

STATE OF TEXAS

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COUNTY OF TRAVIS

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DEVELOPER PARTICIPATION CONTRACT

This Developer Participation Contract (the “*Agreement*”) is entered into this ____ day of _____ 2023 (the “*Effective Date*”) by and between the City of Pflugerville, Texas, a Texas home-rule municipality (the “*City*”) and TAWR Property Owner, Ltd., a Texas limited partnership (the “*Developer*”). The City and the Developer are also referred to herein collectively as the “*Parties*” and individually as “*Party*.”

WHEREAS, the Developer is the developer of the multifamily development referred to as Tacara at Weiss Ranch (the “*Development*”), being a subdivision located within the City, and the Developer is the current owner of that certain real property described in Exhibit 1 platted as Lot 1 of the Tacara at Weiss Ranch Final Plat and made a part of the Development;

WHEREAS, the Developer is proposing to construct a wastewater line which has been sized for capacity above the Developer’s intended use of the Development (the “*Project*”); and

WHEREAS, said wastewater line was included within the improvements shown for Tacara at Weiss Ranch Offsite Construction Plans and accepted by the City on June 15, 2022; and

WHEREAS, the City is requesting that the Developer oversize the Project and related infrastructure (the “*Oversizing*”) to include gravity flows from (1) a planned contributing wastewater area larger than the wastewater flows from the Development, and (2) the adjacent Water Treatment Plant Expansion project to increase capacity of the infrastructure to provide 1,950 gallons per minute of additional capacity, both of which are anticipated to result in increasing the pipe size from 8-inch to 18-inch, as depicted in Exhibit 1-A; and

WHEREAS, in connection with the Development and in accordance with this Agreement, the City desires to pay for the costs incurred by the Developer and attributable to the costs of the Oversizing, to include permitting, insuring, subsurface utility engineering, designing, and constructing, as set forth herein; and

WHEREAS, the City desires to have the Developer include the Oversizing in the process of constructing the Project, as provided in this Agreement; and

WHEREAS, the Parties agree that the cost estimate of the *Oversizing* is \$792,346.24; and

WHEREAS, the Parties agree that the Oversizing of the wastewater facilities is to increase capacity to anticipate future development and wastewater flow

increases in the area, and Section 212.072(c) of the Texas Local Government Code allows participation by the City at a level not to exceed one hundred percent (100%) of the total costs of the Oversizing without complying with the competitive bidding procedure of Chapter 252 of the Local Government Code; and

WHEREAS, the City has determined the Developer’s construction of the Oversizing will be an economic benefit to the citizens of the City, therefore, this Agreement is in the best interest of the citizens of the City.

NOW, THEREFORE, for and in consideration of the above and foregoing recitals and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Developer do hereby agree as follows:

Section 1. Incorporation of Recitals.

The above and foregoing recitals are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Term.

This Agreement shall be effective as of the date of execution of this Agreement by the last of the Parties to do so (the “*Effective Date*”). This Agreement shall remain in full force and effect from the Effective Date until the City and the Developer have completed their respective obligations hereunder or until this Agreement has been earlier terminated by the mutual agreement of the City and the Developer in writing.

Section 3. Improvements.

The Project and Oversizing, as described and defined in the Recitals above (collectively hereinafter referred to as the “*City-Developer Project Improvements*”) shall be designed and constructed by the Developer. The Developer shall construct the City-Developer Project Improvements as described in this Agreement in accordance with and subject to the following: (i) the zoning for the Development, (ii) all federal, state, and local ordinances, laws, statutes, standards, rules, regulations, codes, orders, directives, permits, plans or policies, including, without limitation, the City of Pflugerville, Texas, and any other governmental entity or agency having jurisdiction over the Development, and (iii) all of the terms and conditions of this Agreement.

- A. *Design.* The plans for the design and construction of the City-Developer Project Improvements dated December 22, 2022, as revised on May 10, 2023, entitled Tacara at Weiss Ranch Offsite Construction Plans (the “Plans”) have been completed by LJA Engineering, Inc. (the “Design Professional”), and the same have been submitted to and approved by the City in accordance with the City’s normal and usual practices and processes for reviewing and approving design

plans for a development. A copy of the Plans will be kept on file in the office of the City Engineer (the "City Engineer"). Approval by the City of the Plans does not constitute a representation or warranty by the City regarding the accuracy and competency of the same, and such approval is not an assumption of or an indemnification for such responsibility or liability by the City for any defect, error or omission in the Plans.

- B. *Construction.* The Developer shall construct the City-Developer Project Improvements in accordance with the Plans with Developer's personnel and equipment and/or through contract with Baxter Contracting (the "Contractor"). Upon the Effective Date of this Agreement, the construction of the City-Developer Project Improvements shall be promptly commenced and thereafter diligently prosecuted to completion. All work on the City-Developer Project Improvements shall be performed in a good and workmanlike manner and in accordance with the Plans and all applicable laws, ordinances, rules, standards, regulations, and codes.

- C. Prior to commencing any work on the City-Developer Project Improvements, Developer shall provide (or require the Contractor to provide) to the City performance bonds as required under Section 212.073 of the Texas Local Government Code guaranteeing the faithful performance of the work and the payment of all obligations arising under the City-Developer Project including, without limitation, the payment of all persons performing labor or providing materials under or in connection with the City-Developer Project, each in the penal sum of one hundred percent (100%) of the total City-Developer Project Improvements cost estimate. Developer shall pay or cause the Contractor or the subcontractor to pay the premiums for such bonds, but the Developer shall be reimbursed for the costs of such bonds as part of Oversizing Costs. Bonds shall be issued by a surety company reasonably satisfactory to the City, licensed by the State of Texas to act as a Surety, and listed on the current U.S. Treasury Listing of Approved Sureties. All bonds shall be made on a form complying with the requirements of the laws of the State of Texas and satisfactory to the City. Developer shall cause the Contractor to provide the same warranties to the City as are being provided to Developer. Developer and the City of Pflugerville, Texas shall be named as joint obligees on all Contractor-provided bonds.

- D. To the extent any of the City-Developer Project Improvements are located within public right-of-way or property owned by the City, the City hereby grants to Developer and the Contractor a license to enter upon such public right-of-way or property for the sole and limited purpose of constructing, inspecting, maintaining, and repairing the City-Developer Project Improvements. Developer or Contractor shall coordinate with the City and utility providers to minimize the possibility of damage to utilities and any disruption to users within proximity of the construction area. Upon completion of the City-Developer Project, Developer shall ensure that the City-Developer Project Improvements and the property on which the

improvements were constructed are free and clear of all liens and encumbrances, including mechanics liens and purchase money security interests, to the extent arising by, through or under Developer, the Contractor, or any subcontractor or material suppliers pursuant to the Construction Contract.

- E. Developer shall timely pay the Contractor, if any, in accordance with the terms and conditions of the applicable construction contract. Developer shall thoroughly inspect the work of any Contractor to guard the City against defects and deficiencies in the City-Developer Project Improvements without assuming responsibility for the means and methods used by the Contractor.
- F. The City has the right to inspect, test, measure or verify the construction work on the City-Developer Project Improvements, as the City deems necessary and at any time. Developer shall keep the City Engineer informed regarding the progress of the City-Developer Project Improvements' construction. Developer shall notify and provide documentation to the City Engineer for the following events: (i) notice to proceed, (ii) default of the Contractor (if it occurs), and (iii) completion of the City-Developer Project Improvements such that they are ready for inspection by the City. The City-Developer Project Improvements shall not be considered finally complete until the City Engineer (or designee) has inspected the improvements and has issued a certificate of completion and/or formally accepted the improvements on behalf of the City.

Section 4. Reimbursement.

Subject to all of the terms and conditions of this Agreement, the City shall reimburse the Developer one hundred percent (100%) of the total costs and expenses paid by Developer for permitting, insuring, designing, and constructing the Oversizing (the "*Oversizing Costs*"), such Oversizing Costs defined as the excess over the estimated cost of the Project without the Oversizing, as detailed in the Cost Estimate attached as Exhibit 2 (the "*Oversizing Cost Estimate*"). The actual Oversizing Costs shall be the "Reimbursement Amount".

Payment of the Reimbursement Amount shall be made in accordance with and is subject to the following:

During the course of construction of the City-Developer Project Improvements, it is anticipated that the Design Professional and Contractor will, as portions of the work on the Oversizing are completed, submit to Developer a request for a progress payment or an invoice (each being a "Contractor Invoice") for the applicable portion of the work completed (the "Applicable Completed Portion"). Following its receipt of a Contractor Invoice, Developer shall submit to the City:

- (a) a true and correct copy of the Contractor Invoice (together with all attachments, documents, and materials applicable thereto and such other information as the City may request in connection

therewith), and

(b) an invoice for that portion of the Reimbursement Amount applicable to the Contractor Invoice, which shall show the total price paid to the Contractor for such work for which payment is requested (the “Reimbursement Invoice”) and remaining balance of the City Oversizing Costs.

Each Reimbursement Invoice shall be accompanied by:

1. a certification from Developer that the Applicable Completed Portion for which a disbursement has been requested has been:
 - a. completed in accordance with the Plans, with all laws, ordinances, standards, codes, rules and regulations of the United States, the State of Texas, the City, and any other governmental entity having jurisdiction (including, without limitation, the standards of the Americans with Disabilities Act of 1990), and with this Agreement, and
 - b. paid for by Developer in accordance with the applicable construction contract, and
 - c. duly executed partial lien waivers from Contractor (and subcontractors and material suppliers) establishing payment or satisfaction of payment to the same with respect to the Applicable Completed Portion.
2. a copy of the Contractor’s certificate of payment to subcontractors and material suppliers for work completed through the Applicable Completed Portion, and by a certificate (sealed by the Design Professional) from the Design Professional that the Applicable Completed Portion has been completed in accordance with the Plans and the applicable construction contract.

Within twenty (20) days after the City’s receipt of a Reimbursement Invoice, Design Professional’s certification that the Applicable Completed Portion has been completed as set forth above, and other items which are to accompany the Reimbursement Invoice as set forth herein, and provided Developer is not then in default of this Agreement beyond any applicable cure period, the City shall pay to Developer the amount of the applicable Reimbursement Invoice.

Final payment shall be made within thirty (30) days following the last to occur of the following:

1. the City’s receipt from the Design Professional of the Design Professional’s certification (sealed by the Design Professional) that the City-Developer Project Improvements have all been fully and finally completed in accordance with an applicable construction contract, all laws, ordinances, standards, codes, rules and regulations of the United States, the State of Texas, the City, and any other governmental entity having jurisdiction

(including, without limitation, the standards of the Americans with Disabilities Act of 1990), and with this Agreement,

2. the City's receipt of a written certification from Developer that the final payment for the construction of the City-Developer Project Improvements has been made and accepted by the Contractor, and receipt of duly executed lien waivers from the Contractor (and subcontractors and material suppliers) establishing full and final payment or satisfaction of full and final payment to the same,
3. the City's receipt from Developer of all guarantees and warranties from the Contractor, subcontractors, vendors, suppliers, or manufacturers, in connection with or relating to all or any portion of the work on the City-Developer Project Improvements, and
4. the City's receipt of a final invoice containing a notification of final completion of the City-Developer Project Improvements and confirmation of the City's acceptance thereof as set forth herein.

Payment of the final invoice and City's issuance of a letter of acceptance memorandum shall constitute the last and final payment to be made by the City to Developer pursuant to this Agreement, and completion of all of the City's obligations hereunder.

Section 5. Insurance.

At all times during the term of this Agreement, Developer shall maintain minimum insurance coverages, described below. Developer may satisfy this requirement through insurance provided by its Contractor.

Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$2,000,000 products/ completed operations aggregate), and XCU (Explosion, Collapse, Underground) hazards. Coverage for products/completed operations must be maintained for at least two (2) years after the construction work has been completed. Coverage must be amended to provide for an each-project aggregate limit of insurance. An alternative would be to have separate limits for all lines of General Liability coverage for each project.

Workers Compensation insurance at statutory limits, including Employers Liability coverage with minimum limits of \$500,000 each-occurrence each accident/\$500,000 by disease each-occurrence/\$500,000 by disease aggregate.

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

coverage.

Umbrella Liability at minimum limits of \$5,000,000.00 aggregate with respect to primary Commercial General Liability, Automobile Liability, and Employers Liability policies.

Any subcontractor(s) hired by the Contractor shall maintain insurance coverage equal to that required of the Contractor. Developer shall require Contractor to require all subcontractors to carry insurance naming the City of Pflugerville, Texas as an additional insured and meeting all of the above requirements.

With reference to the foregoing insurance requirements, Developer or Contractor (as applicable) shall specifically endorse applicable insurance policies as follows:

1. The City of Pflugerville, Texas shall be named as an additional insured with respect to General Liability, Automobile Liability, and Umbrella Liability.
2. A waiver of subrogation in favor of the City of Pflugerville, Texas, its officers, employees, and agents shall be contained in the Workers Compensation and all liability policies.
3. All insurance policies shall be endorsed to require the insurer to immediately notify the City of any material change in the insurance coverage.
4. All insurance policies shall be endorsed to the effect that the City will receive at least thirty (30) days' notice prior to cancellation or non-renewal of the insurance.
5. All insurance policies, which name the City of Pflugerville, Texas as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.

Required limits may be satisfied by any combination of primary and umbrella liability insurances.

Contractor may maintain reasonable and customary deductibles.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance Developer or its authorized agent, delivered to Developer and the City prior to the commencement of any work on the Oversizing (or within 15 days after the date of this Agreement if construction has already commenced), and shall contain provisions representing and warranting the following:

1. Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.

2. Shall specifically set forth the notice-of-cancellation or termination provisions to the City.

Upon request, Developer shall furnish the City with certified copies of all insurance policies.

Developer shall require Contractor to continuously and without interruption, maintain in force the required insurance coverages specified in this Section. If Developer does not comply with this requirement the City Engineer, at the City Engineer's sole discretion, may:

1. Subject to the notice and cure period set forth in Section 7, immediately suspend Developer from any further performance under this Agreement and begin procedures to terminate for default, or
2. Purchase the required insurance with City funds and deduct the cost of the premiums from the Reimbursement Amount due to Developer under this Agreement.

The City shall never waive or be estopped to assert its right to terminate this Agreement because of its acts or omissions regarding its review of insurance documents.

Section 6. Intentionally deleted.

Section 7. Termination.

A. Either Party (the "non-defaulting party") may terminate this Agreement in the event of default of this Agreement by the other Party (the "defaulting party") and a failure by the defaulting party to cure such default after receiving notice thereof from the non-defaulting party in accordance with this Section 7A. Default shall occur if a Party fails to observe or perform any of its duties under this Agreement. Should such a default occur, the non-defaulting party shall deliver a written notice to the defaulting party describing such default and the proposed date of termination. Such date may not be sooner than the 30th day following receipt of the notice by the defaulting party; but if the default cannot with diligence be cured within the said 30 day period, if within such 30 day period the defaulting party provides the non-defaulting party written notice of the curative measures which it proposes to undertake, and proceeds promptly to initiate such measures to cure such default, and thereafter prosecutes the curing of such default with diligence and continuity, the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of such default with diligence and continuity. If prior to the proposed date of termination, the defaulting party cures such default to the non-defaulting party's satisfaction, the proposed termination shall be ineffective. If the defaulting party fails to cure such default prior to the proposed date of termination, the non-defaulting party may terminate this Agreement, and the obligations of the Parties hereunder shall end, except to the extent of such obligations that expressly survive termination or such obligations which accrued prior to the date of such termination. The City Engineer may give such notice on behalf of the City for purposes of this Agreement.

B. In addition to the provisions of Section 7A above, the City may terminate this Agreement without notice or any opportunity to cure for any of the following reasons:

1. Insolvency of, the making of a transfer in fraud of creditors by, or the making of an assignment for the benefit of creditors by, the Developer.

2. Filing of a petition under any section or chapter of the National Bankruptcy Act, as amended, or under any similar law or statute of the United States or any State thereof by the Developer, or adjudication as a bankrupt or insolvent in proceedings filed against the Developer.

3. Appointment of a receiver or trustee for all or substantially all of the assets of the Developer.

C. In the event this Agreement is terminated due to default of the Developer or for any of the reasons set forth in Section 7B above, or if the Developer abandons the City-Developer Project for a period of ninety (90) days following commencement of construction thereof, either of which event is before the Developer completes the construction of the City-Developer Project improvements, the City reserves the right to continue the City-Developer Project construction and utilize any unexpended funds for this Agreement or funds secured through any bond provided hereunder to complete the work. In such event, Developer shall have no claim for any other funds of the City.

Section 8. Conflict of Interest.

A. Developer acknowledges that it is informed that the Charter of the City of Pflugerville and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 11.06 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a Party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

B. Pursuant to the subsection above, Developer warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Developer further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

C. In addition, Developer warrants and certifies that it has filed a Texas Ethics Commission Certificate of Interested Parties (Form 1295).

Section 9. Miscellaneous.

A. **Force Majeure.** “Force Majeure” includes acts of God, acts of the public enemy, war, blockades, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, tornados, hurricanes, arrests and restraints of government and people, explosions, governmental delays, shortages of labor and/or materials, unforeseen environmental conditions and/or endangered species, and any other inability of either Party to carry out its obligations under this Agreement.

If, because of Force Majeure any Party is delayed in carrying out its obligations under this Agreement or is rendered unable, wholly or in part, to carry out its obligations under this Agreement, then such Party shall give to the other Party prompt written notice of the Force Majeure event with reasonable full details concerning it. Upon delivery of such notice, the obligation of the Party giving the notice, so far as it is affected by the Force Majeure, shall be suspended during, but not longer than, the continuance of the Force Majeure. Any Party who is affected by an event of Force Majeure shall use all possible diligence to remove the Force Majeure as quickly as possible, but its obligation shall not be deemed to require the settlement of any strike, lockout, or other labor difficulty contrary to the wishes of the Party involved or so affected.

B. **Inspection.** In connection with this Agreement and the matters set forth herein and in accordance with Texas Local Government Code § 212.074(b), all of Developer’s books and other records directly related to the City-Developer Project shall be made available by Developer for inspection by the City upon request. The City further has the right to conduct inspections of all places where work is undertaken in connection with this Agreement.

C. **Independent Contractor.** Developer is an independent contractor, and Developer shall accomplish all of its obligations and services provided for herein in such capacity, and under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, joint enterprise, or employment between the Parties; provided always, however, that the obligations and services of Developer hereunder shall be provided in a manner consistent with all applicable standards and regulations governing the same. The City shall have no control or supervisory powers as to the detailed manner or method of Developer’s performance of the subject matter of this Agreement. All officers, employees, personnel, contractors, subcontractors, agents, and representatives supplied or used by Developer in connection with the obligations set forth in this Agreement shall be deemed officers, employees, personnel, contractors, subcontractors, agents, and representatives of Developer and shall not be considered officers, employees, personnel, contractors, subcontractors, agents, and representatives of the City for any purpose whatsoever. Developer shall be solely responsible for the compensation of all such persons, for the withholding of income, social security and other payroll taxes and for the coverage of all workers’ compensation benefits, as and to the extent applicable.

D. **Non-Assignment.** Neither Party shall have the authority to or shall assign, convey, pledge, or otherwise transfer in any manner this Agreement, or any of the privileges, rights, or duties set forth herein, to any other person or entity, without the express prior written approval and consent of the other Party; provided, however, that Developer may assign this Agreement to a first lien mortgagee without the consent of the City. Notwithstanding the foregoing, the City acknowledges that the Developer's obligations to construct the City-Developer Project improvements may be performed by the Contractor pursuant to a construction contract, but same shall not constitute an assignment nor a violation of this provision. Any assignment, conveyance, pledge, or other transfer in violation of this provision shall be null and void *ab initio* and cause for immediate termination (no period of cure) by the other Party.

E. **No Third-Party Beneficiary.** This Agreement and each of its provisions are solely for the benefit of the Parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

F. **Survival.** Except as otherwise provided for in this Agreement, all obligations and responsibilities arising prior to the expiration or termination of this Agreement allocating responsibility or liability of or between the Parties shall survive the completion or termination of this Agreement, and any rights and remedies either Party may have with respect to the other arising out of the performance during the term of this Agreement shall survive the cancellation, expiration, or termination of this Agreement. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by a Party shall not preclude or waive its right to use any or all other rights and remedies, and said rights and remedies are given in addition to any other rights and remedies the Parties or either of them may have in law, in equity, or otherwise. Notwithstanding the foregoing, both the City and Developer expressly waive any and all rights to claim any speculative, consequential, punitive or special damages.

G. **Non-Waiver.** The failure of either Party to enforce any provision or condition contained in this Agreement at any time will not be construed as a waiver of that condition or provision nor will it operate as a forfeiture of any right of future enforcement of the condition or provision.

H. **Interpretation.** For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the term does not create a presumption that components not expressed are excluded.

I. **Exhibits.** All exhibits referenced in this Agreement are incorporated herein and made a part hereof for all purposes.

J. **Notices.** Any notice and/or statement required and permitted to be delivered shall be deemed delivered upon receipt after hand delivery or depositing same in the United States mail, certified mail with return receipt requested, postage prepaid, or upon receipt by nationally recognized overnight courier, addressed to the appropriate Party at the following addresses, or at such other addresses provided by the Parties by notice under this subsection:

If to the City, to: City of Pflugerville
Attn: Sereniah Breland, City Manager
100 E. Main Street, Ste. 300
Pflugerville, Texas 78691
Phone: 512.990.6100
E-mail: sereniahb@pflugervilletx.gov

With copies to: Charles E. Zech
Denton, Navarro, Rocha, Bernal & Zech, PC
2500 W. William Cannon, # 609
Austin, Texas 78745
Phone: 512.479.6431; Fax: 512-279-6438

If to the Developer, to: Casey Development, Ltd.
Attn: Ory Kalenkosky
200 E. Basse Road, Suite 300
San Antonio, TX 78209
Phone: 210.380.4769
E-mail:

With copies to: Golden, Steves & Gordon, LLP
Attn: Karl Baker
200 E. Basse Road, Suite 200
San Antonio, TX 78209

K. **Conflict of Laws and Venue.** The laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement; and, with respect to any conflict of law provisions, the Parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement. In the event of any action under this Agreement, exclusive venue for all causes of action shall be instituted and maintained in a state district court located in Travis County, Texas.

L. **Entire Agreement.** This Agreement supersedes all previous agreements regarding the matters set forth herein, and constitutes the entire understanding of the Parties. Developer shall be entitled to no other benefits than those specified herein. No changes, amendments, or alterations shall be effective unless in writing and signed by both Parties.

M. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision is not a part hereof, and the remaining provisions hereof shall

remain in full force and effect. In lieu of any illegal, invalid, or unenforceable provision herein, the Parties shall seek to negotiate a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

N. **Applicable Laws.** This Agreement and all of its terms and conditions are subject to applicable laws, ordinances, rules, regulations, and codes, including, without limitation, the City Charter of the City of Pflugerville, Texas.

Further, Developer acknowledges that the City of Pflugerville may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it; (i) does not boycott Israel; (ii) will not boycott Israel during the term of the contract; (iii) does not boycott energy companies; (iv) will not boycott energy companies during the term of the contract; (v) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association; and (vi) will not discriminate during the term of the contract against a firearm entity or firearm trade association (Texas Government Code, Chapter 2271.002; 2274.002).

Developer hereby verifies that it does not boycott Israel, and agrees that, during the term of this agreement, will not boycott Israel as this term is defined in the Texas Government Code, Section 808.001, as amended. Developer hereby verifies that it does not boycott energy companies, and agrees that, during the term of this agreement, will not boycott energy companies as this term is defined in Texas Government Code, Section 809.001, as amended. Developer hereby verifies that it does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and agrees that, during the term of this agreement, will not discriminate against a firearm entity or firearm trade association as those terms are defined in Texas Government Code, Section 2274.001, as amended.

Further, Developer hereby certifies that it is not a company identified under Texas Government Code, Section 2252.152 as a company engaged in business with Iran, Sudan, or Foreign Terrorist Organizations.

O. **Authority.** The undersigned officers and/or agents of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties hereto.

P. **Effective Date.** This Agreement shall be effective upon the date of the last of the Parties to sign below, as reflected by the date of signing.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the City and Developer have executed this Agreement.

CITY:

DEVELOPER:

CITY OF PFLUGERVILLE, TEXAS
a home-rule municipality

TAWR Property Owner, Ltd.,
A Texas limited partnership

By: _____

Sereniah Breland
City Manager

Date of signing: _____

By: _____


Darren Casey
Manager

Date of signing: May 11, 2023

ATTEST:

By: _____

Trista Evans
City Secretary

EXHIBIT 1

Lot 1 of TACARA AT WEISS RANCH FINAL PLAT, a subdivision of record in document number 202200130 in the Official Public Records of Travis County, Texas

[Plat follows on next page]

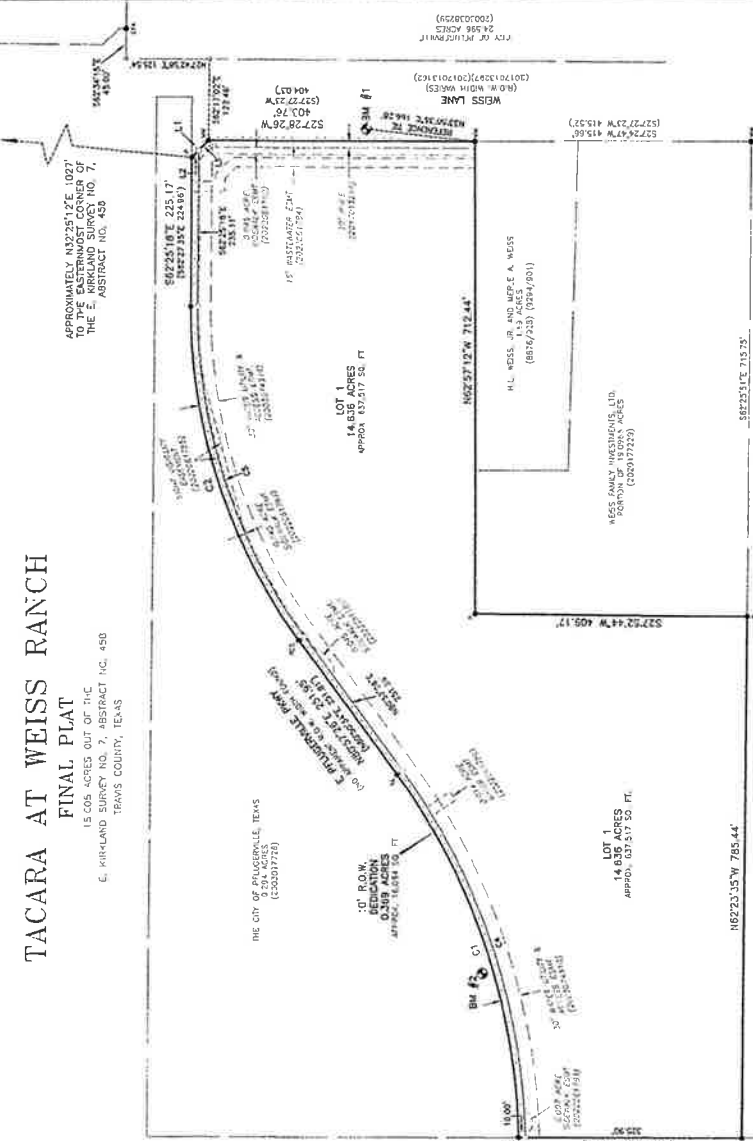
2022.00.130

5/19/2022

\$75.00

TACARA AT WEISS RANCH
FINAL PLAT

15.035 ACRES OUT OF THE
C. KIRKLAND SURVEY NO. 7, ABSTRACT NO. 458
TRAVIS COUNTY, TEXAS



SCALE: 1" = 100'
GRAPHIC SCALE

LEGEND

- 1/2" REBAR WITH 'TARY' BOUNDARY CAP SET
- 1/2" REBAR WITH 'LEGIBLE' CAP FOUND
- 1/2" REBAR WITH 'MCGRAW & MCGRAW' CAP FOUND
- 1/2" REBAR WITH 'WHEATON SURVEYING' CAP FOUND
- 1/2" REBAR WITH 'TOS BROS 4854' CAP FOUND
- 1/2" REBAR WITH 'TOS INC' CAP FOUND
- 805 NAIL IN CONCRETE FOUND
- CALCULATED POINT
- BENCHMARK/CORNER POINT
- BM BENCHMARK
- P.U.E. PUBLIC UTILITY EXTENSION
- ROW RIGHT OF WAY
- () RECORD INFORMATION
- - - SUBJECT BOUNDARY LINE
- - - ADJOINING PROPERTY LINE
- ORIGINAL LINE
- # W/ICE BENCHMARK LOCATION

PLAT OF THE CITY OF PRUGERVILLE, TEXAS
15.035 ACRES
(202200130)

ENGINEER
L.A. ENGINEERING, INC.
201 E. FLORENCE, L.L.C.
SAN ANTONIO, TEXAS 78209
APRIL, TEXAS 78735
SUCCESSION
MAYNARD ENGINEERING, LLC
APRIL, TEXAS 78719
517-352-9611

ROCK WEISS FALK INVEST, CL, L.L.C.
PORTION OF 13.85 ACRES
(202200130)

THIS IS A SURFACE PLANNING.
BEARING BASE: THE TEXAS COORDINATE SYSTEM, NAD 83, IS USED FOR ALL CALCULATIONS ON THIS PLAT. ALL SURVEYING CONTROL POINT TIES ARE TO THE SURFACE OF THE EARTH.
THIS PLAT WILL BE SET AS IN SET AS LONG AS THE SURFACE OF THE EARTH IS UNCHANGED. THE INTERSECTION OF WEISS LANE AND THE SURFACE OF THE EARTH WILL BE THE CENTER OF THE SUBJECT TRACT.
SURFACE COORDINATES:
N 3187788.53
E 3187788.53
TEXAS STATE PLANE COORDINATES
NAD 83, 1117
MERIDIAN: 96° 43' 28"
ELECTRIC: 643.47
CORRECTION SCALE FACTOR = 0.99999993
MERIDIAN SCALE FACTOR = 1.00000000
COR AND TO SURFACE CORRECTION
CORRECTION SCALE FACTOR = 1.00000000
MERIDIAN SCALE FACTOR = 1.00000000
VERTICAL DATUM: MGD BS (GEOID 780)

REQUIRED PAYING OBLIGATION = 3.95 ACRES FOR 500 SQUARED UNITS
SECTION INDEXTION #183201 = 3 ACRES
TOTAL ACRES = 15.035 ACRES
TOTAL NUMBER OF LOTS = 1
TOTAL NUMBER OF LOTS 1 (14.538 ACRES)
LAND USE OF LOT 1: MULTI-FAMILY RESIDENTIAL AND RETAIL
NEW STREET: NONE
R.O.W. WIDTH: 30.00 ACRES (183.1 L.F.)
DATE OF SURVEY: 05/19/2022

LINE	BEARING	DISTANCE	REMARK
L1	S17°16'53"E	11.15	S1777227.23, 11
L2	S17°16'53"E	11.11	
L3	S17°16'53"E	21.04	

CURVE	RADIUS	DELTA	ARC	BEARING	CHORD	RECORD POINT
C1	955.00	357.92	56.13	S87°30'02"E	514.97	(202200130, 11)
C2	955.00	357.92	56.13	S87°30'02"E	514.97	(202200130, 11)
C3	955.00	357.92	56.13	S87°30'02"E	514.97	(202200130, 11)
C4	955.00	357.92	56.13	S87°30'02"E	514.97	(202200130, 11)
C5	955.00	357.92	56.13	S87°30'02"E	514.97	(202200130, 11)

ENGINEER: L.A. ENGINEERING, INC. (202200130)
CITY OF PRUGERVILLE, TEXAS
15.035 ACRES
APRIL, TEXAS 78719
517-352-9611

EARLY LAND SURVEYING
A LIMITED LIABILITY COMPANY
P.O. BOX 9286
4122-201-8118
SHEET 01 OF 02

RECORDED IN THE PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS
BOOK 183201, PAGE 11

APPROXIMATELY NEAREST CORNER TO THE EASTERNMOST CORNER OF THE E. KIRKLAND SURVEY NO. 7, ABSTRACT NO. 458

202200130


TACARA AT WEISS RANCH FINAL PLAT

15.005 ACRES OUT OF THE
E. NICKLAND SURVEY NO. 7, ABSTRACT NO. 453
TRAVIS COUNTY, TEXAS

OWNER'S DECLARATION STATEMENT
STATE OF TEXAS,
COUNTY OF TRAVIS,
I, **DOUGLAS B. CARLSON**, being one of the owners of the above described premises, do hereby declare to the public the use of all streets, alleys, ways, and easements shown hereon, and do hereby dedicate to the public the use of all streets, alleys, ways, and easements shown hereon.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office this 10 day of April, 2022, at Austin, Texas.

DOUGLAS B. CARLSON
OWNER
BY: 
STATE OF TEXAS,
COUNTY OF TRAVIS,
I, **DOUGLAS B. CARLSON**, being one of the owners of the above described premises, do hereby declare to the public the use of all streets, alleys, ways, and easements shown hereon, and do hereby dedicate to the public the use of all streets, alleys, ways, and easements shown hereon.

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BY: 
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COUNTY OF TRAVIS,
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COUNTY OF TRAVIS,
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DOUGLAS B. CARLSON
OWNER
BY: 
STATE OF TEXAS,
COUNTY OF TRAVIS,
I, **DOUGLAS B. CARLSON**, being one of the owners of the above described premises, do hereby declare to the public the use of all streets, alleys, ways, and easements shown hereon, and do hereby dedicate to the public the use of all streets, alleys, ways, and easements shown hereon.

- GENERAL NOTES:**
1. THIS PLAT LIES WITHIN THE CITY OF Pflugerville, TARRANT JURISDICTION.
 2. WATER AND WASTEWATER SHALL BE PROVIDED BY THE CITY OF Pflugerville. NO LOT IN THIS PLAT SHALL BE OCCUPIED UNTIL CONNED TO WATER AND WASTEWATER FACILITIES.
 3. EASEMENTS LOCATED TO THE PUBLIC OF THIS PLAT SHALL ALSO BE SUBJECT TO THE CITY OF Pflugerville'S POLICIES AND REGULATIONS. THE CITY OF Pflugerville SHALL HAVE THE AUTHORITY TO WAIVE THE STRICT ENFORCEMENT OF ANY CITY ORDINANCE TO MAINTAIN THE QUALITY OF THE PLAT, SUBJECT TO THE CITY OF Pflugerville'S POLICIES AND REGULATIONS.
 4. NO IMPROVEMENTS INCLUDING BUT NOT LIMITED TO STRUCTURES, POLES, OR UTILITIES SHALL BE ALLOWED IN A PUBLIC EASEMENT, EXCEPT AS APPROVED BY THE CITY OF Pflugerville.
 5. THIS SUBDIVISION IS SUBJECT TO ALL CITY OF Pflugerville ORDINANCES ON TECHNICAL MANUALS RELATED TO TREE PRESERVATION FOR CITY ORDINANCE 1208-12-02-24 AND CITY ORDINANCE 1224-09-08-25-24.
 6. THE CITY OF Pflugerville SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF ALL PUBLIC UTILITY LINES AND FACILITIES.
 7. THE OWNER SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF ALL PRIVATE UTILITY LINES AND FACILITIES.
 8. THIS SUBDIVISION SHALL MAINTAIN POST-DEVELOPMENT PEAK FLOW RATES FOR THE 2 YEAR 25 YEAR AND 100 YEAR STORM EVENTS.
 9. ALL DEVELOPMENT SHALL BE CONFORMED TO THE CITY OF Pflugerville'S POLICIES AND REGULATIONS, INCLUDING BUT NOT LIMITED TO, TELEPHONE, CABLE, FIBER, AND OTHER UTILITIES.
 10. THE OWNER OF THIS SUBDIVISION, AND HIS OR HER SUCCESSORS AND ASSIGNS, SHALL MAINTAIN THE CITY OF Pflugerville'S POLICIES AND REGULATIONS, INCLUDING BUT NOT LIMITED TO, TELEPHONE, CABLE, FIBER, AND OTHER UTILITIES.
 11. CONSTRUCTION PLANS AND SPECIFICATIONS FOR ALL SUBDIVISION IMPROVEMENTS SHALL BE APPROVED BY THE CITY OF Pflugerville PRIOR TO ANY CONSTRUCTION WITHIN THE SUBDIVISION.
 12. ALL PROPOSED FENCES AND WALLS MUST BE SUBJECT TO THE CITY OF Pflugerville'S POLICIES AND REGULATIONS, INCLUDING BUT NOT LIMITED TO, TELEPHONE, CABLE, FIBER, AND OTHER UTILITIES.
 13. WASTEWATER AND WATER SYSTEMS SHALL CONFORM TO TCCO TEXAS COMMISSION ON CONSTRUCTION'S (TCCO) POLICIES AND REGULATIONS. THE OWNER SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF ALL PRIVATE UTILITY LINES AND FACILITIES.
 14. THE OWNER SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF ALL PRIVATE UTILITY LINES AND FACILITIES.
 15. ALL (6) FOOT WIDE STREETS SHALL BE CONFORMED TO THE SUBDIVISION'S POLICIES AND REGULATIONS. THE CITY OF Pflugerville SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF ALL PUBLIC UTILITY LINES AND FACILITIES.
 16. THE DEVELOPMENT CONSTRUCTION PLANS SHALL BE REVIEWED AND APPROVED BY THE CITY OF Pflugerville. DEVELOPMENT SERVICES SHALL BE PAID TO THE CITY OF Pflugerville.
 17. THE CITY OF Pflugerville SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF ALL PUBLIC UTILITY LINES AND FACILITIES.
 18. A 10-FOOT WIDE UTILITY EASEMENT (UTILES) SHALL BE REQUIRED ALONG EACH SIDE OF ALL 10-FOOT WIDE STREETS AND ALLEYS. THE CITY OF Pflugerville SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF ALL PUBLIC UTILITY LINES AND FACILITIES.

City of Pflugerville
CITY CLERK
THIS PLAT MEETS THE GENERAL CRITERIA OF THE PLANNING AND ZONING COMMISSION ON THE DATE OF 10 APRIL 2022.

Rebecca Guerrero
CITY CLERK



EARLY LAND SURVEYING
A LIMITED LIABILITY COMPANY

200 BOB EYLES
AUSTIN, TX 78709
THE EARLY FIRM AND LOGO ARE TRADEMARKS OF EARLY LAND SURVEYING, INC.

PROJECT NO.: 1099-013
DRAWING NO.: 2022-013-PL1
DATE: 4/7/22
PLAT SCALE: 1" = 100'
SHEET NO.: 02 OF 02

EXHIBIT 1-A
Plans for Oversizing Offsite Wastewater Line

SUBMITTED FOR APPROVAL BY
 LJA ENGINEERING, INC.

[Signature] December 20, 2022

MAY 25, 2021

[Signature] June 15, 2022

[Signature] June 15, 2022

DEVELOPER'S REPRESENTATIVE (BY CHECKBOX)

DATE

PROJECT INFORMATION

PROJECT NAME: TACARA AT WEISS RANCH OFFSITE CONSTRUCTION PLANS

PROJECT ADDRESS: EAST PFLUGERVILLE PARKWAY AT WEISS LANE, PFLUGERVILLE, TEXAS

PROJECT NUMBER: 2022-001

PROJECT PHASE: PRELIMINARY

PROJECT STATUS: SUBMITTED FOR APPROVAL

PROJECT LOCATION: PFLUGERVILLE, TEXAS

PROJECT OWNER: [REDACTED]

PROJECT CONTACT: [REDACTED]

PROJECT PHONE: [REDACTED]

PROJECT FAX: [REDACTED]

PROJECT EMAIL: [REDACTED]

PROJECT WEBSITE: [REDACTED]

PROJECT ADDRESS: [REDACTED]

PROJECT CITY: [REDACTED]

PROJECT STATE: [REDACTED]

PROJECT ZIP: [REDACTED]

PROJECT COUNTY: [REDACTED]

PROJECT DISTRICT: [REDACTED]

PROJECT SUBDISTRICT: [REDACTED]

PROJECT PHASE: [REDACTED]

PROJECT STATUS: [REDACTED]

PROJECT LOCATION: [REDACTED]

PROJECT OWNER: [REDACTED]

PROJECT CONTACT: [REDACTED]

PROJECT PHONE: [REDACTED]

PROJECT FAX: [REDACTED]

PROJECT EMAIL: [REDACTED]

PROJECT WEBSITE: [REDACTED]

PROJECT ADDRESS: [REDACTED]

PROJECT CITY: [REDACTED]

PROJECT STATE: [REDACTED]

PROJECT ZIP: [REDACTED]

PROJECT COUNTY: [REDACTED]


PROJECT DISTRICT: [REDACTED]

PROJECT SUBDISTRICT: [REDACTED]

TACARA AT WEISS RANCH

OFFSITE CONSTRUCTION PLANS

EAST PFLUGERVILLE PARKWAY AT WEISS LANE
 PFLUGERVILLE, TEXAS



PROJECT INFORMATION

PROJECT NAME: TACARA AT WEISS RANCH OFFSITE CONSTRUCTION PLANS

PROJECT ADDRESS: EAST PFLUGERVILLE PARKWAY AT WEISS LANE, PFLUGERVILLE, TEXAS

PROJECT NUMBER: 2022-001

PROJECT PHASE: PRELIMINARY

PROJECT STATUS: SUBMITTED FOR APPROVAL

PROJECT LOCATION: PFLUGERVILLE, TEXAS

PROJECT OWNER: [REDACTED]

PROJECT CONTACT: [REDACTED]

PROJECT PHONE: [REDACTED]

PROJECT FAX: [REDACTED]

PROJECT EMAIL: [REDACTED]

PROJECT WEBSITE: [REDACTED]

PROJECT ADDRESS: [REDACTED]

PROJECT CITY: [REDACTED]

PROJECT STATE: [REDACTED]

PROJECT ZIP: [REDACTED]

PROJECT COUNTY: [REDACTED]

PROJECT DISTRICT: [REDACTED]

PROJECT SUBDISTRICT: [REDACTED]

REVISIONS

NO.	DATE	DESCRIPTION
1	12/20/2022	ISSUED FOR APPROVAL

REVISIONS

NO.	DATE	DESCRIPTION
1	12/20/2022	ISSUED FOR APPROVAL

LJA Engineering, Inc.

10000 W. PFLUGERVILLE PARKWAY
 SUITE 100
 PFLUGERVILLE, TEXAS 77356

PH: 281.233.0000
 FAX: 281.233.0001
 WWW.LJA-ENGINEERING.COM

EXHIBIT 2
Oversizing Cost Estimate

[attached]

Lee Contractors, Inc.
 136 Market Street
 Georgetown, Texas 78626
 Ph (512) 809-3512

Underground Utilities Bid Proposal

Baxter Contracting
 Attn: Brad Waters

Date: March 15, 2023

Weiss Lane
 Pflugerville, Texas

Tacara at Weiss Ranch - Offsite Waste Water

Description	Qty.	Unit M.	Unit Price	Extended Price
Offsite Waste Water				
8" SDR 26	2981	lf	\$ 89.72	\$ 267,455.32
24" Steel Casing	72	lf	\$ 266.54	\$ 19,190.88
24" Bore w/ Casing	435	lf	\$ 718.75	\$ 312,656.25
48" Waste Water Manhole	17	ea	\$ 3,974.37	\$ 67,564.29
48" Manhole Extra Depth	70	wf	\$ 469.69	\$ 32,878.30
Manhole Coating	206	wf	\$ 287.50	\$ 59,225.00
Connect to Existing Waste Water Manhole	1	ea	\$ 6,231.26	\$ 6,231.26
				\$ 765,201.30
Restoration				
Regrade & Reveg ROW (Excluded portion on Site)	7470	sy	\$ 4.56	\$ 34,063.20
				\$ 34,063.20
Concrete				
6' Concrete Sidewalk	2634	sf	\$ 6.00	\$ 15,804.00
				\$ 15,804.00
General Conditions				
Mobilization	1	ls	\$ 11,093.15	\$ 11,093.15
Trench Safety	2981	lf	\$ 3.16	\$ 9,419.96
Layout & Staking	2981	lf	\$ 4.14	\$ 12,341.34
				\$ 32,854.45

Total Base Bid: \$ 847,922.95

NOTES:

- * Utility spoils to be stock-piled on site (Total Hauloff from offsite utilities = 1120 cubic yards)
- * This proposal includes 1 mobilization only.
- * This proposal includes a maintenance bond of 10% on public work anything more will require a change order.
- * This proposal is valid for 30 days only.

EXCLUSIONS:

Cleaning	Tie-ins at buildings and cleanouts within 5' of buildings
All concrete swales, flumes & sidewalk drains	Topsoil and revegetation
Dewatering and/or wellpoints	Concrete unless specifically bid
Extensive rehabilitation to existing manholes (Price includes repairs to match existing coating only)	All site work including pond excavation & backfill of walls
Liquidated damages	Sidewalks & curb & gutter unless specifically noted
All inlet transitions and aprons	Bonds
All dry utilities, conduit and sleeves	Fences
Site development permits & impact/lap fees	TX DOT Right-Of-Way Permits
Capital recovery fees (including the cost of water meters)	HMA/C paving, striping & markings and/or street signs
Testing (other than required pressure tests on piping)	All items not specifically bid
Handling, storage or disposal of any contaminated soils	Repair to existing utilities not shown on plans or marked by One Call

Tanner Rogers

3/15/2023
 Date

Lee Contractors, Inc.
 140D Market Street
 Georgetown, Texas 78626
 Ph (512) 809-3512

Underground Utilities Bid Proposal

Baxter Contracting

Date: April 21, 2023

Weiss Lane
 Pflugerville, Texas

Tacara@ Weiss Ranch Offsite

Description	Qty.	Unit M.	Unit Price	Extended Price
Wastewater				
18" SDR-26 PVC	2870	LF	\$ 225.56	\$ 647,367.20
12" SDR-26 PVC	117	LF	\$ 153.69	\$ 17,991.73
30" Bore	430	LF	\$ 760.00	\$ 326,800.00
30" Steel Encasement Pipe	450	LF	\$ 343.42	\$ 154,539.00
12" Plug	1	EA	\$ 431.68	\$ 431.68
6' DIA Manhole w/interal Drop	2	EA	\$ 25,749.75	\$ 51,499.50
5' DIA Manhole	17	EA	\$ 13,182.99	\$ 224,110.76
Manhole Coaling	255	VF	\$ 291.65	\$ 74,370.75
Connect to Existing WW Manhole	1	EA	\$ 4,500.00	\$ 4,500.00
				\$ 1,501,590.62
General Conditions				
Mobilization	1	LS	\$ 5,546.57	\$ 5,546.57
Trench Safety	2987	LF	\$ 15.00	\$ 44,805.00
Layout & Staking	2987	LF	\$ 3.50	\$ 10,454.60
Haul off Utility Spoils	1746	CY	\$ 20.00	\$ 34,920.00
Regrade and Revegetate ROW	7470	SY	\$ 5.75	\$ 42,952.50
				\$ 138,678.67

Total Base Bid: \$ 1,640,269.19

NOTE:

- * This changes on this proposal was based off a non engineered drawing, and deviations or changes in the field may require a change order.
- * This proposal includes 1 mobilization only.
- * No addendums have been recognized at the time of this proposal.
- * All utility lines terminated at buildings based on locations identified on the civil plans.
- * This proposal includes a maintenance bond of 10% on public work anything more will require a change order.
- * This proposal is valid for 30 days only.

EXCLUSIONS:

- Clearing.
- All concrete swales, flumes & sidewalk drains.
- Dewatering and/or wellpoints.
- Extensive rehabilitation to existing manholes. (Price includes repairs to match existing coaling only.)
- Liquidated damages.
- Site development permits & impact/lap fees.
- Capital recovery fees (including the cost of water meters)
- Testing (other than required pressure tests on piping)
- Handling, storage or disposal of any contaminated soils.
- Repair to existing utilities not shown on plans or marked by One Call.
- Sidewalk Repair unless specifically noted.
- Bonds.
- Fences.
- TX DOT Right -Of- Way Permits
- HMAC paving, striping & markings and/or street signs.
- Downspout connections.
- All items not specifically bid

Tanner Rogers

4/21/2023

Date