Texas;

**Thence** North 67 degrees 27 minutes 46 seconds West along the common line of the herein described tract and said adjoining called 607.75 acre tract, same being the common line of said Wiley Martin Survey, Abstract 56, and said adjoining Henry Wilcox Survey, Abstract 342, being along the southerly line of said called 371.8877 acre tract and the upper south line of said called 130.58 acre tract, 5,064.24 feet to an angle point, said point being the northwest corner of said adjoining called 607.75 acre tract and said adjoining Henry Wilcox Survey, Abstract 342, same being the east corner of said E. P. Everett Survey, Abstract 387, and the northeast corner of an adjoining called 24.9524 acre tract recorded in Volume 1934, Page 712, Official Records, Fort Bend County, Texas;

**Thence** North 67 degrees 36 minutes 40 seconds West along the common line of the herein described tract and said adjoining called 24.9524 acre tract, same being the common line of said Wiley Martin Survey, Abstract 56, and said E. P. Everett Survey, Abstract 387, 547.46 feet to a reentry corner to the herein described tract and a reentry corner to said called 130.58 acre tract, said point being the northwest corner of said adjoining called 24.9524 acre tract;

**Thence** South 42 degrees 08 minutes 14 seconds West along the common line of the herein described tract and said adjoining called 24.9524 acre tract, 2,046.63 feet to a point in the northeast right-of-way line of Ricefield Road for the most westerly south corner of the herein described tract and the south corner of said called 130.58 acre tract, same being the west corner of said adjoining called 24.9524 acre tract;

**Thence** North 47 degrees 59 minutes 25 seconds West along the northeast right-of-way line of Ricefield Road, 344.35 feet to a point for the west corner of the herein described tract and the west corner of said called 130.58 acre tract, same being the south corner of the adjoining residue of a called 400.814 acre tract recorded under County Clerk's File Number 2006019259, Official Public Records, Fort Bend County, Texas;

**Thence** North 42 degrees 05 minutes 03 seconds East along the common line of the herein described tract and said adjoining residue of a called 400.814 acre tract, being the westerly line of said called 130.58 acre tract, 1,924.14 feet to an angle point;

**Thence** North 22 degrees 20 minutes 28 seconds East continuing along said line, and along the east line of an adjoining called 21.29 acre tract recorded under County Clerk's File Number 2008017096, Official Public Records, Fort Bend County, Texas, and the east line of an adjoining called 30.00 acre tract recorded under County Clerk's File Number 2007013845, Official Public Records, Fort Bend County, Texas, 3,225.31 feet to a point in the centerline of A. Myers Road for the northwest corner of the herein described tract and the northwest corner of said called 130.58 acre tract, same being the northeast corner of said adjoining residue of a called 400.814 acre tract, and being in the southerly line of an adjoining called 792.85 acre tract recorded under County Clerk's File Number 2001123289, Official Public Records, Fort Bend County, Texas, and described in Volume 510, Page 210, Deed Records, Fort Bend County, Texas;

**Thence** South 67 degrees 49 minutes 42 seconds East along the northerly line of the herein described tract, the northerly line of said called 130.58 acre tract, and the northerly line of said called 371.8877 acre tract, as located in A. Myers Road, 6,171.28 feet to the upper northeast corner of the herein described tract and the upper northeast corner of said called 371.8877 acre tract, same being the northwest corner of the adjoining residue of a called 376.1612 acre tract recorded in Volume 1934, Page 712, Official Records, Fort Bend County, Texas;

**Thence** South 21 degrees 34 minutes 18 seconds West along the common line of the herein described tract and said adjoining residue of a called 376.1612 acre tract, 470.17 feet to a reentry corner to the herein described tract and a reentry corner to said called 371.8877 acre tract, same being the southwest corner of said adjoining residue of a called 376.1612 acre tract;

**Thence** South 68 degrees 25 minutes 42 seconds East continuing along said common line, 397.73 feet to the lower northeast corner of the herein described tract and the lower northeast corner of said called 371.8877 acre tract, same being the southeast corner of said adjoining residue of a called 376.1612 acre tract, and being in the westerly right-of-way line of Berdett Road;

Fort Bend County MUD 184  
502.46 Acres

Wiley Martin Survey, Abstract 56  
E. P. Everett Survey, Abstract 387

**Thence** South 21 degrees 34 minutes 18 seconds West along the easterly line of the herein described tract and the easterly line of said called 371.8877 acre tract, same being the westerly right-of-way line of Berdett Road, 2,800.25 feet to the **Place of Beginning** and containing 502.46 acres of land, more or less.

This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

September 18, 2013

Job Number 11646-0769-00

Charlie Kalkomey Surveying, Inc.  
6415 Reading Road  
Rosenberg, TX 77471-5655  
(281) 342-2033



A handwritten signature in black ink, appearing to read "Chris D. Kalkomey", written over a horizontal line.

Acting By/Through Chris D. Kalkomey  
Registered Professional Land Surveyor  
No. 5869  
CDKalkomey@jonescarter.com

**EXHIBIT B**  
Operations Report

Unless otherwise specified, the District shall submit to the Public Works Department of the City a monthly operations report including but not limited to the following information:

1. Facility Operations
  - a. Wastewater Treatment
    - i. Copy of monthly TCEQ and EPA wastewater treatment operations report, where applicable.
    - ii. Itemized list of all base District activities.
    - iii. Itemized list of all additional approved activities and charges.
    - iv. Copy of all manifested wastes.
    - v. Summarized report of activities indicating task frequency and man hour requirements.
  - b. Water
    - i. Copy of monthly TCEQ operations report, where applicable.
    - ii. Itemized list of all base District activities
    - iii. Itemized list of all additional approved activities and charges.
    - iv. Summarized report of activities indicating task frequency and man hour requirements
2. Summary of maintenance and repair by facility
3. TCEQ and EPA permit performance, where applicable.
4. Total water usage as indicated by current customer billings.
5. Copies of all reports and correspondence made by the District to local, state or federal regulatory agencies

**EXHIBIT C**  
City's Drought Contingency Plan

**ORDINANCE NO. 2014-15**

**AN ORDINANCE READOPTING AND CONTINUING WITHOUT CHANGE THE CITY'S DROUGHT CONTINGENCY REGULATIONS AS SET FORTH IN ARTICLE II OF CHAPTER 10 OF THE CODE OF ORDINANCES OF THE CITY OF ROSENBERG, TEXAS; PROVIDING RULES AND REGULATIONS FOR INITIATION AND TERMINATION OF DROUGHT CONTINGENCY PLANS WITHIN THE CITY; PROVIDING FOR RESPONSE STAGES AND RESTRICTIONS ON CERTAIN WATER USES DURING DROUGHT CONDITIONS; PROVIDING FOR ENFORCEMENT OF SUCH RESTRICTIONS; PROVIDING FOR PROCEDURES FOR GRANTING OF VARIANCES; PROVIDING A PENALTY IN AN AMOUNT OF NOT MORE THAN \$500 FOR VIOLATION OF ANY PROVISION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; AND PROVIDING FOR SEVERABILITY.**

**WHEREAS**, the City Council of the City of Rosenberg recognizes the amount of water available to the City and its water utility customers is limited and subject to depletion during periods of extended drought; and,

**WHEREAS**, Section 11.1272 of the Texas Water Code and applicable rules of the Texas Commission on Environmental Quality require all public water systems in Texas to prepare a drought contingency plan; and,

**WHEREAS**, as authorized under law and in the best interest of the residents, citizens and inhabitants of the City of Rosenberg, the City Council deems it expedient and necessary to establish certain rules and procedures for the orderly and efficient management of limited water supplies during drought conditions and other water-related emergencies; and,

**WHEREAS**, the City Council passed and approved a drought contingency plan by Ordinance No. 2010-31 on December 21, 2010; and,

**WHEREAS**, the City Council held a public hearing on Tuesday, April 15, 2014, to allow members of the public the right to provide input regarding the drought contingency plan regulations; and,

**WHEREAS**, after review of said drought contingency plan, the City Council has determined that the current plan adequately provides for comprehensive drought response measures and that no changes are needed to the current plan; now, therefore,

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROSENBERG:**

Section 1. That the drought contingency plan as provided in Article II of Chapter 10 of the Code of Ordinances of the City of Rosenberg is hereby readopted and shall continue without change as attached hereto as Exhibit "A" and made a part hereof for all purposes, and the Code of Ordinances shall reflect by footnote the adoption of this Ordinance continuing such regulations.

Section 2. All ordinances or parts of inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

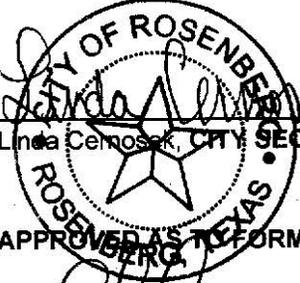
Section 3. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance

as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Rosenberg, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional whether there be one or more parts.

**PASSED AND APPROVED** by a vote of 7 "ayes" in favor and 0 "noes" against on this first and final reading in full compliance with the provisions of Section 3.10 of the Charter of the City of Rosenberg on this, the 10<sup>th</sup> day of April 2014.

**ATTEST:**

**APPROVED:**

  
*Lina Cenosek*  
Lina Cenosek, CITY SECRETARY

*Vincent M. Morales, Jr.*  
Vincent M. Morales, Jr., MAYOR

**APPROVED AS TO FORM:**  
*Lora Jean D. Lenzsch*  
Lora Jean D. Lenzsch, CITY ATTORNEY

PART II - CODE OF ORDINANCES

Chapter 10 - EMERGENCY MANAGEMENT—DROUGHT CONTINGENCY REGULATIONS

ARTICLE II. DROUGHT CONTINGENCY REGULATIONS

**ARTICLE II. DROUGHT CONTINGENCY REGULATIONS** <sup>[31]</sup>

Sec. 10-30. Declaration of policy, purpose, intent and regulation.

Sec. 10-31. Statement of public involvement.

Sec. 10-32. Public education.

Sec. 10-33. Coordination with regional water planning groups.

Sec. 10-34. Authorization.

Sec. 10-35. Application.

Sec. 10-36. Definitions.

Sec. 10-37. Triggering criteria for initiation and termination of drought response stages

Sec. 10-38. Drought response stages.

Sec. 10-39. Enforcement.

Sec. 10-40. Variances.

Secs. 10-41—10-49. Reserved.

**Sec. 10-30. Declaration of policy, purpose, intent and regulation.**

In order to conserve the available water supply and protect the integrity of water supply facilities, with particular regard for domestic water use, sanitation, and fire protection, and to protect and preserve public health, welfare, and safety and minimize the adverse impacts of water supply shortage or other water supply emergency conditions, the city hereby adopts the following regulation and restrictions on the delivery and consumption of water.

Water uses regulated or prohibited under these drought contingency regulations (regulations) are considered to be non-essential and continuation of such uses during times of water shortage or other emergency water supply conditions are deemed to constitute a waste of water which subjects the offender(s) to penalties as provided for in this article and generally in this Code.

(Ord. No. 2010-31, § 1, 12-21-10)

**Sec. 10-31. Statement of public involvement.**

Opportunity for the public to provide input into the preparation of the regulations was provided by the city by means of providing public notice in a newspaper of general circulation and a public hearing to accept input on these regulations.

(Ord. No. 2010-31, § 1, 12-21-10)

**Sec. 10-32. Public education.**

The city will periodically provide the public with information about these regulations, including information about the conditions under which each stage of these regulations is to be initiated and the

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drought response measures to be implemented in each stage. This information will be provided by means of utility bill inserts.

(Ord. No. 2010-31, § 1, 12-21-10)

**Sec. 10-33. Coordination with regional water planning groups.**

The service area of the City of Rosenberg is located within the Region H Water Planning Group and the city has provided a copy of this article to Region H and will cooperate with governmental entities located within Region H.

(Ord. No. 2010-31, § 1, 12-21-10)

**Sec. 10-34. Authorization.**

The city manager or his/her designee is hereby authorized and directed to implement the applicable provisions of this article upon determination that such implementation is necessary to protect public health, safety and welfare. The city manager, or his/her designee, shall have the authority to initiate or terminate drought or other water emergency response measures as described in this article.

(Ord. No. 2010-31, § 1, 12-21-10)

**Sec. 10-35. Application.**

The provisions of this article shall apply to all persons, customers, and property utilizing water provided by the city. The terms "person" and "customer" as used in the article include individuals, corporations, partnerships, associations and all other legal entities.

The beneficial use of treated wastewater (reuse or recycled water), condensate water, or cooling tower blow down, without waste, is exempt from the provisions of this article and a defense to prosecution. The use of alternate on-site reclaimed sources may be approved through variance from the city manager, or his/her designee on a case by case basis.

All references herein to materials contained in this article shall be deemed to refer to "the plan" and any modifications and/or changes thereof as shall be approved from time to time by the city council as an amendment to the terms and provision of this article.

(Ord. No. 2010-31, § 1, 12-21-10)

**Sec. 10-36. Definitions.**

For the purpose of this article, the following definitions shall apply:

*Aesthetic water use* shall mean water used for ornamental or decorative purposes such as fountains, reflecting pools and water gardens.

*Beneficial use* shall mean the use of treated wastewater (reuse or recycled water), condensate water, or cooling tower blown down for a purpose not otherwise prohibited by city, state, or federal law or regulation, when such use is a reasonable viable alternative offering efficiency of use and economic benefits.

*Commercial and institutional water use* shall mean water used which is integral to the operations of commercial and non-profit establishments and governmental entities such as retail establishments, hotels and motels, restaurants, and office buildings.

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*Conservation* shall mean those practices, techniques, and technologies, that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water or increase the recycling and reuse of water so that a supply is conserved and made available for future or alternate uses.

*Customer* shall mean any person, company or organization using water supplied by the city.

*Domestic water use* shall mean water used for personal needs or for household or sanitary purposes such as drinking, bathing, heating, cooking, sanitation, or for cleaning a residence, business, industry or institution.

*Even number address* shall mean street addresses, box numbers, or rural postal route numbers ending in 0, 2, 4, 6, or 8 and locations without addresses.

*Industrial water use* shall mean the use of water in processes designed to convert materials of lower value into forms that have greater usability and value.

*Landscape irrigation use* shall mean water used for the irrigation and maintenance of landscaped areas, publicly or privately owned, including residential and commercial lawns, gardens, golf courses, parks, rights-of-way and medians.

*Non-essential water use* shall mean water uses that are not essential or required for the protection of public, health, safety and welfare, including:

- (1) Irrigation of landscape areas including parks, athletic fields and golf courses except otherwise provided under these regulations;
- (2) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle;
- (3) Use of water to wash down any sidewalks, walkways, driveways, parking lots, tennis courts or other hard-surfaced areas;
- (4) Use of water to wash down buildings or structures for purposes other than immediate fire protection;
- (5) Flushing gutters or permitting water to run or accumulate in any gutter or street;
- (6) Use of water to fill, refill, or add to any indoor or outdoor swimming pools or Jacuzzi-type pools;
- (7) Use of water in a fountain or pond for aesthetic or scenic purposes, except where necessary to support aquatic life;
- (8) Failure to repair a controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s); and
- (9) Use of water from hydrants for construction purposes or any other purposes other than fire fighting

*Odd numbered address* shall mean street addresses, box numbers, or rural postal numbers ending in 1, 3, 5, 7, or 9.

*Reuse or recycled water* shall mean domestic or municipal wastewater which has been treated to a quality suitable for a beneficial use in accordance with applicable law.

*Waste* shall mean the use of water without obtaining maximum beneficial use thereof. Waste shall also include, but not be limited to, causing, suffering, or permitting a flow of water used for landscape watering to run into any river, creek, stream, or other natural water course or drain, superficial or underground channel, bayou, or unto any sanitary or storm sewer, any street, road or highway or other impervious surface area, or upon the lands of another person or upon public lands. Waste shall also include, but not be limited to, failure to repair any controllable leak on property owned by any registered water meter holder.

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(Ord. No. 2010-31, § 1, 12-21-10)

**Sec. 10-37. Triggering criteria for initiation and termination of drought response stages**

The city manager, or his/her designee, shall monitor water supply and/or demand conditions on a daily basis and shall determine when conditions warrant initiation or termination of each stage of this article. Public notification of the initiation or termination of drought response stages shall be by means of publication in a newspaper of general circulation and/or by notification via the electronic media depending upon the severity of conditions.

(a) *Stage 1—Mild Water Shortage Conditions.*

*Requirements for initiation*—Customers shall be requested to voluntarily conserve water and adhere to the prescribed conditions on certain water uses, defined in this article and the regulations as herein set out when the demand on the city's water supply facilities reaches or exceeds sixty-five (65) percent of the production capacity of such facilities for five (5) consecutive days, as determined by the city manager or his/her designee.

*Requirements for termination*—Stage 1 of the regulations may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of three (3) consecutive days, as determined by the city manager or his/her designee.

(b) *Stage 2—Moderate Water Shortage Conditions.*

*Requirements for initiation*—Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses provided for under these regulations when the demand on the city's water supply facilities reaches or exceeds seventy-five (75) percent of the production capacity of such facilities for five (5) consecutive days, as determined by the city manager or his/her designee.

*Requirements for termination*—Stage 2 of these regulations may be rescinded when all of the conditions listed as triggering events have ceased to exist for three (3) consecutive days, as determined by the city manager or his/her designee.

(c) *Stage 3—Severe Water Shortage Conditions.*

*Requirements for initiation*—Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses provided in section 10-36 of these regulations when the demand on the city's water supply facilities reaches or exceeds eighty (80) percent of the production capacity of such facilities for three (3) consecutive days, as determined by the city manager or his/her designee.

*Requirements for termination*—Stage 3 of these regulations may be rescinded when all of the conditions listed as triggering events have ceased to exist for three (3) consecutive days, as determined by the city manager or his/her designee.

(d) *Stage 4—Critical Water Shortage Conditions.*

*Requirements for initiation*—Customers shall be required to comply with requirements and restrictions on certain non-essential water uses provided in section 10-36 of these regulations when the demand on the city's water supply facilities reaches or exceeds eighty-five (85) percent of the production capacity of such facilities for twenty-four (24) hours, as determined by the city manager or his/her designee.

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*Requirements for termination*—Stage 4 of the article may be rescinded when all of the conditions listed as triggering events have ceased to exist for two (2) consecutive days, as determined by the city manager or his/her designee.

(e) *Stage 5—Emergency Water Shortage Conditions.*

*Requirements for initiation*—Customers shall be required to comply with the requirements and restrictions for Stage 5 of these regulations when the city manager or his/her designee determines that a water supply emergency exists based on:

- (1) Major water line breaks, or pump or system failures, which cause unprecedented loss of capacity to provide water service; or
- (2) Natural or manmade contamination of the water supply source(s).

*Requirements for termination*—Stage 5 of the article may be rescinded when all of the conditions listed as triggering events have ceased to exist as determined by the city manager or his/her designee.

(Ord. No. 2010-31, § 1, 12-21-10)

**Sec. 10-38. Drought response stages.**

The city manager, or his/her designee, shall monitor water supply and/or demand conditions on a daily basis and, in accordance with the triggering criteria set forth in this article, shall determine that a mild, moderate, severe, critical or emergency condition exists and shall implement the following actions upon publication of notice in a newspaper of general circulation:

*Stage 1—Mild Water Shortage Conditions.*

*Supply Management Measures—Voluntary Water Use Restrictions.*

- (a) Water customers are requested to voluntarily limit the irrigation of landscaped areas to Sundays and Thursdays for customers with a street address ending in an even number (0, 2, 4, 6 or 8), and Saturdays and Wednesdays for water customers with a street address ending in an odd number (1, 3, 5, 7 or 9), and to irrigate landscapes only between the hours of 12:00 midnight and 10:00 a.m. and 8:00 p.m. and 12:00 midnight on the designated watering days.
- (b) All operations of the city shall adhere to water use restrictions prescribed for Stage 2 of this article.
- (c) Water customers are requested to practice water conservation and to minimize or discontinue water use for non-essential purposes.

*Stage 2—Moderate Water Shortage Conditions.*

*Target:* Achieve a ten percent (10%) reduction in daily water demand.

*Supply Management Measures—Water Use Restrictions.*

It shall be a violation of this Code punishable as otherwise set out in this Code for any person not to adhere to the following water use restrictions which shall apply to all persons:

- (a) Irrigation of landscaped areas with hose-end sprinklers or automatic irrigation systems shall be limited to Sundays and Thursdays for customers with a street address ending in an even number (0, 2, 4, 6 or 8), and Saturdays and Wednesdays for water customers with a street

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address ending in an odd number (1, 3, 5, 7 or 9), and irrigation of landscaped areas is further limited to the hours of 12:00 midnight until 10:00 a.m. and between 8:00 p.m. and 12:00 midnight on designated watering days. However, irrigation of landscaped areas is permitted at anytime if it is by means of a hand-held hose, a faucet filled bucket or water can of five (5) gallons or less, or a drip irrigation system.

- (b) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane, or other vehicle is prohibited except on designated watering days between the hours of 12:00 midnight and 10:00 a.m. and between 8:00 p.m. and 12:00 midnight. Such washing, when allowed, shall be done with a hand-held bucket or a hand-held hose equipped with a positive shutoff nozzle for quick rinses. Vehicle washing may be done at any time on the immediate premises of a commercial car wash or commercial service station. The provisions of this section shall not be applicable if the health, safety, and welfare of the public is contingent upon frequent cleaning, such as garbage trucks and vehicles used to transport food and perishables.
- (c) Use of water to fill, refill, or add to any indoor or outdoor swimming pools, wading pools, or Jacuzzi-type pools is prohibited except on designated watering days between the hours of 12:00 midnight and 10:00 a.m. and 8:00 p.m. and 12:00 midnight.
- (d) Operation of any ornamental fountain or pond for aesthetic or scenic purposes is prohibited except where necessary to support aquatic life or where such fountains or ponds are equipped with a recirculation system.
- (e) Use of water from hydrants shall be limited to fire fighting, related activities, or other activities necessary to maintain public health, safety and welfare, except that use of water from designated fire hydrants for construction purposes may be allowed under special permit from the city.
- (f) Use of water for the irrigation of golf course greens, tees and fairways is prohibited except on designated watering days between the hours of 12:00 midnight and 10:00 a.m. and between 8:00 p.m. and 12:00 midnight. However, if the golf course utilizes a water source other than that provided by the city, the facility shall not be subject to these regulations.
- (g) All restaurants are prohibited from serving water to their patrons except when requested.
- (h) The following uses of water are defined as non-essential and are prohibited:
  - 1. Wash down of any sidewalks, walkways, driveways, parking lots, tennis courts or other hard-surfaced areas;
  - 2. Use of water to wash down buildings or structures for purposes other than immediate fire protection;
  - 3. Use of water for dust control;
  - 4. Flushing gutters or permitting water to run or accumulate in any gutter or street; and
  - 5. Failure to repair controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s).

*Stage 3—Severe Water Shortage Conditions.*

*Target:* Achieve a fifteen (15) percent reduction in daily water demand.

*Supply Management Measures—Water Use Restrictions.* All requirements of Stage 2 shall remain in effect during Stage 3 except:

- (a) Irrigation of landscaped areas shall be limited to designated watering days between the hours of 12:00 midnight and 10:00 a.m. and between 8:00 p.m. and 12:00 midnight and shall be by

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means of hand-held hoses, hand-held buckets, drip irrigation or permanently installed automatic sprinkler system only. The use of hose-end sprinklers is prohibited at all times.

- (b) The watering of golf course tees is prohibited unless the golf course utilizes a water source other than that provided by the city.
- (c) The use of water for construction purposes from designated fire hydrants under special permit is to be discontinued.

*Stage 4—Critical Water Shortage Conditions.*

*Target:* Achieve a twenty (20) percent reduction in daily water demand.

*Supply Management Measures—Water Use Restrictions.* All requirements of Stage 2 and 3 shall remain in effect during Stage 4 except:

- (a) Irrigation of landscaped areas shall be limited to designated watering days between the hours of 6:00 a.m. and 10:00 a.m. and between 8:00 p.m. and 12:00 midnight and shall be by means of hand-held hose, hand-held buckets or drip irrigation only. The use of hose-end sprinklers or permanently installed automatic sprinkler systems are prohibited at all times.
- (b) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle not occurring on the premises of commercial car wash and commercial service stations and not in the immediate interest of public health, safety and welfare is prohibited. Further, such vehicle washing at commercial car washes or service stations shall occur only between the hours of 6:00 a.m. and 10:00 a.m. and between 6:00 p.m. and 10:00 p.m.
- (c) The filling, refilling, or adding of water to swimming pools, wading pools, and Jacuzzi-type pools is prohibited.
- (d) Operation of any ornamental fountain or pond for aesthetic or scenic purposes is prohibited except where necessary to support aquatic life or where such fountains or ponds are equipped with a recirculation system.
- (e) No applications for new, additional, expanded, or increased-in-size water service connections, meters, service lines, pipeline extensions, mains or water service facilities of any kind shall be allowed or approved.

*Stage 5—Emergency Water Shortage Conditions.*

*Target:* Eliminate conditions that triggered drought response Stage 5.

*Supply Management Measures—Water Use Restrictions.* All requirements of Stage 2, 3, and 4 shall remain in effect during Stage 5, except:

- (a) Irrigation of landscaped areas is absolutely prohibited.
- (b) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane, or other vehicle is absolutely prohibited.

Interconnections with the City of Richmond Water System and/or Fort Bend County Municipal Utility District No. 5 Water System are to be used as alternative water sources, as needed.

(Ord. No. 2010-31, § 1, 12-21-10)

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**Sec. 10-39. Enforcement.**

- (a) No person shall knowingly or intentionally allow the use of water from the city for residential, commercial, industrial, agricultural, governmental or any other purpose in a manner contrary to any provision of these regulations, or in an amount in excess of that permitted by the drought response stage in effect at the time pursuant to action taken by the city manager or his/her designee, in accordance with provisions of these regulations.
- (b) Any person who shall violate any provisions of this article shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine in an amount not to exceed five hundred dollars (\$500.00). Each day that one (1) or more of the provisions in this article is violated shall constitute a separate offense. If a person is convicted of three (3) or more violations of this article, the city manager or his/her designee shall be authorized, upon due notice to the customer, to discontinue water service to the premises where such violations occur. Services discontinued under such circumstances shall be restored only upon payment of a reconnection charge established by the city and any other costs incurred by the city in discontinuing service. In addition, suitable assurance must be given to the city manager or his/her designee that the same actions shall not be repeated while the regulations are in effect. In addition to the relief as otherwise provided herein, the city shall have the authority in the proper case to seek injunctive relief in a court of competent jurisdiction.
- (c) Any person, including a person classified as a water customer of the city, in apparent control of the property where a violation occurs or originates shall be presumed to be the violator. Proof that the violation occurred on the person's property shall constitute a rebuttable presumption that the person in apparent control of the property committed the violation, but any such person shall have the right to show that he/she did not commit the violation. Parents shall be presumed to be responsible for violations of their minor children and proof that violation, committed by a child, occurred on property within the parents' control shall constitute as a rebuttable presumption that the parent committed the violation. Any such parent may be excused if he/she had previously directed the child not to use the water as it was used in violation of these regulations and the parent could not have reasonably known of the violation.
- (d) Any city police officer, code enforcement employee or any other employee designated by the city manager may issue a citation to a person he/she reasonably believes to be in violation of these regulations. Such citation, when issued, shall be served and appropriate hearing set in the manner otherwise provided for by law for citations in the Municipal Court of the City of Rosenberg, Texas.

(Ord. No. 2010-31, § 1, 12-21-10)

**Sec. 10-40. Variances.**

The city manager or his/her designee may, in writing, grant temporary variance for existing water uses otherwise prohibited under this article if it is determined that failure to grant such variance would cause an emergency condition adversely affecting health, sanitation, or fire protection for the public or the person requesting such variance and if one (1) or more of the following conditions are met:

- (a) Compliance with this article cannot be technically accomplished during the duration of the water supply shortage or other conditions for which the regulations are in effect.
- (b) Alternative methods can be implemented which will achieve the same level of reduction in water use.

Persons requesting an exemption from the provisions of this article shall file a petition for variance with the city within five (5) days after the provisions of this article or a particular drought response stage has been invoked. All petitions for variances shall be reviewed by the city manager or his/her designee, and shall include the following:

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- (a) Name and address of the petitioner(s),
- (b) Purpose of water use,
- (c) Specific provision(s) of this article from which the petitioner is requesting relief,
- (d) Detailed statement as to how the specific provision of this article adversely affects the petitioner or what damage or harm will occur to the petitioner or others if petitioner complies with the provisions of this article,
- (e) Description of the relief requested,
- (f) Period of time for which the variance is sought,
- (g) Alternative water use restrictions or other measures the petitioner is taking or proposes to take to meet the intent of this article and the compliance date, and
- (h) Other pertinent information.

Variations granted by the city shall be subject to the following conditions, unless waived or modified by the city manager or his/her designee:

- (a) Variations granted shall include a timetable for compliance.
- (b) Variations granted shall expire when the regulations are no longer in effect, unless the petitioner has failed to meet specified requirements.

No variance shall be retroactive or otherwise justify any violation of these regulations prior to the issuance of the variance.

(Ord. No. 2010-31, § 1, 12-21-10)

**Secs. 10-41—10-49. Reserved.**

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FOOTNOTE(S):

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— (3) —

**Editor's note**— Ord. No. 2010-31, § 1, adopted December 21, 2010, repealed former Art. II, and enacted provisions designated as a new Art. II to read as herein set out. Prior to inclusion of said ordinance, Art. II pertained to similar subject matter. See also the Code Comparative Table. ([Back](#))

## EXHIBIT D

### Form of Fire Protection Service Agreement

#### 2014 FIRE PROTECTION AGREEMENT

This Fire Protection Agreement (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Rosenberg, Texas (the "City") and Fort Bend County Municipal Utility District No. 184 (the "District"), a conservation and reclamation district created pursuant to Article XVI, Section 59 of the Texas Constitution.

#### RECITALS

The District is partially located within the extraterritorial jurisdiction of the City (the "ETJ"), and partially within its corporate limits. District and the City desire to enter into a Fire Protection Agreement pursuant to which the City will provide District fire protection services on a long-term basis.

NOW, THEREFORE, the City and District hereby covenant and agree as follows:

Section 1. Definitions. Unless the context indicates otherwise, the following words and phrases used in this Agreement shall have the meanings ascribed thereto:

"City" means the City of Rosenberg, Texas.

"District" means Fort Bend County Municipal Utility District No. 184.

"District's Territory" means that area within the District's boundaries as more particularly described on Exhibit "A," attached here to and incorporated herein.

"Equivalent Single-Family Connections" or "ESFCs" means the daily amount of water and wastewater that is attributable to one single-family residential home, as determined by the City.

"Participating Entities" means the City and other entities included or to be included in the Service Area, as such area may be expanded by the City from time to time, that execute a fire protection agreement with the City pursuant to which they pay their share of the costs of designing and constructing Fire Station No 3 or a buy in charge. The District is not a Participating Entity.

"Service Area" means the area served by Fire Station No. 3, as identified and defined in Exhibit "B," attached hereto and incorporated herein.

"Service Unit" means one residential unit or the amount of square footage for nonresidential property calculated as provided in Section 7(b)(1) and (2) hereof.

Section 2. Fire Protection Services.

(a) During the term of this Agreement, the City will provide Fire Protection Services to all persons, buildings, and property located within the District's Territory in the Service Area, as it may be expanded from time to time. The City will provide Fire Protection Services to the District in the same manner and with the same standard of care as it would to those properties, residences and structures in the City limits. In this Agreement, "Fire Protection Services" means all fire suppression and rescue services regularly provided by the City of Rosenberg Fire Department to persons and property located within its corporate limits on the effective date of this Agreement, except for the following: fire inspections of buildings and properties, code enforcement services, and arson investigations. The City also agrees to provide to District the City's ISO rating as it may vary from time to time.

(b) The parties acknowledge that the City must also respond to requests for Fire Protection Services in the corporate limits of the City and that the City has contracts to provide fire prevention services to other entities. In providing Fire Protection Services to the District, the City will follow its adopted standard operating procedures, subject to its right and discretion, without being in breach of this Agreement and without liability to the District or its occupants or residents, to determine:

- (1) whether Fire Protection Services are needed in a particular case;
- (2) whether and when personnel or equipment are available to respond to a request for Fire Protection Services;
- (3) the order in which to respond to requests for Fire Protection Services; and
- (4) the time in which to respond to a request for Fire Protection Services.

(c) The District assumes no responsibility for the reliability, promptness, or response time of the City. The District's sole obligation for provision of Fire Protection Services to District's Territory is to make payments as described in this Agreement.

Section 3. Facilities and Equipment.

(a) As of the date of this Agreement, the City has two (2) existing fire stations with a third under construction. The City currently owns four (4) pumpers (engines that carry the water hoses), one (1) pumper/ladder truck, and one (1) boat for water rescues, and other necessary equipment for the operation of its stations and trucks and has purchased or will purchase the needed additional equipment for Fire Station No. 3. In providing Fire Protection Services to District, the City shall be solely responsible for the operation and maintenance of its facilities and equipment.

(b) This Agreement shall not obligate the City to construct or keep any fire stations, fire trucks, fire equipment or fire personnel for the District's Territory or to designate, reserve, or devote all or part of the City's Fire Department's trucks, equipment, or personnel exclusively to or for District's Territory in carrying out this Agreement, but the City will use its best efforts to comply with State standards regarding fire suppression equipment.

(c) The parties acknowledge that in conducting fire suppression efforts in District's Territory, the City will use the fire hydrants, connections, and water supply and distribution systems (the "water distribution system"), and water supply available in District's Territory, but the City shall not be responsible for providing for, constructing, inspecting, maintaining, or repairing any part of the water distribution system in District's Territory and the City shall not be liable to District or any occupant or resident in District's Territory for any deficiency or malfunction of the water distribution system located in District's Territory.

The District makes no representations and assumes no responsibility for the type, quality, sufficiency or qualifications of the City's Fire Protection Service equipment used to serve District's Territory.

(d) District hereby acknowledges that the City has executed or will execute a similar Agreement with other districts and entities in the extraterritorial jurisdiction of the City that are within the Service Area of the proposed Fire Station No. 3. The failure of one or more of other entities to comply with their respective agreements shall not void this Agreement. However, the timing of various staffing levels by the City and the funding amounts outlined in this Agreement may vary as a result of one or more of the other entities failing to execute a similar agreement or failing to comply.

Section 4. Employees and Staffing. The City shall provide employees who meet minimum state qualifications to perform the Fire Protection Services required by this Agreement. District assumes no responsibility for the actions of the City's employees in performing their fire protection duties. District will make no recommendations and is in no way responsible for the sufficiency or qualifications of the City's employees. Fire Station No. 3 shall be staffed consistent with, and not in excess of, other City fire stations.

Section 5. EMS Service. The City intends to request Fort Bend County (the "County") to provide an EMS Ambulance (the "Ambulance") to be operated by the County from Fire Station No. 3. Upon execution of an agreement with the County, the City will allow the Ambulance, Ambulance personnel, and related equipment to make use of and operate from Fire Station No. 3. Neither the City nor District shall have any responsibility for the cost or expense to purchase, equip, operate, or maintain the Ambulance.

Section 6. District Election. District acknowledges that the City will institute a tiered rate structure for the payment of Fire Protection Services that provides a lower

rate for Participating Entities (the "Participating Rate"). District has elected not to contribute toward the costs of designing, constructing and equipping Fire Station No. 3 and acknowledges and agrees that District will not receive the lower rate but will pay the rate for entities that do not contribute (the "Non-Participating Rate"). Nor will District be entitled to any rebate from buy-in payments that any entities in the future may pay in order to receive the Participating Rate.

Section 7. Payment for Fire Protection Services.

(a) Although the City will provide Fire Protection Services to all property within the District's Territory, the rates charged by the City area based on residential units and Service Units as defined below. In consideration of the City providing Fire Protection Services, the District agrees to make monthly payments ("Monthly Payment") to the City calculated at the Non-Participating Rate as follows:

(1) Residential Properties. The District shall pay to the City a Monthly Payment of \$30.00 for each residential unit in the District that is connected to the public water supply system on or before last day of the previous month in advance of the provision of services. A residential unit shall mean any building or part of a building designed for permanent occupancy by one family. (A detached single family residence is one residential unit; a duplex is two residential units; and each living unit in an apartment complex is one residential unit). Such payments shall be due and payable on or before the fifteenth (15<sup>th</sup>) day of the month for the upcoming month's services. For example, payment for March services is due on or before February 15.

(2) Nonresidential Properties. The District shall also pay the City a monthly charge equal to \$30.00 per Service Unit. Each 2,000 square feet or part thereof of building floor area for every "improved nonresidential property" that is connected to the public water supply system in advance of the provision of services is one Service Unit. "Improved nonresidential property" means any improved real property, whether or not such property is tax-exempt, on which there is located a building or structure that is not residential property. The square footage used to determine the charge shall be based on the records of the Fort Bend Central Appraisal District.

(3) Calculation of Service Units. Before the commencement of Fire Protection Services and each November thereafter, District will provide the City will an accurate count of Service Units. The City will confirm the number of Service Units that will be charged for in the upcoming year and notify District of the number of Service Units.

(b) Bi-Annual Adjustment. The current rates will be in effect until changed by the City, which in no event shall occur sooner than December 31, 2015. Thereafter, the City shall have the right to adjust the Monthly Payments no more frequently than every two (2) years, beginning with the fees to be effective January 1, 2016, based on the

City's actual cost of service for the previous fiscal year; provided, however, that no increase will be effective unless and until the City provides sixty (60) days written notice to District of the new Monthly Payment. If the City decides to increase the Monthly Payment, the City will prepare a cost of service report to determine its actual costs to provide fire protection services for the previous year. The City will then provide the new rates (the "Updated Rates") to District with notice of the date such rates will become effective, which date may not be sooner than forty-five (45) days after the date the Updated Rates are provided to District. If District does not agree to the Updated Rates, District shall have the right to terminate this Agreement upon thirty (30) day's written notice to the City.

(c) **Extraordinary Cost Changes and Termination.** Notwithstanding any limitation in the preceding section, if any extraordinary event affects City's costs to provide fire protection services, the City may set a new rate effective upon sixty (60) days' notice to District. District shall have the right to terminate this Agreement if District does not agree with such rate.

(d) All Monthly Payments shall be due on or before the fifteenth (15<sup>th</sup>) day of each month. All monthly payments shall be paid by District to the City without notice for demand at the offices of the City located at 2110 4th Street, Rosenberg, Texas, unless District is notified otherwise. All or part of any Monthly Payments paid by District after the last day of the month is delinquent and shall be subject to a one-time late fee equal to ten percent (10%) of the delinquent amount. In the event that the District has not paid all amounts due within 30 days of the time they are due (not delinquent), the City shall have the right to terminate this Agreement by giving written notice to District.

(e) Alternatively, District may elect to make one annual payment in advance of the provision of Fire Protection Services. District shall notify the City of its desire to make annual payments and the City will advise District of the due date for such payment and the period covered by the payment. Payment shall be calculated based on the number of Service Units existing as of the end of the previous month. For example, if District wants to make an annual payment for calendar year 2015, the City will notify District of the date in December when payment is due and Service Units will be calculated as of November 30. If annual payments are made and District terminates this Agreement prior to the completion of the year for which payment was made pursuant to District's rights under this Agreement, the City will refund to District an amount equal to the number of full months remaining in the paid year after the date of termination. For example, if District pays for the period from January 1 through December 31 and then terminates on May 20, the City will refund the payments attributable to the period from June 1 through December 31.

**Section 8. Term and Termination.** This Agreement will be in full force and effect upon the date first written above. The Agreement will continue in effect for twenty (20) years (the "Initial Term") and shall be automatically renewed thereafter for successive one-year terms. After the end of the Initial Term, either party may terminate this Agreement by giving written notice to the other at least one (1) year prior to the date

of termination, subject to District's right to terminate as otherwise specifically provided in this Agreement.

Section 9. Default. Either party may declare a default hereunder if the other party fails, refuses, or neglects to comply with any of the terms of this Agreement. If a party declares a default of this Agreement, this Agreement shall terminate after notice and opportunity to cure as provided for herein. The party declaring a default shall notify the other party of any default in writing in the manner prescribed herein. The notice shall specify the basis for the declaration of default, and the party shall have thirty (30) days from the receipt of such notice to cure any default (except when curing the default requires activity over a period of time in excess of thirty (30) days, performance shall commence within thirty (30) days after the receipt of notice, and such performance shall be diligently continued until the default is cured). If the default is not cured within the cure period, as it may be extended by agreement of the parties, the non-defaulting party shall then have the right to terminate by giving the defaulting party written notice of default, which shall be effective upon the defaulting party's receipt of such notice.

Section 10. Notice. All notices shall be in writing and given by certified mail with return receipt requested, with receipt as of the date of the signed receipt. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purpose of notice, the addresses of the parties shall, unless changed as hereinafter provided, be as follows:

If to the City:           City of Rosenberg  
                                  2110 4th Street  
                                  Rosenberg, Texas 77471-0032  
                                  Attn: City Manager

If to the District:       Fort Bend County Municipal Utility District No. 184  
                                  c/o James A. Boone  
                                  Allen Boone Humphries Robinson LLP  
                                  Phoenix Tower  
                                  3200 Southwest Freeway  
                                  Suite 2600  
                                  Houston, Texas 77027

The parties shall have the right to change their respective addresses and each shall have the right to specify their respective new addresses by at least fifteen (15) days written notice to the other party.

Section 11. No Additional Waiver Implied. No waiver or waivers of any breach or default or any breaches or defaults by either party hereto of any term, covenant, condition, or liability hereunder, or of performance by the other party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances. The City and District specifically reserve all defenses, immunities and privileges accorded by law.

Section 12. Modification. This Agreement shall be subject to change or modification only with the written mutual consent of the parties hereto.

Section 13. Severability. The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section or other part of this contract or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section or other part of this contract to other persons or circumstances shall not be affected thereby.

Section 14. Agreement Not for Benefit of Third Parties. This Agreement is not intended to benefit any party other than the parties to this Agreement or to impose any duty upon the City or District toward any person or entity not a party hereto.

Section 15. Liability. The City shall not be liable to District or any other person for its decisions in the manner or method of providing Fire Protection Services under this Agreement. This Agreement is not intended to waive or alter any defense, privilege or immunity the City or District has under State law for claims arising from the performance of this Agreement, including the failure to provide or the method of providing Fire Protection Services under this Agreement.

Section 16. Superseding Agreement. This Agreement supersedes all prior agreements between the parties regarding the provision of fire protection services.

IN WITNESS WHEREOF, the parties have executed this Agreement in multiple copies, each of which shall be deemed an original as of the date and year first written above, to be effective as of the date specified in Section 8 hereof.

**Fort Bend County Municipal Utility  
District No. 184**

By: \_\_\_\_\_  
Name: \_\_\_\_\_, President

**CITY OF ROSENBERG, TEXAS**

\_\_\_\_\_  
Vincent M. Morales, Jr., Mayor

ATTEST:

\_\_\_\_\_  
Linda Cernosek, City Secretary

**EXHIBIT A**  
**District's Territory**

**EXHIBIT B**  
**Service Area for Fire Station No. 3**

**EXHIBIT E**  
Form of Strategic Partnership Agreement

**STRATEGIC PARTNERSHIP AGREEMENT**

**THE STATE OF TEXAS**           §  
  §  
**COUNTY OF FORT BEND**       §

This **STRATEGIC PARTNERSHIP AGREEMENT** (this “*Agreement*”) is made and entered into, effective as of \_\_\_\_\_, 2014, by and between the **CITY OF ROSENBERG, TEXAS**, a municipal corporation and home rule city of the State of Texas (the “*City*”), and **FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 184**, a conservation and reclamation district created pursuant to Article XIV, Section 59, Texas Constitution and operating pursuant to Chapters 49 and 54, Texas Water Code (the “*District*”).

**RECITALS**

The District was created with the consent of the City for the purpose of providing water, sewer, drainage, road and recreational facilities to the land within its boundaries. The District is located within both the municipal boundaries and the extraterritorial jurisdiction (“*ETJ*”) of the City.

The provisions of TEX. LOCAL GOV’T CODE, Section 43.0751 (the “*Act*”) state that the City and the District may enter into a strategic partnership agreement that provides for the terms and conditions under which services will be provided and funded by the City and the District and under which the District will continue to exist for an extended period after annexation of all or a portion of the land within the District by the City.

The City and the District, after the provision of required notices, held public hearings in compliance with the Act. Based upon public input received at such hearings, the City and the District wish to enter into a strategic partnership agreement to provide the terms and conditions under which services will be provided and funded by the City and the District and under which the District will continue to exist for an extended period of time after the District is annexed for general purposes.

**NOW, THEREFORE**, for and in consideration of the mutual agreements, covenants, and conditions contained herein, and other good and valuable consideration, the City and the District agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

1.01. Definitions. The terms *Act*, *City*, *District*, and *ETJ* shall have the meanings provided for them in the recitals, above. Except as may be otherwise defined, or the context

clearly requires otherwise, capitalized terms and phrases used in this Agreement shall have the meanings as follows:

*City Consent* means the resolution of the City consenting to the creation of the District, and the terms and conditions to such consent described therein.

*Commercial* means all nonresidential development, except for developments owned by a tax-exempt entity, a non-profit entity or a homeowner or property owner association.

*Commission* means the Texas Commission on Environmental Quality and its successors.

*Developer* means the entity or entities advancing funds to the District for the design and construction of District facilities and for other legal purposes which advances are subject to reimbursement by the District pursuant to the rules of the Commission.

*Person* means any individual, partnership, association, firm, trust, estate, public or private corporation, or any other entity whatsoever.

1.02. Findings and conclusions. The City and the District hereby find and declare:

a. The Act authorizes the City and the District to enter into this Agreement to define the terms and conditions under which services to the District will be provided and funded by the parties and to define the terms and conditions under which the District will be annexed by the City at a future date as agreed hereunder as an alternative to annexation without the consent of the District.

b. In compliance with Subsection (p) of the Act, this Agreement (i) does not require the District to provide revenue to the City solely for the purpose of an agreement with the City to forgo annexation of the District, and (ii) provides benefits to each party, including revenue, services, and regulatory benefits, which are reasonable and equitable with regard to the benefits provided to the other party.

c. All the terms and conditions contained in this Agreement are lawful and appropriate to provide for the provision of municipal services and annexation.

d. The District is not obligated to make payments to the City for services except as otherwise provided herein.

e. This Agreement has been duly adopted by the City and the District after conducting two public hearings at which members of the public who wanted to present testimony or evidence regarding the Agreement were given the opportunity to do so. Notice of each hearing was published in the format required by TEX. LOCAL GOV'T CODE, Section 43.123(b) and was published at least once on or after the 20th day before each public hearing of the City.

**ARTICLE 2**  
**ANNEXATION OF THE DISTRICT**

2.01. Conditions to annexation.

a. The parties agree that the District and its residents should be allowed to develop and function with certainty regarding the conditions under which annexation will be authorized by the City. As a result, the City and the District agree that, without regard to the City's right and power under existing or subsequently enacted law and subject to Section 2.02, the City will not fully annex the District until the following conditions have been met, and shall thereafter be authorized, but not required, to fully annex the District for any purpose:

1. 90% of the developable acreage in the District has been developed with water, sanitary sewer, drainage and paving ("Substantial Completion") or (b) ten (10) years from the date of the SPA, whichever comes first, and the Developer or his successors and assigns have been reimbursed to the maximum extent permitted by the rules of the Commission or the City assumes the obligation to reimburse. At such time, the City will have the right to annex but not the obligation.

2. at a point earlier than Substantial Completion if the City agrees that the Developer may advance funds for water, sewer and drainage facilities until Substantial Condition and the City will reimburse the Developer to the maximum extent allowed by and in accordance with the rules of the Commission.

b. If the City wishes to complete the District facilities in order to comply with subsection a, item 1, above, the District will cooperate with the City to provide access to the District's facilities and allow such connection or supplement thereto as may be reasonably necessary upon written notice of its intent to so complete from the City to the District; provided that any such construction by or on behalf of the City shall be sufficient to provide water supply and distribution, wastewater collection and treatment, and drainage facilities to the entire unserved portion of the District.

2.02. Annexation of Commercial property. Notwithstanding Section 2.01, the City may annex for limited purposes any Commercial portions of the District at any time after the effective date of this Agreement, as determined by the City (the "Annexed Commercial Property"). In such event, the District shall remain in existence, with full powers, and any Annexed Commercial Property shall also remain in the boundaries of the District, subject to the full power and authority of the District with respect to water, wastewater and drainage facilities and services. This annexation provision is in lieu of any annexation of residential property prior to the annexation of the entire District as provided in this Article.

2.03 Annexation procedures. Because the District is, pursuant to this Agreement, an area that is the subject of a strategic partnership agreement, the City is not required to include the District in an annexation plan pursuant to TEX. LOCAL GOV'T CODE, Section 43.052(h)(3)(B).

2.04. Operations prior to full annexation. Prior to annexation of the entire District for full purposes, except as may be specifically provided in this Agreement or in the City Consent, the District is authorized to exercise all powers and functions of a municipal utility district provided by law, including, without limiting the foregoing, the power to incur additional debts, liabilities, or obligations, to construct additional utility facilities, or to contract with others for the provision and operation thereof, or sell or otherwise transfer property without prior approval of the City, and the exercise of such powers is hereby approved by the City.

2.05. Continuation of the District following full annexation. Upon annexation of the entire District under the provisions of Section 2.01 above, the District will continue to exist for an extended period to allow for the completion of District operations and the integration of the District's utility system into the City's utility system, following which period the City shall act to abolish the District in accordance with applicable law; provided that, if the City has not abolished the District within 120 days after such annexation under Section 2.01, the District shall be automatically abolished on the 121st day. At such time, the City will assume all rights, assets, liabilities and obligations of the District (including all obligations to reimburse the developers within the District) and the District will not be continued or converted for limited purposes. Upon full annexation, fees and charges imposed on residents of the former District for services provided by the City shall be equal to those fees and charges imposed on all other residents of the City.

2.06. Attempted incorporation. Notwithstanding any provision herein to the contrary, in the event that an election is called pursuant to applicable law in connection with a bona fide petition for incorporation of a municipality that includes a substantial portion of the District, the City shall be entitled to annex that portion the District attempting to incorporate.

### **ARTICLE 3 LIMITED PURPOSE ANNEXATION OF LAND**

#### **Section 3.01 Imposition of the City's Sales and Use Tax**

In the event the City elects to annex Commercial property for limited purposes as provided in Section 2.02 of this Agreement, the City shall impose its sales and use tax upon the Annexed Commercial Property pursuant to Subsection (k) of the Act. The sales and use tax shall be imposed on the receipts from the sale and use at retail of taxable items at the rate of two percent or the rate specified under future amendments to Chapter 321 of the Tax Code. The sales and use tax shall take effect on the date described in Tax Code §321.102.

### **ARTICLE 4 DEFAULT, NOTICE AND REMEDIES**

4.01. Default; notice. A breach of any material provision of this Agreement after notice and an opportunity to cure shall constitute a default. The non-breaching party shall notify the breaching party of an alleged breach, which notice shall specify the alleged breach with reasonable particularity. If the breaching party fails to cure the breach within a reasonable time

not sooner than 30 days after receipt of such notice (or such longer period of time as the non-breaching party may specify in such notice), the non-breaching party may declare a default hereunder and exercise the remedies provided in this Agreement in the event of default.

4.02. Remedies. In the event of a default hereunder, the remedies of the non-defaulting party shall be limited to either or both of the following:

a. Monetary damages for actual losses incurred by the non-defaulting party if such recovery of monetary damages would otherwise be available under existing law and the defaulting party is not otherwise immune from paying such damages; and

b. Injunctive relief specifying the actions to be taken by the defaulting party to cure the default or otherwise comply with its obligations hereunder. Injunctive relief shall be directed solely to the default and shall not address or include any activity or actions not directly related to the default.

## **ARTICLE 5 MISCELLANEOUS**

5.01. Beneficiaries. This Agreement shall bind and inure to the benefit of the parties, their successors and assigns. This Agreement shall be recorded with the County Clerk in the Official Records of Fort Bend County, and shall bind and benefit each owner and each future owner of land included within the District's boundaries in accordance with Tex. Local Gov't Code, Section 43.0751(c). In the event of annexation of the District by the City, the Developer shall be considered a third-party beneficiary of this Agreement.

5.02. Term. This Agreement shall commence and bind the parties on the effective date first written above and continue for twenty-five (25) years thereafter, unless terminated on an earlier date pursuant to other provisions or by express written agreement executed by the City and the District. Upon the expiration of the initial term, this Agreement may be extended, at the District's request, with City approval, for successive one-year periods until all land within the District has been annexed into the City.

5.03. Notice. Any notices or other communications ("Notice") required to be given by one party to another by this Agreement shall be given in writing addressed to the party to be notified at the address set forth below for such party, (i) by delivering the same in person, (ii) by depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the party to be notified, or (iii) by depositing the same with Federal Express or another nationally recognized courier service guaranteeing "next day delivery", addressed to the party to be notified, or (iv) by sending the same by telefax with confirming copy sent by mail. Notice deposited in the United States mail in the manner hereinabove described shall be deemed effective from and after the date of such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties, until changed as provided below, shall be as follows:

City: City of Rosenberg  
2110 Fourth Street,  
Rosenberg, Texas 77471  
Attn: City Manager

District: Fort Bend County Municipal Utility District No. 184  
c/o Allen Boone Humphries Robinson  
3300 Southwest Freeway, Suite 2600  
Houston, Texas 77027  
Attn: Jim Boone

The parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by giving at least five days written notice 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 for calculating the notice shall be extended to the first business day following such Saturday, Sunday or legal holiday.

5.04. Time. Time is of the essence in all things pertaining to the performance of this Agreement.

5.05. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected.

5.06. Waiver. Any failure by a party hereto to insist upon strict performance by the other party of any material provision of this Agreement shall not be deemed a waiver thereof or of any other provision hereof, and such party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

5.07. Applicable law and venue. The construction and validity of this Agreement shall be governed by the laws of the State of Texas without regard to conflicts of law principles. Venue shall be in Fort Bend County, Texas.

5.08. Reservation of rights. To the extent not inconsistent with this Agreement, each party reserves all rights, privileges, and immunities under applicable laws.

5.09. Further documents. The parties agree that at any time after execution of this Agreement, they will, upon request of another party, execute and deliver such further documents and do such further acts and things as the other party may reasonably request in order to carry out the terms of this Agreement.

5.10. Incorporation of exhibits and other documents by reference. All Exhibits and other documents attached to or referred to in this Agreement are incorporated herein by reference for the purposes set forth in this Agreement.

5.11. Effect of state and federal laws. Notwithstanding any other provision of this Agreement, the District and the City shall comply with all applicable statutes or regulations of the United States and the State of Texas, as well as any City ordinances or rules implementing such statutes or regulations, and such City ordinances or rules shall not be deemed a breach or default under this Agreement.

5.12. Authority for execution. The City hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the City Charter and City ordinances. The District hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted by the Board of Directors of the District.

**SIGNATURE PAGES FOLLOW**

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement effective as of the date first written above.

CITY OF ROSENBERG, TEXAS

By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Secretary

FORT BEND COUNTY MUNICIPAL  
UTILITY DISTRICT NO. 184

By: \_\_\_\_\_  
President, Board of Directors

ATTEST:

By: \_\_\_\_\_  
Secretary

THE STATE OF TEXAS   §  
  §  
COUNTY OF FORT BEND §

This instrument was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, City Manager of the City of Rosenberg, Texas, on behalf of said city.

\_\_\_\_\_  
Notary Public, State of Texas

(NOTARY SEAL)

THE STATE OF TEXAS   §  
  §  
COUNTY OF FORT BEND §

This instrument was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of the Board of Directors of Fort Bend County Municipal Utility District No. 184, a political subdivision of the State of Texas, on behalf of said political subdivision.

\_\_\_\_\_  
Notary Public, State of Texas

(NOTARY SEAL)



# CITY COUNCIL COMMUNICATION

August 26, 2014

ITEM #	ITEM TITLE
6	<b>Resolution No. R-1846 – Fort Bend County MUD No. 184 Development Agreement</b>

**ITEM/MOTION**

Consideration of and action on Resolution No. R-1846, a Resolution authorizing the Mayor to execute, for and on behalf of the City, a Development Agreement by and between the City and Dry Creek (Houston) ASLI VII, LLC, a Delaware limited liability company, in association with Fort Bend County Municipal Utility District No. 184.

FINANCIAL SUMMARY	ELECTION DISTRICT
-------------------	-------------------

<b>Annualized Dollars:</b>	<b>Budgeted:</b>	<input type="checkbox"/> District 1
<input type="checkbox"/> One-time	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<input type="checkbox"/> District 2
<input type="checkbox"/> Recurring	<b>Source of Funds:</b> N/A	<input type="checkbox"/> District 3
<input checked="" type="checkbox"/> N/A		<input checked="" type="checkbox"/> District 4
		<input type="checkbox"/> City-wide
		<input type="checkbox"/> N/A

**SUPPORTING DOCUMENTS:** **MUD #: 184**

- Resolution No. R-1846

**APPROVALS**

<b>Submitted by:</b>	<b>Reviewed by:</b>	<b>Approved for Submittal to City Council:</b>
<i>Travis Tanner</i>	<input type="checkbox"/> Exec. Dir. of Administrative Services	<i>Robert Gracia</i>
Travis Tanner, AICP	<input checked="" type="checkbox"/> Asst. City Manager of Public Services <i>g.m.</i>	Robert Gracia
Executive Director of Community Development	<input type="checkbox"/> City Attorney	City Manager
	<input type="checkbox"/> City Engineer	
	<input type="checkbox"/> (Other)	

**EXECUTIVE SUMMARY**

Attached is the proposed Development Agreement (Agreement) between the City and Dry Creek (Houston) ASLI VII, LLC, for City Council's consideration. The Agreement will accommodate the development and construction of certain infrastructure improvements as specified and in compliance with the City's regulations, and will provide guidelines for how current subdivision regulations will be enforced throughout the development period of the project. The development will consist of 502.46 acres and up to 1,400 single-family residential lots. The Development Agreement provides for the following.

- The development will follow the City's current "Subdivision" Ordinance and Design Standards for public infrastructure
- Plats will come before the Planning Commission (Commission) and City Council and must comply with lot size and other applicable requirements.
- The development will meet the City's current parkland dedication requirements, which require more amenities and parkland to be set aside than in the previous ordinance.
- The Agreement contains a safeguard regarding the improvement of A. Meyers Road. It is currently anticipated that Fort Bend County will construct A. Meyers as a major thoroughfare; however if Fort Bend County doesn't commence work, the developer must construct the southern half or two (2) future eastbound lanes of the road in phases before the subdivision is platted (see Agreement for further details).
- The developer will convey a two-acre water plant site to the City within three (3) years of the Agreement being executed.

Attached as Exhibit "C" to the Agreement is the General/Land Plan (Plan) that was approved by the Commission on August 20, 2014. All lots will be a minimum of sixty feet (60') in width, with a minimum average size of 7,000 square feet and minimum overall size of 6,500 square feet per the current "Subdivision" Ordinance. There will be approximately 349.6 acres of residential development (all single-family) according to the Plan. The Plan also calls for a minimum of 26.3 acres in improved parkland to be set aside (based on 1,400 lots) per City ordinance. Overall there

will be 105.5 acres of open space including parks, detention, landscape reserves, etc. Finally, the development has two (2) non-residential sites consisting of 17 acres.

Overall, the proposed development represents an improvement in terms of lot sizes and amenities compared to what could be developed in the City or its Extraterritorial Jurisdiction under the previous ordinances. In addition to the Land Plan, the Development Agreement was reviewed by the Planning Commission on August 20. The Commission recommended approval to City Council of the Development Agreement. Staff recommends approval of Resolution No. R-1846 the Development Agreement as proposed. District representatives will be in attendance to address any questions you may have.

**RESOLUTION NO. R-1846**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE, FOR AND ON BEHALF OF THE CITY, A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY AND DRY CREEK (HOUSTON) ASLI VII, LLC, A DELAWARE LIMITED LIABILITY COMPANY, IN ASSOCIATION WITH FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 184.**

\* \* \* \* \*

**WHEREAS**, the City Council has deemed it appropriate to consent to the creation of Fort Bend Municipal Utility District No. 184 (“District”); and,

**WHEREAS**, a Development Agreement (“Agreement”) is necessary and appropriate to accommodate the development and construction of certain infrastructure improvements as specified and in compliance with the City’s regulations for a proposed development project in association with the District and Dry Creek (Houston) ASLI VII, LLC (“Developer”); and,

**WHEREAS**, the Developer desires to enter into this Agreement with the City for the development and construction of single-family residential and commercial uses, and to provide for adherence to regulatory requirements and development standards of the City; now, therefore,

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROSENBERG:**

Section 1. The City Council of the City of Rosenberg hereby authorizes the Mayor to execute a Development Agreement, for and on behalf of the City, with Dry Creek (Houston) ASLI VII, LLC, a Delaware Limited Liability Company.

Section 2. A copy of said Agreement is attached hereto as Exhibit “A” and made a part hereof for all purposes.

**PASSED, APPROVED, AND RESOLVED** this \_\_\_\_ day of \_\_\_\_\_ 2014.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Linda Cernosek, **CITY SECRETARY**

\_\_\_\_\_  
Vincent M. Morales, Jr., **MAYOR**

**DEVELOPMENT AGREEMENT BETWEEN  
THE CITY OF ROSENBERG, TEXAS,  
AND DRY CREEK (HOUSTON) ASLI VII, LLC**

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**DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ROSENBERG, TEXAS,  
AND DRY CREEK (HOUSTON) ASLI VII, LLC**

This Development Agreement (the "Agreement") is made and entered into as of \_\_\_\_\_, 2014, by THE CITY OF ROSENBERG, TEXAS, a home rule municipality in Fort Bend County, Texas, acting by and through its governing body, the City Council of Rosenberg, Texas (the "City"); and DRY CREEK (HOUSTON) ASLI VII, LLC, a Delaware limited liability company (the "Developer").

**RECITALS**

The City is a home rule city and municipal corporation that provides a full-range of governmental services to its citizens.

The Developer owns approximately 502.46 acres of land located partially within the City's boundaries and partially in the City's extraterritorial jurisdiction, which acreage is more particularly described in **Exhibit A** (the "Tract"). The City wishes to provide for the orderly, safe, and healthful development of land within the City's extraterritorial jurisdiction as provided in Chapter 42, Texas Local Government Code.

Fort Bend County Municipal Utility District No. 184 (the "District") has been created to encompass the Tract. The Developer intends to develop the Tract for single-family residential and commercial uses. The development will occur in phases, and the Developer anticipates that each phase will be platted separately.

The Developer desires to develop a high quality single-family community on the Tract; however, the Developer represents that the feasibility of the development of the Tract requires an agreement providing for long-term certainty in regulatory requirements and development standards by the City regarding the Tract.

The City and the Developer agree that the development of the Tract can best proceed pursuant to a development agreement and pursuant to the Service Agreement (defined hereinafter) of even date which is to be assigned to the District after it is confirmed by the voters of the District, which agreement is integral to the development of the Tract.

It is the intent of this Agreement to establish certain restrictions and commitments imposed and made in connection with the development of the Tract. The City and the Developer are proceeding in reliance on the enforceability of this Agreement.

**AGREEMENT**

NOW THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained herein, and other good and valuable consideration, the City and the Developer agree as follows:

## ARTICLE I DEFINITIONS

**Section 1.01 Terms.** Unless the context requires otherwise, and in addition to the terms defined above, the following terms and phrases used in this Agreement shall have the meanings set out below:

*City* means the City of Rosenberg, Texas.

*City Council* means the City Council of the City or any successor governing body.

*Commission* means the Texas Commission on Environmental Quality and its successors.

*County* means Fort Bend County, Texas.

*Designated Mortgagee* means, whether one or more, any mortgagee or security interest holder that has been designated to have certain rights pursuant to Article V hereof.

*Developer* means Dry Creek (Houston) ASLI VII, LLC, a Delaware limited liability company or its assignee.

*Development Ordinance* means the City's development ordinance as defined in Section 3.01 of this Agreement.

*Development Plan* means the plan for the proposed development of the Tract, a copy of which is attached to this Agreement as **Exhibit C**, as it may be revised from time to time in accordance with the terms of this Agreement and with City approval of any material change, as determined by the City.

*District* means Fort Bend County Municipal Utility District No. 184, a municipal utility district duly created by special act of the Texas Legislature, effective September 1, 2013, that encompasses the Tract, and whose purposes are limited to supplying a public water supply, sanitary sewer services, drainage services, fire protection, roads, and/or parks and recreational services to the areas within its boundaries.

*ETJ* means the extraterritorial jurisdiction of the City.

*Fire Protection Services Agreement* means the agreement for the City to provide fire protection services that the District is to enter into as provided in the Service Agreement.

*Groundwater Reduction Plan Participation Agreement* means the groundwater reduction plan participation agreement that the District is to enter into as provided in the Service Agreement.

*HOA* means the homeowners association for the homes within the District.

*Impact Fee* means the fee that is a one-time charge to Developer by the City for each Equivalent Single-family Connection platted to cover the capital costs incurred by the City related to the provision of water supply and related to sewage treatment facilities, provided that

the City provides Wastewater Services to the District.

*Person* means any individual, partnership, association, firm, trust, estate, public or private corporation, or any other legal entity whatsoever.

*Planning Commission* means the Planning Commission of the City.

*Service Agreement* means the *Water Supply and Wastewater Services Agreement between the City of Rosenberg, Texas, and Dry Creek (Houston) ASLI VII, LLC*, dated \_\_\_\_\_, 2014.

*SPA* means a strategic partnership agreement between the City and the District that is authorized by Section 43.0751, Texas Local Government Code.

*Tract* means all the land described in the attached **Exhibit A** and also means any other property annexed into the District and approved by City Council for such annexation, to be developed by Developer.

*Ultimate Consumer* means the purchaser of a tract or lot within the Tract who does not intend to resell, subdivide, or develop the tract or lot in the ordinary course of business.

*Wastewater Service Date* means the date that the City begins providing Wastewater Services to the Tract.

*Water Plant Site* means a tract of land in a location mutually agreed upon by Developer and the City within the Tract that is no greater than two (2) acres to be used by the City for a water plant.

**Section 1.02 Exhibits.** The following exhibits are attached to this Agreement as though fully incorporated herein:

- |           |  |
|-----------|--|
| Exhibit A | The Tract                                      |
| Exhibit B | Development Ordinance                          |
| Exhibit C | Development Plan                               |
| Exhibit D | Memorandum of Agreement                        |
| Exhibit E | Form of Agreement for Fire Protection Services |
| Exhibit F | Form of Strategic Partnership Agreement        |

## ARTICLE II DEVELOPMENT PLAN, PLATTING, AND MUNICIPAL UTILITY DISTRICT

**Section 2.01 Introduction.** The Tract is to be developed as a single-family community. The land uses within the Tract shall be typical of a single-family development with single-family residential, commercial, institutional, and recreational facilities.

**Section 2.02 Platting.** The Developer is required to plat any subdivision of the Tract in accordance with the requirements of the Development Ordinance. *The Developer hereby acknowledges and agrees that the City's final approval of any plat of land within the Tract*

*does not constitute in any way the City's reservation, commitment, or statement of availability of water, sanitary sewer, or stormwater drainage capacity or services for such land. The provision of such utilities to the Tract is the subject of the Service Agreement.*

**Section 2.03 Municipal Utility District.** Upon receipt of a petition requesting consent to the creation of the District from the landowners within the District, the City will adopt a resolution or ordinance consenting to the creation of the District and the issuance of water, sewer, drainage, park and road bonds by the District, subject to the consent conditions set out in the City's ordinances.

**Section 2.04 Automatic Termination.** The City shall have the right to terminate this Agreement upon which action it shall be of no further force and effect if the Developer has not initiated construction of any infrastructure within the Tract three (3) years from the date of this Agreement.

### **ARTICLE III DESIGN AND CONSTRUCTION STANDARDS AND APPLICABLE ORDINANCES**

**Section 3.01 Regulatory Standards and Development Quality.** The City and the Developer agree that one of the primary purposes of this Agreement is to provide for quality development of the Tract and certainty as to the regulatory requirements applicable to the development of the Tract throughout the development process. Feasibility of the development of the Tract is dependent upon a predictable regulatory environment and stability in the projected land uses. In exchange for Developer's performance of the obligations under this Agreement to develop the Tract in accordance with certain standards and to provide the overall quality of development described in this Agreement, the City agrees to the extent allowed by law that it will not impose or attempt to impose any moratoriums on building or growth within the Tract.

By the terms of this Agreement, the City and the Developer intend to establish development rules and regulations which will ensure a quality, unified development, yet afford the Developer predictability of regulatory requirements throughout the term of this Agreement. The City and the Developer hereby agree that "Development Ordinance," as used in this Agreement, means Chapter 25 of the City's Code of Ordinances, in the form attached to this Agreement as **Exhibit B** and not including any future amendments or changes; provided, however, ten (10) years from and after the date of this Agreement, Development Ordinance shall mean the City's then current ordinance regulating subdivisions, including any future amendments and changes. For purposes of determining which development regulations apply to a particular plat, the Development Ordinance shall be the one in effect, pursuant to the provisions of this Agreement, on the date of the Developer's submittal of a preliminary plat to the City. The development regulations and guidelines established in the Development Ordinance include density and land use regulations, a general land use plan, a circulation plan, a parks and recreation plan, and subdivision regulations. The City and the Developer agree that any City ordinance, whether heretofore or hereafter adopted, that addresses matters that are covered by this Agreement shall not be enforced by the City within the Tract, except for the Development Ordinance to the extent expressed in this Agreement, and that the provisions of this Agreement govern development of the Tract.

Notwithstanding the foregoing provisions of this section, the parties agree that the City's plat filing fees, review fees, and inspection fees, as the City may amend them from time to time, shall be applied to the Developer and the Tract; provided, however, any such amendments adopted by the City Council shall apply uniformly throughout the City and its extraterritorial jurisdiction.

Notwithstanding the foregoing, the City's plumbing code as it is amended from time to time shall apply to the Tract and be adopted by the District.

**Section 3.02 Water/Wastewater/Drainage Services.** (a) The plan for an integrated regional water supply, storage, and distribution system; wastewater collection and treatment system; and stormwater control and drainage system to serve the Tract shall be developed in accordance with the Development Ordinance, City design standards, and the Service Agreement.

(b) The number of lots will not exceed a number that can be served by the number of Equivalent Single-family Connections of Water Supply Services to be provided to the District under the Service Agreement.

(c) The Developer will purchase water to serve the District from the City pursuant to the Services Agreement. The Developer can immediately apply for a wastewater discharge permit for an interim wastewater treatment plant to be located within the boundaries of the District, and the City will not object to this permit. The Developer acknowledges that the City prefers that the Developer not construct a wastewater treatment plant to serve the District, and the Developer agrees to negotiate in good faith with the owners of the multi-district wastewater treatment plant located within the boundaries of Fort Bend County Municipal Utility District No. 152 to obtain both interim wastewater service and wastewater service capacity to serve the ultimate wastewater needs of the District. If the Developer determines that Developer cannot reach an agreement for interim service or permanent capacity on reasonable economic terms and in a reasonable time frame, the Developer will notify the City in writing and will meet with the City to discuss the terms offered and the failure to reach agreement timely. If the City agrees that terms are not reasonable and/or that an agreement cannot be reached and service cannot be provided within a time frame that will allow the Developer to proceed with development in a timely manner, the City will agree that the District may construct an interim wastewater treatment plant within the boundaries of the District, subject to approval of the wastewater discharge permit by the TCEQ. In the event that the District constructs an interim wastewater treatment plant, the District agrees that it will discontinue using the interim wastewater treatment plant, will contract with the City for wastewater treatment service for the District, will construct the facilities needed to connect the District's wastewater system to the City's wastewater system, and will send all wastewater discharges from the District to the City's wastewater treatment, provided it is economically feasible to do so. The City agrees to give the District two (2) years written notice of the anticipated Wastewater Service Date and agrees that the District will not be required to take Wastewater Services from the City prior to the expiration of such two year period. The District will remove such interim plant within six (6) months after the Wastewater Service Date. The parties acknowledge that it is not possible at this time to designate the point of connection to the City's system as that point will be determined based upon development to occur in the future. Therefore, the parties agree that it

will be considered economically feasible provided that the point of connection to the City's system is no further than  $\frac{3}{4}$  of a mile from any point on the District's boundary. The parties further agree that this sewer line connecting to the point of connection to the City's system will be constructed by the District/Developer in the City or County road right-of-way or, if it is not to be constructed in the City or County road right-of-way, the City will provide easements to the District that are necessary for construction of this sewer line. In addition, if the District intends to construct a permanent wastewater treatment plant, the District will notify the City of such intent prior to beginning the design of the permanent wastewater treatment plant. Within one hundred eighty (180) days of receipt of such notice, the City will notify the District in writing whether the City elects to provide Wastewater Services to the Tract and notify the District of a Wastewater Service Date that is no sooner than two (2) years after the date of such notice.

(d) Developer agrees that, after receipt of a written request from the City delivered to Developer no more than three (3) years from the date of this Agreement, Developer will convey (i) a Water Plant Site to the City, and (ii) if applicable, an easement to the City providing access from Meyers Road to the Water Plant Site. The conveyance instruments will be in a form reasonably acceptable to the City and will provide that the City will not be subject to paying any annual HOA special assessments or other types of fees charged by the HOA within the development. The conveyance will be made within ninety (90) days of Developer's receipt of the written request.

(e) The Developer will work with the District to install pipes, valves, spray heads and related appurtenances that have been approved by the Commission for effluent reclaimed water for all irrigation systems on at least 75% of District property within the current boundaries of the District that can be served with effluent reclaimed water (such as irrigation in boulevards, parks, etc.). The District, the Developer and the City will mutually agree upon multiple points of connection. The City must approve the plans for such systems. The parties agree to work together to design and operate the District's irrigation systems so as to maximize the use of the effluent reclaimed water as such use affords credits against the groundwater reduction requirements of the Fort Bend Subsidence District, which credits shall be the property of the City to use for the benefit of the participants in the City's Groundwater Reduction Plan. The District will purchase effluent reclaimed water from the City if the City delivers effluent reclaimed water to a point of connection and in a sufficient amount to serve the District's irrigation needs for areas served by that point of connection. The effluent reclaimed water will be pressurized or the parties will agree on an alternate effluent delivery system that is not pressurized. The District is allowed to install and use potable water systems for irrigation in an area until such time as the City delivers effluent to the point of connection serving such area in a sufficient amount to serve the District's irrigation needs for such area. With respect to either an interim wastewater treatment plant or a permanent wastewater treatment plant constructed by the District, if the District will generate sufficient effluent to make it economically feasible for the District to provide Type 1 reclaimed water for its irrigation purposes, the District agrees to obtain authorization from the Commission for Type 1 Reuse pursuant to Chapter 210 of the Commission rules and will provide Type 1 reclaimed water for its irrigation purposes. Credits against the Groundwater Reduction Plan shall be the property of the City to use for the benefit of the participants in the City's Groundwater Reduction Plan.

(f) The Developer may enter into a reimbursement agreement with the District to seek reimbursement for the costs of the water, wastewater, and drainage facilities referenced in this Section 3.02, as well as, to the extent allowed by law, the park and recreational facilities referenced in Section 3.06 below, the fire protection facilities referenced in Section 3.07 below, and the street and road facilities referenced in Section 3.08 below.

**Section 3.03 Design Standards for Public Improvements.** The Developer shall provide streets, drainage, utilities, parks and recreational facilities according to the Development Plan at Developer's sole cost; provided, however, the Developer may receive reimbursement of certain eligible costs from the District, as referenced in Section 3.02. The Developer shall provide written certification to the City from a professional engineer registered in the state of Texas that the City's then current design criteria for streets, paving, drainage, water, wastewater and park improvements have been met. Subject to such certification from a registered professional engineer and approval of the plans by the City Engineer, no approval by the Planning Commission or the City Council shall be required.

To the extent allowed by law, the City agrees to modify its regulations for the construction of public improvements only as provided in this paragraph. During the term of this agreement, the City may modify, supplement, or amend the City Design Standards to make them consistent with generally acceptable standards within Fort Bend County, Texas. All such modifications, supplement, and amendments to the Design Standards shall be uniformly applied to all development governed by the Development Ordinance. The criteria and construction standards for drainage facilities and improvements shall be consistent with criteria and standards imposed by the Fort Bend County Drainage District as they may be amended by Fort Bend County Drainage District from time to time. The Developer will comply with changes as set forth in this section.

**Section 3.04 Construction.** The water, wastewater, and drainage improvements to serve the Tract (the "Facilities") shall be constructed by or on behalf of the Developer at the Developer's expense and shall be designed using the City's standard criteria. The Developer and the City acknowledge that they are entering into the Service Agreement which provides, among other things, for the construction of a 16-inch regional water line along Benton from Reading to A. Meyers Road (the "Benton Waterline") and a water line along A. Meyers Road from the connection point with the Benton Water line to the District boundary (the "District Waterline"), both lines to include related appurtenances. The Benton Waterline and the District Waterline are referred to collectively as the "Improvements." The Developer shall be responsible for the engineering and construction of the Improvements. The Developer agrees that it will provide the necessary engineering and construction for the Improvements, including all necessary appurtenances, and the City agrees to offset the engineering and construction costs of the Benton Waterline against Impact Fees for water assessed against the Developer in accordance with Section 29-282 of the City's Code of Ordinances. No credit will be given for the District Waterline. Before commencing construction of the Improvements, the Developer must receive written approval from the City of the plans and specifications for the Improvements. Upon written approval of the plans and specifications, the Developer may proceed to construct the Improvements, provided however, that the contract for the Benton Waterline shall be competitively bid and awarded in accordance with the rules applicable to the District. The Developer shall execute the construction contract and shall pay the contractor upon receipt of

written pay estimates. Also before beginning construction on the Improvements, the Developer shall provide the City with copies of payment and performance bonds that comply with all applicable requirements of law, specifically including the bond requirements of Texas Government Code Chapter 2253 or, if applicable, Chapter 53, Texas Property Code, with a copy of a Certificate of Insurance reflecting that the contractor has general liability and/or excess coverage of at least \$1,000,000 per occurrence and \$2,000,000 aggregate coverage. The City shall have the right to inspect the construction of the Improvements. Upon completion of the Improvements, (i) the City shall inspect the same and shall note any deficiencies in the construction of the Improvements; (ii) the Developer shall convey the completed Improvements and any right-of-way for the Improvements to the City, subject to the Developer's right to capacity in such Improvements and subject to the City's acceptance of the conveyance of such Improvements; and (iii) the City shall be responsible for the operation and maintenance of the Improvements. The Developer shall warrant the Improvements or cause any construction contract warranty to run to the City for a period of one year after final completion of the Improvements and acceptance by the City.

**Section 3.05 Service Capacity.** Subject to the Developer's construction of water, wastewater, and drainage improvements to serve the Tract in accordance with the provisions of Section 3.04, the City shall acknowledge and reserve to the Developer service capacity in such improvements to the extent of the Developer's share of funding for such improvements; provided that, the City's reservation of capacity in the Benton Water Line to the Developer shall be limited by the maximum number of Equivalent Single-family Connections of Water Supply Services provided for in section 2.4 of the Services Agreement.

**Section 3.06 Parks and Recreational Facilities.** (a) The Developer will satisfy the parkland dedication requirements under Chapter 25, Article IV of the City Code of Ordinances.

(b) The City acknowledges and agrees that the Developer may make provisions for public park and recreational facilities to serve the Tract to be financed, developed, and maintained by the District, to the extent authorized by state law. The Developer agrees that any such amenities may be dedicated to a property owners association and/or to the District for ownership and operation and shall not be the responsibility of the City unless and until the City annexes the Tract, in which case the amenities owned by the District would become the property of the City. However, sites for stormwater detention systems shall be conveyed to and operated and maintained by the District. Notwithstanding the foregoing, prior to the first connection to the Water System within the Tract being made, the Developer shall enter into a contract with the homeowners association within the District, or other entity acceptable to the City, but referred to as "HOA" in this subsection (b). Said contract shall provide that the land within the District shall have reserved stormwater detention capacity within the system and shall further provide that if the District will be dissolved pursuant to any applicable law, the HOA, prior to the effective date of dissolution, will accept conveyance of the sites for stormwater detention systems in fee from the District, it being understood and agreed that under no conditions will the City own, operate, or maintain any stormwater detention facilities.

**Section 3.07 Fire Protection Services.** The Developer will cause fire protection services to be provided for the Tract by using its best efforts to cause the District to enter into a separate written agreement with the City in accordance with the Service Agreement, subject to the

District obtaining all necessary approvals. The Developer will pay all costs of the District to enter into such agreement.

**Section 3.08 Road Facilities.** (a) The Development Plan reflects proposed streets.

(b) In the event that the County has not constructed the southern half (the two future eastbound lanes) of A. Meyers Road (50-foot right-of-way width) adjacent to the boundary of the District (the “A. Meyers Road Portion”) in accordance with the following schedule, the Developer will construct segments of the A. Meyers Road Portion as set forth below:

- (i) Upon platting of 50% of the single-family lots, the District and/or the Developer will construct 50% of the length of the A. Meyers Road Portion prior to the recordation of the subsequent platted section of the development within the District.
- (ii) Upon platting of 75% of the single-family lots, the District and/or the Developer will construct an additional 25% of the length of the A. Meyers Road Portion prior to the recordation of the subsequent platted section of the development within the District.
- (iii) Upon platting of 90% of the single-family lots, the District and/or the Developer will construct the final 25% of the A. Meyers Road Portion prior to the recordation of the last platted section of the development within the District.

(c) The Developer will dedicate right-of-way to provide half of the ultimate proposed 100-foot right-of-way for A. Meyers Road. The Developer will dedicate half of the additional right-of-way to provide the ultimate 100-foot right-of-way with the remainder to be dedicated by the developer/owner of the tract north of A. Meyers Road. The dedication will be made as land containing such right-of-way is platted, provided that if the County elects to build the A. Meyers Road Portion and all right-of-way has not been dedicated by plat, the Developer agrees to convey such right-of-way within ninety (90) days of receipt of written request from either the City or the County.

(d) The Developer will also construct the portion of A. Meyers Road (50-foot right-of-way width) from the west property line of the undeveloped tract located southwest of the intersection of A. Meyers Road and Berdett Road to Berdett Road (the “A. Meyers Road/Berdett Road Portion”) provided that the City or the County obtains the right-of-way for the A. Meyers Road/Berdett Road Portion. After the Developer’s receipt of written notice that the right-of-way has been acquired, the Developer will include the A. Meyers Road/Berdett Road Portion in the construction contract for the next segment of road to be constructed hereunder. If the Developer has not received written notice that the right-of-way has been acquired at least ninety (90) days before the District and/or the Developer awards a contract for the final segment of the A. Meyers Road Portion to the City or County, the Developer will not be required to construct the A. Meyers Road/Berdett Road Portion.

(e) Neither the Developer nor the District will be required by the City to construct any roadway improvements outside of the boundaries of the District other than in accordance with this Agreement.

**Section 3.09 Liability of Ultimate Consumer.** Ultimate Consumers shall have no liability for the failure of the Developer to comply with the terms of this Agreement and shall only be liable for their own failure to comply with the recorded declaration of restrictive covenants and land use restrictions applicable to the use of their tract or lot.

#### **ARTICLE IV ANNEXATION OF THE TRACT**

**Section 4.01 Annexation by the City.** The City agrees to annex the Tract only in accordance with the SPA, when in effect.

**Section 4.02 Strategic Partnership Agreement.** Section 43.0751, Tex. Local Gov't Code (the "Act"), provides for the negotiation and implementation of "strategic partnership agreements" between cities and municipal utility districts, whereby the continued existence of the district and various areas of governmental cooperation may be provided for by agreement. The Developer agrees to work with the District to enter into a strategic partnership agreement between the City and the District in a form substantially similar to the form of agreement attached to the Service Agreement.

**Section 4.03 Annexation of Land into the District.** The parties agree that if any land is annexed into the District following consent of the City, the development of such land shall be subject to this Agreement. In addition, no development within the annexed land may take place until the Developer has submitted and obtained City approval of a new Development Plan for the District which includes the annexed land. Such approved Development Plan will be signed by both parties and dated and will become the new **Exhibit C** to this Agreement.

#### **ARTICLE V PROVISIONS FOR DESIGNATED MORTGAGEE**

**Section 5.01 Notice to Designated Mortgagee.** Pursuant to Section 5.03, any Designated Mortgagee shall be entitled to simultaneous notice any time that a provision of this Agreement requires notice to Developer.

**Section 5.02 Right of Designated Mortgagee to Cure Default.** Any Designated Mortgagee shall have the right, but not the obligation, to cure any default in accordance with the provisions of Section 5.03 and Article VII.

**Section 5.03 Designated Mortgagee.** At any time after execution and recordation in the Real Property Records of Fort Bend County, Texas, of any mortgage, deed of trust, or security agreement encumbering the Tract or any portion thereof, the Developer (a) shall notify the City in writing that the mortgage, deed of trust, or security agreement has been given and executed by the Developer, and (b) may change the Developer's address for notice pursuant to Section 9.01 to include the address of the Designated Mortgagee to which it desires copies of notice to be provided.

At such time as a release of any such lien is filed in the Real Property Records of Fort Bend County, Texas, and the Developer gives notice of the release to the City as provided

herein, all rights and obligations of the City with respect to the Designated Mortgagee under this Agreement shall terminate.

The City agrees that it may not exercise any remedies of default hereunder unless and until the Designated Mortgagee has been given thirty (30) days written notice and opportunity to cure (or commences to cure and thereafter continues in good faith and with due diligence to complete the cure) the default complained of. Whenever consent is required to amend a particular provision of this Agreement or to terminate this Agreement, the City and the Developer agree that this Agreement may not be so amended or terminated without the consent of such Designated Mortgagee; provided, however, consent of a Designated Mortgagee shall only be required to the extent the lands mortgaged to such Designated Mortgagee would be affected by such amendment or termination.

Upon foreclosure (or deed in lieu of foreclosure) by a Designated Mortgagee of its security instrument executed by the Developer encumbering the Tract, such Designated Mortgagee (and its affiliates) and their successors and assigns shall not be liable under this Agreement for any defaults that are in existence at the time of such foreclosure (or deed in lieu of foreclosure). Furthermore, so long as such Designated Mortgagee (or its affiliates) is only maintaining the Tract and marketing it for sale and is not actively involved in the development of the Tract, such Designated Mortgagee (and its affiliates) shall not be liable under this Agreement. Upon foreclosure (or deed in lieu of foreclosure) by a Designated Mortgagee, any development of the property shall be in accordance with this Agreement.

If the Designated Mortgagee and/or any of its affiliates and their respective successors and assigns, undertakes development activity, the Designated Mortgagee shall be bound by the terms of this Agreement. However, under no circumstances shall such Designated Mortgagee ever have liability for matters arising either prior to, or subsequent to, its actual period of ownership of the Tract, or a portion thereof, acquired through foreclosure (or deed in lieu of foreclosure).

## **ARTICLE VI PROVISIONS FOR DEVELOPER**

**Section 6.01 Waiver of Actions Under Private Real Property Rights Preservation Act.** The Developer hereby waives its right, if any, to assert any causes of action against the City accruing under the Private Real Property Rights Preservation Act, Chapter 2007, Texas Government Code (the "Act"), that the City's execution or performance of this Agreement or any authorized amendment or supplements thereto may constitute, either now or in the future, a "Taking" of Developer's, Developer's grantee's, or a grantee's successor's "Private Real Property," as such terms are defined in the Act. Provided, however, that this waiver does not apply to, and the Developer and Developer's grantees and successors do not waive their rights under the Act to assert a claim under the Act for any action taken by the City beyond the scope of this Agreement which otherwise may give rise to a cause of action under the Act.

**Section 6.02 Developer's Right to Continue Development.** The City and the Developer hereby acknowledge and agree that, subject to Section 8.04 of this Agreement, the Developer may sell all or a portion of the Tract to one or more Persons who shall be bound by this

Agreement and perform the obligations of Developer hereunder, provided that the Developer shall retain ultimate responsibility for complying with the terms of this Agreement unless the City agrees in writing that the purchaser shall be responsible for and perform the Developer's obligations.

## **ARTICLE VII MATERIAL BREACH, NOTICE AND REMEDIES**

**Section 7.01 Material Breach of Agreement.** It is the intention of the parties to this Agreement that the Tract be developed in accordance with the terms of this Agreement and that Developer follow the development plans as set out in the Development Plan.

(a) The parties acknowledge and agree that any major deviation from the Development Plan and the concepts of development contained therein and any substantial deviation by Developer from the material terms of this Agreement would frustrate the intent of this Agreement, and therefore, would be a material breach of this Agreement. A material breach of this Agreement by Developer shall be deemed to have occurred in any of the following instances:

1. Developer's failure to develop the Tract in compliance with the approved Development Plan, as from time to time amended; or Developer's failure to secure the City's approval of any material or significant modification or amendment to the Development Plan;
2. Failure of the Developer or the District to approve or consent to any annexation of territory by the City in accordance with this Agreement; or
3. Failure of the Developer to substantially comply with a provision of this Agreement or a City ordinance applicable to the Tract.

(b) The parties agree that nothing in this Agreement can compel the Developer to proceed or continue to develop the Tract within any time period.

(c) The parties acknowledge and agree that any substantial deviation by the City from the material terms of this Agreement would frustrate the intent of this Agreement and, therefore, would be a material breach of this Agreement. A material breach of this Agreement by the City shall be deemed to have occurred in any of the following instances:

1. The imposition or attempted imposition of any moratorium on building or growth on the Tract prohibited by State law or this Agreement;
2. The imposition of a requirement to provide regionalization or oversizing of public utilities through some method substantially or materially different than the plan set forth in this Agreement;
3. An attempt by the City to annex, in whole or in part, the property within the District prior to the occurrence of the conditions set forth in Section 4.01 of this Agreement;
4. An attempt by the City to enforce any City ordinance within the Tract that is inconsistent with the terms and conditions of this Agreement;

5. An attempt by the City to require modification or amendment of the Development Plan where it complies with the requirements of this Agreement; or

6. An attempt by the City to unreasonably withhold approval of a plat of land within the Tract that complies with the requirements of this Agreement.

In the event that a party to this Agreement believes that another party has, by act or omission, committed a material breach of this Agreement, the provisions of this Article VII shall provide the remedies for such default.

### **Section 7.02 Notice of Developer's Default.**

(a) The City shall notify the Developer and each Designated Mortgagee in writing of an alleged failure by the Developer to comply with a provision of this Agreement, which notice shall specify the alleged failure with reasonable particularity. The alleged defaulting Developer shall, within thirty (30) days after receipt of such notice or such longer period of time as the City may specify in such notice, either cure such alleged failure or, in a written response to the City, either present facts and arguments in refutation or excuse of such alleged failure or state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure.

(b) The City shall determine (i) whether a failure to comply with a provision has occurred; (ii) whether such failure is excusable; and (iii) whether such failure has been cured or will be cured by the alleged defaulting Developer or a Designated Mortgagee. The alleged defaulting Developer shall make available to the City, if requested, any records, documents or other information necessary to make the determination.

(c) In the event that the City determines that such failure has not occurred, or that such failure either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to the City, or that such failure is excusable, such determination shall conclude the investigation.

(d) If the City determines that a failure to comply with a provision has occurred and that such failure is not excusable and has not been or will not be cured by the alleged defaulting Developer or a Designated Mortgagee in a manner and in accordance with a schedule reasonably satisfactory to the City, then the City Council may proceed to mediation under Section 7.04 and subsequently exercise the applicable remedy under Section 7.05.

### **Section 7.03 Notice of City's Default.**

(a) The Developer shall notify the City in writing of an alleged failure by the City to comply with a provision of this Agreement, which notice shall specify the alleged failure with reasonable particularity. The City shall, within thirty (30) days after receipt of such notice or such longer period of time as the Developer may specify in such notice, either cure such alleged failure or, in a written response to the Developer, either present facts and arguments in refutation or excuse of such alleged failure or state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure.

(b) The Developer shall determine (i) whether a failure to comply with a provision has occurred; (ii) whether such failure is excusable; and (iii) whether such failure has been cured or will be cured by the City. The City shall make available to the Developer, if requested, any records, documents or other information necessary to make the determination.

(c) In the event that the Developer determines that such failure has not occurred or that such failure either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to the Developer, or that such failure is excusable, such determination shall conclude the investigation.

(d) If the Developer determines that a failure to comply with a provision has occurred and that such failure is not excusable and has not been or will not be cured by the City in a manner and in accordance with a schedule reasonably satisfactory to the Developer, then the Developer may proceed to mediation under Section 7.04 and subsequently exercise the applicable remedy under Section 7.05.

**Section 7.04 Mediation.** In the event the parties to this Agreement cannot, within a reasonable time, resolve their dispute pursuant to the procedures described in Sections 7.02 or 7.03, the parties agree to submit the disputed issue to non-binding mediation. The parties shall participate in good faith, but in no event shall they be obligated to pursue mediation that does not resolve the issue within seven (7) days after the mediation is initiated or fourteen (14) days after mediation is requested. The parties participating in the mediation shall share the costs of the mediation equally.

#### **Section 7.05 Remedies.**

(a) In the event of a determination by the City that the Developer has committed a material breach of this Agreement that is not resolved in mediation pursuant to Section 7.04, the City may, subject to the provisions of Section 6.02, file suit in a court of competent jurisdiction in Fort Bend County, Texas, and seek any relief available at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgment Act and or termination of this Agreement as to the breaching Developer.

(b) In the event of a determination by a Developer that the City has committed a material breach of this Agreement that is not resolved in mediation pursuant to Section 7.04, the Developer may file suit in a court of competent jurisdiction in Fort Bend County, Texas, and seek any relief available, at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgment Act to enforce compliance with or termination of this Agreement.

### **ARTICLE VIII BINDING AGREEMENT, TERM, AMENDMENT, AND ASSIGNMENT**

**Section 8.01 Beneficiaries.** This Agreement shall bind and inure to the benefit of the City and the Developer, their successors and assigns. In addition to the City and the Developer, Designated Mortgagees, and their respective successors or assigns, shall also be deemed beneficiaries to this Agreement. The terms of this Agreement shall constitute covenants running with the land comprising the Tract and shall be binding on all future Developers and owners of

any portion of the Tract, other than Ultimate Consumers. Notwithstanding the foregoing statement, an Ultimate Consumer shall be bound by the Developer's submittal of the annexation petition required by Section 4.02, to the extent allowed by law, and shall be bound by the Developer's waiver of rights described in Section 6.02. A memorandum of this Agreement, in substantially the form attached hereto as **Exhibit D**, shall be recorded in the County Clerk Official Records of Fort Bend County, Texas.

**Section 8.02 Term.** This Agreement shall bind the parties and continue for twenty-five (25) years from the date of this Agreement, unless terminated on an earlier date pursuant to other provisions or by express written agreement executed by the City and Developer. Upon the expiration of twenty-five (25) years from the date of this Agreement, this Agreement may be extended, at the Developer's request and with City Council approval, for successive one-year periods.

**Section 8.03 Termination.** In the event this Agreement is terminated as provided in this Agreement or is terminated pursuant to other provisions, or is terminated by mutual agreement of the parties, the parties shall promptly execute and file of record, in the County Clerk Official Records of Fort Bend County, a document confirming the termination of this Agreement, and such other documents as may be appropriate to reflect the basis upon which such termination occurred.

**Section 8.04 Assignment or Sale.** If the Developer proposes to sell substantially all of the Tract, or all of the Tract owned at such time by the Developer, the Developer shall provide prior written notice of such sale to the City. Any person who acquires the Tract or any portion of the Tract, except for an Ultimate Consumer whose liability is defined in Section 3.07 above, shall take the Tract subject to the terms of this Agreement. The terms of this Agreement are binding upon Developer, its successors and assigns, as provided in Section 8.01 above. Provided, however, the Developer's assignee shall not acquire the rights and obligations of the Developer unless the Developer and assignee enter into a written assignment agreement in a form satisfactory to the City, and the City agrees in writing to such assignment, which approval will not be unreasonably delayed, conditioned or withheld. Any contract, agreement to sell land, or instrument of conveyance of land which is a part of the Tract, other than to an Ultimate Consumer, shall recite and incorporate this Agreement as binding on any purchaser or assignee.

**Section 8.05 Transfer of Control of Developer.** The Developer shall promptly notify the City in writing prior to any substantial change in ownership or control of that Developer. As used herein, the words "substantial change in ownership or control" shall mean a change of more than 49% of the stock or equitable ownership of a Developer. Any contract or agreement for the sale, transfer, or assignment of control or ownership of a Developer shall recite and incorporate this Agreement as binding on any purchaser, transferee, or assignee.

## **ARTICLE IX MISCELLANEOUS PROVISIONS**

**Section 9.01 Notice.** The parties contemplate that they will engage in informal communications with respect to the subject matter of this Agreement. However, any formal notices or other communications ("Notice") required to be given by one party to another by this

Agreement shall be given in writing addressed to the party to be notified at the address set forth below for such party, (a) by delivering the same in person, (b) by depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified; (c) by depositing the same with Federal Express or another nationally recognized courier service guaranteeing "next day delivery," addressed to the party to be notified, or (d) by sending the same by telefax with confirming copy sent by mail. Any notice required to be given by a party to a Designated Mortgagee shall be given as provided above at the address designated upon the identification of the Designated Mortgagee. Notice deposited in the United States mail in the manner herein above described shall be deemed effective from and after three (3) days after the date of such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties, until changed as provided below, shall be as follows:

City:	City of Rosenberg P.O. Box 32 Rosenberg, Texas 77471 Attn: City Manager (fax) (832) 595-3311
Developer:	Dry Creek (Houston) ASLI VII, LLC c/o Ersa Grae Corporation 9801 Westheimer, Suite 250 Houston, Texas 77042 Attn: Vahid Tabrizi
District:	Fort Bend County Municipal Utility District No. 184 c/o Allen Boone Humphries Robinson LLP 3200 Southwest Freeway, Suite 2600 Houston, Texas 77027 Attn: Jim Boone (fax) 713-860-6401

The parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by giving at least five (5) days written notice to the other parties. A Designated Mortgagee may change its address in the same manner by written notice to all of the parties. If any date or any period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday or legal holiday.

**Section 9.02 Time.** Time is of the essence in all things pertaining to the performance of this Agreement.

**Section 9.03 Severability.** If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected.

**Section 9.04 Waiver.** Any failure by a party hereto to insist upon strict performance by the other party of any material provision of this Agreement shall not be deemed a waiver thereof or of any other provision hereof, and such party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

**Section 9.05 Applicable Law and Venue.** The construction and validity of this Agreement shall be governed by the laws of the State of Texas without regard to conflicts of law principles. Venue shall be in Fort Bend County, Texas.

**Section 9.06 Reservation of Rights.** To the extent not inconsistent with this Agreement, each party reserves all rights, privileges, and immunities under applicable laws.

**Section 9.07 Further Documents.** The parties agree that at any time after execution of this Agreement, they will, upon request of another party, execute and deliver such further documents and do such further acts and things as the other party may reasonably request in order to effectuate the terms of this Agreement.

**Section 9.08 Payment Guarantee.** The District will enter into contracts for the construction of the Benton Water Line and the A. Meyers Water Line and Developer will execute such contracts for the purpose of guaranteeing payments to the contractors thereunder.

**Section 9.09 Incorporation of Exhibits and Other Documents by Reference.** All Exhibits and other documents attached to or referred to in this Agreement are incorporated herein by reference for the purposes set forth in this Agreement.

**Section 9.10 Effect of State and Federal Laws.** Notwithstanding any other provision of this Agreement, Developer, its successors or assigns, shall comply with all applicable statutes or regulations of the United States and the State of Texas, as well as any City ordinances not in conflict with this Agreement, and any rules implementing such statutes or regulations.

**Section 9.11 Authority for Execution.** The City hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the City Charter and City ordinances. The Developer hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the articles of incorporation and bylaws or partnership agreements of such entities.

[EXECUTION PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

CITY OF ROSENBERG, TEXAS

\_\_\_\_\_

ATTEST:

APPROVED:

\_\_\_\_\_  
CITY SECRETARY

\_\_\_\_\_  
CITY ATTORNEY

DRY CREEK (HOUSTON) ASLI VII, LLC, a  
Delaware limited liability company

By: Avanti Strategic Land Investors VII,  
L.L.L.P., a Delaware limited liability limited  
partnership, its sole Member

By: Avanti Properties Group II, L.L.L.P., a  
Delaware limited liability limited partnership, its  
Managing General Partner

By: Avanti Management Corporation, a Florida  
corporation, its sole General Partner

By: \_\_\_\_\_  
Andrew Dubill, Vice President

**EXHIBIT A**  
**THE TRACT**

STATE OF TEXAS           §

COUNTY OF FORT BEND   §

A **METES & BOUNDS** description of a 502.46 acre tract of land in the Wiley Martin Survey, Abstract 56, and the E. P. Everett Survey, Abstract 387, Fort Bend County, Texas, being that certain called 371.8877 acre tract recorded under County Clerk's File Number 2013131554, Official Public Records, Fort Bend County, Texas, and that certain called 130.58 acre tract recorded under County Clerk's File Number 2005107303, Official Public Records, Fort Bend County, Texas, with all bearings based upon the Texas Coordinate System, South Central Zone, NAD83, based upon GPS observations.

**Beginning** at a  $\frac{3}{4}$  inch iron rod with cap marked "EHR&A" found in the northwesterly right-of-way line of Berdett Road for the south corner of said called 371.8877 acre tract, for the most easterly south corner and **Place of Beginning** of the herein described tract, said point also being in the southwest line of said Wiley Martin Survey, Abstract 56, same being the northeast line of the adjoining Henry Wilcox Survey, Abstract 342, and the northeast line of an adjoining called 607.75 acre tract recorded in Volume 64, Page 109, Deed Records, Fort Bend County, Texas;

**Thence** North 67 degrees 27 minutes 46 seconds West along the common line of the herein described tract and said adjoining called 607.75 acre tract, same being the common line of said Wiley Martin Survey, Abstract 56, and said adjoining Henry Wilcox Survey, Abstract 342, being along the southerly line of said called 371.8877 acre tract and the upper south line of said called 130.58 acre tract, 5,064.24 feet to an angle point, said point being the northwest corner of said adjoining called 607.75 acre tract and said adjoining Henry Wilcox Survey, Abstract 342, same being the east corner of said E. P. Everett Survey, Abstract 387, and the northeast corner of an adjoining called 24.9524 acre tract recorded in Volume 1934, Page 712, Official Records, Fort Bend County, Texas;

**Thence** North 67 degrees 36 minutes 40 seconds West along the common line of the herein described tract and said adjoining called 24.9524 acre tract, same being the common line of said Wiley Martin Survey, Abstract 56, and said E. P. Everett Survey, Abstract 387, 547.46 feet to a reentry corner to the herein described tract and a reentry corner to said called 130.58 acre tract, said point being the northwest corner of said adjoining called 24.9524 acre tract;

**Thence** South 42 degrees 08 minutes 14 seconds West along the common line of the herein described tract and said adjoining called 24.9524 acre tract, 2,046.63 feet to a point in the northeast right-of-way line of Ricefield Road for the most westerly south corner of the herein described tract and the south corner of said called 130.58 acre tract, same being the west corner of said adjoining called 24.9524 acre tract;

**Thence** North 47 degrees 59 minutes 25 seconds West along the northeast right-of-way line of Ricefield Road, 344.35 feet to a point for the west corner of the herein described tract and the west corner of said called 130.58 acre tract, same being the south corner of the adjoining residue of a called 400.814 acre tract recorded under County Clerk's File Number 2006019259, Official Public Records, Fort Bend County, Texas;

**Thence** North 42 degrees 05 minutes 03 seconds East along the common line of the herein described tract and said adjoining residue of a called 400.814 acre tract, being the westerly line of said called 130.58 acre tract, 1,924.14 feet to an angle point;

**Thence** North 22 degrees 20 minutes 28 seconds East continuing along said line, and along the east line of an adjoining called 21.29 acre tract recorded under County Clerk's File Number 2008017096, Official Public Records, Fort Bend County, Texas, and the east line of an adjoining called 30.00 acre tract recorded under County Clerk's File Number 2007013845, Official Public Records, Fort Bend County, Texas, 3,225.31 feet to a point in the centerline of A. Myers Road for the northwest corner of the herein described tract and the northwest corner of said called 130.58 acre tract, same being the northeast corner of said adjoining residue of a called 400.814 acre tract, and being in the southerly line of an adjoining called 792.85 acre tract recorded under County Clerk's File Number 2001123289, Official Public Records, Fort Bend County, Texas, and described in Volume 510, Page 210, Deed Records, Fort Bend County, Texas;

**Thence** South 67 degrees 49 minutes 42 seconds East along the northerly line of the herein described tract, the northerly line of said called 130.58 acre tract, and the northerly line of said called 371.8877 acre tract, as located in A. Myers Road, 6,171.28 feet to the upper northeast corner of the herein described tract and the upper northeast corner of said called 371.8877 acre tract, same being the northwest corner of the adjoining residue of a called 376.1612 acre tract recorded in Volume 1934, Page 712, Official Records, Fort Bend County, Texas;

**Thence** South 21 degrees 34 minutes 18 seconds West along the common line of the herein described tract and said adjoining residue of a called 376.1612 acre tract, 470.17 feet to a reentry corner to the herein described tract and a reentry corner to said called 371.8877 acre tract, same being the southwest corner of said adjoining residue of a called 376.1612 acre tract;

**Thence** South 68 degrees 25 minutes 42 seconds East continuing along said common line, 397.73 feet to the lower northeast corner of the herein described tract and the lower northeast corner of said called 371.8877 acre tract, same being the southeast corner of said adjoining residue of a called 376.1612 acre tract, and being in the westerly right-of-way line of Berdett Road;

Fort Bend County MUD 184  
502.46 Acres

Wiley Martin Survey, Abstract 56  
E. P. Everett Survey, Abstract 387

**Thence** South 21 degrees 34 minutes 18 seconds West along the easterly line of the herein described tract and the easterly line of said called 371.8877 acre tract, same being the westerly right-of-way line of Berdett Road, 2,800.25 feet to the **Place of Beginning** and containing 502.46 acres of land, more or less.

This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

September 18, 2013

Job Number 11646-0769-00

Charlie Kalkomey Surveying, Inc.  
6415 Reading Road  
Rosenberg, TX 77471-5655  
(281) 342-2033



A handwritten signature in black ink, appearing to read "Chris D. Kalkomey".

Acting By/Through Chris D. Kalkomey  
Registered Professional Land Surveyor  
No. 5869  
CDKalkomey@jonescarter.com

**EXHIBIT B**  
**THE DEVELOPMENT ORDINANCE**

## PART II - CODE OF ORDINANCES

### Chapter 25 SUBDIVISIONS

#### Chapter 25 SUBDIVISIONS <sup>[1]</sup>

ARTICLE I. - IN GENERAL

ARTICLE II. - PROCEDURES AND REQUIREMENTS

ARTICLE III. - SUBDIVISION DESIGN REQUIREMENTS (STANDARDS)

ARTICLE IV. - PARK LAND, PUBLIC SITES AND OPEN SPACES

ARTICLE V. - IMPROVEMENTS AND ACCEPTANCE OF THE SUBDIVISION

ARTICLE VI. - MISCELLANEOUS

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FOOTNOTE(S):

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**Editor's note**— Ordinance No. 2001-33, § 1, adopted Aug. 21, 2001, repealed Chapter 25, §§ 25-1—25-137, in its entirety and enacted a new Chapter 25, §§ 25-1—25-137, to read as herein set out. Formerly, such chapter pertained to similar provisions and derived from Ord. No. 98-06, § 1, adopted Feb. 3, 1998; Ord. No. 98-33, § 1, adopted Oct. 20, 1998; and Ord. No. 2000-38, § 1, adopted Sept. 5, 2000. Former Chapter 21 was enacted by Ord. No. 98-06, § 1, adopted February 3, 1998, which repealed previous Chapter 25 and added new provisions in place thereof. The provisions of previous Chapter 25 derived from §§ 20-1—20-29 of the 1960 Code; Ord. No. 89-20, § 1, adopted March 21, 1989; and Ord. No. 90-55, § 8, adopted Sept. 4, 1990. Subsequently, Ord. No. 2005-24, § 1, adopted Oct. 18, 2005, amended Ch. 25, in its entirety, to read as herein set out. See also the Code Comparative Table for a detailed analysis of inclusion. ([Back](#))

**Charter reference**— Municipal planning and zoning, § 8.01 et seq. ([Back](#))

**Cross reference**— Planning and development, § 2-86 et seq.; location restrictions on alcoholic beverage establishments, § 3-2; consumption or possession of alcoholic beverages restricted, §§ 3-3, 3-4; animals, Ch. 4; pets prohibited from running at large, § 4-2; limitation on the number of dogs and cats, § 4-31; annexations, Ch. 5; buildings and building regulations, Ch. 6; requirements for electrical signs, § 6-151 et seq.; plumbing and gas standards, § 6-171 et seq.; housing code, § 6-231 et seq.; apartment buildings or complexes, § 6-251 et seq.; permits required for construction or reconstruction of driveways, culverts, etc., § 6-326 et seq.; flood prevention and protection, Ch. 12; standards for flood prevention and protection in subdivision proposals, § 12-53; standards for flood prevention and protection for certain subdivision proposals, § 12-55; health, sanitation and nuisances, Ch. 14; rodent control, § 14-50 et seq.; manufactured housing, mobile homes and travel trailers and parks, Ch. 17; mobile home, manufactured housing and travel trailer park plats, § 17-76 et seq.; requirements for manufactured housing, mobile home or travel trailer park, § 17-114; parks and recreation, Ch. 21; solid waste, Ch. 23; streets, sidewalks and other public places, Ch. 24; traffic and vehicles, Ch. 28; utilities, Ch. 29. ([Back](#))

**State Law reference**— Subdivisions, V.T.C.A., Local Government Code § 212.001 et seq. ([Back](#))

PART II - CODE OF ORDINANCES  
Chapter 25 - SUBDIVISIONS

ARTICLE I. IN GENERAL

**ARTICLE I. IN GENERAL**

[Sec. 25-1. Definitions.](#)

[Sec. 25-2. Authority; scope of provisions.](#)

[Sec. 25-3. Penalties.](#)

[Sec. 25-4. Interpretation and purpose.](#)

[Sec. 25-5. Application of regulations.](#)

[Sec. 25-6. Subject developments.](#)

[Sec. 25-7. Exemptions.](#)

[Sec. 25-8. Variances.](#)

[Sec. 25-9. Duty of owner, subdivider.](#)

[Sec. 25-10. Application for approval.](#)

[Sec. 25-11. Signs in residential subdivisions.](#)

[Secs. 25-12—25-30. Reserved.](#)

**Sec. 25-1. Definitions.**

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. Definitions not expressly prescribed herein are to be determined in accordance with customary usage in municipal planning and engineering practices. The word "shall" is always mandatory, while the word "may" is merely directory. The city council reserves to itself the power, duty and responsibility to interpret, define and/or provide such modification to this chapter or any provision thereof that the city council shall be called upon from time to time to provide. Such interpretation, definition and/or modification as shall be provided by action of the city council shall constitute an amendment to this chapter.

*Access easement* shall mean an easement designated on the final plat, whether or not so named, which provides access to platted tracts excepting single-family and duplex residential. The easement shall meet the requirements as set forth in section 25-61(c), and shall be privately maintained.

*Administrative officer* shall mean the person who is designated by the city manager to administer this chapter and is responsible for coordinating the review of all plats and construction documents.

*Alley* shall mean a minor public right-of-way not intended to provide the primary means of access to abutting lots, which is used primarily for vehicular service access to the back or sides of properties otherwise abutting on a street.

*Amending plat* shall mean a plat which is controlling over the preceding plat without vacation of that plat, which is submitted for approval of certain dimensional and notational corrections and lot line adjustments under the provisions of the Texas Local Government Code. An amending plat is a final plat.

*Block* shall mean a tract or parcel of land designated as such on a duly recorded plat and may be entirely surrounded by public streets or by a combination of public streets and public parks, cemeteries, railroad rights-of-way, or natural or manmade physical features that disrupt what would otherwise be an unbroken landscape (for example, ditches, gullies, ridges, etc.).

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ARTICLE I. IN GENERAL

*Building* shall mean any structure which is built for the support, shelter, or enclosure of persons, animals, chattels, machinery, equipment, or movable property of any kind.

*Building line* or *building setback* shall mean the line within the property defining the minimum horizontal distance between a building or other structure and the adjacent street line and other property lot lines, including side or rear property lines.

*City* shall mean the City of Rosenberg, Texas, a home-rule municipal corporation located within Fort Bend County.

*City engineer* shall mean the registered professional engineer or firm of registered professional consulting engineers that has been specifically designated as such by the city.

*Commission* shall mean the planning and zoning commission of the city. The commission is appointed by the city council to act on subdivision plats, planning issues, and such other matters as shall be from time to time referred to the commission by the city council.

*Comprehensive/master plan* shall mean the comprehensive plan, including all its revisions, of the city and adjoining areas as adopted by the city council and the commission as a guide to future development. This plan indicates the general locations recommended for various land uses, transportation routes, public and private buildings, streets, parks, water, sewer, and other private developments and improvements. The comprehensive plan may also be defined as a series of plans such as the thoroughfare plan, water and sewer plan, and annexation plan, among others.

*Condominium* shall mean joint ownership and control, as distinguished from sole ownership and control of specified horizontal layers of air space; each condominium unit is individually owned, while the common elements of the condominium building, structure or development are jointly owned; may be commercial, industrial, recreational, or residential.

*Corner lot* shall mean a building lot, not a double front lot, which has frontage on two (2) streets that are perpendicular to each other or within forty-five (45) degrees of being perpendicular to each other.

*County* shall mean Fort Bend County, Texas.

*County commission* shall mean the duly and constitutionally elected governing body of Fort Bend County.

*Crosswalk* shall mean a public right-of-way not more than six (6) feet in width between property lines which provides pedestrian circulation.

*Cul-de-sac* shall mean a street having but one (1) outlet to another street and terminated on the opposite end by a vehicular turnaround.

*Dead end street* shall mean a street, other than a cul-de-sac, with only one (1) outlet.

*Design standards* shall mean such general requirements as shall be from time to time promulgated by the administrative officer for the design of public improvements and private improvements that connect to or affect the public infrastructure.

*Developer* shall mean any person subdividing a tract or parcel of land to be sold or otherwise handled for their own personal gain or use.

*Development* shall mean a planning or construction project involving substantial property involvement and usually including the subdivision of land and change in land use character.

*Double front lot* shall mean a building lot, not a corner lot, which has frontage on two (2) streets that are parallel or within forty-five (45) degrees of being parallel to each other.

*Duplex* shall mean a building containing two (2) dwelling units to be occupied by two (2) families living independently of each other.

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*Easement* shall mean an area for restricted use on private property upon which a public utility shall have the right to remove and keep removed all or part of any building, fences, trees, shrubs, or other improvements or growths which in any way endanger, tend to endanger, or interfere with the construction or maintenance, or efficiency of its respective systems on any of these easements. The public utility shall at all times have the right of ingress and egress to, from and upon the said easement for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining, and adding to or removing all or part of its respective systems without the necessity of procuring the permission of anyone. The ownership or title to the land encompassed by the easement is retained by the owner.

*Engineer* shall mean a person duly authorized under the provisions of the Texas Engineering Registration Act, as amended, to practice the profession of engineering and who is specifically qualified to design and prepare construction plans, specifications and documents for subdivision development.

*Extraterritorial jurisdiction*, within the terms of the Texas Municipal Annexation Act, shall mean the unincorporated area, not a part of any other city, which is contiguous to the corporate limits of the city, the outer boundaries of which are measured from the extremities of the corporate limits of the city outward for such distances as may be stipulated in the Texas Municipal Annexation Act in accordance with the total population of the incorporated city, in which area, within the terms of the act, the city may enjoin the violation of its Code.

*Filing date (commission)* shall mean the date when all necessary forms, fees, and copies are submitted for review, recommendation and approval by the commission, and such forms, fees and requirements are acknowledged as being complete by letter or certificate issued by the city to or in favor of the developer or applicant.

*Filing date (city council)* shall mean the date the commission recommends approval of the plat to the city council.

*Filing fee* shall mean the prescribed plat and lot fee rates, as shall be from time to time established and promulgated by the city manager, to accompany the filing with the commission for preliminary and final subdivision plats.

*Final plat* shall mean a map or drawing of a proposed subdivision prepared to meet all of the requirements for approval by the commission and city council. Distances shall be accurate to the nearest hundredth of a foot. The final plat of any lot, tract, or parcel of land shall be recorded in the records of the county. An amended plat is also a final plat.

*Fire lane* shall mean a required access for emergency vehicles to be shown on the plat as a privately maintained easement providing public access.

*Front or frontage* shall mean that portion of a tract of land which abuts on a public street to which it has direct access.

*Front or frontage (corner lot, residential)* shall be the side abutting a public street with the narrowest frontage. In a case where both sides abutting a public street are equal in distance, the determination of the front shall be determined by the planning director or his designee after considering the subject tracts relation to the thoroughfare plan.

*Industrial lot* shall mean a lot utilized for the bulk storage of, or manufacturing processes that use, flammable, explosive or high hazard materials; or a lot utilized in such a manner as to emit odors, noises, dust or vibrations beyond the boundaries of the lot.

*Land plan* shall mean a general, conceptual or master plan for an area proposed for partial or complete subdivision. The land plan shall show the proposed locations of land uses, streets, phasing of development, important physical features, and other applicable information for the entire area to be subdivided.

*Lot* shall mean a divided or undivided parcel of land having frontage on at least one (1) public street which is or in the future may be offered for sale, conveyance, transfer or improvement; which is

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designated as distinct and separate; and which is identified by lot number and block number or symbol in a duly approved subdivision plat which has been properly filed for record.

*Lot area* shall mean the total area, measured on a horizontal plane, included within the lot or property line.

*Lot depth* shall mean the length of a straight line connecting the midpoint of the front and rear lot lines.

*Lot width* shall mean width of the lot at the front building setback line.

*Major thoroughfare plan* shall mean the comprehensive plan of highways, major thoroughfares, and collector streets as a part of the city's comprehensive plan and adaptations, amendments, or supplements thereto as adopted by the commission and city council.

*Multi-family dwelling* shall mean a structure designed to contain three (3) or more complete separate living facilities for single-family occupancy. Multi-family dwellings shall include apartments and condominiums and shall be platted accordingly.

*One-foot reserve* shall mean a buffer strip established within the public street right-of-way and adjacent un-subdivided acreage to prevent access to the public street right-of-way for a street on or parallel to the plat boundary. When the adjacent property is platted the one-foot reserve becomes vested in the public for street right-of-way purposes.

*Patio home or zero lot line home* shall mean a single-family detached dwelling unit that requires a zero building line on one (1) side and a minimum ten-foot side yard on the other. There shall be right to access from the side yard adjoining the zero lot line for maintenance purposes, and there shall be only one (1) detached dwelling unit per platted lot which shall be individually owned.

*Pavement width* shall mean the portion of a street available for vehicular traffic. Where curbs are laid it shall be from inside of curb to inside of curb.

*Person* shall mean any individual, association, firm, corporation, governmental agency, or political subdivision.

*Planned unit development* shall mean a form of development which promotes the development of a tract of land in a unified manner and which may allow for certain variances from the established development standards for lot sizes, lot width and building lines, as established in this chapter. Town homes, patio homes, cluster homes, condominiums and multi-family developments may be considered a planned unit development.

*Plat* shall mean a map, drawing, chart, or plan showing the layout of a proposed subdivision into lots, blocks, streets, parks, school sites, commercial or industrial sites, drainage ways, building lots, easements, alleys, or any similar type of plat, which a developer submits for approval and a copy of which he intends to record in final form.

*Plat certificate* shall mean a certificate issued upon approval and recordation of the subdivision certifying that the subdivision has met all the requirements for a plat.

*Preliminary plat* shall mean a map or drawing of a proposed subdivision illustrating the features of the development for review and recommendation by the commission, but not suitable for recordation in the county records.

*Principal building* shall mean the building in which the principal use of the lot which it is located on is conducted. All residential uses are principal uses.

*Private street* shall mean a private right-of-way, not dedicated to public use, which provides vehicular access to more than two (2) residential dwelling units, or two (2) or more commercial or industrial buildings or parking areas. The right-of-way and pavement shall meet all of the requirements as set forth

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for a street dedicated to public use, including but not limited to construction standards, width, building lines, and function, but shall be privately maintained.

*Public easement* shall mean a right granted or dedicated to the public or governmental agency in, on, across, over, or under property for a specified use by an instrument or map duly recorded in the records of the county.

*Public street* shall mean a right-of-way dedicated to public use for pedestrian and vehicular traffic and public utility purposes.

*Record plat* shall mean a plat of any lot, tract or parcel of land that is recorded with the county clerk following final approval by the city council.

*Replat* shall mean the resubdivision of all or any part of any block or lots of a previously platted subdivision.

*Reserve* shall mean a tract, parcel, or unit of land not physically divided, which may have frontage on a public street, and which is, or in the future may be, offered for sale, conveyance, transfer, lease, or improvement which is designated as a distinct separate tract and which is identified by a reserve symbol on a duly approved subdivision plat that has been properly recorded with the county.

*Sidewalk* shall mean a paved pedestrian walkway parallel to a street right-of-way line or street pavement edge, which walkway shall be constructed within the right-of-way of any public street.

*Single-family dwelling unit* shall mean a building containing one (1) dwelling unit that is designed to be occupied by one (1) family.

*Street* shall mean a public right-of-way, however designated, which provides vehicular circulation and access to adjacent property.

- (1) A *major thoroughfare* means a principal traffic artery or traffic way, usually of more or less continuous routing over long distances, whose function is to serve as a principal connecting street with state and federal highways, and shall include each street designated as a major thoroughfare on the major thoroughfare plan of the city or so designated by the commission and city council. Minimum paving width of a major thoroughfare shall be two (2) twenty-four-foot lanes of paved width measured inside curb to inside curb, with a fifteen-foot median for a four-lane divided roadway; or fifty-one-foot paved width measured inside curb to inside curb for a four-lane undivided roadway. Minimum width of right-of-way shall be one hundred (100) feet.
- (2) A *collector street* means a street whose function is to collect and distribute traffic between major thoroughfares and minor streets. It is not necessarily of continuous routing for long distances, has intersections at grades, provides direct access to abutting property, and shall include each street designated as a collector street on the thoroughfare plan or so designated by the commission and city council. Minimum paving width of a collector street shall be thirty-nine (39) feet measured inside curb to inside curb. Minimum width of right-of-way shall be eighty (80) feet.
- (3) A *minor street* means a street whose function is to provide access to abutting residential property within neighborhoods, with all intersections at grade, and not of continuous routing for any great distance so as to discourage heavy, through traffic and shall include any public street which is not classified as a major thoroughfare or a collector street. Minimum paving width of a minor street shall be twenty-seven (27) feet measured inside curb to inside curb. Minimum width of right-of-way shall be sixty (60) feet.
- (4) An *access street* means a public street within or bounding a townhouse or patio home subdivision which serves a townhouse or patio home subdivision and other adjacent property.

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- (5) An *interior street* means a public street not more than six hundred (600) feet long within a townhouse or patio home subdivision which is located and designed to serve a limited area within such subdivision and shall not serve other properties outside the subdivision.

*Subdivision* means the division of any lot, tract or parcel of land by plat, map or description into two (2) or more parts, lots or sites for the purpose, whether immediate or future, of sale, rental or lease, or division of ownership. Any dedication in the laying (or realignment) of new streets, or other public or private accessways, with or without lots, shall constitute a subdivision. Subdivision shall also include the resubdivision and replatting of land or lots which are part of a previously recorded subdivision. An "addition" is a subdivision as defined in this section. The term "subdivision" shall also include the division of land, whether by plat or by metes and bounds description, and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.

*Surveyor* shall mean a registered professional land surveyor, as authorized by statutes, to practice the profession of surveying.

*Title report* shall mean a report, prepared and executed by a title company authorized to do business in the state or an attorney licensed in the state, certifying the true owner of the property and describing all encumbrances of record which affect the property.

*Townhouse* shall mean a single-family residential unit that shares at least one (1) common or party wall with another unit. There shall be only one (1) such dwelling unit per platted lot. Each unit and the platted lot upon which it stands shall be individually owned, subject to a party wall agreement with the adjacent owner. In addition to individually owned lots as described herein, townhouse developments generally are cluster developments or planned unit developments in which there is land, and in some cases, facilities that are owned in common by all of the townhouse owners within the same subdivision.

*Tract* shall mean the same as a lot and shall be subject to the same platting requirements.

(Ord. No. 2005-24, § 1, 10-18-05; Ord. No. 2006-32, § 2, 11-7-06; Ord. No. 2008-18, § 1, 8-19-08; Ord. No. 2009-25, § 1, 7-21-09; Ord. No. 2010-12, § 1, 4-6-10)

**Sec. 25-2. Authority; scope of provisions.**

The commission of the city, under such requirements, limitations and/or restrictions as are provided in this article, shall have the power and authority to recommend to the city council approval of plats for subdivisions within the corporate limits of the city and for a distance surrounding the corporate limits of the city within the extraterritorial jurisdiction of the city as authorized by Chapter 25, Texas Local Government Code.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-3. Penalties.**

The penalty upon conviction for violation of this chapter shall be by fine as provided in section 1-13, Code of Ordinances.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-4. Interpretation and purpose.**

- (a) In the interpretation and application of the provisions of these regulations, it is the intention of the city council that the principles, standards and requirements provided for herein shall be minimum requirements for the platting and developing of subdivisions in the city and its extraterritorial jurisdiction. It is the purpose of this chapter to provide for the orderly, safe, and healthful

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development of the area within the city and its extraterritorial jurisdiction and to promote the health, safety, morals and welfare of the community.

- (b) The city council at all times reserves to itself the power, duty and responsibility to provide such interpretation, meaning and understanding as shall be from time to time deemed desirable as to the intent, understanding and/or application of this chapter or any provision hereof, and the decision of the city council as may be expressed in any ordinance adopted from time to time shall be deemed controlling on all parties hereto as if the same had been repeated verbatim herein.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-5. Application of regulations.**

- (a) No plat of a subdivision within the corporate limits or extraterritorial jurisdiction necessary for recording with the county clerk shall be approved by the city or any city official unless the same has been recommended by the commission and approved by the city council. It shall accurately describe the property to be conveyed or developed and be prepared in accordance with the subdivision regulations of this Code, current design standards and other applicable ordinances notwithstanding any other provisions in this Code to the contrary.
- (b) No building permit, certificate of occupancy, plumbing permit, electrical permit, utility tap, or any other permit or authority required or permitted under this Code may be issued or granted, nor shall acceptance of required public improvements within the corporate limits be permitted, without a recorded plat as provided herein.
- (c) Any subdivision within the city and its extraterritorial jurisdiction shall conform to the subdivision regulations, current design standards of the city, and other applicable ordinances and standards that may exist at the date of final enactment of this chapter or any amendments thereto that may be from time to time adopted.
- (d) The following procedures shall be followed before any utility service connection, including but not limited to water, gas, sewer and electricity, may be made or any such utility service provided:
- (1) Upon written request of an owner of land or a public utility, the city shall make the following determinations regarding the owner's land or the land in which the public utility is interested and that is located within the platting jurisdiction of the city:
- a. Whether a plan, plat or replat is required by law; and
  - b. If a plan, plat or replat is required, whether it has been prepared as required and approved by the city council.
- Such request must identify the land by a metes and bounds legal description prepared by a registered professional land surveyor, and the physical, common or street address of the property which is the subject of the request.
- (2) If the city determines that a plan, plat or replat is not required, the city shall issue to the requesting party notice of that determination. If the city determines that a plan, plat or replat is required and that such a document has been prepared, reviewed and approved by the city council, the city shall issue to the requesting party notice of that determination.
- (3) For purposes of this subsection only, the following definitions shall apply:
- a. *City* shall mean the city engineer or other appropriate city official, as designated from time to time by the city manager.
  - b. *Public utility* shall mean any entity, other than a municipality, that provides water, sewer, electricity, gas or other utility services.

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- (e) No plat shall be approved and/or signed by any city official as a prerequisite for filing with the county clerk or building permit or other legal authority for development or any part thereof unless all improvements have been approved in accordance with the subdivision regulations as set out in Chapter 25 of this Code, the current design standards as may be from time to time prepared and promulgated by the city, or other legal authority.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-6. Subject developments.**

- (a) The provisions of the subdivision regulations of this Code and the current design standards shall apply to the following forms of land subdivision and development activity:
- (1) The division of land into two (2) or more lots, tracts, reserves, sites or parcels;
  - (2) All subdivision of land which was outside the jurisdiction of the subdivision regulations of the city and which subsequently came within the jurisdiction of the subdivision regulations of the city through annexation or extension of the extraterritorial jurisdiction of the city;
  - (3) The division of land previously subdivided or platted into tracts, sites or parcels and not recorded that were subject to and not in accordance with adopted city subdivision regulations in effect at the time of such subdividing or platting;
  - (4) The combining of two (2) or more contiguous tracts, lots, sites or parcels for the purpose of creating one (1) or more legal lots;
  - (5) The dedication or vacation, when no appropriation by use, entry or improvement has been made, of streets, fire lanes and alleys through any tract of land regardless of the area involved;
  - (6) The vacation of a previously recorded subdivision plat;
  - (7) Permanent public or semi-public spaces such as golf courses, recreational uses, institutional uses, schools, open spaces or park areas, and similar uses; and
  - (8) Any other development on an undeveloped or semi-developed site within the corporate limits or extraterritorial jurisdiction of the city.
- (b) In the event a reasonable question shall exist at any time as to whether a proposed division of land is subject to the provisions of this article, the city council is hereby vested with full power and authority to make such determination and the decision thereon shall be on the property owner thereof.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-7. Exemptions.**

- (a) The provisions of the subdivision regulations of this Code shall not apply to:
- (1) Land legally platted and approved prior to the effective date of the subdivision regulations of this Code except as otherwise provided herein (construction of facilities shall conform to the current design standards in effect at the time of construction);
  - (2) Existing cemeteries complying with all state and local laws and regulations (exemptions do not apply to new cemeteries or expansion of existing cemeteries);
  - (3) Divisions of land created by order of a court of competent jurisdiction;
  - (4) Divisions of land into parts greater than five (5) acres where each part has access and no public improvement is being dedicated (see Section 212.004(a) of the Texas Local Government Code);

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- (5) Subdivision development that is exempt by other law;
  - (6) Two (2) or more adjoining lots or tracts of land within the City of Rosenberg, with common ownership, which the owner of the lots or tracts wishes to merge such lots or tracts into one (1) lot or tract in order to avoid the creation of a technical violation of the city's building and subdivision regulations relating to building setback lines. This exemption is only applicable if the joinder of lots or tracts does not require or necessitate the dedication or removal of any public rights-of-way, public easements or other public improvements, and the owner agrees, in writing and on a form approved by the city, that the merged lot or tract may not be divided in the future unless a subdivision plat authorizing such division has been first approved by the city and filed of record in accordance with applicable state laws and city ordinances governing plats and the subdivision of land. The form must also inform and declare that any subsequent purchaser will be bound by the requirements of this exemption; and
  - (7) A lot or tract of land within the City of Rosenberg that does not have a subdivision plat filed of record or does not otherwise have a valid plat that may be filed of record, which the owner of the lot or tract seeks a building permit, certificate of occupancy, plumbing permit, electrical permit, utility tap, or any other permit or authority required or permitted under this Code, may avoid the necessity of recording a subdivision plat as required by this Code, so long as the permit or other authority or other requirements by the city sought does not require or necessitate the dedication or removal of any public rights-of-way, public easements or other public improvements, and the owner agrees, in writing and on a form approved by the city, that the lot or tract may not be divided in the future unless a subdivision plat authorizing such division has been first approved by the city and filed of record in accordance with applicable state laws and city ordinances governing plats and the subdivision of land. The form must also inform and declare that any subsequent purchaser will be bound by the requirements of this exemption.
- (b) If platting is not required, the city may, upon proper application and the submission of such information as shall be deemed necessary authorize the issuing of building permits or site plan approval.

(Ord. No. 2005-24, § 1, 10-18-05; Ord. No. 2010-07, § 1, 2-16-10)

**Sec. 25-8. Variances.**

- (a) The commission shall review the variance request and make a recommendation to the city council. The city council may then authorize a variance from these regulations when in its opinion undue hardship will result from requiring strict compliance. The applicant shall have the responsibility of proving that compliance would create a hardship. In granting a variance, the city council may prescribe conditions that it deems necessary or desirable to the public interest. Any conditions that are prescribed shall be deemed continuing and shall be placed of record in the office of the county clerk either on the face of the subdivision plat or as an attachment thereto. The city council shall take into account the nature of the proposed use of land involved and existing uses of the land in the vicinity, the number of persons who will reside or work in the proposed subdivision, and the probable effect of such variance upon traffic conditions and upon public health, safety, convenience, and welfare in the vicinity. No variance will be granted unless the city council finds that an undue hardship exists. The following conditions must be present for consideration:
- (1) There are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of his land;
  - (2) The granting of the variance will not be detrimental to the public safety or welfare, or injurious to other property in the area;

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- (3) The granting of the variance will not have the effect of preventing the orderly subdivision of other lands in the area in accordance with the provisions of this chapter; and
- (4) A more appropriate design solution exists which is not currently allowed in this chapter.
- (b) A variance may not be granted in such cases where the only evidence for the granting of the variance is the loss of a potential profit at the time of the lot development and build out. Economic hardship to the subdivider, standing alone, shall not be deemed to constitute undue hardship.
- (c) Such recommendations of the commission and findings of the city council, together with the specific facts on which such findings are based, shall be incorporated in the official minutes of the commission and the city council meetings at which such variance is recommended or granted. Variances may be granted only when in harmony with the general purpose and intent of this chapter so that the public health, safety and welfare may be secured and substantial justice done. The city council may reach a conclusion that a hardship exists if it finds that:
  - (1) The applicant complies strictly with the provisions of this chapter, and no other reasonable use of the property may be made except for the use that is proposed and recommended;
  - (2) The hardship to which the applicant complains is one suffered by the applicant rather than by neighbors or the general public;
  - (3) The hardship relates to the applicant's land, rather than personal circumstances;
  - (4) The hardship is unique to the property, rather than one shared by many surrounding properties; and
  - (5) The hardship is not the result of the applicant's own actions or neglectful conduct.
- (d) In granting variances, the city may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties. All conditions as are imposed shall be placed of record on the face of the subdivision plat or may, as an alternative thereof, be placed of record by separate instrument duly filed for record with the subdivision plat in the office of the county clerk.
- (e) A variance may, at the sole discretion of the city council, be issued for an indefinite duration or for a specified period of time.
- (f) All conditions imposed by the city council are enforceable in the same manner as any other applicable requirement of this Code.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-9. Duty of owner, subdivider.**

It is the responsibility of the applicant for a subdivision plat to obtain such information and/or documentation as shall be necessary to ensure that the application is in accord with the provisions of this Code and all other law. In this regard, it is suggested that the applicant for a subdivision plat first confer with the city and obtain such written information as may be available from the city prior to making an application for subdivision plat approval and/or submitting any documents to the city for approval. The applicant shall be solely responsible for knowledge of all applicable law, policies and/or procedures as may be then promulgated by the city.

(Ord. No. 2005-24, § 1, 10-18-05)

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**Sec. 25-10. Application for approval.**

Before a subdivision of any tract of land shall occur where the same is divided into two (2) or more tracts to sell or develop the same into separate parcels, or before any permit for the erection or placement of a structure, or for any other reason as may be required by this Code, the subdivider, owner, or proper agent thereof shall apply in writing to the city for initial consideration by the commission for approval of a land subdivision. The application of the subdivider, owner or agent shall conform to requirements of this chapter.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-11. Signs in residential subdivisions.**

- (a) Signs shall not be permitted in residential subdivisions except as specifically authorized in this section. No person shall cause a sign to be erected, constructed, relocated, altered, repaired or maintained until a special sign permit for such has been issued by the city manager or his designee, and the requisite fee paid, except as otherwise provided in this section.

For purposes of this section the term "sign" shall refer to the area where graphics are displayed, including the immediate supporting structure. "Graphics" shall refer to the lettering and or logos that will be attached to, or engraved into a sign. "Graphics area" shall be measured by drawing a rectangle around the largest area of actual lettering and or logos and measuring the inside area.

- (b) All applications for a special sign permit under this chapter shall include a drawing to scale of all proposed signs, all existing signs maintained on the premises and visible from the right-of-way, a drawing of the plot plan indicating the proposed location of the sign(s), and specifications. All applications for signs in the right-of-way shall contain a provision where the applicant shall hold the city harmless from any and all claims, demands or cause of action brought by anyone or any entity for damages either directly or indirectly relating to the placement or existence of the proposed sign in the right-of-way. The city manager or his designee may at any time in the appropriate case determine that there exists special circumstances and conditions necessitating the applicant provide the city with additional security or impose additional conditions he determines necessary under the specific circumstances. The permit may also contain special conditions the city manager or his designee determines are necessary to insure compliance with this article or to protect the public and public property. It is unlawful for any person doing work under a permit to violate any special condition or other provision of the permit.
- (c) To identify a single-family residential development, two (2) detached identification signs may be constructed at each subdivision street entrance on opposite sides. A street intersection with an esplanade may also include a blade sign in compliance with this section. For purposes of this section a "blade sign" shall refer to as a sign placed in the median of a boulevard street.

Such signs will be subject to the following minimum conditions and restrictions:

- (1) Building wall signs are prohibited.
- (2) The signs must be of a masonry composition for permanent identification of a subdivision.
- (3) Blade signs shall not exceed three and one-half (3.5) feet in height above finished grade within a distance of fifteen (15) feet of the nose of the esplanade. Outside of this area, the height of the blade sign shall not exceed seven (7) feet in height above finished grade. Finished grade at a blade sign shall not exceed an elevation as determined by a 4:1 (horizontal: vertical) slope from the top of curb.

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- (4) Signs that are setback zero (0) to nine and ninety-nine hundredths (9.99) feet from the street right-of-way shall not exceed one hundred (100) square feet in area; graphics area shall not exceed fifty (50) square feet.
  - (5) Signs that are setback ten (10) to nineteen and ninety-nine hundredths (19.99) feet from the street right-of-way shall not exceed three hundred (300) square feet in area; graphics area shall not exceed eighty (80) square feet.
  - (6) Signs that are setback over twenty (20) feet from the street right-of-way shall not have a specific limitation on area but shall be reviewed by the city manager or his designee, premised upon safety and the objectives of this section, but the graphics area shall not exceed one hundred (100) square feet.
  - (7) The bottom of a sign shall not exceed a height of eighteen (18) inches above adjacent (natural) grade.
  - (8) The sign shall not be illuminated except by reflective flood light type illumination. There shall not be any flashing or intermittent lights. Lights which are not effectively shielded to prevent beams of light from being directed at any portion of the traveled way and/or brilliance as to cause glare or impair vision, or which otherwise interfere with the driver's operation of motor vehicle, are prohibited. All lighting shall comply with Fort Bend County regulations and all other state, local and federal regulations and requirements.
  - (9) The sign shall meet the wind load requirements of the building code.
  - (10) All signs shall be located in such a manner to: (i) avoid conflicts with utility lines; (ii) not encroach upon traffic visibility and appropriate sight distances necessary for the safe movement of traffic and pedestrians; and (iii) any other related safety concerns as determined by the city manager or his designee.
  - (11) All signs, trees, shrubs, flowers, grass, vegetation, ferns, watering systems, lighting systems, ornamental gates, columns, or other ornamental features, materials and related landscaping denoting the entrance to a neighborhood or subdivision shall be maintained by the applicant or applicant's assignees, with any such assignment requiring prior authorization of the city manager.
- (d) *[Reserved.]*
- (e) The city manager or his designee may suspend or revoke any permit issued under the provisions of this section whenever he shall determine that the permit is issued in error or on the basis of incorrect or false information supplied, or whenever such permit be issued in violation of any of the provisions of this section or any other ordinance of this city or laws of this state or the federal government. Such suspension or revocation shall be effective when communicated in writing to the person to whom the permit is issued, or the owner of the sign facilities or the responsible party of the premises upon which the sign facility is located. If a permit is revoked the city may remove or cause to be removed the sign facilities with out liability to the owner thereof. The city shall upon removal not be responsible for the storage and/or safe keeping of the sign facilities or remnants thereof and shall have no liability to preserve the same or to exercise reasonable care for the removed sign or parts thereof.
  - (f) Any sign located in the public right-of-way may be temporarily or permanently removed, destroyed, or relocated at any time as determined by the city without compensation to the person owning or placing the sign.
  - (g) The city council may consider appeals on the basis that such regulations and/or standards will, by reason of exceptional circumstances, aesthetics or surroundings, constitute a practical difficulty or unnecessary hardship. The appeal must be submitted in writing to the city manager or his designee within seventy-two (72) hours of the action being appealed. The city council in addressing such

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appeal may, in the interest of the public welfare and to ensure compliance with this section may establish conditions of operation, location, arrangement, proportionality scale, materials and construction of any use for which a permit is authorized herein. In authorizing the location of any use listed for a special sign permit, the city council may impose such development standards and safeguards as the conditions and location indicate important to the welfare and protection of adjacent property from glare, offensive view or other undesirable conditions. The revocation and appeal provisions in this section govern over any other conflicting provision in this Code.

(Ord. No. 2005-24, § 1, 10-18-05; Ord. No. 2007-15, § 1, 5-15-07)

**Secs. 25-12—25-30. Reserved.**

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**Sec. 25-31. Purpose.**

The purpose of this article is to establish the procedures and requirements for the submittal, review, recommendation, consideration and action by the commission and the city council on a request for subdivision plat approval and to provide the procedures necessary to ensure the orderly processing of the application for subdivision plat approval in the city and its extraterritorial jurisdiction.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-32. Pre-application.**

Prior to submitting an application for subdivision plat approval, the applicant or subdivider may contact the city to obtain information and assistance in land subdivisions before preparing a land plan or the preliminary plat and filing a formal application for approval with the city.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-33. Land plan approval.**

- (a) *General requirements.* A land plan consisting of a general plan, master plan, and/or concept plan shall be submitted to the city manager or designee for review by the commission prior to or in conjunction with the submittal of any preliminary plat, except as noted below, for any tract of land over fifty (50) acres in size. If the city manager or designee determines that an area less than fifty (50) acres contains unique features or is surrounded by existing or proposed subdivisions with potential limited access, a land plan may be required to be reviewed prior to the preliminary or final plat submittal. The decision of the city manager or designee to require a land plan shall be deemed final and binding as a condition prerequisite to further review of the proposed subdivision plan.

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- (b) *Purpose.* The purpose of the land plan is to allow the commission to review the proposed major thoroughfare and collector street patterns, land use, environmental issues, conformance to the comprehensive master plan, the property's relationship to adjoining subdivisions or properties, as well as such additional developmental or infrastructure review as deemed necessary by the city.

While certain items may be required or supplied without requirement, recommendation of approval of a land plan by the commission to proceed is granted only for infrastructure, thoroughfare and collector street patterns, land use (not density or lot layout), environmental issues, conformance to the master plan, and relationship to adjacent properties. The commission cannot recommend approval beyond this scope.

- (c) *Partial development.* Where a phased or partial development is proposed, the land plan area shall include the entire property from which the initial or any subsequent phase is being subdivided. Where the applicant can demonstrate that natural or manmade features, such as creeks and thoroughfares, make unnecessary the inclusion of the entire property in the land plan to adequately review the proposed subdivision for compliance with all of the terms and provisions of this Code, the subdivider may request approval from the commission for a submittal of a smaller land plan area. Boundaries such as thoroughfares (existing or proposed), creeks, political subdivisions, or other such natural or man-made features may be used to delineate the smaller land plan area.
- (d) *Not required.* A land plan shall not be required if the preliminary plat(s) contains sufficient information to provide for the proper coordination of development.
- (e) *Application and fees.*
- (1) The land plan shall be accompanied by the completed application and appropriate fees at least twenty-one (21) days prior to the commission meeting at which it is to be considered.
  - (2) Two (2) copies of prints of the proposed subdivision, drawn on sheets at a size of twenty-four (24) inches by thirty-six (36) inches and twelve (12) copies of the print reduced to a size of eleven (11) inches by seventeen (17) inches shall be submitted. After an administrative review of the land plan, a revised submittal may be required. If required, the revised land plan shall be submitted seven (7) days prior to the commission meeting and shall include seven (7) copies of the plan drawn on sheets at a size of twenty-four (24) by thirty-six (36) and eleven (11) copies of the plan reduced to a size of eleven (11) inches by seventeen (17) inches.
- (f) *Traffic impact analysis.* Any land plan or subdivision plat involving a change to a thoroughfare plan or is seventy-five (75) acres or more in size must accompany with its application a traffic impact analysis in such format and under such procedures as the city manager or designee may from time to time require or specify. Failure to provide a traffic impact analysis and/or traffic study or to meet any other requirements that may be imposed by the city manager or designee shall be grounds to deny the filing of any subdivision plat tendered or offered for filing.

Additionally, a traffic impact analysis may be required by the city manager or designee, or by the commission, to address the following:

- (1) Increased traffic loadings on existing streets.
  - (2) Traffic patterns and street classifications within proposed development.
  - (3) Traffic control devices within the proposed development and on adjacent streets.
- (g) *Effect of approval.* The recommendation by the commission to proceed in relation to the land plan shall not be deemed to grant or vest in the applicant any approvals or grants other than as specifically provided in this Code and does not constitute approval of the subsequent plats within the plan boundaries.

The land plan recommendation does not exempt a developer from meeting all ordinances in effect at the time of the recommendation and any and all amendments or newly-adopted ordinances after

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recommendation and prior to final plat approval, unless agreed to by the city council under a separate development or utility agreement.

- (h) *Length of recommendation.* Unless agreed to by the city council under a separate development or utility agreement, the recommendation of a land plan shall be valid for a period of eighteen (18) months. Extension(s) may be approved by the commission for up to an additional six (6) months for a total of two (2) years. Upon approval by the city council of a final plat of individual sections of the development, the land plan approval is automatically extended for an additional eighteen (18) months. However, unless agreed to by the city council under a separate development or utility agreement, the approval of a land plan shall not be valid for a combined period of more than five (5) years.
- (i) *Graphic requirements.* The following are the graphic requirements of a land plan:
- (1) A scale of one (1) inch = two hundred (200) feet or one (1) inch = four hundred (400) feet.
  - (2) A title block within the lower right corner of the land plan.
  - (3) A vicinity or location map that delineates the location of the proposed subdivision with respect to major thoroughfares, freeways, water courses and ditches. The vicinity map shall be located in the upper right corner of the drawing or map.
  - (4) Proposed name of the development.
  - (5) The name and address of the subdivider and the land planner, engineer, or surveyor responsible for the design or survey.
  - (6) A graphic scale indicating the scale at which the drawing is prepared.
  - (7) Date of the drawing.
  - (8) The legal description of the tract according to the abstract and survey records of the county.
  - (9) North clearly indicated to the top or left of the plan.
  - (10) The perimeter of the boundary drawn in a bold solid line.
  - (11) The names of adjacent additions or subdivisions with respective recording information and/or owners of adjoining parcels of unplatted land with respective recording information.
  - (12) The existing zoning on adjoining land, where applicable.
  - (13) The location, width and names of all existing or platted streets or other public rights-of-way within and/or adjacent to the tract.
  - (14) Existing permanent buildings.
  - (15) Railroad rights-of-way.
  - (16) Topography with contours at five-foot intervals.
  - (17) Existing drainage channels or creeks and other important natural features.
  - (18) Existing pipelines, fee strips and easements.
  - (19) Adjacent political subdivisions and corporate limits.
  - (20) Applicable district boundaries.
  - (21) The proposed layout and width of proposed thoroughfares, collector streets and minor streets.
  - (22) Designation of tracts as lots or reserves in accordance with anticipated usage.
  - (23) A table indicating the number of typical lot sizes and the percentages of each by phase or sections and total development.

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(24) The city shall be provided with an electronic file of the land plan in the format(s) designated by the city.

- (j) *Changes to land plan.* Changes to the land plan may be acceptable up through the platting procedures as long as the changes are minor and are not critical or greatly affect the configuration of thoroughfares and collector streets, drainage or other infrastructure, entrances, land uses, etc. The city manager or his designee will determine if a change is minor or if there is a need for a new land plan.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-34. Preliminary plat.**

- (a) *General requirements.* A preliminary plat of any proposed subdivision shall be submitted for commission review and recommendation for approval in compliance with the schedule and requirements set forth in this chapter and as set forth below.

- (1) The preliminary plat shall be accompanied by the completed application and appropriate fees at least twenty-six (26) days prior to the commission meeting at which it is to be considered.
- (2) Two (2) copies of prints of the proposed subdivision, drawn on sheets at a size of twenty-four (24) inches by thirty-six (36) inches and twelve (12) copies of the print reduced to a size of eleven (11) inches by seventeen (17) inches shall be submitted. After an administrative review of the preliminary plat, a revised submittal will be required. The revised preliminary plat shall be submitted nine (9) days prior to the commission meeting and shall include seven (7) copies of the plat drawn on sheets at a size of twenty-four (24) inches by thirty-six (36) inches and eleven (11) copies of the plat reduced to a size of eleven (11) inches by seventeen (17) inches. An electronic copy of the revised plat in the format(s) required by the city shall also be submitted.
- (3) The preliminary plat shall show all designated land uses, lots or reserves, on the face of the plat in accordance with the approved land plan and all approved comprehensive, water, sewer, and thoroughfare plans
- (4) The preliminary plat shall be prepared by a licensed professional engineer or a licensed professional land surveyor.
- (5) The preliminary plat shall include preliminary plans for the following:
  - a. Water distribution system;
  - b. Sewerage collection system; and
  - c. On-site and off-site drainage system.
- (6) The administrative officer shall be furnished with copies of letters from the officers and individuals named herein verifying contact and specifying that review has occurred and the activity as herein specified has been successfully completed:
  - a. All applicable utility companies including gas, electrical and telephone, stating that these companies have knowledge of the proposed subdivision and are currently negotiating the necessary service easements and acknowledging receipt of the preliminary plat for the purpose of establishing easements.
  - b. Any other applicable district or entity with jurisdiction in the area verifying adequate capacities and applicable fees.

These verification letters must be received by the administrative officer either prior to final plat approval by the commission or at such other time as may be specified by the administrative officer.

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- (b) *Study and report.* The administrative officer shall initiate a study of the preliminary plat and give a written report to the commission before its consideration for recommendation. The subdivider or his designated representative shall be provided, upon request, with a copy of this report prior to the commission meeting.
- (c) *Action by commission.* Following review of the preliminary plat and other material submitted, as well as discussions with the subdivider on changes deemed advisable and the kind and extent of improvements to be made by him, the commission may act thereon as submitted, or modified, if found by the commission to be in full compliance with the terms and provisions of this Code and in the best interest of the city in accordance with the requirements of law as follows:
  - (1) Recommend approval;
  - (2) Recommend approval contingent upon conditions, corrections or changes to be made to the final plat; or
  - (3) Recommend disapproval.
- (d) *Effect of recommended approval.* Recommendation of a preliminary plat by the commission shall be deemed an expression of conditional recommended approval to the layouts submitted on the preliminary plat as a guide for the preparation of the final plat and the future installation of streets, water, sewer, and other required improvements and utilities and to the preparation of construction plans.
- (e) *Duration of recommended approval.* Recommendation of a preliminary plat shall be effective for one hundred eighty (180) days. The applicant who submitted the preliminary plat may request a one-time extension of the previously recommended preliminary plat. The request shall be made in writing on a prescribed form to the city manager or his designee at least thirty (30) days before the preliminary plat's expiration. The request shall state the reasons for the extension, the amount of time to reasonably accommodate the need, and acknowledgement that there are no additional extensions. The maximum extension shall not exceed one hundred eighty (180) days, and must be justified as determined by the city manager or his designee. Only one (1) extension will be granted regardless of the amount of time for the extension or additional extensions requested.
- (f) *Commencement of work.* No construction work shall begin on the proposed improvements in the proposed subdivision prior to the approval by the commission and the city council and recordation of the final plat. The subdivider may at his own risk undertake certain ground excavations for clearing, grading and drainage purposes. Any required permits shall be issued prior to commencement of work.
- (g) *Not required.* A preliminary plat shall not be required if the proposed subdivision meets the criteria as set forth for short form final plats.
- (h) *Additional requirements.* Any plat within the extraterritorial jurisdiction of the city shall also be subject to county platting requirements and the more restrictive requirements shall govern.
- (i) *Variations.* A variance request, if applicable and there is justification for same, shall be provided on the application form provided by the city.
- (j) *Graphic requirements.* Preliminary plats which do not include the following data and information will be considered incomplete and may not be accepted for submission by the city. The required copies or prints of the proposed subdivision shall include the following:
  - (1) The preliminary plat shall be drawn to a minimum scale of one hundred (100) feet to the inch. In cases of large developments which would exceed the dimensions of the sheet of one hundred (100) feet to the inch scale, preliminary plats may be two hundred (200) feet to the inch or a scale approved by the administrative officer. A graphic scale shall be shown on the plat.

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- (2) A vicinity or location map that delineates the location of the proposed subdivision with respect to major thoroughfares, freeways, water courses and ditches. The vicinity map shall be located in the upper right corner of the drawing.
- (3) The boundary lines, abstract lines, survey lines, corporate boundaries, district boundaries, existing or proposed highways, and streets.
- (4) The name and location of all adjoining subdivisions or property owners shall be drawn to the same scale and shown in dotted lines adjacent to the tract proposed for subdivision in sufficient detail to show accurately the existing streets, easements and alleys and other features that may influence the layout of development of the proposed subdivision. Adjacent unplatted land shall accurately delineate property lines and owners of record.
- (5) The location and widths of all streets, alleys, railroads and easements existing or proposed within the subdivision limits, and the manner in which such streets, alleys and easements may eventually connect with those of the nearest existing subdivision.
- (6) Proposed street names are suggested but not required. Street names are required at the time the final plat is approved.
- (7) The location of all existing property lines, existing lot and block numbers and date recorded; existing buildings; existing drainage facilities, utilities, and pipelines showing pipe sizes and capacities of sewer or water mains, gas mains, or other underground structures, whether public or private, easements of record; or other existing features within the area proposed for subdivision. When appropriate, a separate submittal for utilities may be allowed by the administrative officer.
- (8) Proposed arrangement of lots (including lot and block numbers in accordance with a systematic, consecutive numbering arrangement) and proposed use of same and their relationship to streets, alleys and easements in adjacent subdivisions. Any nonresidential reserves shall also be shown.
- (9) The title under which the proposed subdivision is to be recorded; the name of the city, county, and state in which the subdivision is located; the name and complete address of the owner; and the name and complete address of the land planner, engineer, or registered professional land surveyor preparing the drawing shall be located in the lower right corner. The subdivision name shall not be duplicated, but phasing identification is allowed. The administrative officer shall determine if the proposed subdivision identification will be in conflict with existing plats. The description of the property shall include the approximate acreage.
- (10) Sites, if any, to be reserved or dedicated for parks, playgrounds, schools, or other public use.
- (11) North arrow, date, scale, and other pertinent data oriented to the top of the sheet.
- (12) All physical features of the property to be subdivided including location and size of all natural and artificial water courses, ditches, ravines, culverts, and bridges; one hundred (100) year flood plain according to Federal Emergency Management Agency information; the outline of major wooded areas or the location, species and sizes of major specimen trees of thirty (30) inches or greater in diameter; and other structures or features pertinent to subdivision.
- (13) All preliminary plats shall be submitted in legible format on a good grade blue line or black line paper.
- (14) Location(s) of any existing structures to be retained shall be shown on the plat.
- (15) A copy of the proposed subdivision restrictions and/or covenants that are anticipated to be filed for record and will constitute encumbrances on the subject property shall be provided, if available.

(Ord. No. 2005-24, § 1, 10-18-05; Ord. No. 2007-18, § 1, 6-5-07)

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**Sec. 25-35. Final plat.**

(a) *General requirements.* The final plat and engineering construction drawings and specifications are required for any area in the city or its extraterritorial jurisdiction and shall meet the following requirements:

- (1) The final plat shall be in general conformance with the preliminary plat as recommended and shall incorporate all conditions, changes, directions and additions recommended by the commission and if not directly incorporated, the terms or provisions thereof shall be inscribed on the face of the plat and/or set out on separate writing to be filed for record with the plat. The final approval of the plat shall be by the city council. If the subdivision is in the city's extraterritorial jurisdiction, it shall also be approved by the county commission. The final plat shall not be submitted for city council approval until detailed engineering construction plans have been submitted for approval by the city.
- (2) The final plat shall constitute only that portion of the approved preliminary plat which the subdivider proposes to record and then develop. Such portion shall conform to all the requirements of the regulations of this Code.
- (3) The final plat and construction plans shall be submitted for review at least twenty-six (26) calendar days prior to a regularly or specially scheduled commission meeting at which they are to be considered.
- (4) Two (2) copies of prints of the proposed subdivision on sheets at a size of twenty-four (24) inches by thirty-six (36) inches and drawn to a minimum scale of one hundred (100) feet to the inch and twelve (12) copies of the print reduced to a size of eleven (11) inches by seventeen (17) inches shall be submitted. The submittal shall include the following:
  - a. Completed application form;
  - b. Copies and reductions of the plat;
  - c. Transmittal letter;
  - d. Fees;
  - e. Tax certificates, in a form acceptable to the county clerk for plat recordation;
  - f. Title commitment of specific tract of land; and
  - g. Engineering construction plans.
- (5) All public utility easements shall be included as required for utility companies by the city.
- (6) The final plat (and any replats) shall be prepared by a registered professional land surveyor. After an administrative review of the final plat, a revised submittal may be required. If required, the revised final plat shall be submitted nine (9) days prior to the commission meeting and shall include seven (7) copies of the plat drawn on sheets at a size of twenty-four (24) inches by thirty-six (36) inches and eleven (11) copies of the plat reduced to a size of eleven (11) inches by seventeen (17) inches. An electronic copy of the revised plat in the format(s) required by the city shall also be submitted.

After an administrative review of the final plat, a revised submittal may be required. If required, the revised final plat shall be submitted seven (7) days prior to the commission meeting and shall include seven (7) copies of the plat drawn on sheets at a size of twenty-four (24) inches by thirty-six (36) inches and eleven (11) copies of the plat reduced to a size of eleven (11) inches by seventeen (17) inches. An electronic copy of the revised plat in the format(s) required by the city shall also be submitted.

(b) *Recommendation.* The administrative officer shall review the final plat for compliance with these regulations and make recommendation to the commission.

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- (c) *Action by commission.* The commission will consider the final plat and the written recommendation and may take one (1) of the following actions:
- (1) Recommend approval;
  - (2) Recommend approval contingent upon corrections or changes to be made to the plat; or
  - (3) Recommend disapproval.
- (d) *Effect of approval.* In the event the commission should grant approval of a plat contingent upon corrections, the subdivider or his designated representative shall then submit the final plat with the required changes to the administrative officer for review and approval at least twelve (12) calendar days prior to a regularly or specially scheduled city council meeting. The submittal shall include the following:
- (1) Eleven (11) full size copies and reductions of the plat;
  - (2) Resolution of any contingency items recommended by the commission;
  - (3) Current title report for the specific tract;
  - (4) Performance bonds, letter of credit for the cost of the public improvements, or assurance of completion of the public improvements.
- (e) *Administrative review.* The administrative officer shall review the submittal for compliance with the regulations and recommendations of the commission and place the final plat on the city council agenda. Failure of the subdivider to provide any of the required items may cause disapproval of the plat.
- (f) *Action by city council.* The city council shall take action on the plat within the time period specified by the filing date pursuant to subsection (g). The action shall consist of:
- (1) Approval;
  - (2) Approval, contingent upon corrections or changes to be made to the plat; or
  - (3) Disapproval of the plat.
- (g) *Filing date.* The filing date of an application for final plat approval with the city council shall be the date the commission recommends approval of the plat. However, if the commission recommends approval with contingencies, the plat will not be considered as "filed" until all contingencies have been met by the applicant. The administrative officer shall certify when contingencies have been addressed. The statutory thirty-day time period shall begin when all contingencies and all submittal requirements have been completed as certified by the administrative officer.
- (h) *Resubmittal.* A substantial change to the approved final plat prior to recordation shall require resubmittal to the city council. With the approval of the administrative officer, minor changes including addition of easements, correction of clerical errors or omissions may be made prior to submittal for signature and recordation.
- (i) *Duration of approval.* Recommendation for approval of the final plat by the commission is valid for one (1) year from the date of approval. Final approval by the city council shall expire if the plat is not recorded within such time. An extension of approval may be requested in writing at least thirty (30) days prior to the expiration date and submitted to the appropriate body for consideration and approval.
- (j) *Construction plans.* Prior to the submittal of the final plat for city council approval, engineering construction plans showing paving and design details of streets, alleys, culverts, bridges, storm sewers, water mains, sanitary sewers and other engineering details of the proposed subdivision shall be submitted to the administrative officer for review by the city engineer. One (1) copy shall be submitted with the final plat. Such plans shall be prepared by a registered professional engineer and

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shall conform to the current design standards, this Code and applicable ordinances adopted by the city.

- (k) *Signature and recordation.* Following approval by the city council, the specified number of originals may be submitted for signature and the placement of the city seal. If the final plat is within the city limits, the originals shall be accompanied by the filing fee and the city shall record the final plat at the county clerk's office. If the final plat is in the extraterritorial jurisdiction, the plat originals shall be forwarded by the city to the office of the county engineer for review and action by the county commission court and recordation.
- (l) *Commencement of work.* No construction work shall begin on the proposed improvements in the proposed subdivision prior to the approval and recordation of the final plat except as provided herein. The subdivider may undertake certain ground excavations for grading and drainage purposes if required permits are issued. Any excavation prior to approval of the final plat shall be at the subdivider's risk and any work done is to facilitate the subdivider's schedule and does not imply approval of the work. Engineering and construction plans shall also be submitted according to the current design standards, in addition to the requirements set forth herein.
- (m) *Graphic requirements.* In addition to the graphic requirements for a preliminary plat the final plat shall include the following:
  - (1) All final plats shall be submitted on sheets no larger than twenty-four (24) inches by thirty-six (36) inches and to a scale not greater than one hundred (100) feet to the inch.
  - (2) The exterior boundary of the subdivision shall be indicated by a distinct bold line and corner marked by individual symbols.
  - (3) The length and bearing of all straight lines, and the radii, arc lengths, chord length, tangent length and central angles of all curves shall be indicated along the lines of each lot or in a curve or line table. The curve data pertaining to block or lot boundaries may be placed in a curve table showing curve number, radius, delta, arc length, chord length, and chord bearing.
  - (4) The names and recording information of all adjoining subdivisions, all abutting lots, lot and block numbers and other recorded information.
  - (5) Course and distance.
  - (6) The names, accurate location and widths of all adjacent streets, watercourses, railroads, alleys, easements, city and utility district boundaries.
  - (7) Street names shall be shown and shall not duplicate existing street names in the City or the extraterritorial jurisdiction. Extensions of streets shall have the same name as the existing street. Similar spelling or pronunciations should be avoided to prevent confusion.
  - (8) The location and dimension of any utility easement adjoining or abutting the subdivision or proposed within the subdivision shall be shown. It shall be applicant's responsibility to coordinate with appropriate utility companies for placement of utility easements.
  - (9) In all subdivisions and additions, sufficient permanent monuments shall be established at points to represent or reference boundary corners, angle points, and points of curvature or tangency along all street rights-of-way in the subdivision. Survey monuments shall be an iron rod or pipe not less than five-eighth (5/8) inches in diameter and thirty-six (36) inches long. Monuments shall be set flush with the top of the ground or curb. Each monument set by the surveyor shall include a cap with the surveyor's identification attached to it.
  - (10) The final plat shall show a title block in the lower right corner of the sheet. The name of the subdivision, the name, address, and telephone numbers of the subdivider and engineer or surveyor, the scale and location of the subdivision, and reference to original land grant or survey and abstract numbers shall be indicated. If more than one (1) page is required for the

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plat, the title block may be reduced in size on the subsequent sheets. The vicinity map is required on only one (1) sheet.

- (11) An owner's dedication block or acknowledgment shall be attached to and be a part of the final subdivision plat and shall contain a minimum of information as required by the city. Examples of the information required on the final plat which would meet the above requirements shall be provided by the city.
  - (12) A statement signed by the owner and acknowledged before a notary public as to the authenticity of the signatures.
  - (13) Lien holder's certification and notarization.
  - (14) A signed registered professional land surveyor's certificate.
  - (15) Plat approval block for the signature of the mayor or person designated by city council and a place for the city secretary to attest such signature. A plat approval block shall also be provided for the signatures of the chairman and secretary of the commission.
  - (16) Any proposed reserve uses and the property dimensions shall be shown on the plat. The use of the reserve shall be specific if required by the city council.
  - (17) Any special restrictions shall be noted on the plat or referenced accordingly or in the general notes.
  - (18) General notes shall be included on the final plat as specified by the city. These notes shall appear on the same page with the layout of the subdivision and shall include, but are not limited to the following:
    - a. Standard abbreviations;
    - b. Finished floor elevations;
    - c. Reference to U.S.C. & G.S. benchmark and description and temporary benchmark within five hundred (500) feet of the subdivision;
    - d. Elevation data;
    - e. Flood zone information;
    - f. District boundaries;
    - g. Zoning district, if applicable;
    - h. Location of aerial easements; and
    - i. Building permit note (if applicable).
- (n) *Additional requirements.* The final plat shall comply with the following additional requirements:
- (1) The subdivision plat boundaries shall be tied to existing monuments with coordinates using Texas State Plane Coordinate System, South Central Zone.
  - (2) The city shall be provided with an electronic file of the final plat in the format(s) designated by the city.
  - (3) A copy of the proposed subdivision restrictions and/or covenants that are anticipated to be filed for record and will constitute encumbrances on the subject property shall be provided.

(Ord. No. 2005-24, § 1, 10-18-05; Ord. No. 2007-18, § 2, 6-5-07)

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**Sec. 25-36. Short form final plats (combination preliminary and final plat).**

The city manager or his designee may allow a final plat without the necessity of a preliminary plat (as required in section 25-34) for currently platted property or replats if requested by the applicant.

- (1) Application fees for short form platting shall be paid at the time of application.
- (2) The final plat meets all of the conditions and requirements as outlined under the Texas Local Government Code, as amended, as well as the following:
  - a. No more than four (4) lots, tracts or reserves are included.
  - b. The area to be platted lies within an existing public street circulation system already approved by the city council.
  - c. The plat does not propose to vacate public street rights-of-way or easements.
  - d. The plat does not propose creation or extension of public rights-of-way.
  - e. The proposed development does not require any significant drainage improvements and, if contained wholly or partially within the one hundred-year flood plain, conforms to Federal Emergency Management Agency flood plain management rules.
  - f. The proposed development is consistent with the thoroughfare plan and creates no significant traffic congestion on the existing public street system.
- (3) The short form plat shall meet all of the requirements for a final plat in section 25-35.
- (4) Evidence that the proposed subdivision is adequately served by all existing utilities, including gas, water, sewer, electricity, etc., and is acknowledged as acceptable by the city engineer and public works director at the time the short form final plat is submitted.
- (5) If it is a replat, a public hearing is held in accordance with the requirements of law for replats before final approval of the final plat.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-37. Administrative (minor) plat.**

The administrative or minor plat, as specified in the Texas Local Government Code, as amended, may be used in a limited manner in order to adjust property lines and/or easements as defined in the plat for the purpose of development flexibility. When requested by an applicant, the city manager or his designee, at his discretion, may allow an applicant to submit an administrative (minor) plat and follow such procedures.

The administrative (minor) plat must meet the following requirements:

- (1) Is for currently unplatted property, a replat, or amending a plat that meets the following conditions:
  - a. Involves four (4) or fewer lots.
  - b. All property after proposed adjustments has the required access on existing streets.
  - c. Does not require the creation of any new street or public right-of-way.
  - d. Does not require the extension or relocation of any utilities or municipal facilities.
  - e. Does not propose to eliminate or vacate public street rights-of-way or easements.
  - f. Does not include the creation of any new lots or lines.

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- (2) Shall meet all requirements of a short form final plat with the exception of only requiring approval of city council, without need of review by the commission.
- (3) Evidence that the proposed subdivision is adequately served by all existing utilities, including gas, water, sewer, electricity, etc., and is acknowledged as acceptable by the city engineer and public works director at the time the short form final plat is submitted.
- (4) If it is a replat, a public hearing is held in accordance with the requirements of law for replats before final approval of the final plat.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-38. Vacating of plat.**

- (a) A plat or any part of a plat may be vacated by request of the owners of all the lots in the plat. In addition to the procedure outlined in Chapter 212, Texas Local Government Code, as amended, the submittal requirements for the vacation to the commission and city council are the same as for approval of a final plat.
- (b) A vacated plat shall be recommended by the commission and approved by the city council. The city council may reject any vacation instrument which abridges or destroys any public rights in improvements, easements, streets, alleys or similar public areas which are deemed by the city council necessary to serve the surrounding area.
- (c) An approved vacated plat must be recorded and operates to destroy the effect of the recording of the vacated plat and to divert all public rights to the streets, alleys and other public areas laid out or described in the plat.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-39. Replat.**

- (a) A replat is a redesign of all or a part of a recorded plat or subdivision of land which substantially changes the elements of the plat. The same procedures shall be followed as for preliminary, final or short form plat. The replat must be in accordance with Chapter 212, Texas Local Government Code. A public hearing shall be required before the commission or the city council on all residential replats when the previous plat is not vacated in compliance with the Texas Local Government Code.
- (b) All proposed replats which are governed by the provisions of Chapter 212 of the Texas Local Government Code must be submitted with the following items in addition to those required for a preliminary, final or short form plat.
  - (1) A written statement indicating intent to seek commission approval under the requirements of Chapter 212 of the Texas Local Government Code.
  - (2) A current (not more than thirty (30) days old) title report, statement, opinion, title policy, certificate or letter from a title company authorized to do business in the State of Texas or from an attorney licensed as such in the State of Texas which indicates the name of the record owner of fee simple title for every piece of property required to be given written notice of such replat under the provisions of Chapter 212 of the Texas Local Government Code.
  - (3) A certified list (not more than thirty (30) days old) of all owners of property as such ownership appears on the last approved ad valorem tax rolls of either the city or county in which such property is located, which are required to be given written notice of such replat under the provisions of Chapter 212 of the Texas Local Government Code. Certification for the purpose of

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this subsection shall be made by a title company authorized to do business in the State of Texas or an attorney licensed as such in the State of Texas.

- (4) One (1) stamped envelope addressed to each landowner indicated on either the title report or the tax roll list as required above. Each envelope shall contain a copy of the required notice as set out in Chapter 212 of the Texas Local Government Code.
- (5) An affidavit in separate writing signed by all the owners of property within the proposed replat which attests that the proposed replat "does not attempt to alter, amend or remove covenants or restrictions."
- (6) The administrative officer will authorize the publication of the required notification of public hearing by the city secretary after the commission establishes a date for said public hearing.
- (c) If action on a residential replat application must be deferred because sufficient written protest has been submitted, the thirty-day period in which action must be taken by the city council is extended by the period of time necessary to verify the written protest.
- (d) The replat of a subdivision shall meet all the requirements for a new subdivision that may be pertinent, as provided for herein. It shall show the existing property being re-subdivided. No preliminary plat shall be required on replats if waived by the administrative officer.
- (e) The title shall identify the documents as "Lots \_\_\_\_\_, being a replat of Lots \_\_\_\_\_ of Block \_\_\_\_\_ of the \_\_\_\_\_ Subdivision." A reason for the replat shall also be stated on the plat.
- (f) A partial replat of only the affected lots will be accepted when the conditions and/or opinions allowed by the amending plat procedure are not applicable.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-40. Amending plat.**

The amending plat procedure shall be in accordance with Chapter 212, Texas Local Government Code, as may be amended.

- (1) An amending plat shall meet all of the informational requirements set forth for a final plat.
- (2) Where an amending plat meets the requirements for an administrative plat as specified in this chapter, it does not require the review of commission.
- (3) In no instance may an amending plat be submitted that creates more than four (4) lots.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-41. Recordation.**

Following the approval of the city council, a plat shall follow the following procedures for recordation:

- (1) Within one (1) year following the approval of the final plat by the city council, the subdivider shall submit the required number of originals to the city for signatures and recordation. The originals shall be on at least four (4) mil camera positive matte finish (both sides) film. All signatures shall be clearly affixed in permanent black ink. All seals shall be affixed in permanent black ink or a raised seal.
- (2) A current title report for the specified tract and current tax certificate, in a form acceptable to the county clerk for plat recordation, shall be submitted and verified prior to the city signatures and seals being affixed on the plat.

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- (3) If the subdivision is within the city, the city shall record the plat in the county clerk's office. The subdivider shall forward a check for the appropriate amount with the submittal of the originals for signatures. If the plat is in the extraterritorial jurisdiction, the plat originals shall be forwarded by the city to the county for approval and recordation. One (1) recorded original shall be returned to the city.
- (4) All requirements of applicable ordinances shall have been met.
- (5) The final plat shall not be submitted for recordation until detailed engineering plans have been approved by the city and/or the public improvements are complete. The approval of the plat and construction plans shall be valid for one (1) year, after which time they must be re-approved by the city, subject to current requirements before recordation.
- (6) The restrictive covenants shall be provided and the recording information shall be shown in a note on the plat.
- (7) An address map shall be provided. All addresses shall be coordinated with the appropriate utility company or the city.

(Ord. No. 2005-24, § 1, 10-18-05)

**Secs. 25-42—25-50. Reserved.**

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ARTICLE III. SUBDIVISION DESIGN REQUIREMENTS (STANDARDS)

**ARTICLE III. SUBDIVISION DESIGN REQUIREMENTS (STANDARDS)**

DIVISION 1. - GENERALLY

DIVISION 2. - SPECIFIC REQUIREMENTS

DIVISION 3. - TOWNHOUSE SUBDIVISIONS

DIVISION 4. - PATIO HOME SUBDIVISIONS

DIVISION 5. - PLANNED UNIT DEVELOPMENT

DIVISION 6. - DUPLEX SUBDIVISIONS

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ARTICLE III. - SUBDIVISION DESIGN REQUIREMENTS (STANDARDS)

DIVISION 1. GENERALLY

***DIVISION 1. GENERALLY***

[Sec. 25-51. Conformity to comprehensive master plan.](#)

[Sec. 25-52. City policy and general requirements.](#)

[Sec. 25-53. Changes or amendments to the design standards.](#)

[Secs. 25-54—25-60. Reserved.](#)

**Sec. 25-51. Conformity to comprehensive master plan.**

The proposed subdivision shall conform to the projected future land use pattern as outlined by the comprehensive master plan that has been formulated and adopted by the city council.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-52. City policy and general requirements.**

(a) *City policy.* The city council shall require that all land subdividers and developers shall, on all subdivisions of land in the city and within its extraterritorial jurisdiction, as that term is defined in the Texas Local Government Code, adhere to and be governed by the policies that have been established for the provision and construction of underground utilities, street improvements, alleys or easements.

(b) *General requirements.*

(1) *Water lines, sewer lines and storm sewers.*

a. The subdivider or developer shall be required to construct, at his own expense, all water lines, sewer lines, storm sewer lines, drainage ditches, detention facilities, if required, and structures in accordance with the current design standards in effect at the time of construction. This shall include all engineering costs for design, layout and construction supervision. Preliminary plans and layouts for all such utility lines shall be submitted by the subdivider or developer to the commission for study along with the submission of the preliminary plat of the subdivision. Final construction plans will be submitted by the subdivider at the time of filing his final plat with the commission in the same number of copies as required of the subdivision plat.

b. There will be no participation by the city in the cost of any of the underground utility lines or drainage facilities within the subdivision except in the event of the requirement for oversize lines to serve land areas and improvements beyond the subdivision in question, or to serve other subdivisions. Each installation of this character and the terms and extent of city participation will be considered individually upon the merits of each facility and the conditions involved.

c. Trunk lines of such systems to serve the subdivision under consideration will be considered upon each facility's individual merits for each subdivision.

(2) *Street improvements, curb and gutter, pavement.*

a. The subdivider shall be required to construct, at his own expense, concrete curb and gutter streets in accordance with current design standards in effect at the time of construction.

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This shall include all engineering costs for design, layout and construction supervision. Preliminary plans for such improvements shall be submitted to the commission for study and for tentative approval before any work is started in the subdivision. Detailed construction plans, including plan and profile for each street, shall be filed with the submission of the final plat in the same number of copies as required of the final subdivision plat.

- b. The city may participate in the cost of street surfacing and construction of arterial streets or thoroughfares in excess of the standard width and thickness of pavement for residential or service streets required to be constructed by the subdivider.
- c. Each street installation project will be considered by the city upon the individual merits of each project prior to construction.
- d. Subdivisions abutting on main arterial shall have fences erected on the common property line with the public street right-of-way which shall be of wood or metal construction, not less than six (6) feet in height, and shall be constructed of materials designed to prevent visual invasion by any person upon the public street right-of-way with any person or property located upon any part of the subdivision. The degree of visual blockage shall not be less than ninety (90) percent.

(3) *Alleys and easements.*

- a. The city may require in a new subdivision twenty-foot wide easements in lieu of alleys except in certain cases as may be determined by the commission.
- b. If a subdivider desires to include alleys in a subdivision, the expense of development of the same shall be borne by the owner of the subdivision or the developer, and the same shall be constructed in accordance with current design standards for city streets in effect at the time of construction.
- c. Any construction plans related to this type of improvement shall be submitted to the commission along with the final plat of the subdivision.

(4) *Water and sewer facilities; land subject to flooding and otherwise inhabitable.*

- a. The commission may refuse to approve a plat when it is evident that adequate water and sewer facilities cannot be supplied within a reasonable time.
- b. Land subject to flooding and land deemed by the commission to be uninhabitable shall not be platted for residential occupancy nor shall it be platted for such other uses as may increase danger to health, safety, life or property or aggravate the flood hazard, but such land within the plat shall be set aside for such uses as shall not be endangered by periodic or occasional inundation and shall not produce unsatisfactory living conditions.

(Ord. No. 2005-24, § 1, 10-18-05; Ord. No. 2009-08, § 1, 3-3-09)

**Sec. 25-53. Changes or amendments to the design standards.**

The current design standards will, from time to time require revisions and updates to allow for changing construction technology. The design standards referenced herein shall mean the current standards as of the date of adoption of this Code amendment, to-wit, October 18, 2005, or as they may be revised from time to time.

(Ord. No. 2005-24, § 1, 10-18-05)

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**Sec. 25-61. Streets.**

(a) *General requirements.* The arrangement, character, extent, width, grade, and location of all streets shall conform to the city thoroughfare plan and the current design standards manual and shall be considered in their relation to existing and planned streets or driveways, to topographical conditions, to public safety and in their appropriate relation to the proposed uses of the land to be served by such streets. Unless required by the city, strips of land controlling access to or egress from other property, or to or from any street or alley, or having the effect of restricting or damaging the adjoining property for subdivision purposes or which will not be taxable or accessible for special improvements shall not be permitted in any subdivision. All streets shall be paved in accordance with the current design standards. All lots, tracts and reserves shall have frontage on an approved public right-of-way or access easement(s).

*Exception:* Rural streets for rural lots as provided in section 25-67 (Lots, tracts, reserves) Subsection (7)(b), may be constructed in accordance with section 25-61 Streets (p), provided that open side ditches used for drainage meet all applicable specifications provided by the city and the county.

(b) *Private streets.* Private streets or any similar privately maintained access ways are prohibited in single-family residential developments.

(c) *Access.* Primary access through a mutual access easement in a commercial, town home or condominium development shall conform to all design and construction standards stated herein and in current design standards.

(1) If the easement contains public utilities, including but not limited to water lines, sanitary sewer lines, storm sewer lines, electrical lines, or gas lines, the easement shall meet all of the

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requirements set forth for a public street, including but not limited to construction standards, width, curves, building lines, sight distance visibility and landscape maintenance.

- (2) If the easement does not contain public utilities, then the easement shall meet the following requirements:
- a. The minimum width of the easement shall be thirty (30) feet.
  - b. The minimum pavement width shall be thirty (30) feet, back-of-curb to back-of-curb.
  - c. The geometry and construction standards shall meet all of the requirements for a public street, with the exception that asphalt surfacing shall not be permitted.
  - d. The pavement shall have a standard six-inch reinforced concrete curb in accordance with the current design standards.
  - e. Access to the easement shall be via approved curb cuts with spacings in accordance with current design standards. No direct parking access shall be allowed to the easement.
  - f. Building lines and parking setbacks shall be measured from the back-of-curb.
  - g. The minimum parking setback shall be ten (10) feet.

Any mutual access agreement between the property owners and/or lessors shall be submitted to the city for approval and filed of record with the county clerk's office, and so noted on the plat prior to recordation of the plat. A note shall be placed on the plat defining the accessibility to the access easement by police, fire and emergency vehicles, utility operations and maintenance personnel.

- (d) *Streets not on plan.* When a street is not on the thoroughfare plan, the arrangement of streets in a subdivision shall:
- (1) Provide for the continuation or appropriate protection of existing streets in surrounding areas; or conform to a plan for the neighborhood as adopted by the city to meet a particular situation where topographical or other conditions make continuance or conformity to existing streets impracticable.
  - (2) Provide for future access to adjacent vacant areas which will likely develop in the future.
  - (3) Resolve alignment with existing right-of-way and driveway openings.
- (e) *Minor streets.* Minor residential streets shall be so designed that their use by through traffic will be discouraged.
- (f) *Geometric street design.* Standards for curvature, intersecting streets, and offset intersections are detailed in the design standards.
- (g) *Street widths.* Street right-of-way widths shall be shown on the thoroughfare plan and shall be designed in accordance with the design standards. Lane widths and median widths shall also be in accordance with the design standards.
- (h) *Half streets.* Half streets shall be prohibited, except when essential to the reasonable development of the subdivision in conforming to the other requirements of these regulations and the thoroughfare plan, and where the city council finds it will be practical to require the dedication of the other one-half (½) when the adjoining property is subdivided. When a partial street has been platted previously along a common property line, the other portion of the street shall be dedicated. Construction of half streets and improvements made to all on-site facilities are defined in the design standards.
- (i) *Cul-de-sacs.* A cul-de-sac street may be provided where the shape of a portion of the proposed subdivision or where the terrain of the land would make it difficult, uneconomical or unreasonable to

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plat with connecting streets. These cul-de-sacs shall be so arranged as to provide access to all lots and shall conform to the most current design standards.

- (j) *Dead end streets.* Dead end streets are temporary in nature and are not allowed except to provide for access to adjacent land areas and in no case shall be more than two hundred fifty (250) feet in length or equal to one (1) lot depth, whichever is greater. A temporary turnaround shall be provided and indicated on the plat and built in accordance with the design standards.
- (k) *Reserves.* A one-foot reserve shall be established along the side or the end of a street that abuts acreage tracts. A note shall be on the plat to define the one-foot reserve.
- (l) *New streets.* New streets which are an extension of existing streets shall bear the names of existing streets and shall be dedicated with appropriate transitions and widths.
- (m) *Street names.* No new street names shall be used which will duplicate or be confused with the names of existing streets. All street names shall demonstrate good judgment and character on behalf of the subdivider based upon commonly accepted use of names and places. Street names shall be subject to the approval of the city council at the time of final plat approval.
- (n) *Points of access.* Single-family residential subdivisions, including patio home and townhouse subdivisions, shall have an adequate number of access points to provide for an orderly and safe movement of vehicular traffic. The minimum number of points of access from said subdivisions shall be as follows:
  - (1) Subdivisions with fifty (50) or fewer lots—One (1) point of access
  - (2) Subdivisions with fifty-one (51) to one hundred twenty-five (125) lots—Two (2) points of access, or one (1) point of access if that access is via a boulevard street section with no lots having direct access to the divided boulevard street section serving as said access
  - (3) Subdivisions with one hundred twenty-six (126) to two hundred fifty (250) lots—Two (2) points of access, with at least one (1) point of access via a boulevard street section of at least one hundred twenty (120) feet in length (end of median to end of median), with no lots having direct access to the boulevard street section serving as said access, and at least one (1) point of access being directly to a collector or major thoroughfare.
  - (4) Subdivisions with more than two hundred fifty-one (251) lots—The number of access points shall be determined by the city; however, there must be at least two (2) points of access, with at least one (1) point of access via a boulevard street section of at least one hundred twenty (120) feet in length (end of median to end of median), with no lots having direct access to the boulevard street section serving as said access, and at least one (1) point of access being directly to a collector or major thoroughfare.
  - (5) For the purposes of this subsection, a boulevard street shall mean a divided four-lane street with a minimum fifteen-foot wide median and minimum eighty-foot right-of-way.
- (o) *Construction.* All streets dedicated within a subdivision in the city or its extraterritorial jurisdiction shall be constructed in accordance with paving widths and specifications as set forth in the current design standards of the city at the time at which the final plat is recorded.
- (p) *Future streets.* When a tract of land is subdivided into parcels that are larger than normal building lots, such parcels shall be arranged to permit the opening of future streets and a logical ultimate resubdivision.
- (q) *Rural streets.* Rural streets may be provided in subdivisions where lots conform to the minimum requirements for rural lots (section 25-67(h)(2) Rural Lots). A rural street shall have a minimum seventy-foot right-of-way with a twenty-eight-foot pavement, which may be asphalt or concrete,

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provided applicable city and county standards are met. Curbs are not required and open road side ditches may be used for drainage. No parking shall be allowed along a rural street right-of-way.

- (r) *Points of access.* Multi-family dwelling subdivisions, including apartment and condominium subdivisions, shall have an adequate number of access points to provide for an orderly and safe movement of vehicular traffic. The minimum number of points of access from said subdivisions shall be as follows:
- (1) *Subdivisions with fifty (50) or fewer dwelling units*—One (1) point of access.
  - (2) *Subdivisions with fifty-one (51) to one hundred twenty-five (125) dwelling units*—Two (2) points of access, or one (1) point of access if that access is via a boulevard street section with no dwelling units having direct access to the divided boulevard street section serving as said access.
  - (3) *Subdivisions with one hundred twenty-six (126) to two hundred (200) dwelling units*—Two (2) points of access, with at least one (1) point of access via a boulevard street section of at least one hundred twenty (120) feet in length (end of median to end of median), with no dwelling units having direct access to the boulevard street section serving as said access, and at least one (1) point of access being directly to a collector or major thoroughfare.
  - (4) For the purposes of this subsection, a boulevard street shall mean a divided four-lane street with a minimum fifteen-foot wide median and minimum eighty-foot right-of-way.

(Ord. No. 2005-24, § 1, 10-18-05; Ord. No. 2006-33, § 1, 11-7-06; Ord. No. 2009-25, § 2, 7-21-09)

**Sec. 25-62. Alleys.**

- (a) Alleys may be allowed in commercial and industrial districts, except that the city council may require that definite and assured provision is made for service access, such as off-street loading, unloading and parking consistent with and adequate for the use proposed. Service alleys in commercial and industrial districts shall conform to the most current design standards or as may be established by the commission or the city council. An access easement may be substituted upon approval of the city council if the easement is also a fire lane easement.
- (b) Residential alleys may not be required, except that the same may be required where alleys of adjacent subdivisions already platted would be closed or dead-ended by failure to provide alleys in the new subdivision. Residential alleys shall conform to the most current design standards or as may be established by the commission and or the city council.
- (c) Dead end alleys shall be avoided where possible, but, if unavoidable, shall be provided with adequate turnaround at the dead end as determined by the city council.
- (d) Alleys may not exceed a maximum length of fourteen hundred (1,400) feet unless otherwise waived by the city council.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-63. Easements.**

- (a) All utility easements, including those for water, sewer, storm sewer and fire lanes, shall be shown on the final plat.
- (b) Easements across lots or centered on or adjacent to rear or side lot lines shall be provided for utilities where necessary and shall be of such widths as may be reasonably necessary for the utility

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or utilities using same. It shall be the subdivider's responsibility to determine appropriate easement widths as required by the current design standards.

- (c) Where a subdivision is traversed by a watercourse, ditch, drainage way or channel, there shall be provided a storm water easement or drainage right-of-way conforming substantially with such course and of such additional width as may be designated by the city and/or the county drainage district, subject to determination using proper engineering considerations. Maintenance easements shall also be specified. Approved utilities are permitted within the drainage easement if specified and approved as drainage and utility easement.
- (d) Fire lane easements shall be specified on all multi-family and nonresidential plats and shall conform to the design standards. The design and paving material in the fire lane shall conform to the design standards.
- (e) In all cases, easements shall connect with already established easements in adjoining property, and utilities shall be located within such easements and conform to the design standards.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-64. Curb radii at intersections.**

Curb radii at street intersections shall conform to current design standards and property lines shall be adjusted accordingly.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-65. Blocks.**

- (a) The length, width, and shape of blocks shall be determined with due regard to:
  - (1) Provision of adequate building sites suitable to the special needs of the type of use contemplated; and
  - (2) Needs for convenient access, circulation, control and safety of street traffic.
- (b) Lengths and widths shall be in conformance with the design standards. In general, intersecting streets determining the lengths and widths of the blocks shall be provided at such intervals as to serve cross-traffic adequately and to meet existing streets or customary subdivision practices.
  - (1) Minimum block length shall be five hundred (500) feet; however, this standard may be varied in cases where physical barriers or property ownership creates conditions where it is appropriate that these standards be varied having due regard for connecting streets, circulation of traffic and public safety.
  - (2) Maximum block length shall be twelve hundred (1,200) feet, except where no existing subdivision controls, the block length may increase to fourteen hundred (1,400) feet.
  - (3) When possible, the block width or depth shall allow two (2) tiers of lots, back-to-back, except when prevented by the size of the property or the need to back on an identified thoroughfare. When adjacent to a thoroughfare, the subdivider may not double front lots.
- (c) Blocks shall be numbered consecutively within the overall plat and shall be consistent with adjacent plats.

(Ord. No. 2005-24, § 1, 10-18-05)

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**Sec. 25-66. Sidewalks.**

Sidewalks shall be required as provided in section 25-52(b)(2)d.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-67. Lots, tracts, reserves.**

Lots, tracts and reserves within the city, unless the commission, for cause, may otherwise approve, shall conform to the following minimum requirements:

- (1) Each residential lot, tract or reserve shall front on and have access from a dedicated public street; provided however, such access may be provided from a private street or access easement where permitted by this chapter. Any residential lot, tract or reserve having access only from an alleyway shall not be permitted. No residential lot shall have access to a major thoroughfare or collector street, except as permitted below.
  - a. The lot shall have a minimum frontage on the major thoroughfare or collector street of one hundred seventy-five (175) feet, and
  - b. The lot shall contain a minimum area of three (3) acres, and
  - c. The lot shall be provided access to the major thoroughfare or collector street via one (1) driveway only, having a maximum width of twenty (20) feet, measured at the right-of-way line, and shall have a minimum radius of twenty-five (25) feet at the point of connection to the paving of the major thoroughfare or collector street, and
  - d. Access driveways shall be located in accordance with the following:
    1. Greater than one hundred (100) feet from a street intersection as measured from the center of the driveway to the right-of-way line of the street intersecting the major thoroughfare or collector street,
    2. Greater than sixty-five (65) feet from a property line as measured from the centerline of the driveway.
- (2) The width of a lot shall be measured at the front building line. Cul-de-sac and radial lots shall also meet additional specified minimum width requirements as measured at the property/right-of-way line using the chord or straight line distance.
- (3) The depth of the lot shall be measured as an average between the side lot lines from the property-line/right-of-way.
- (4) A lot area size shall be computed inclusive of all easements. There shall be a minimum buildable area, exclusive of easements, for each lot to meet the requirements set forth herein.
- (5) Corner lots shall be increased in size whenever necessary so as to provide that any structure to be placed thereon shall conform to the building line requirements of each street.
- (6) No lots may be split by any jurisdictional boundary lines.
- (7) Residential lots, tracts or reserves shall conform to the following requirements:
  - a. *Urban lots.*
    1. *Lot widths.*
      - i. Single-family subdivisions of any size.
        - A. A minimum lot width of sixty (60) feet.

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- B. Cul-de-sac/radial—Fifty (50) feet at the street right-of-way with a minimum width of sixty (60) feet at the front building line.
    - ii. Patio home subdivisions—See Division 4, Patio Home Subdivisions.
    - iii. Townhouse Subdivision—See Division 3.
    - iv. Duplex Subdivision—See Division 6, Duplex Subdivisions.
  - 2. *Lot size—Minimum.*
    - i. Single-family subdivisions of any size—Average area of all lots within each section shall be a minimum of seven thousand (7,000) square feet. However, the minimum area of any lot shall not be less than six thousand five hundred (6,500) square feet.
    - ii. Patio home subdivision—See Division 3, Patio Home Subdivisions.
    - iii. Townhouse subdivision—See Division 4, Townhouse Subdivisions.
    - iv. Duplex subdivision—See Division 6, Duplex Subdivisions.
  - b. *Rural lots.* Rural lot subdivisions for single-family detached dwellings may be approved, provided that each lot within the proposed subdivision has an area of at least one (1) acre and said development conforms to applicable state law, and other applicable codes and ordinances of the city and the county.
- (8) All reserves shall be labeled with their appropriate use. Landscape and detention reserves may also be designated as utility easements. When in the determination of the city council the proposed land use is essential to the signage of public facilities, the city council may require the intended use of the reserve to be specified.
- (9) All nonresidential and multifamily tracts or reserves shall front on a dedicated public street or dedicated access/fire lane easement. The design of driveways, access easements and fire lanes shall be in conformance with the current design standards.
- (10) In no case shall a rectangular or irregularly shaped lot contain less than the minimum square footage as designated.

(Ord. No. 2005-24, § 1, 10-18-05; Ord. No. 2006-05, § 1, 2-28-06; Ord. No. 2006-37, § 1, 11-21-06)

**Sec. 25-68. Building lines—Single-family lots.**

Building lines or setback lines shall be established for all single-family residential lots and so indicated on all subdivision plats as stipulated below:

- (1) *Corner lots.* The setback lines for corner lots shall be as follows:
  - a. A minimum building setback of twenty-five (25) feet shall be provided on the front and fifteen (15) feet on the side of all corner lots where such lots side upon minor streets.
  - b. A minimum building setback of twenty-five (25) feet shall be provided on the front and twenty (20) feet on the side of all corner lots where such lots side upon collector streets.
  - c. A minimum building setback of twenty-five (25) feet shall be provided on the front and twenty-five (25) feet on the side of all corner lots where such lots side upon major thoroughfares.
- (2) *Corner lots less than fifty (50) feet in width.* The setback lines for corner lots less than fifty (50) in width shall be as follows:

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- a. A minimum building setback of twenty-five (25) feet shall be provided on the front and five (5) feet on the side of all corner lots where such lots sides upon a street containing the required right-of-way for its classification according to the City of Rosenberg's Thoroughfare Plan.
  - b. This provision shall not apply to a lot within a townhouse subdivision or patio home subdivision as defined by this chapter.
- (3) *Interior lots.* A minimum building setback of twenty-five (25) feet shall be provided on the front and five (5) feet on each side of all interior lots fronting on minor and collector streets and major thoroughfares.

(Ord. No. 2005-24, § 1, 10-18-05; Ord. No. 2010-12, § 2, 4-6-10)

**Sec. 25-69. Building lines—Commercial lots.**

Building lines or setback lines shall be established for all commercial lots and indicated on all subdivision plats as provided below:

- (1) *Corner lots.* The setback lines for corner lots shall be as follows:
- a. A minimum building setback of twenty-five (25) feet shall be provided on the front and fifteen (15) feet on the side of all corner lots that side upon minor streets.
  - b. A minimum building setback of twenty-five (25) feet shall be provided on the front and twenty (20) feet on the side of all corner lots that side upon collector streets.
  - c. A minimum building setback of twenty-five (25) feet shall be provided on the front and twenty-five (25) feet on the side of all corner lots that side upon major thoroughfares.
  - d. A minimum building setback of thirty (30) feet shall be provided, for all commercial structures up to fifty (50) feet in height, on the side and rear of all corner lots that are adjacent to a residential use. An additional one (1) foot of setback shall be required for every additional one (1) foot in height of the commercial structure above fifty (50) feet. Side and rear setbacks for lots lines that are not adjacent to a street, thoroughfare, or residential use, shall be established in accordance with the most recently adopted version of the International Building Code. The minimum building setback for the side and rear of all corner lots adjacent to a residential use shall be inclusive of one-half (½) the width of any adjacent platted and recorded public alley or easement, provided that:
    - 1. The minimum width of the alley or easement is twenty (20) feet; and
    - 2. The alley or easement is, and remains accessible, unenclosed and unobstructed.
- (2) *Interior lots.* The setback lines for interior lots shall be as follows:
- a. A minimum building setback of twenty-five (25) feet shall be provided on the front of all interior lots that front upon minor and collector streets and major thoroughfares.
  - b. The minimum building setback requirements on the sides of interior lot lines shall be established in accordance with the most recently adopted version of the International Building Code.
  - c. A minimum building setback of thirty (30) feet shall be provided, for all commercial structures up to fifty (50) feet in height, on the rear of all interior lots that are adjacent to a residential use. An additional one (1) foot of setback shall be required for every additional one (1) foot in height of the commercial structure above fifty (50) feet. The minimum building setback for the rear of all interior lots adjacent to a residential use shall be

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inclusive of one-half (½) the width of any adjacent platted and recorded public alley or easement, provided that:

1. The minimum width of the alley or easement is twenty (20) feet; and
  2. The alley or easement is, and remains accessible, unenclosed and unobstructed.
- (3) *Variance procedure for lots of record.* Lawfully preexisting lots on the date of adoption of this section, which are of a size that strict compliance with the setback requirements set forth in this section would create an undue hardship by significantly affecting the development of the tract for commercial purposes, are hereby entitled to seek a variance from the provisions hereof, as authorized under section 25-8 of this Code.
- (4) The Downtown Area, as defined in Chapter 6 of this Code, is exempt from the setback requirements set forth in this subsection; however, all structures constructed in the Downtown Area shall comply with all setback requirements established in the International Building Code and the International Fire Code, as adopted.

(Ord. No. 2005-24, § 1, 10-18-05; Ord. No. 2008-06, § 1, 5-20-08; Ord. No. 2008-18, § 2, 8-19-08; Ord. No. 2008-24, § 5, 8-5-08)

**Sec. 25-70. Building lines—Industrial lots.**

Building lines or setback lines shall be established for all industrial lots and indicated on all subdivision plats as provided below:

- (1) *Corner lots.* The setback lines for corner lots shall be as follows:
  - a. A minimum building setback of twenty-five (25) feet shall be provided on the front and fifteen (15) feet on the side of all corner lots that side upon minor streets.
  - b. A minimum building setback of twenty-five (25) feet shall be provided on the front and twenty (20) feet on the side of all corner lots that side upon collector streets.
  - c. A minimum building setback of twenty-five (25) feet shall be provided on the front and twenty-five (25) feet on the side of all corner lots that side upon major thoroughfares.
  - d. A minimum building setback of sixty (60) feet shall be provided, for all industrial structures up to sixty (60) feet in height, on the side and rear of all corner lots that are adjacent to a residential use. An additional one (1) foot of setback shall be required for every additional one (1) foot in height of the industrial structure above sixty (60) feet. Side and rear setbacks for lots lines that are not adjacent to a street, thoroughfare, or residential use, shall be established in accordance with the most recently adopted version of the International Building Code.
- (2) *Interior lots.* The setback lines for interior lots shall be as follows:
  - a. A minimum building setback of twenty-five (25) feet shall be provided on the front of all interior lots that front upon minor and collector streets and major thoroughfares.
  - b. The minimum building setback requirements on the sides of interior lot lines shall be established in accordance with the most recently adopted version of the International Building Code.
  - c. A minimum building setback of sixty (60) feet shall be provided, for all industrial structures up to sixty (60) feet in height, on the rear of all interior lots that are adjacent to a residential use. An additional one (1) foot of setback shall be required for every additional one (1) foot in height of the industrial structure above sixty (60) feet.

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- (3) The Downtown Area, as defined in Chapter 6 of this Code, is exempt from the setback requirements set forth in this subsection; however, all structures constructed in the Downtown Area shall comply with all setback requirements established in the International Building Code and the International Fire Code, as adopted.

(Ord. No. 2008-06, § 3, 5-20-08; Ord. No. 2008-18, § 4, 8-19-08; Ord. No. 2008-24, § 6, 8-5-08)

**Sec. 25-71. Street lights.**

Each subdivision shall have street lights installed with a maximum spacing of three hundred (300) feet between each light, and arranged so that one (1) light is installed at every street intersection. The wiring shall be placed underground and the light mounted on a steel standard. The light intensity of each lamp shall be a minimum of sixteen thousand (16,000) lumens and the light shall be high pressure sodium vapor. Each subdivider will be required to pay to the city, annually for three (3) years (beginning from the date the lights are installed), a fee equal to the actual cost to the city for the upcoming year of installing and maintaining newly installed streetlights requested by such subdivider, which cost will be established by the city's power provider in the beginning of each year.

(Ord. No. 2005-24, § 1, 10-18-05; Ord. No. 2008-06, § 2, 5-20-08; Ord. No. 2008-18, § 3, 8-19-08)

**Note**—Formerly § 25-70.

**Sec. 25-72. Subdivision—Unit of a larger tract.**

Where the proposed subdivision constitutes a unit of a larger tract owned by the subdivider which is intended to be subsequently subdivided as additional units of the same subdivision, the preliminary and final plats shall be accompanied by a layout of the entire area showing the tentative proposed layout of streets, blocks, drainage, water, sewer and other improvements for such area. The overall layout, if approved by the commission, shall be attached to and filed with a copy of the approved subdivision plat in the permanent files of the city. Thereafter, plats of subsequent units of such subdivisions shall conform to such approved overall layout, unless changed by the commission. However, except where the subdivider agrees to such change, the commission may change such approved overall layout only when the commission finds:

- (1) That adherence to the previously approved overall layout will hinder the orderly subdivision of other land in the area in accordance with this chapter; or
- (2) That adherence to the previously approved overall layout will be detrimental to the public health, safety or welfare, or will be injurious to other property in the area.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-73. Large-scale neighborhood development.**

The standards and requirements of the regulations contained in this chapter may be modified by the commission and city council in the case of a plan and program of development of a new town, a complete large residential community of neighborhood units, or mass housing project, which contains adequate provisions for circulation, recreation, light, air and service needs of the tract when fully developed and populated and equal to or better than the detailed requirements of the regulations of this Code and which also provides such covenants or other legal provisions as will assure conformity to the comprehensive master plan of the city.

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(Ord. No. 2005-24, § 1, 10-18-05)

**Secs. 25-74—25-85. Reserved.**

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DIVISION 3. TOWNHOUSE SUBDIVISIONS

***DIVISION 3. TOWNHOUSE SUBDIVISIONS***

[Sec. 25-86. Definitions.](#)

[Sec. 25-87. Procedural requirements.](#)

[Sec. 25-88. Streets and other public ways.](#)

[Sec. 25-89. Building setback.](#)

[Sec. 25-90. Lots.](#)

[Sec. 25-91. Utilities.](#)

[Sec. 25-92. Other requirements.](#)

[Secs. 25-93—25-105. Reserved.](#)

**Sec. 25-86. Definitions.**

The following words, terms, and phrases, when used in this division, shall have the meanings ascribed to them herein, except where the context clearly indicates a different meaning.

*Open space* shall mean private property under common ownership designated for recreation area, private park, play lot area, plaza area, and ornamental area open to general view and within the subdivision. Open space does not include streets, alleys, utility easements, and required building setbacks.

*Townhouse* or *row house* shall mean a structure which is one (1) of a series of dwelling units designed for single-family occupancy, which are connected or immediately adjacent to each other. However, a townhouse or row house shall not include a mobile home, manufactured housing and/or travel trailer.

*Townhouse subdivision* shall mean those developments in which it is proposed to partition land into individual lots and construct townhouses which may be individually owned.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-87. Procedural requirements.**

All persons proposing or intending to develop a townhouse subdivision within the city or within its extraterritorial jurisdiction shall comply with the procedural requirements set out in Article II of this chapter.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-88. Streets and other public ways.**

- (a) Interior streets shall have a minimum right-of-way width of fifty (50) feet and shall be developed with a minimum of a twenty-seven-foot paving section (inside of curb to inside of curb) with concrete curb and gutter in accordance with the current design standards. For the purposes of this section, interior streets may be public or private streets.
- (b) Access streets shall have a minimum right-of-way width of fifty (50) feet and shall be developed with a minimum of a thirty-six-foot pavement section (inside of curb to inside of curb).

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- (c) All townhouse subdivisions shall have direct access streets to at least one (1) dedicated and accessible public street having a right-of-way width of not less than sixty (60) feet.
- (d) All townhouse lots shall have direct access to an interior street, an access street, or a rear access easement having a width of thirty-eight (38) feet and a twenty-eight-foot paving section (inside of curb to inside of curb). Dead-end access easements shall not be greater than two hundred (200) feet in length. All rear access easements shall not be dedicated as public rights-of-way, but shall be private rights-of-way and shall be privately maintained.
- (e) In the event private interior streets or private rear access easements are utilized in a townhouse subdivision, provisions shall be included in the restrictive covenants for such subdivision to ensure that there is adequate funding for the perpetual maintenance of such private streets and rear access easements.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-89. Building setback.**

- (a) Building setback lines of twenty-five (25) feet shall be required on all lots fronting or backing on an access street.
- (b) Building setback lines of twenty (20) feet shall be required on all lots siding on access streets or upon a plat boundary.
- (c) No building setback lines shall be required on the sides of lots abutting interior streets, except where traffic safety or other factors necessitate the establishment of such setbacks.
- (d) Where townhouse lots and dwelling units are designed to face upon an open or common access court rather than upon a street, such open or common court shall be at least forty (40) feet wide and not more than two hundred (200) feet long, measured from the street upon which the court must open. Such court may not include vehicular drives or parking area in front of dwelling units.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-90. Lots.**

- (a) Lot area shall be a minimum of two thousand five hundred (2,500) square feet.
- (b) Lot width shall be a minimum of twenty-five (25) feet.
- (c) Dwelling units may be constructed up to side lot lines, and openings shall not face a side lot line unless the side wall of the dwelling unit is at least ten (10) feet from the side lot line.
- (d) Lot size may be reduced under the provisions that open space be dedicated according to the following schedule:

For every one hundred (100) square feet of open space per lot, provided the minimum lot area may be reduced by two hundred (200) square feet. No lot shall, however, have a lot area of less than two thousand (2,000) square feet, and a width of less than twenty-five (25) feet.

<b>Open Space Per Dwelling</b>	<b>Minimum Lot Area (sq. ft.)</b>
0	2,500

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100	2,300
200	2,100
250	2,000
300	1,900
350	1,800

- (e) The subdivision shall include two and one-half (2.5) parking spaces per townhouse lot. Garage parking spaces up to two (2) spaces per lot may be included in the total number of required spaces. All off-street parking shall be designated as such and comply with sections 6-416—6-418, Code of Ordinances.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-91. Utilities.**

All utilities such as sanitary sewer, water, gas, telephone, television cable and electrical, shall be placed underground.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-92. Other requirements.**

A townhouse subdivision shall meet all requirements of Divisions 1 and 2 of this article as well as all other requirements in this chapter, the provisions of this division being variations permitted especially for townhouse subdivisions.

(Ord. No. 2005-24, § 1, 10-18-05)

**Secs. 25-93—25-105. Reserved.**

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DIVISION 4. PATIO HOME SUBDIVISIONS

***DIVISION 4. PATIO HOME SUBDIVISIONS***

[Sec. 25-106. Definitions.](#)

[Sec. 25-107. Procedural requirements.](#)

[Sec. 25-108. Streets and other public ways.](#)

[Sec. 25-109. Reserved.](#)

[Sec. 25-110. Lots.](#)

[Sec. 25-111. Utilities.](#)

[Sec. 25-112. Other requirements.](#)

**Sec. 25-106. Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them herein, except where the content clearly indicates a different meaning:

*Open space* shall mean private property under common ownership designated for recreation area, private park, play lot area, plaza and ornamental area open to general view within the subdivision. Open space does not include streets, alleys, utility easements and required building setbacks.

*Patio home* shall mean a structure which is a series of dwelling units designed for single-family occupancy, which are constructed on a lot which shall have a minimum area of six thousand (6,000) square feet and shall have a zero offset on one (1) side of the lot. However, a patio home shall not include a mobile home, manufactured housing and/or travel trailer.

*Patio home subdivision* shall mean those developments in which it is proposed to partition land into individual lots and construct patio homes which shall be individually owned and where the offset of a structure shall be zero on one (1) side of the lot with an easement of ten (10) feet granted on the opposite side to the adjoining property owner for maintenance purposes.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-107. Procedural requirements.**

All those persons proposing or intending to develop a patio home subdivision shall comply with the procedural requirements set out in article II of this chapter.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-108. Streets and other public ways.**

- (a) Access streets shall have a minimum right-of-way width of sixty (60) feet and shall be developed with a minimum of a thirty-six-foot paving section (inside of curb to inside of curb) with concrete curb and gutter in accordance with current design standards.
- (b) Interior streets shall have a minimum right-of-way width of sixty (60) feet and shall be developed with a minimum of a twenty-eight-foot paving section (inside of curb to inside of curb) with concrete curb and gutters in accordance with current design standards.

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DIVISION 4. PATIO HOME SUBDIVISIONS

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-109. Reserved.**

**Sec. 25-110. Lots.**

- (a) Lot area shall be a minimum of six thousand (6,000) square feet.
- (b) Lot width shall be a minimum of fifty-five (55) feet. Cul-de-sac/radial lot width shall be a minimum of forty-five (45) feet at the street right-of-way with a minimum width of fifty-five (55) feet at the front building line.
- (c) Dwelling units shall be constructed with a zero lot line clearance on one (1) side of lot. Doors shall not be installed in sides with zero lot line clearance.
- (d) Ten (10) feet must be maintained between sides of any two (2) dwelling units placed on adjacent lots.
- (e) Deed restrictions for zero lot line clearance must provide a ten-foot easement to the owner whose dwelling unit is on the property line for maintenance purposes.
- (f) Deed restrictions must provide that: "No autos, trucks, boats, campers, other trailers, or vehicles of any kind shall ever be left parked on the grass or yard except as provided for in paved off-street parking space and then only as temporary parking incident to the contemporaneous use of such vehicle or object, nor shall same be left parked on any lot unless parked inside a garage."

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-111. Utilities.**

All utilities such as sanitary sewer, water, gas, telephone, television cable, and electrical service shall be placed underground.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-112. Other requirements.**

- (a) A patio home subdivision shall meet all requirements of division 1 and 2 of this article as well as all other requirements in this chapter, the provisions of this division being variations permitted especially for patio home subdivisions.
- (b) A patio home subdivision shall contain no less than twenty (20) lots and shall be located on no less than three (3) acres.

(Ord. No. 2005-24, § 1, 10-18-05)

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DIVISION 5. PLANNED UNIT DEVELOPMENT

***DIVISION 5. PLANNED UNIT DEVELOPMENT***

[Sec. 25-113. Planned unit development.](#)

**Sec. 25-113. Planned unit development.**

A planned unit development (PUD) promotes the development of a tract of land in a unified manner and may allow for deviation from the development standards in this Code and in such other ordinances as may exist. Variances to the established criteria for lot widths, lot depths, building lines and location of open space may be considered for recommendation and approval as part of a PUD when the following requirements are met:

- (1) All single-family residential lots shall front on a public street right-of-way.
- (2) Provision shall be made for adequate separation between the fronts of buildings.
- (3) Lot widths and depths shall be adequate for residential construction in accordance with established building codes.
- (4) Building lines shall be established to provide adequate off-street parking for each residential unit.
- (5) Provision shall be made for compensating open space with the PUD.
- (6) Justification shall be made for the design of the subdivision.
- (7) A finding shall be made that there is no negative impact on health, safety or welfare in the area.

(Ord. No. 2005-24, § 1, 10-18-05)

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DIVISION 6. DUPLEX SUBDIVISIONS

***DIVISION 6. DUPLEX SUBDIVISIONS***

[Sec. 25-114. Duplex subdivision.](#)

[Sec. 25-115. Reserved.](#)

**Sec. 25-114. Duplex subdivision.**

For purposes of this chapter, "duplex" shall be defined as a building containing two (2) dwelling units to be occupied by two (2) families living independently of each other. A duplex subdivision shall meet all of the requirements of division 1 and 2 of this article, as well as all other requirements in this chapter, the provisions of this division being variations permitted specifically for duplex subdivisions. The following building lines, set back lines, and parking requirements shall be established for all duplexes/duplex subdivisions, and so indicated on all subdivision plats as delineated below:

- (1) *Minimum lot size.* The minimum lot size shall be eight thousand (8,000) square feet.
- (2) *Minimum lot width.* The minimum lot width shall be eighty (80) feet.
- (3) *Minimum rear setback.* The minimum rear setback shall be twenty-five (25) feet.
- (4) *Setback—Corner lots.*
  - a. A minimum building setback of twenty-five (25) feet shall be provided on the front and fifteen (15) feet on the side of all corner lots where such lots side upon minor streets.
  - b. A minimum building setback of twenty-five (25) feet shall be provided on the front and twenty (20) feet on the side of all corner lots where such lots side upon collector streets.
  - c. A minimum building setback of twenty-five (25) feet shall be provided on the front and twenty-five (25) feet on the side of all corner lots where such lots side upon thoroughfares.
- (5) *Setback—Interior lots.* A minimum building setback of twenty-five (25) feet shall be provided on the front and ten (10) feet on each side of all interior lots fronting on minor and collector streets and thoroughfares.
- (6) *Minimum on-site parking.* There shall be a minimum of four (4) on-site covered parking spaces per duplex within the required building lines, setback requirements.
- (7) *Access restriction.* There shall be no driveway access permitted to any lot from a collector or thoroughfare street.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-115. Reserved.**

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ARTICLE IV. PARK LAND, PUBLIC SITES AND OPEN SPACES

**ARTICLE IV. PARK LAND, PUBLIC SITES AND OPEN SPACES**

[Sec. 25-116. Areas for public use.](#)

[Sec. 25-117. Park land dedication.](#)

[Sec. 25-118. School sites.](#)

[Sec. 25-119. Public facilities.](#)

[Sec. 25-120. Wetlands.](#)

[Secs. 25-121—25-130. Reserved.](#)

**Sec. 25-116. Areas for public use.**

The subdivider shall give consideration to suitable sites for parks, playgrounds, schools, and other areas for public use so as to conform to with the recommendations of the city council and comprehensive master plan. Any provisions for schools, parks, and other public uses, shall be indicated on the preliminary plat.

(Ord. No. 2005-24, § 1, 10-18-05; Ord. No. 2006-08, § 2, 5-16-06)

**Sec. 25-117. Park land dedication.**

(a) *Purpose of land dedication requirements.* This section is enacted in accordance with the home rule powers of the city, granted under the Texas Constitution, and the Statutes of the State of Texas, including, but not by way of limitation, Texas Local Government Code, Chapter 212, as amended. It is hereby declared by the city council that open space and recreational areas in the form of parks are necessary for the health, safety, and welfare of the public. It is further declared by the city council that the only procedure to provide for such open space and recreational areas is by integrating such a requirement into the procedure for the planning and development of property or subdivisions in the city limits or extraterritorial jurisdiction of the city. All single-family and multiple-family residential subdivisions, therefore, shall be required to comply with this section.

The primary purpose of the parkland requirements is to ensure that the need for parkland that arises from new development is satisfied by the development, so that those who generate the need for park areas and recreation facilities contribute their proportionate share. Accordingly, when new development occurs, a reasonable contribution is to be made for open space for those who live in the new development so that they may engage in active and passive recreational activities within or near the new development. In some instances, the need for parks resulting from new development may be addressed most effectively through the development and acquisition of community or regional parks, or the improvement or expansion of an existing park, serving several neighborhoods.

It shall be required that a developer of any residential subdivision set aside and convey to the public sufficient and suitable lands for the purpose of parkland, or contribute cash in lieu of land conveyance, or a combination thereof, as determined by the planning and zoning commission.

The requirements for the conveyance of parkland established by this section are based in part on the goals and recommendations, needs and standards set forth in the parks and recreation master plan, as amended from time to time, and adopted by the city council. The master plan describes the needs prioritization and implementation plan, standards for parks and recreation units, as well as goals and objectives.

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ARTICLE IV. PARK LAND, PUBLIC SITES AND OPEN SPACES

- (b) *Application.* This section applies to all property within the city limits and extraterritorial jurisdiction of the city. This section also applies to subdivision applications submitted after the effective date of this section, for which plat approval is sought under Chapter 25, Subdivision Regulations, of the Code of Ordinances, as may be amended from time to time.
- (c) *Exemptions.* This section shall not apply and have no effect on the following:
- (1) Any subdivision that a final plat application has been filed prior to the passage of this section.
  - (2) A division of land into parts greater than five acres, where each part has access and no public improvement is being dedicated, pursuant to Texas Local Government Code, Section 212.004, Plat Required, Subchapter A, Regulation of Subdivisions.
  - (3) Alterations or expansion of an existing residential unit or building of multiple units where no additional residential units are created and where the use is not changed.
  - (4) The construction of accessory buildings or structures.
  - (5) The installation of a replacement HUD-Code manufactured home.
  - (6) The replacement of a destroyed or partially destroyed residential unit or building of multiple units with a new building of the same size and use.
- Any claim of exemption shall be made no later than the time of application for preliminary plat approval. Any claim not so made shall be deemed waived.
- (d) *Definitions.*
- (1) *Cash contribution* refers to an equivalent cash value contribution to the city for parkland property acquisition or parkland development costs in lieu of dedication of actual parkland property.
  - (2) *Community park* refers to a larger park that serves a broader purpose than other types of parks. The main focus is on meeting community-based recreation needs, as well as preserving valued landscapes and open spaces. The location of community parks is determined by the quality and suitability of the site, relevant to its proximity to new development and other parks and open spaces. A community park serves two or more neighborhoods and has a primary service area within one mile of its location. A community park is sized to meet its needs and is typically a minimum of ten to 25 acres.
  - (3) *Effective date* refers to the date upon which the city council adopted the ordinance enacting this section.
  - (4) *Land plan* refers to a general master plan for an area proposed for partial or complete subdivision. The land plan shows the proposed locations of land uses, streets, phasing of development, important physical features, and other applicable information for the entire area to be subdivided.
  - (5) *Mini-park* is intended for passive use and limited recreational activity of the immediate neighbors. They are typically developed within apartment complexes, manufactured home parks, and other heavily populated developments and are designed to serve the needs of the immediate population.
  - (6) *Neighborhood park* refers to the basic unit of the park system, which is intended to serve as a recreational focus of the neighborhood. It is typically one quarter to one half mile distance from all areas it serves and uninterrupted by arterial roads, highways, and other barriers to safe use. The site should be accessible from throughout its service area by way of interconnecting sidewalks or trails. The minimum size of a neighborhood park is five acres. The shape of the parkland shall be conducive to meeting its purpose as an area for both active and passive recreation.

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- (7) *Open space* is parkland that is to be kept essentially unimproved and dedicated for public or private use. The primary function of this type of parkland is to preserve vegetated areas and tree lines as well as to conserve sensitive resources. Open space may be required for dedication to the public or restricted by conservation easement in the favor of the city.
  - (8) *Parkland* refers to the actual property on which the public park will be situated. It is also referred to as the property to be dedicated by the property owner to the city pursuant to these parkland dedication requirements.
  - (9) *Parkland contribution* refers to the actual dedication of parkland property to the city by way of plat note and/or general warranty deed.
  - (10) *Parkland improvements* include those improvements to the city-owned parkland that allow the parkland to be utilized as public parks, including, but not limited to, new construction, renovation, and replacement of existing facilities that are functionally obsolete or unsafe.
  - (11) *Private park* is one that is owned in fee and fully maintained by a homeowners' association or other designated organization. They are designed and constructed by the developer and for use of residents only within the neighborhood.
  - (12) *Regional parks* are large acreages that usually have distinct natural qualities for outdoor recreation, such as nature observance and habitat conservation, as well as active recreational areas for swimming, picnicking, hiking, fishing, boating, camping, and other uses. These facilities are a minimum of 150 acres in size and attract visitors within a one hour driving distance.
- (e) *Park zones.* Park zones established by the city council, after recommendation from the parks board, and shown on the parks and recreation system plan, which is included in the adopted Rosenberg Parks and Recreation Master Plan, shall be prima facie proof that any park located therein is within such a convenient distance from any residence located therein. The primary costs of neighborhood and community parks should be borne by the ultimate residential property owners who, by reason of the proximity of their property to such parks, shall be the primary beneficiaries of such facilities.

Therefore, the following requirements are established to effect the purposes stated above and shall apply to any land to be used for residential purposes.

- (f) *Parkland dedication, fee in-lieu, and public or private development.* Dedication of land suitable for parkland and recreation purposes or a contribution of cash in lieu of parkland shall be required for a subdivider who proposes to plat land under the city's subdivision regulations, as may be amended from time to time.

*Subsequent change.* If the actual number of completed dwelling units exceeds the figure upon which the original dedication or cash contribution was completed, such additional dedication or cash contribution shall be required, and shall be made by payment of cash in lieu of land, or by conveyance of an equivalent land area. All new lots within a replat or addition to an existing subdivision shall comply with the parkland dedication or cash contribution requirements as outlined in this subsection, as specified below.

*Methods of dedication, contribution, or development:*

- (1) *Parkland dedication.* Whenever a final plat is filed of record with the County Clerk of Fort Bend County for residential development in accordance with the platting regulations of the City, such plat shall contain a clear fee simple dedication of an area of land to the City for park purposes.
  - a. *On-site conveyance of parkland.* The amount of land required to be dedicated for parkland will be calculated at a rate of six and one-quarter acres of parkland per 1,000 residents, or an equivalent ratio thereof. The following formula shall be used to determine the amount of parkland to be dedicated:

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6.25 x (No Units) x (Persons/Unit) = Acres to be dedicated 1,000

The number of persons per unit is based on an average household size of 3.00 persons per household.<sup>1</sup> This ratio shall be reviewed and adjusted from time to time, as necessary.

<sup>1</sup> Source: U.S. Census Bureau.

- i. *Land plan.* Parkland to be conveyed or privately owned shall be designated on the land plan with its general location and acreage denoted.
  - ii. *Preliminary and final plats.* Parkland to be conveyed shall be designated as a reserve on both the preliminary and final plats as "Parkland Dedicated to the City of Rosenberg" with the perimeter dimensions and acreage denoted. A note referencing the dedication shall be placed on the final plat. Parkland to be privately owned shall be designated as a private park reserve and so noted on both the preliminary and final plat.
  - iii. *Deed required.* Prior to recording the final plat, the subdivider shall deliver to the city a deed, in a form approved by the city attorney, conveying parkland shown on the final plat as approved by the planning and zoning commission. The parkland deeded to the city shall not be subject to reservations of record, encumbrances or easements that will interfere with the use of the land for park purposes. The deed delivered to the city shall be recorded in conjunction with the recordation of the final plat.
- b. *Off-site conveyance of parkland.* Upon affirmative recommendation from the parks board and planning and zoning commission and approval of the city council, the city may accept parkland that is not part of a subdivision in order to meet the parkland requirement, subject to the following:
- i. The site proposed to meet the parkland requirement is within the same park zone as that ordinarily required within the subdivision; and
  - ii. The site meets the park development standards of this section, as described in (g) below; and,
  - iii. The site exceeds that required by the subdivision or addition, as specified in (d)(1) above by 20 percent, and
  - iv. A deed shall be required in accordance with the provisions of 1.a.ii above.
  - v. No park less than ten acres in size shall be conveyed to the city.
- c. *Park improvements required.* Parkland conveyed to the city shall be improved as required by this paragraph. The subdivider shall indicate the proposed parkland improvement(s), which shall be constructed in accordance with the site plan, as required in (i) below. Such improvements shall be completed by the subdivider within the time period specified for construction of public improvements in (i) below. An improved park shall, at a minimum, include the following:
- i. Paved frontage with curbs and gutters for all required street frontages abutting the outside perimeter of the parkland;
  - ii. A sidewalk or trail installed in the park, and/or sidewalk installed along all street frontage of the park with the location approved according to the approved site plan;
  - iii. Water, wastewater, electrical services, and all other utilities provided to the remainder of the subdivision shall be provided to the park as part of standard subdivision improvements;

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- iv. Lighting along those portions of the required street frontage(s) as well as ample overhead and/or bollard lighting within and throughout the park to provide for a safe and secure environment; and,
- v. The grading of site and installation of grass with irrigation.
- vi. Permanently constructed restroom facilities built to city standards and the requirements of the American's with Disabilities Act (ADA). Restroom facilities are required for parks that are three acres or larger in size. Developments for which the cumulative required park acreage is less than three acres in size shall pay a fee equal to 60 percent of the development fee required under subsection (f)(2) below;
- vii. One playscape structure and edged fall surface area with a minimum capacity of 15 children, per industry standards;
- viii. Covered picnic table, grill, and trash container at a rate of one per acre, or portion thereof;
- ix. Drinking fountain at a rate of 0.25 per acre, but no less than one per park; and,
- x. Park benches at a rate of two per acre, but no less than two per park.

All park areas and playground equipment shall be in accordance with the *U.S. Consumer Products Safety Commission, Publication 325*, as currently amended.

- (2) *Cash in lieu of parkland.* The city requires a dedication of land to satisfy at least a portion of the requirements of this section. The amount of parkland that must be dedicated shall equal at least 50 percent of the parkland dedication requirements, provided that the area of such amount equals at least 5,000 square feet. The city may, at its option, require a parkland fee to satisfy the remaining amount of parkland conveyance required, under the following circumstances:
- a. When less than five acres is required to be conveyed;
  - b. Where the proposed parkland does not meet the standards set forth in (g) below;
  - c. When a replat or amending plat within the city limits is submitted with increased density; or,
  - d. The city determines that sufficient park area is already in the public domain in the zone of the proposed development, or the potential for that area would be better served by expanding or improving an existing park or constructing a larger community or regional park suitable for several neighborhoods.

*In-lieu fee amount.* Where the payment of a fee-in-lieu of parkland dedication is required or acceptable to the city council as provided for in this section, such fee shall be in an amount of \$950.00 per residential dwelling unit.

*Development fee.* In addition to the fee in-lieu of land dedication, there shall also be a fee in the amount of \$750.00 per residential dwelling unit, which is equivalent to the amount of required improvements as specified in (f)(1)c. above.

*Timing of payment.* Such payment in lieu of land shall be made at or prior to the time of filing the final plat for record in the county deed records at the courthouse.

*Use of cash contribution.* Cash payments may be used only for acquisition or improvement of a neighborhood park located within the same park zone as the development. However, it is hereby provided that all fees may be applied to any type of park site if all requisite criteria for the other types of park facilities have been met, as determined by the city. Fees paid in lieu of land for neighborhood parks may be utilized for a community or regional park if such use satisfies the purposes of land dedication as provided for herein, as determined by the city.

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*Special fund; right to refund:*

- a. There is hereby established a special fund for the deposit of all sums paid in lieu of parkland dedication under this section, which fund shall be known as the "Parkland Dedication Fund." Funds shall only be released from the parkland dedication fund upon city council approval of a plan to utilize the funds to build or enhance a park within the park zone from which the funds originated.
  - b. The city shall account for all sums paid in lieu of land dedication under this section with reference to the individual plats involved. Any funds paid in lieu of land must be expended by the city within ten years after the filing of the final plat, or the filing of the final plat of each phase or section of the contributing subdivision, if a phased development. Such funds shall be spent on a first in, first out basis for each area. If not so expended, the owner(s) of the property on the last day of such period shall be entitled to a pro rata refund of such sum, computed on a square footage of area basis. The owner(s) of such property must request such refund within one year of entitlement, in writing, or such right shall be barred.
- (3) *Private parkland credit.* Where park areas and recreational facilities are to be provided in a proposed subdivision, and where such areas and facilities are to be privately owned and maintained by the future residents of the subdivision, these areas and facilities may satisfy the requirement of parkland dedication if the following standards are met:
- a. The private ownership and maintenance of such areas and facilities are adequately provided for by recorded written agreement, conveyance, or restrictions.
  - b. The use of such areas and facilities are restricted for park and recreational purposes by a recorded covenant, which runs with the land in favor of the future owners of property and which cannot be defeated or eliminated without the consent of the city council.
  - c. Such areas and facilities for which credit is given shall include improvements for the basic needs of a local park. These improvements must be equivalent to that required in (f)(1)c. above to ensure that new neighborhood parks are provided with minimum standard amenities. These improvements shall be required before the final acceptance of the subdivision by the city council after recommendation from the planning and zoning commission.
  - d. All park areas and playground equipment shall be in accordance with the *U.S. Consumer Products Safety Commission, Publication 325*, as currently amended.
  - e. Dedicated parkland must be established with grass by the developer. This grass and an irrigation system must be installed and approved by the city building official or designee. The homeowners' association is responsible for the irrigation and maintenance of the property.

*Required documentation.* In order to receive the private parkland credit, the subdivider shall provide documents to the city at the time of final plat filing sufficient to establish that the requirements of (c) above have been satisfactorily met. In the event that the subdivider proposes to construct the improvements at a later date, as in a phased development, the city shall require that the subdivider obtain a surety bond, performance bond, or other form of guarantee that the recreational amenities will be installed concurrent with the build-out of the subdivision, and in no case greater than two years. The city planner and parks director shall evaluate and approve the documentation submitted prior to any credit being given. In cases where the equivalency of the improvements are disputed, the required level of improvements shall be as finally determined by the city council.

*Partial fee required.* Subdividers who propose to provide private "resident only" parkland shall pay to the city an amount equal to ten percent the amount of the mandatory dedication

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determined in accordance with (f)(2) above for deposit in the city's parkland dedication fund for purposes of defraying the financial burden private subdivisions impose on public parks elsewhere in Rosenberg. The value of the dedication provided under this section shall be calculated as specified in (f)(2) above.

*Dual park and easement, stormwater drainage facility, or nature reserve.* Land that is encumbered by easements, detention areas, lake and drainage channel borders, or other similar characteristics will qualify for private neighborhood parkland in accordance with the following calculation. Twenty-five percent of encumbered private parkland will qualify for private neighborhood parks (0.25:1 ratio), up to 50 percent credit. Additional conditions apply to encumbered parkland, including:

- a. Detention areas shall have (i) side slopes of a 5:1 ratio unless otherwise approved by the city, (ii) gravity flow or a pumping system designed to remove all algae, (iii) a bottom with a minimum area of 50 feet by 100 feet in dimension unless otherwise approved by the city, and (iv) field areas with a level, domed design suitable for field sports. Plans with proposed amenities must be approved by the city council, after recommendation from the planning and zoning commission. Plans with proposed amenities must be submitted with the preliminary plat in order to receive credit for detention areas.
  - b. Drainage ditches and lake borders shall have (i) side slopes of a 5:1 ratio unless otherwise approved by the city council, (ii) hike/bike all-weather paths, landscaping and sodding installed according to the construction standards of the city, (iii) an average minimum width of 30 feet and a minimum width of 20 feet beyond top of bank, and (iv) drainage ditches and lake borders with meandering, natural contour appearances.
  - c. Ten percent of lakes and nature reserves or land, which is generally undeveloped and unsuitable for organized recreational activities without substantial development effort, but which provides desirable aesthetic qualities, such as wetlands and other wooded areas, will qualify for private neighborhood parkland (0.10:1 ratio) up to 50 percent credit. Dry bottom detention ponds do not meet the definition of a lake or nature reserve.
- (4) *City purchase of parkland.* The city may from time to time decide to purchase land in or near the area of actual or potential development for a community park to serve such actual or potential development. If the city purchases parkland in a park zone, sufficient in size to entirely meet the needs of that zone, subsequent parkland dedications for that park zone shall be in cash. Such cash contribution shall be in the amount as specified in (2) above, which shall go toward reimbursement of the city for its costs to acquire and develop the land as a park.
- (g) *Park development standards.* Parkland conveyed to the city as provided in this section shall meet each of the standards set forth below:
- (1) The parkland shall have frontage on a street equal to or greater than the square root of the total square footage of park area to be conveyed.
  - (2) Unless otherwise approved by the city planner and parks director, parkland that is adjacent to a designated trail shall be designed and located within a subdivision or addition to allow for an extension or connection of a public park or public recreation facility within an abutting subdivision.
  - (3) A minimum of 50 percent of the dedicated parkland within a subdivision or addition shall be outside of the 100-year floodplain and shall have a size configuration and topography to be developable for active park purposes.
  - (4) Parkland shall not be encumbered with existing or proposed public utility easements or drainage channels that would unduly restrict the development of the site for recreational purposes.

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- (5) A proposed subdivision adjacent to a park or open space area shall not be designed to restrict reasonable access or visibility into the park. No lots shall have their rear yard abutting a public park unless public access is provided each 400 feet, or portion thereof.
  - (6) Street connections between residential neighborhoods shall be provided, wherever practicable, to provide reasonable access to parks and open space areas to all residents within reasonable proximity to such parks and open space areas. Proposed access and public availability of parkland, both physical and visual, shall be recommended by the planning and zoning commission and approved by the city council.
  - (7) In any instance where acreage is dedicated to the city or a homeowners' association as a park or greenway under this section, the dedicating party shall also dedicate a cleared access of at least 20 feet in width from a publicly dedicated street to the park or greenway. The city may waive this requirement if it determined that public street access is sufficient to meet the intent of this requirement.
  - (8) Areas within a school site may be utilized to partially meet the parkland dedication requirements upon approval of the planning and zoning commission and approval of the city council, as well as the school district board. Areas in a school site may receive a credit toward the required land dedication subject to approval by the planning and zoning commission and final approval by the city council. Such credit shall be on a case-by-case basis and subject to standards as may be determined and considered necessary and appropriate by the city.
  - (9) The location of dedicated parkland may be required at the edge of a subdivision so that additional land may be added at such time as adjacent land is subdivided or acquired for public use. Otherwise, a centralized location is preferred.
  - (10) Any residential street built adjacent to a park shall be constructed to collector width to ensure access and prevent traffic congestion.
  - (11) Sites should have and retain existing trees or other scenic elements.
  - (12) Where a non-residential use must directly abut a park, the use must be separated by a screening wall or fence and landscaping. Access points to the park from the non-residential use may be allowed by the planning and zoning commission if a public benefit is established.
- (h) *Parks and recreation master plan considerations.* The parks and recreation master plan is intended to provide the city with a guide upon which to base future decisions. Because of the need to consider specific characteristics in the site selection process, the park locations indicated in the plan are general. The actual locations, sizes, and number of parks will be determined when development occurs. The plan will also be used to locate desirable park sites before development occurs, and those sites may be purchased by the city or received as donations.

Park zones are established in the parks and recreation system plan of the adopted Rosenberg Parks and Recreation Master Plan. These zones are configured to indicate the service areas for community parks. Neighborhood parks shall have a minimum separation of one-half mile from the boundaries of other neighborhood or community parks and shall, to the extent practicable, be distributed evenly across the designated park zones. The appropriate location and spacing of neighborhood parks shall be determined by the planning and zoning commission through the subdivision development process. Zone boundaries are established that follow, to the extent practicable, key topographic features such as major thoroughfares, streams, and city limit and extraterritorial jurisdiction (ETJ) lines.

- (i) *Site plan submission and approval.* A site plan must be submitted to the city planner and parks director for review, which shall be approved by the planning and zoning commission prior to final plat submittal or upon application of a building permit, as applicable. Such site plan shall include the following:
  - (1) North arrow and scale.

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- (2) Vicinity map indicating the general location of the site and its relationship with adjacent and nearby streets, watercourses and similar features in all directions from the site to a distance of 200 feet.
- (3) Existing and finished grades or contours at one foot intervals.
- (4) Identification of any areas on the site or within 200 feet that is within the 100-year floodplain.
- (5) Sufficient dimensions to indicate relationship between buildings, property lines, parking areas, fields and courts, playground areas, and other elements of the plan.
- (6) Proposed location of buildings and other structures, fields and courts, playground areas, parking areas, drives, screening, drainage patterns, public streets and any existing easements.
- (7) Location, massing and pattern of existing vegetation and the general extent and character of proposed landscaping and tree preservation.
- (8) Existing streams, drainage channels, and other bodies of water.
- (9) Focal points and site amenities.
- (10) Existing structures on the site and within 100 feet of the site.
- (11) Street and traffic patterns affecting the site including the location of traffic control devices.
- (12) Pedestrian and vehicular circulation patterns and improvements.
- (13) Surrounding uses, activities and influences of the site and adjacent properties within 200 feet, including:
  - a. Any public streets.
  - b. Any drives that exist or which are proposed to the degree that they appear on plans on file with the city.
  - c. Any buildings that exist or are proposed to the degree that their location and size are shown on plans on file with the city. One- and two-family residences may be shown in approximate location and general size and shape.
  - d. The location, size, cross-section and calculation of any drainage structures, such as culverts, paved or earthen ditches or storm sewers and inlets.
- (14) Typical building elevations depicting the style, size and exterior construction materials of the buildings proposed. Where several building types are proposed on the plan a separate sketch shall be prepared for each type.
- (15) The boundary lines of the area included in the site plan, including bearings, dimensions and reference to a point on a recorded plat.
- (16) Proposed utility connection layouts for water, sewer and electricity.
- (17) Name and address of the land owner, applicant, architect, landscape architect, planner, engineer, surveyor, or other person involved in the preparation of the plan.
- (18) Date of preparation of the site plan.
- (19) Signature block for appropriate city officials.

Within 12 months from the date of site plan submission, the subdivider or landowner shall submit detailed plans and specifications for review and approval, which shall be in substantial compliance with the site plan. The construction of all improvements shall be complete within 12 months from the date of approval of the plans and specifications.

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*Completion and acceptance.* Park development will be considered complete and a certificate of completion will be issued after the following requirements are met:

- (1) Improvements have been constructed in accordance with the approved plans.
- (2) All parkland upon which the improvements have been constructed have been dedicated as required by this section.
- (3) All manufacturer warranties have been provided for any equipment.

Upon issuance of a certificate of completion, subdivider or landowner warrants the improvements for a period of one year. The subdivider and/or landowner shall be liable for any costs required to complete park development if:

- (1) Subdivider fails to complete the improvements in accordance with the approved plans.
  - (2) Subdivider fails to complete any warranty work.
- (j) *Consideration and approval.* Unless provided otherwise in this section, an action by the city shall be by the city council, after consideration of the recommendations of the planning and zoning commission and, as applicable, the parks board.
- (k) *Review of dedication requirements.* The city shall review the fees set forth in this section each year. The city shall take into account inflation as it affects land and park development costs as well as the city's targeted level of service for parkland per 1,000 population.

(Ord. No. 2005-24, § 1, 10-18-05; Ord. No. 2006-08, § 2, 5-16-06; Ord. No. 2007-28, § 1, 8-21-07)

**Sec. 25-118. School sites.**

School sites for public schools shall be coordinated with the appropriate school district within whose jurisdiction the plat lies.

(Ord. No. 2005-24, § 1, 10-18-05; Ord. No. 2006-08, § 2, 5-16-06)

**Sec. 25-119. Public facilities.**

Public facilities such as fire stations, libraries, municipal, schools, county, and municipal utility district buildings shall be indicated on a plat. The location of these facilities shall be coordinated with the applicable governing body and in compliance with the comprehensive plan of the city.

(Ord. No. 2005-24, § 1, 10-18-05; Ord. No. 2006-08, § 2, 5-16-06)

**Sec. 25-120. Wetlands.**

If there are any areas previously designated which constitute wetlands by federal law, these areas shall be indicated on the plat and any restrictions on these areas shall be noted on the plat.

(Ord. No. 2005-24, § 1, 10-18-05; Ord. No. 2006-08, § 2, 5-16-06)

**Secs. 25-121—25-130. Reserved.**

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**ARTICLE V. IMPROVEMENTS AND ACCEPTANCE OF THE SUBDIVISION**

[Sec. 25-131. Improvements.](#)

[Sec. 25-132. Flood damage prevention.](#)

[Secs. 25-133—25-135. Reserved.](#)

**Sec. 25-131. Improvements.**

- (a) The requirements of the subdivision regulations as set forth below are designed and intended to ensure that for all subdivisions of land within the scope of the subdivision regulations, all improvements as required herein are installed in a timely manner in order that:
  - (1) The city can provide for the orderly and economical extension of public facilities and services;
  - (2) All purchases of property within the subdivision shall have a usable buildable parcel of land.
  - (3) All required improvements are constructed in accordance with city standards.
- (b) The public improvements required by the city for the acceptance of the subdivision by the city shall include, but are not limited to the following:
  - (1) Water and sewer facilities;
  - (2) Drainage facilities;
  - (3) Streets;
  - (4) Street lights;
  - (5) Street signs;
  - (6) Traffic control devices required as part of the project and appurtenances to the above, and any other public facilities required as part of the proposed subdivision; and
  - (7) Public land or public park construction.
- (c) All aspects of the design and implementation of public improvements shall comply with the current design standards and any other applicable city codes and ordinances, including preparation and submittal of construction plans and construction inspection.
- (d) All subdivisions in the extraterritorial jurisdiction shall also be reviewed and approved by the county engineer's office and the county commission.
- (e) Prior to the final approval of construction of the streets and utilities, monumentation for the subdivision shall be in place for the perimeter, right-of-way corners, angle points, and points of curvature using an iron pipe or rod of not less than five-eighths (5/8) inch in diameter and thirty-six (36) inches long and set flush with finished grade or top of curb. Plat boundary corners shall be set and shall include a cap or tag with the surveyor's identification. Acceptance by the city shall be contingent upon proper documentation. All lot corner monuments shall be set prior to the issuance of a building permit or the beginning of principal building construction. The lot corner monuments shall be iron rods not less than one-half (1/2) inch in diameter and twenty-four (24) inches in length.
- (f) The final approval of the construction and acceptance of the improvements in a subdivision shall be in accordance with the guidelines established in the current design standards.
- (g) The city shall not issue any permits for construction within the subdivision, within the corporate limits, except permits to construct public improvements until such time as all public improvements of the

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subdivision have been constructed and accepted by the city or a certified check, performance bond or letter of credit is provided to and accepted by the city. A notation stating the above shall appear on each final plat.

- (h) Before considering the final plat of a subdivision located all or partially within the city and/or the city's extraterritorial jurisdiction, the city council must be satisfied that all public improvements required will be constructed in accordance with the design standards requirements. The subdivider shall, unless the city council has determined otherwise, guarantee these public improvements will be constructed in one (1) of the following ways:
- (1) Deposit a certified check with, and payable to, the city in an amount equal to the cost to complete such public improvements, including the cost of remaining engineering and inspection services.
  - (2) Furnish the city with a performance bond executed by a surety company authorized to do business in the State of Texas in an amount equal to the cost to complete such public improvements. The performance bond shall be subject to the approval of the city attorney and must be executed by a corporate surety in conformance to Article 5160 V.A.C.S.; or
  - (3) The subdivider shall furnish the city with a letter of credit payable by an acceptable financial institution to the city in a form approved by the city attorney, guaranteeing the payment of an amount equal to the cost to complete such public improvements. The letter of credit shall be irrevocable and shall be for a term sufficient to cover the twelve-month period plus an additional thirty (30) calendar days and require only that the city present the issuer a letter signed by an authorized representative of the city certifying to the city's right to draw or collect funds under the specific terms of the letter of credit.
  - (4) As an alternative to providing one (1) of the above financial securities, the following may occur:
    - a. Upon approval of the final plat by the city council and prior to it being signed by the city council members, and before said final plat shall be allowed to be recorded in the plat records of the county, the subdivider requesting final plat approval shall, within the time period for which the final plat has been approved by the city, construct all improvements as required by these subdivision regulations and provide a surety instrument guaranteeing their maintenance as required herein. In the event that all public improvements have not been constructed at the time the subdivider requests plat recordation, the subdivider shall provide financial security as described in paragraphs 1., 2. or 3., above in the amount of the improvements not previously constructed. Prior to city council granting this specific approval, the subdivider must request in a letter to the city that the plat will not be recorded in the deed records of the county until such public improvements are constructed or otherwise guaranteed.
    - b. In all instances the original copy of the final plat without benefit of required signatures of city officials shall be held in escrow by the administrative officer and shall not be released for any purpose until such time as the conditions of the approval are complied with.
    - c. Upon the requirements of this section being satisfied, the final plat shall be considered fully approved, except as otherwise provided for in these regulations. The original copy of the final plat shall be signed by the appropriate city officials and the administrative officer shall cause said final plat to be filed in the plat records of the county, or forwarded to the county for final approval and recordation.
    - d. In the event that a performance bond or a letter of credit is the method selected by the subdivider for guaranteeing such improvements, such document shall be subject to the condition that the public improvements will be completed within twelve (12) months after approval of the final plat by the city council, unless a longer time shall be approved by the city council upon the determination that such longer time period would not be

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unreasonable. In the event that the required public improvements guaranteed by such performance and/or such letter of credit are not or will not be completed within the time specified by the city council, the city council shall have the authority to extend the time period within which the subdivider shall complete the public improvements, subject to the extension of the expiration date of the approval of the plat and the performance bond or letter of credit.

- (i) *Security.*
- (1) *Waiver of security.* The city council may waive all or a portion of the security requirements of this section if it finds that the public health, safety and general welfare will not be harmed by such waiver. The city council shall take into consideration the extent of public improvements to be installed, the likelihood that such improvements will be installed by the subdivider within the twelve-month period, the impact that may result if such improvements are not timely installed, and the hardship to the subdivider if the security requirements are imposed.
  - (2) *Release of security.* As a portion of the public improvements are completed in accordance with the design standards, the subdivider may make application to the administrative officer to reduce the amount of the original letter of credit, performance bond or certified check. If the city council is satisfied that such portion of the public improvements has been completed in accordance with current design standards, the city council may cause the amount of the letter of credit, performance bond or certified check to be reduced by such amount that the city council deems appropriate, so that the remaining amount of the letter of credit, performance bond or certified check adequately insures the completion of the remaining public improvements.
  - (3) *Determination of amount.* A professional engineer licensed to practice in the State of Texas shall furnish estimates of the costs of engineering and construction of all required improvements to the administrative officer who shall review the estimates in order to determine the adequacy of the guarantee instrument for insuring the construction of the required facilities.
  - (4) *Coordination with county.* If the project is located in the extraterritorial jurisdiction and is subject to county bonding requirements, the subdivider may provide the financial security conforming to the above requirements in the name of the county, provided that the current county regulations stipulate that the security will not be reduced or released without written approval by the administrative officer, and provided that the instrument is transferable from the county to the city upon annexation.
- (j) Approval of final plats shall be deemed to have expired in subdivisions for which no assurances for completion have been posted or the improvements have not been completed within the period of one (1) year. In those cases where a surety instrument has been required and improvements have not been completed within the terms of said surety instrument, the city shall declare the surety to be in default and require that all the improvements be installed, unless extended under the provisions of this section.
- (k) The city shall inspect all required improvements to ensure compliance with city requirements and approved construction plans. When all required improvements have been satisfactorily completed, the city shall either accept, in writing, the improvements as having been satisfactorily completed, or shall issue a punch list to the developer denoting items remaining to be completed. The city shall not accept dedications of required improvements nor release or reduce a performance bond or other assurance until such time as it determines that:
- (1) All improvements have been satisfactorily completed;
  - (2) The required number of "as built" plans, in both hard copy and electronic formats, have been submitted to and accepted by the city;
  - (3) The required maintenance guarantee has been provided; and

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- (4) Any and all other requirements identified in this chapter or other city codes and ordinances have been satisfied.
- (l) Before the release of any instrument guaranteeing the construction of required subdivision improvements or the signing of the final plat where subdivision improvements were made prior to the filing of the final plat for recordation, the subdivider shall furnish the city, if in the city limits, or the county, if in the extraterritorial jurisdiction, with a maintenance bond or other surety instrument to assure the quality of materials, workmanship and maintenance of all required improvements. The maintenance bond or other surety instrument shall be approved by the city attorney as to form, sufficiency, and manner of execution. Said bond shall be in compliance with the design standards. Whenever a defect or failure of any required improvement occurs within the period of coverage, the city may require that a new maintenance bond or surety instrument be posted for a period of one (1) full calendar year sufficient to cover the corrected defect of failure.

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-132. Flood damage prevention.**

The lowest elevation of the first floor of all principal buildings is to be constructed at least one (1) foot above the one hundred-year floodplain. All public streets are to be designed such that the lowest top of curb elevation is equal to or above the one hundred-year floodplain elevation. The one hundred-year floodplain is considered to be the one hundred-year water surface elevation in the outfall channel or receiving stream designated to receive storm runoff from the proposed development. For levied areas subject to multiple outlet condition analysis conforming to the county's criteria, the aforementioned requirement is to be met for all conditions. Special consideration may be given to tracts containing natural aesthetic amenities within existing developed areas and served by existing outfall drainage facilities, where the addition of fill would result in the destruction of the amenities, and for which there is no other feasible method to meet the aforementioned criteria.

(Ord. No. 2005-24, § 1, 10-18-05)

**Secs. 25-133—25-135. Reserved.**

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**ARTICLE VI. MISCELLANEOUS**

[Sec. 25-136. Map update.](#)

[Sec. 25-137. Schedule of fees.](#)

**Sec. 25-136. Map update.**

The developer shall submit to the city a digitized copy of the entire subdivision at a scale appropriate to update the city maps and subdivision map. This copy shall comply with requirements established in section 25-35, Final Plat, subsection (n)(2).

(Ord. No. 2005-24, § 1, 10-18-05)

**Sec. 25-137. Schedule of fees.**

The following fees shall be charged and paid by any applicant seeking any authority under this chapter. All fees must be paid at the time an application for authority hereunder is made in accordance with the provisions of this chapter and in the amounts as herein specified:

- (1) Land plan/conceptual plan .....\$200.00
- (2) Preliminary plat:
  - a. Base .....500.00
  - b. Plus, per lot .....2.00
  - c. Plus, per acre of reserve .....10.00
- (3) Final plat:
  - a. Base .....300.00
  - b. Plus, per lot .....1.00
  - c. Plus, per acre of reserve .....5.00
- (4) Variance request .....200.00
- (5) Plan review fee—In an amount as determined by Chapter 6, section 6-27(7)(e) of the Code of Ordinances
- (6) Inspection fee, for water, sanitary sewer, drainage, and street improvements. Applicant shall provide estimated costs, and supporting information for determination of the cost of the project. These fees shall be payable on the earlier of the time of platting or upon request for a building permit. The fee shall be as follows:
  - a. One (1) percent of actual construction cost of projects of ten thousand dollars (\$10,000.00) or less, or
  - b. One hundred dollars (\$100.00) plus three-fourths ( $\frac{3}{4}$ ) of one (1) percent of actual construction cost on the incremental project value over ten thousand dollars (\$10,000.00) but less than fifty thousand dollars (\$50,000.00), or
  - c. Four hundred dollars (\$400.00) plus one-half ( $\frac{1}{2}$ ) of one (1) percent of actual construction cost on the incremental project value in excess of fifty thousand dollars (\$50,000.00).

PART II - CODE OF ORDINANCES  
Chapter 25 - SUBDIVISIONS

ARTICLE V. IMPROVEMENTS AND ACCEPTANCE OF THE SUBDIVISION

- (7) An applicant seeking authority under this Chapter 25, "Subdivisions" shall not be required to pay the fee for a building permit for the construction of water, sanitary sewer, drainage, and street improvements. However, the applicant shall be required to obtain a building permit before any construction is commenced.
- (8) Adjustments.
  - a. Adjustments to the above referenced fees and charges for application for authority hereunder shall be established from time to time by ordinance by the city council.
  - b. Such fees and charges shall be imposed on all applications seeking authority under this chapter regardless of the action taken by the commission and city council thereon. Additional fees shall be collected for the purpose of defraying the costs of administrative, clerical, inspection services and professional fees necessary to properly investigate the request for authority hereunder, as required prior to any final approval.

(Ord. No. 2005-24, § 1, 10-18-05)



**EXHIBIT D**  
**MEMORANDUM OF DEVELOPMENT AGREEMENT**

THE STATE OF TEXAS           §

§           KNOW EVERYONE BY THESE PRESENTS:

COUNTY OF FORT BEND       §

A Development Agreement (the "Agreement") was made and entered into as of \_\_\_\_\_, 2014, by and between the CITY OF ROSENBERG, TEXAS (the "City"), a municipal corporation in Fort Bend County, Texas, acting by and through its governing body, the City Council of Rosenberg, Texas, and DRY CREEK (HOUSTON) ASLI VII, LLC, a Delaware limited liability company (the "Developer")

The Developer owns, or may own, approximately 502.46 acres of land more particularly described in Exhibit "A" attached hereto (the "Tract")

The purpose of the Agreement is to define the City's regulatory authority over the Tract, to establish certain restrictions and commitments imposed and made in connection with the development of the land within the Tract, to provide certainty to the Landowner concerning regulation of the development within the Tract for a period of years, and to identify and establish a land plan and guidelines for development within the Tract.

A copy of the Agreement, and all exhibits, and supplements or amendments thereto, may be obtained from the City Secretary of the City of Rosenberg, Texas, upon payment of duplicating costs.

[EXECUTION PAGES FOLLOW]

EXECUTED as of \_\_\_\_\_, 2014.

**CITY OF ROSENBERG, TEXAS**

\_\_\_\_\_

ATTEST:

APPROVED:

\_\_\_\_\_  
CITY SECRETARY

\_\_\_\_\_  
CITY ATTORNEY

THE STATE OF TEXAS           §

§

COUNTY OF FORT BEND       §

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_, as Mayor of the City of Rosenberg, Texas, a Texas municipal corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

(NOTARY SEAL)



**EXHIBIT E**  
**FORM OF AGREEMENT FOR FIRE PROTECTION SERVICES**

**2014 FIRE PROTECTION AGREEMENT**

This Fire Protection Agreement (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Rosenberg, Texas (the "City") and Fort Bend County Municipal Utility District No. 184 (the "District"), a conservation and reclamation district created pursuant to Article XVI, Section 59 of the Texas Constitution.

RECITALS

The District is partially located within the extraterritorial jurisdiction of the City (the "ETJ"), and partially within its corporate limits. District and the City desire to enter into a Fire Protection Agreement pursuant to which the City will provide District fire protection services on a long-term basis.

NOW, THEREFORE, the City and District hereby covenant and agree as follows:

Section 1. Definitions. Unless the context indicates otherwise, the following words and phrases used in this Agreement shall have the meanings ascribed thereto:

"City" means the City of Rosenberg, Texas.

"District" means Fort Bend County Municipal Utility District No. 184.

"District's Territory" means that area within the District's boundaries as more particularly described on **Exhibit "A,"** attached here to and incorporated herein.

"Equivalent Single-Family Connections" or "ESFCs" means the daily amount of water and wastewater that is attributable to one single-family residential home, as determined by the City.

"Participating Entities" means the City and other entities included or to be included in the Service Area, as such area may be expanded by the City from time to time, that execute a fire protection agreement with the City pursuant to which they pay their share of the costs of designing and constructing Fire Station No 3 or a buy in charge. The District is not a Participating Entity.

"Service Area" means the area served by Fire Station No. 3, as identified and defined in **Exhibit "B,"** attached hereto and incorporated herein.

"Service Unit" means one residential unit or the amount of square footage for nonresidential property calculated as provided in Section 7(b)(1) and (2) hereof.

Section 2. Fire Protection Services.

(a) During the term of this Agreement, the City will provide Fire Protection Services to all persons, buildings, and property located within the District's Territory in the Service Area, as it may be expanded from time to time. The City will provide Fire Protection Services to the District in the same manner and with the same standard of care as it would to those properties, residences and structures in the City limits. In this Agreement, "Fire Protection Services" means all fire suppression and rescue services regularly provided by the City of Rosenberg Fire Department to persons and property located within its corporate limits on the effective date of this Agreement, except for the following: fire inspections of buildings and properties, code enforcement services, and arson investigations. The City also agrees to provide to District the City's ISO rating as it may vary from time to time.

(b) The parties acknowledge that the City must also respond to requests for Fire Protection Services in the corporate limits of the City and that the City has contracts to provide fire prevention services to other entities. In providing Fire Protection Services to the District, the City will follow its adopted standard operating procedures, subject to its right and discretion, without being in breach of this Agreement and without liability to the District or its occupants or residents, to determine:

- (1) whether Fire Protection Services are needed in a particular case;
- (2) whether and when personnel or equipment are available to respond to a request for Fire Protection Services;
- (3) the order in which to respond to requests for Fire Protection Services; and
- (4) the time in which to respond to a request for Fire Protection Services.

(c) The District assumes no responsibility for the reliability, promptness, or response time of the City. The District's sole obligation for provision of Fire Protection Services to District's Territory is to make payments as described in this Agreement.

Section 3. Facilities and Equipment.

(a) As of the date of this Agreement, the City has two (2) existing fire stations with a third under construction. The City currently owns four (4) pumpers (engines that carry the water hoses), one (1) pumper/ladder truck, and one (1) boat for water rescues, and other necessary equipment for the operation of its stations and trucks and has purchased or will purchase the needed additional equipment for Fire Station No. 3. In providing Fire Protection Services to District, the City shall be solely responsible for the operation and maintenance of its facilities and equipment.

(b) This Agreement shall not obligate the City to construct or keep any fire stations, fire trucks, fire equipment or fire personnel for the District's Territory or to designate, reserve, or devote all or part of the City's Fire Department's trucks, equipment, or personnel exclusively to or for District's Territory in carrying out this Agreement, but the City will use its best efforts to comply with State standards regarding fire suppression equipment.

(c) The parties acknowledge that in conducting fire suppression efforts in District's Territory, the City will use the fire hydrants, connections, and water supply and distribution systems (the "water distribution system"), and water supply available in District's Territory, but the City shall not be responsible for providing for, constructing, inspecting, maintaining, or repairing any part of the water distribution system in District's Territory and the City shall not be liable to District or any occupant or resident in District's Territory for any deficiency or malfunction of the water distribution system located in District's Territory.

The District makes no representations and assumes no responsibility for the type, quality, sufficiency or qualifications of the City's Fire Protection Service equipment used to serve District's Territory.

(d) District hereby acknowledges that the City has executed or will execute a similar Agreement with other districts and entities in the extraterritorial jurisdiction of the City that are within the Service Area of the proposed Fire Station No. 3. The failure of one or more of other entities to comply with their respective agreements shall not void this Agreement. However, the timing of various staffing levels by the City and the funding amounts outlined in this Agreement may vary as a result of one or more of the other entities failing to execute a similar agreement or failing to comply.

Section 4. Employees and Staffing. The City shall provide employees who meet minimum state qualifications to perform the Fire Protection Services required by this Agreement. District assumes no responsibility for the actions of the City's employees in performing their fire protection duties. District will make no recommendations and is in no way responsible for the sufficiency or qualifications of the City's employees. Fire Station No. 3 shall be staffed consistent with, and not in excess of, other City fire stations.

Section 5. EMS Service. The City intends to request Fort Bend County (the "County") to provide an EMS Ambulance (the "Ambulance") to be operated by the County from Fire Station No. 3. Upon execution of an agreement with the County, the City will allow the Ambulance, Ambulance personnel, and related equipment to make use of and operate from Fire Station No. 3. Neither the City nor District shall have any responsibility for the cost or expense to purchase, equip, operate, or maintain the Ambulance.

Section 6. District Election. District acknowledges that the City will institute a tiered rate structure for the payment of Fire Protection Services that provides a lower

rate for Participating Entities (the "Participating Rate"). District has elected not to contribute toward the costs of designing, constructing and equipping Fire Station No. 3 and acknowledges and agrees that District will not receive the lower rate but will pay the rate for entities that do not contribute (the "Non-Participating Rate"). Nor will District be entitled to any rebate from buy-in payments that any entities in the future may pay in order to receive the Participating Rate.

Section 7. Payment for Fire Protection Services.

(a) Although the City will provide Fire Protection Services to all property within the District's Territory, the rates charged by the City area based on residential units and Service Units as defined below. In consideration of the City providing Fire Protection Services, the District agrees to make monthly payments ("Monthly Payment") to the City calculated at the Non-Participating Rate as follows:

(1) Residential Properties. The District shall pay to the City a Monthly Payment of \$30.00 for each residential unit in the District that is connected to the public water supply system on or before last day of the previous month in advance of the provision of services. A residential unit shall mean any building or part of a building designed for permanent occupancy by one family. (A detached single family residence is one residential unit; a duplex is two residential units; and each living unit in an apartment complex is one residential unit). Such payments shall be due and payable on or before the fifteenth (15<sup>th</sup>) day of the month for the upcoming month's services. For example, payment for March services is due on or before February 15.

(2) Nonresidential Properties. The District shall also pay the City a monthly charge equal to \$30.00 per Service Unit. Each 2,000 square feet or part thereof of building floor area for every "improved nonresidential property" that is connected to the public water supply system in advance of the provision of services is one Service Unit. "Improved nonresidential property" means any improved real property, whether or not such property is tax-exempt, on which there is located a building or structure that is not residential property. The square footage used to determine the charge shall be based on the records of the Fort Bend Central Appraisal District.

(3) Calculation of Service Units. Before the commencement of Fire Protection Services and each November thereafter, District will provide the City will an accurate count of Service Units. The City will confirm the number of Service Units that will be charged for in the upcoming year and notify District of the number of Service Units.

(b) Bi-Annual Adjustment. The current rates will be in effect until changed by the City, which in no event shall occur sooner than December 31, 2015. Thereafter, the City shall have the right to adjust the Monthly Payments no more frequently than every two (2) years, beginning with the fees to be effective January 1, 2016, based on the

City's actual cost of service for the previous fiscal year; provided, however, that no increase will be effective unless and until the City provides sixty (60) days written notice to District of the new Monthly Payment. If the City decides to increase the Monthly Payment, the City will prepare a cost of service report to determine its actual costs to provide fire protection services for the previous year. The City will then provide the new rates (the "Updated Rates") to District with notice of the date such rates will become effective, which date may not be sooner than forty-five (45) days after the date the Updated Rates are provided to District. If District does not agree to the Updated Rates, District shall have the right to terminate this Agreement upon thirty (30) day's written notice to the City.

(c) **Extraordinary Cost Changes and Termination.** Notwithstanding any limitation in the preceding section, if any extraordinary event affects City's costs to provide fire protection services, the City may set a new rate effective upon sixty (60) days' notice to District. District shall have the right to terminate this Agreement if District does not agree with such rate.

(d) All Monthly Payments shall be due on or before the fifteenth (15<sup>th</sup>) day of each month. All monthly payments shall be paid by District to the City without notice for demand at the offices of the City located at 2110 4th Street, Rosenberg, Texas, unless District is notified otherwise. All or part of any Monthly Payments paid by District after the last day of the month is delinquent and shall be subject to a one-time late fee equal to ten percent (10%) of the delinquent amount. In the event that the District has not paid all amounts due within 30 days of the time they are due (not delinquent), the City shall have the right to terminate this Agreement by giving written notice to District.

(e) Alternatively, District may elect to make one annual payment in advance of the provision of Fire Protection Services. District shall notify the City of its desire to make annual payments and the City will advise District of the due date for such payment and the period covered by the payment. Payment shall be calculated based on the number of Service Units existing as of the end of the previous month. For example, if District wants to make an annual payment for calendar year 2015, the City will notify District of the date in December when payment is due and Service Units will be calculated as of November 30. If annual payments are made and District terminates this Agreement prior to the completion of the year for which payment was made pursuant to District's rights under this Agreement, the City will refund to District an amount equal to the number of full months remaining in the paid year after the date of termination. For example, if District pays for the period from January 1 through December 31 and then terminates on May 20, the City will refund the payments attributable to the period from June 1 through December 31.

**Section 8. Term and Termination.** This Agreement will be in full force and effect upon the date first written above. The Agreement will continue in effect for twenty (20) years (the "Initial Term") and shall be automatically renewed thereafter for successive one-year terms. After the end of the Initial Term, either party may terminate this Agreement by giving written notice to the other at least one (1) year prior to the date

of termination, subject to District's right to terminate as otherwise specifically provided in this Agreement.

Section 9. Default. Either party may declare a default hereunder if the other party fails, refuses, or neglects to comply with any of the terms of this Agreement. If a party declares a default of this Agreement, this Agreement shall terminate after notice and opportunity to cure as provided for herein. The party declaring a default shall notify the other party of any default in writing in the manner prescribed herein. The notice shall specify the basis for the declaration of default, and the party shall have thirty (30) days from the receipt of such notice to cure any default (except when curing the default requires activity over a period of time in excess of thirty (30) days, performance shall commence within thirty (30) days after the receipt of notice, and such performance shall be diligently continued until the default is cured). If the default is not cured within the cure period, as it may be extended by agreement of the parties, the non-defaulting party shall then have the right to terminate by giving the defaulting party written notice of default, which shall be effective upon the defaulting party's receipt of such notice.

Section 10. Notice. All notices shall be in writing and given by certified mail with return receipt requested, with receipt as of the date of the signed receipt. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purpose of notice, the addresses of the parties shall, unless changed as hereinafter provided, be as follows:

If to the City:           City of Rosenberg  
2110 4th Street  
Rosenberg, Texas 77471-0032  
Attn: City Manager

If to the District:       Fort Bend County Municipal Utility District No. 184  
c/o James A. Boone  
Allen Boone Humphries Robinson LLP  
Phoenix Tower  
3200 Southwest Freeway  
Suite 2600  
Houston, Texas 77027

The parties shall have the right to change their respective addresses and each shall have the right to specify their respective new addresses by at least fifteen (15) days written notice to the other party.

Section 11. No Additional Waiver Implied. No waiver or waivers of any breach or default or any breaches or defaults by either party hereto of any term, covenant, condition, or liability hereunder, or of performance by the other party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances. The City and District specifically reserve all defenses, immunities and privileges accorded by law.

Section 12. Modification. This Agreement shall be subject to change or modification only with the written mutual consent of the parties hereto.

Section 13. Severability. The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section or other part of this contract or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section or other part of this contract to other persons or circumstances shall not be affected thereby.

Section 14. Agreement Not for Benefit of Third Parties. This Agreement is not intended to benefit any party other than the parties to this Agreement or to impose any duty upon the City or District toward any person or entity not a party hereto.

Section 15. Liability. The City shall not be liable to District or any other person for its decisions in the manner or method of providing Fire Protection Services under this Agreement. This Agreement is not intended to waive or alter any defense, privilege or immunity the City or District has under State law for claims arising from the performance of this Agreement, including the failure to provide or the method of providing Fire Protection Services under this Agreement.

Section 16. Superseding Agreement. This Agreement supersedes all prior agreements between the parties regarding the provision of fire protection services.

IN WITNESS WHEREOF, the parties have executed this Agreement in multiple copies, each of which shall be deemed an original as of the date and year first written above, to be effective as of the date specified in Section 8 hereof.

**Fort Bend County Municipal Utility  
District No. 184**

By: \_\_\_\_\_  
Name: \_\_\_\_\_, President

**CITY OF ROSENBERG, TEXAS**

\_\_\_\_\_  
Vincent M. Morales, Jr., Mayor

ATTEST:

\_\_\_\_\_  
Linda Cernosek, City Secretary

**EXHIBIT A**  
**District's Territory**

**EXHIBIT B**  
**Service Area for Fire Station No. 3**

**EXHIBIT F**  
**FORM OF STRATEGIC PARTNERSHIP AGREEMENT**

**STRATEGIC PARTNERSHIP AGREEMENT**

**THE STATE OF TEXAS**           §  
  §  
**COUNTY OF FORT BEND**       §

This **STRATEGIC PARTNERSHIP AGREEMENT** (this “*Agreement*”) is made and entered into, effective as of \_\_\_\_\_, 2014, by and between the **CITY OF ROSENBERG, TEXAS**, a municipal corporation and home rule city of the State of Texas (the “*City*”), and **FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 184**, a conservation and reclamation district created pursuant to Article XIV, Section 59, Texas Constitution and operating pursuant to Chapters 49 and 54, Texas Water Code (the “*District*”).

**RECITALS**

The District was created with the consent of the City for the purpose of providing water, sewer, drainage, road and recreational facilities to the land within its boundaries. The District is located within both the municipal boundaries and the extraterritorial jurisdiction (“*ETJ*”) of the City.

The provisions of TEX. LOCAL GOV’T CODE, Section 43.0751 (the “*Act*”) state that the City and the District may enter into a strategic partnership agreement that provides for the terms and conditions under which services will be provided and funded by the City and the District and under which the District will continue to exist for an extended period after annexation of all or a portion of the land within the District by the City.

The City and the District, after the provision of required notices, held public hearings in compliance with the Act. Based upon public input received at such hearings, the City and the District wish to enter into a strategic partnership agreement to provide the terms and conditions under which services will be provided and funded by the City and the District and under which the District will continue to exist for an extended period of time after the District is annexed for general purposes.

**NOW, THEREFORE**, for and in consideration of the mutual agreements, covenants, and conditions contained herein, and other good and valuable consideration, the City and the District agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

1.01. Definitions. The terms *Act*, *City*, *District*, and *ETJ* shall have the meanings provided for them in the recitals, above. Except as may be otherwise defined, or the context clearly requires otherwise, capitalized terms and phrases used in this Agreement shall have the meanings as follows:

*City Consent* means the resolution of the City consenting to the creation of the District, and the terms and conditions to such consent described therein.

*Commercial* means all nonresidential development, except for developments owned by a tax-exempt entity, a non-profit entity or a homeowner or property owner association.

*Commission* means the Texas Commission on Environmental Quality and its successors.

*Developer* means the entity or entities advancing funds to the District for the design and construction of District facilities and for other legal purposes which advances are subject to reimbursement by the District pursuant to the rules of the Commission.

*Person* means any individual, partnership, association, firm, trust, estate, public or private corporation, or any other entity whatsoever.

1.02. Findings and conclusions. The City and the District hereby find and declare:

a. The Act authorizes the City and the District to enter into this Agreement to define the terms and conditions under which services to the District will be provided and funded by the parties and to define the terms and conditions under which the District will be annexed by the City at a future date as agreed hereunder as an alternative to annexation without the consent of the District.

b. In compliance with Subsection (p) of the Act, this Agreement (i) does not require the District to provide revenue to the City solely for the purpose of an agreement with the City to forgo annexation of the District, and (ii) provides benefits to each party, including revenue, services, and regulatory benefits, which are reasonable and equitable with regard to the benefits provided to the other party.

c. All the terms and conditions contained in this Agreement are lawful and appropriate to provide for the provision of municipal services and annexation.

d. The District is not obligated to make payments to the City for services except as otherwise provided herein.

e. This Agreement has been duly adopted by the City and the District after conducting two public hearings at which members of the public who wanted to present testimony or evidence regarding the Agreement were given the opportunity to do so. Notice of each hearing was published in the format required by TEX. LOCAL GOV'T CODE, Section 43.123(b) and was published at least once on or after the 20th day before each public hearing of the City.

**ARTICLE 2**  
**ANNEXATION OF THE DISTRICT**

2.01. Conditions to annexation.

a. The parties agree that the District and its residents should be allowed to develop and function with certainty regarding the conditions under which annexation will be authorized by the City. As a result, the City and the District agree that, without regard to the City's right and power under existing or subsequently enacted law and subject to Section 2.02, the City will not fully annex the District until the following conditions have been met, and shall thereafter be authorized, but not required, to fully annex the District for any purpose:

1. 90% of the developable acreage in the District has been developed with water, sanitary sewer, drainage and paving ("Substantial Completion") or (b) 10 years from the date of the SPA, whichever comes first, and the Developer or his successors and assigns have been reimbursed to the maximum extent permitted by the rules of the Commission or the City assumes the obligation to reimburse. At such time, the City will have the right to annex but not the obligation.

2. at a point earlier than Substantial Completion if the City agrees that the Developer may advance funds for water, sewer and drainage facilities until Substantial Condition and the City will reimburse the Developer to the maximum extent allowed by and in accordance with the rules of the Commission.

b. If the City wishes to complete the District facilities in order to comply with subsection a, item 1, above, the District will cooperate with the City to provide access to the District's facilities and allow such connection or supplement thereto as may be reasonably necessary upon written notice of its intent to so complete from the City to the District; provided that any such construction by or on behalf of the City shall be sufficient to provide water supply and distribution, wastewater collection and treatment, and drainage facilities to the entire unserved portion of the District.

2.02. Annexation of Commercial property. Notwithstanding Section 2.01, the City may annex for limited purposes any Commercial portions of the District at any time after the effective date of this Agreement, as determined by the City (the "Annexed Commercial Property"). In such event, the District shall remain in existence, with full powers, and any Annexed Commercial Property shall also remain in the boundaries of the District, subject to the full power and authority of the District with respect to water, wastewater and drainage facilities and services. This annexation provision is in lieu of any annexation of residential property prior to the annexation of the entire District as provided in this Article.

2.03 Annexation procedures. Because the District is, pursuant to this Agreement, an area that is the subject of a strategic partnership agreement, the City is not required to include the District in an annexation plan pursuant to TEX. LOCAL GOV'T CODE, Section 43.052(h)(3)(B).

2.04. Operations prior to full annexation. Prior to annexation of the entire District for full purposes, except as may be specifically provided in this Agreement or in the City Consent, the District is authorized to exercise all powers and functions of a municipal utility district provided by law, including, without limiting the foregoing, the power to incur additional debts, liabilities, or obligations, to construct additional utility facilities, or to contract with others for the provision and operation thereof, or sell or otherwise transfer property without prior approval of the City, and the exercise of such powers is hereby approved by the City.

2.05. Continuation of the District following full annexation. Upon annexation of the entire District under the provisions of Section 2.01 above, the District will continue to exist for an extended period to allow for the completion of District operations and the integration of the District's utility system into the City's utility system, following which period the City shall act to abolish the District in accordance with applicable law; provided that, if the City has not abolished the District within 120 days after such annexation under Section 2.01, the District shall be automatically abolished on the 121st day. At such time, the City will assume all rights, assets, liabilities and obligations of the District (including all obligations to reimburse the developers within the District) and the District will not be continued or converted for limited purposes. Upon full annexation, fees and charges imposed on residents of the former District for services provided by the City shall be equal to those fees and charges imposed on all other residents of the City.

2.06. Attempted incorporation. Notwithstanding any provision herein to the contrary, in the event that an election is called pursuant to applicable law in connection with a bona fide petition for incorporation of a municipality that includes a substantial portion of the District, the City shall be entitled to annex that portion the District attempting to incorporate.

### **ARTICLE 3 LIMITED PURPOSE ANNEXATION OF LAND**

#### **Section 3.01 Imposition of the City's Sales and Use Tax**

In the event the City elects to annex Commercial property for limited purposes as provided in Section 2.02 of this Agreement, the City shall impose its sales and use tax upon the Annexed Commercial Property pursuant to Subsection (k) of the Act. The sales and use tax shall be imposed on the receipts from the sale and use at retail of taxable items at the rate of two percent or the rate specified under future amendments to Chapter 321 of the Tax Code. The sales and use tax shall take effect on the date described in Tax Code §321.102.

### **ARTICLE 4 DEFAULT, NOTICE AND REMEDIES**

4.01. Default; notice. A breach of any material provision of this Agreement after notice and an opportunity to cure shall constitute a default. The non-breaching party shall notify the breaching party of an alleged breach, which notice shall specify the alleged breach with reasonable particularity. If the breaching party fails to cure the breach within a reasonable time

not sooner than 30 days after receipt of such notice (or such longer period of time as the non-breaching party may specify in such notice), the non-breaching party may declare a default hereunder and exercise the remedies provided in this Agreement in the event of default.

4.02. Remedies. In the event of a default hereunder, the remedies of the non-defaulting party shall be limited to either or both of the following:

a. Monetary damages for actual losses incurred by the non-defaulting party if such recovery of monetary damages would otherwise be available under existing law and the defaulting party is not otherwise immune from paying such damages; and

b. Injunctive relief specifying the actions to be taken by the defaulting party to cure the default or otherwise comply with its obligations hereunder. Injunctive relief shall be directed solely to the default and shall not address or include any activity or actions not directly related to the default.

## **ARTICLE 5 MISCELLANEOUS**

5.01. Beneficiaries. This Agreement shall bind and inure to the benefit of the parties, their successors and assigns. This Agreement shall be recorded with the County Clerk in the Official Records of Fort Bend County, and shall bind and benefit each owner and each future owner of land included within the District's boundaries in accordance with Tex. Local Gov't Code, Section 43.0751(c). In the event of annexation of the District by the City, the Developer shall be considered a third-party beneficiary of this Agreement.

5.02. Term. This Agreement shall commence and bind the parties on the effective date first written above and continue for twenty-five (25) years thereafter, unless terminated on an earlier date pursuant to other provisions or by express written agreement executed by the City and the District. Upon the expiration of the initial term, this Agreement may be extended, at the District's request, with City approval, for successive one-year periods until all land within the District has been annexed into the City.

5.03. Notice. Any notices or other communications ("Notice") required to be given by one party to another by this Agreement shall be given in writing addressed to the party to be notified at the address set forth below for such party, (i) by delivering the same in person, (ii) by depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the party to be notified, or (iii) by depositing the same with Federal Express or another nationally recognized courier service guaranteeing "next day delivery", addressed to the party to be notified, or (iv) by sending the same by telefax with confirming copy sent by mail. Notice deposited in the United States mail in the manner hereinabove described shall be deemed effective from and after the date of such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties, until changed as provided below, shall be as follows:

City: City of Rosenberg  
2110 Fourth Street,  
Rosenberg, Texas 77471  
Attn: City Manager

District: Fort Bend County Municipal Utility District No. 184  
c/o Allen Boone Humphries Robinson  
3300 Southwest Freeway, Suite 2600  
Houston, Texas 77027  
Attn: Jim Boone

The parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by giving at least five days written notice 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 for calculating the notice shall be extended to the first business day following such Saturday, Sunday or legal holiday.

5.04. Time. Time is of the essence in all things pertaining to the performance of this Agreement.

5.05. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected.

5.06. Waiver. Any failure by a party hereto to insist upon strict performance by the other party of any material provision of this Agreement shall not be deemed a waiver thereof or of any other provision hereof, and such party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

5.07. Applicable law and venue. The construction and validity of this Agreement shall be governed by the laws of the State of Texas without regard to conflicts of law principles. Venue shall be in Fort Bend County, Texas.

5.08. Reservation of rights. To the extent not inconsistent with this Agreement, each party reserves all rights, privileges, and immunities under applicable laws.

5.09. Further documents. The parties agree that at any time after execution of this Agreement, they will, upon request of another party, execute and deliver such further documents and do such further acts and things as the other party may reasonably request in order to carry out the terms of this Agreement.

5.10. Incorporation of exhibits and other documents by reference. All Exhibits and other documents attached to or referred to in this Agreement are incorporated herein by reference for the purposes set forth in this Agreement.

5.11. Effect of state and federal laws. Notwithstanding any other provision of this Agreement, the District and the City shall comply with all applicable statutes or regulations of the United States and the State of Texas, as well as any City ordinances or rules implementing such statutes or regulations, and such City ordinances or rules shall not be deemed a breach or default under this Agreement.

5.12. Authority for execution. The City hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the City Charter and City ordinances. The District hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted by the Board of Directors of the District.

**SIGNATURE PAGES FOLLOW**

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement effective as of the date first written above.

CITY OF ROSENBERG, TEXAS

By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Secretary

FORT BEND COUNTY MUNICIPAL  
UTILITY DISTRICT NO. 184

By: \_\_\_\_\_  
President, Board of Directors

ATTEST:

By: \_\_\_\_\_  
Secretary

THE STATE OF TEXAS   §  
  §  
COUNTY OF FORT BEND §

This instrument was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, City Manager of the City of Rosenberg, Texas, on behalf of said city.

\_\_\_\_\_  
Notary Public, State of Texas

(NOTARY SEAL)

THE STATE OF TEXAS   §  
  §  
COUNTY OF FORT BEND §

This instrument was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of the Board of Directors of Fort Bend County Municipal Utility District No. 184, a political subdivision of the State of Texas, on behalf of said political subdivision.

\_\_\_\_\_  
Notary Public, State of Texas

(NOTARY SEAL)



# CITY COUNCIL COMMUNICATION

## August 26, 2014

ITEM #	ITEM TITLE
7	<b>Resolution No. R-1847– Fort Bend County Municipal Utility District No. 184 Board of Directors Approval</b>

### ITEM/MOTION

Consideration of and action on Resolution No. R-1847, a Resolution authorizing at least one (1) member of the initial Board of Directors of Municipal Utility District No. 184 of Fort Bend County, Texas.

FINANCIAL SUMMARY	ELECTION DISTRICT
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**Annualized Dollars:**

- One-time
- Recurring
- N/A

**Budgeted:**

- Yes  No  N/A

**Source of Funds:** N/A

- District 1
- District 2
- District 3
- District 4
- City-wide
- N/A

**SUPPORTING DOCUMENTS:**

1. Resolution No. R-1847

**MUD #:** 184

### APPROVALS

**Submitted by:**

*Travis Tanner*  
 Travis Tanner, AICP  
 Executive Director of  
 Community Development

**Reviewed by:**

- Exec. Dir. of Administrative Services
- Asst. City Manager of Public Services *g.m.*
- City Attorney
- City Engineer
- (Other)

**Approved for Submittal to City Council:**

*Robert Gracia*  
 Robert Gracia  
 City Manager

### EXECUTIVE SUMMARY

Pursuant to Section 29-203 of the Code of Ordinances, City Council shall approve at least one (1) member of the initial Board of Directors of the District.

Staff recommends approval of Resolution No. R-1847 approving the Board of Directors of Fort Bend County Municipal Utility District No. 184 as presented. District representatives will be in attendance to address any questions you may have.

**RESOLUTION NO. R-1847**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, A RESOLUTION AUTHORIZING AT LEAST ONE (1) MEMBER OF THE INITIAL BOARD OF DIRECTORS OF FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 184.**

\* \* \* \* \*

**WHEREAS**, the City Council has deemed it appropriate to consent to the creation of Fort Bend Municipal Utility District No. 184 (“District”); and,

**WHEREAS**, at least one (1) member of the initial Board of Directors of said District shall be a person appointed by City Council pursuant to Section 29-203 of the City’s Code of Ordinances; now, therefore,

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROSENBERG:**

Section 1. The City Council of the City of Rosenberg hereby authorizes the initial Board of Directors established as follows:

- |                   |                          |
|-------------------|--------------------------|
| James Koby Gidney | President                |
| Kimlinh Tran      | Vice President           |
| Micheal Wang      | Secretary                |
| Jason M. Safier   | Assistant Secretary      |
| Christine Turner  | Assistant Vice President |

Section 2. This Resolution shall take immediately upon passage.

**PASSED, APPROVED, AND RESOLVED** this \_\_\_\_ day of \_\_\_\_\_ 2014.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Linda Cernosek, **CITY SECRETARY**

\_\_\_\_\_  
Vincent M. Morales, Jr., **MAYOR**

# **ITEM 8**

**Adjournment.**