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WHEREAS, the Parties agree that the City Improvements are for the oversizing of the Roadway improvements to increase capacity to anticipate future development 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 City Improvements without complying with the competitive bidding procedure of Chapter 252 of the Local Government Code; and

WHEREAS, the City has determined the Company's construction of the City Improvements 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 Company 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 Company have completed their respective obligations hereunder or until this Agreement has been earlier terminated by the mutual agreement of the City and the Company in writing or otherwise terminated as set forth in this Agreement.

Section 3. Improvements. The Roadway and City Improvements, as described and defined in the Recitals above, shall be constructed by Company in accordance with and subject to the following:

Company shall construct the City Improvements as described in this Agreement in accordance with and subject to (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 Roadway and related improvements (not including the City Improvements) dated January 26, 2016, entitled "Highland Park Phase C Section 3 Street & Drainage, Water & Wastewater Improvements, Pflugerville, Texas, January 2016" (the "Existing Plans") have been completed by Pape Dawson Engineers, Inc., a professional engineer company registered and licensed to provide its services in the State of Texas (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. The City has obtained from the Design Professional, at the

City's cost and expense, plans and specifications for the City Improvements (the "City Plans"). A true and correct copy of the City Plans have been 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 Existing Plans and City Plans (collectively, the "Plans") will be kept on file in the office of the City's Development Service Center (the "City Development Engineering Director"). 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.

1. The Parties acknowledge that the Company and CC Carlton (the "Contractor") have previously entered into that certain Construction Agreement for Highland Park Phase C-1, C-2 & C-3, relating to Streets, Drainage, Water, Wastewater, Erosion Control & Restoration dated February 10, 2016 (the "Construction Contract"), pursuant to which Contractor is to construct the Roadway and other improvements described in the Existing Plans. Following the Effective Date, Company and Contractor shall promptly enter into an amendment of or change order to the Construction Contract that will require that the Contractor also construct the City Improvements (the "City Improvement Change Order"). The City Improvement Change Order shall be submitted to the City for its review and approval prior to execution, and upon execution, Company shall provide the City with a true and correct copy of the City Improvement Change Order. In the event the City finds that the cost of the City Improvements set forth in the City Improvement Change Order exceeds the City Improvement Estimate, as defined below, the City shall notify the Company and the Company shall seek to reduce the cost of the City Improvement Change Order or seek additional funds from the City. Upon entering into the City Improvement Change Order, the construction of the City Improvements shall be promptly commenced and thereafter diligently prosecuted to completion, but in any event not later than one (1) year following the Effective Date. All work on the City 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.
2. Prior to any work on the City Improvements, Company shall provide (or require the Contractor to provide) to the City performance bonds 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 Construction Contract, to include the City Improvement Change Order (including, without limitation, the payment of all persons performing

labor or providing materials under or in connection with the City Improvement Change Order), each in the penal sum of one hundred percent (100%) of the total Construction Contract Amount. Company shall pay or cause the Contractor or the subcontractor to pay the premiums for such bonds. Bonds shall be issued by a surety company 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. Upon the final completion of the City Improvements and the acceptance thereof by the Company and the City, the Contractor shall submit a Warranty surety bond in required City format guaranteeing workmanship and materials for a period of two-year from the date of final acceptance of the City Improvements by the City. Company shall cause the Contractor to warrant and represent that it will repair any defects in the work herein contracted to be done and performed for a period of two (2) years from the date of the City's acceptance of all of the City Improvements. Company and the City of Pflugerville, Texas shall be named as joint obligees on all of such bonds.

3. To the extent any of the City Improvements are located within public right-of-way or property owned by the City, the City hereby grants to Company 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 Improvements. Company 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 Improvements, Company shall ensure that the City Improvements and the property on which the City 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 Company, the Contractor, or any subcontractor or material suppliers pursuant to the Construction Contract.
4. Company shall timely pay the Contractor in accordance with the terms and conditions of the Construction Contract and the City Improvement Change Order. Company shall insure that all City Improvements are completed in a timely manner in accordance with the Construction Contract and City Improvement Change Order. Company shall thoroughly inspect the work of the Contractor to guard the City against defects and deficiencies in the City Improvements without assuming responsibility for the means and methods used by the Contractor.

5. The City has the right to inspect, test, measure or verify the construction work on the City Improvements, as the City deems necessary.
6. Company shall keep the City Development Engineering Director informed regarding the progress of the City Improvements construction. Company shall notify and provide documentation to the City Development Engineering Director for the following events: (i) execution of the City Improvement Change Order (including copies of bonds and insurance), (ii) notice to proceed, (iii) default of the Contractor (if it occurs), and (iv) completion of the City Improvements such that they are ready for inspection by the City. The City Improvements shall not be considered finally complete until the City Development Engineering Director (or his/her assignee) has inspected the City Improvements and has issued a certificate of completion.

Section 4. Reimbursement. Subject to all of the terms and conditions of this Agreement, the City shall reimburse Company for the lesser of (i) one hundred percent (100%) of the total actual costs and expenses paid by Company in connection with or relating to the negotiation of this Agreement (including without limitation, legal fees), and all costs and expenses of insuring, permitting, and constructing the City Improvements (the “City Improvement Costs”) or (ii) an amount not to exceed THREE HUNDRED NINE THOUSAND FIVE HUNDRED FORTY-ONE AND NO/100 DOLLARS (\$309,541.00), being the estimated City Improvement Costs as represented in Exhibit 3 attached hereto (the “City Improvement Estimate”). The lesser of the City Improvement Costs or the City Improvement Estimate shall be the “Reimbursement Amount”. The City has ensured that sufficient funds are included in the City Improvement Estimate to allow for contingencies during construction of the City Improvements in the amount of ten percent (10%).

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

1. During the course of construction of the City Improvements, it is anticipated that the Design Professional and Contractor will, as portions of the work on the City Improvements are completed, submit to Company 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, Company 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 Improvement Change Order.

2. Each Reimbursement Invoice shall be accompanied by:
 - (a) a certification from Company that the Applicable Completed Portion for which a disbursement has been requested has been:
 - (i) completed in accordance with the City Improvement Change Order, this Agreement, and 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
 - (ii) paid for by Company in accordance with the Construction Contract and City Improvement Change Order, and
 - (b) 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.
3. The Reimbursement Invoice shall also be accompanied by 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, Construction Contract, and City Improvement Change Order.
4. Payment of the final portion of the Reimbursement Amount is further conditioned on and subject to the City’s prior receipt from Company 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 Improvements.
5. Within thirty (30) 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 Company is not then in default of this Agreement beyond any applicable cure period, the City shall pay to Company the amount of the applicable Reimbursement Invoice.

6. Within thirty (30) days following the last of:

- (a) the City's receipt from the Design Professional of the Design Professional's certification (sealed by the Design Professional) that the City Improvements have all been fully and finally completed in accordance with the Construction Contract and City Improvement Change Order,
- (b) the City's receipt of a written certification from Design Professional that the City Improvements have been finally completed in accordance 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,
- (c) the City's receipt of a written certification from Company that the final payment for the construction of the City 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,
- (d) the City's receipt from Company 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 Improvements, and
- (e) final completion of the City Improvements and the City's acceptance thereof as set forth herein.

7. The cost of the *City Improvements* shall not exceed thirty percent (30%) of the total contract price.

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 Company 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, Company shall maintain minimum insurance coverages, described below. Company may satisfy this requirement through insurance provided by its Contractor.

- A. Commercial General Liability insurance at minimum combined single limits of \$2,000,000 per-occurrence and \$5,000,000 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.

- B. Workers Compensation insurance at statutory limits, including Employers Liability coverage a minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.
- C. Commercial Automobile Liability insurance 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.
- D. 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. Company 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.

- E. With reference to the foregoing insurance requirements, Company 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. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
 - 3. 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.
 - 4. All insurance policies shall be endorsed to require the insurer to immediately notify the City of any material change in the insurance coverage.

5. All insurance policies shall be endorsed to the effect that the City will receive at least thirty (30) days' notice prior to cancellation or non-renewal of the insurance.
6. All insurance policies, which name the City of Pflugerville, Texas as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
7. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
8. Contractor may maintain reasonable and customary deductibles, subject to approval by the City.
9. Insurance must be purchased from insurers that are financially acceptable to the City.
10. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, delivered to Company and the City prior to the commencement of any work on the City Improvements (or within 15 days after the date of this Agreement if construction has already commenced), and shall contain provisions representing and warranting the following:
 - a. Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.
 - b. Shall specifically set forth the notice-of-cancellation or termination provisions to the City.
11. Upon request, Company shall furnish the City with certified copies of all insurance policies.
12. Company shall require Contractor to continuously and without interruption, maintain in force the required insurance coverages specified in this Section. If Company does not comply with this requirement the City Engineer, at the City Engineer's sole discretion, may:
 - a. Subject to the notice and cure period set forth in Section 7, immediately suspend Company from any further performance under this Agreement and begin procedures to terminate for default, or

- b. purchase the required insurance with City funds and deduct the cost of the premiums from the Reimbursement Amount due to Company under this Agreement.
- c. 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. Indemnity Owed by Company.

Company covenants and agrees to FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS the City of Pflugerville, Texas and the elected officials, the officers, employees, representatives, and volunteers of the City of Pflugerville, Texas, individually or collectively, in both their official and private capacities (the City of Pflugerville, Texas, and such elected officials, and officers, employees, representatives, and volunteers of the City of Pflugerville, Texas each being a “Pflugerville Person” and collectively the “Pflugerville Persons”), from and against any and all costs, claims, liens, harm, damages, losses, expenses, fees, fines, penalties, proceedings, judgments, actions, demands, causes of action, liability, and suits, of any kind and nature whatsoever made upon any Pflugerville Person, whether directly or indirectly, that arise out of, result from, or relate to: (1) the services and work to be provided by Company under or in connection with this Agreement; (2) representations or warranties by Company under this Agreement; and/or (3) any other act or omission under or in performance of this Agreement by Company, or any owner, officer, director, manager, employee, agent, representative, consultant, contractor, subcontractor, licensee, or concessionaire of Company, or any other person or entity for whom Company is legally responsible, and their respective owners, officers, managers, employees, directors, agents, and representatives (the “Claims”). SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY PFLUGERVILLE PERSON, OR CONDUCT BY ANY PFLUGERVILLE PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

Company shall promptly advise the City in writing of any Claims against any Pflugerville Person or Company related to or arising out of Company’s activities under this Agreement and shall see to the investigation and defense of such Claims at Company’s sole cost and expense. The Pflugerville Persons shall have the right, at the Pflugerville Persons’ option and at its own expense, to participate in such defense without relieving Company of any of its obligations hereunder.

The provisions of this defense, indemnity, and hold harmless obligation, and any other defense, indemnity, and hold harmless obligation set forth in this Agreement, shall survive the termination or expiration of this Agreement.

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 7.A. 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 20th day following receipt of the notice by the defaulting party; but if the default cannot with diligence be cured within the said 20 day period, if within such 20 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, not to exceed 40 days following the occurrence of the default. The non-defaulting party, at its sole option, may extend the proposed date of termination to a later date. 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 subsection A of this Section 7, 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 Company.
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 Company, or adjudication as a bankrupt or insolvent in proceedings filed against the Company.
3. Appointment of a receiver or trustee for all or substantially all of the assets of the Company.
4. Failure by the Company to complete the City Improvements within one (1) year following the Effective Date (subject to Force Majeure).

C. In the event this Agreement is terminated due to default of the Company or for any of the reasons set forth in subsection B. of this Section 7, or if the Company abandons the

City Improvements project for a period of ninety (90) days following commencement of construction thereof, either of which event is before the Contractor completes the construction of the City Improvements, the City reserves the right to continue the City Improvement Change Order and utilize any unexpended funds for this Agreement to reimburse the Contractor. In such event, Company shall have no claim for any other funds of the City.

Section 8. Conflict of Interest.

A. Company 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, Company 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. Company 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, Company warrants and certifies that it has filed a 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 incapacities 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, all of Company's books and other records related to the City Improvements shall be available for inspection by the City at a location within the City as determined by the City. Company shall include in the City Improvement Change Order that the City has and reserves the right, upon notice, to inspect and make an audit of all books, records, accounts and other data of the Contractor relating to the construction of the City Improvements and performance of the City Improvement Change Order. The City further has the right to conduct inspections of all places where work is undertaken in connection with this Agreement.

C. **Independent Contractor.** Company is an independent contractor, and Company 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 Company 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 Company's performance of the subject matter of this Agreement. All officers, employees, personnel, contractors, subcontractors, agents, and representatives supplied or used by Company in connection with the obligations set forth in this Agreement shall be deemed officers, employees, personnel, contractors, subcontractors, agents, and representatives of Company and shall not be considered officers, employees, personnel, contractors, subcontractors, agents, and representatives of the City for any purpose whatsoever. Company 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. Notwithstanding the foregoing, the City acknowledges that the Company's obligations to construct the City Improvements shall be performed by the Contractor pursuant to the City Improvement Change Order, 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 Company 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: Brandon Wade, City Manager
100 E. Main Street
Pflugerville, Texas 78660
Phone: 512.990.6101
E-mail: citymanager@pflugervilletx.gov

With copies to: George E. Hyde, Esq.
Denton, Navarro, Rocha, Bernal, Hyde & Zech, PC
2500 W. William Cannon, # 609
Austin, Texas 78745
Phone: 512.479.6431; Fax: 512-279-6438
E-mail: George.Hyde@rampage-aus.com

If to the Company, to: Continental Homes of Texas, L.P.
Attn: Mr. Ian Cude
10700 Pecan Park Blvd., Suite 400
Austin, Texas 78750
Phone: 512.533.1514; Fax: 512.533.1429
E-mail: icude@drhorton.com

With copies to: D.R. Horton, Inc.
Attn: James C. Ilkenhans, Esq.
4306 Miller Road
Rowlett, Texas 75088
Fax: 800.276.4288

And to: Timothy C. Taylor, Esq.
Jackson Walker L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701-4042
Phone: 512.236.2390; Fax: 512.391.2150
E-mail: ttaylor@jw.com

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. Company 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.

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 City and Company to sign below, as reflected by the date of signing.

[SIGNATURE PAGE FOLLOWS]

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

CITY:

CITY OF PFLUGERVILLE, TEXAS
a home-rule municipality

By: _____
Brandon Wade
City Manager

Date of signing: _____

COMPANY:

Continental Homes of Texas, L.P.
(a Texas limited partnership)

By: CHTEX of Texas, Inc.
(a Delaware corporation)
Its General Partner

By: _____
Ian Cude
Assistant Secretary

Date of signing: _____

ATTEST:

By: _____
Karen Thompson
City Secretary

EXHIBIT 1
Phase C3 Land

FIELD NOTES

JOB NO. 0584-00
DATE: 6-13-16
PAGE 1 OF 3

5.36 ACRES

Being 5.36 acres of land situated in Travis County, Texas, out of the Thomas G. Stuart Survey No. 6, Abstract No. 689, in Travis County, Texas, and being a portion of a called 90.93 acres conveyed to Continental Homes of Texas, L.P., in a Special Warranty Deed, dated June 28, 2007, as recorded under Document No. 2007122919 of the Official Public Records of Travis County, Texas, and further described by metes and bounds as follows:

BEGINNING: at a ½" iron rod w/ cap stamped "TLS, Inc.", set in the north line of a called 75.38 acres (tract 'A') conveyed to the City of Pflugerville, in a General Warranty Deed, dated December 23, 2009, as recorded under Document No. 2010006423 of said Official Public Records, for the southeast corner of a called 35.92 acres conveyed to Continental Homes of Texas, L.P., in a Special Warranty Deed, dated June 28, 2007, as recorded under Document No. 2007122920 of said Official Public Records, an angle point in the west line of said Continental Homes of Texas, L.P., 90.93 acre tract, and the southwest corner of this parcel.

THENCE: N 27°20'22" E, 307.03 feet along the east line of said Continental Homes of Texas, L.P., 35.92 acre tract, the west line of said Continental Homes of Texas, L.P., 90.93 acre tract, and this parcel, to a ½" iron rod w/ cap stamped "TLS, Inc.", set for the southwest corner of a called 10.16 acres conveyed to the City of Pflugerville (tract 'B'), in a General Warranty Deed, dated January 12, 2010, as recorded under Document No. 2010006423 of said Official Public Records, and the northwest corner of this parcel.

THENCE: S 62°25'25" E, in part, through, over and across said Continental Homes of Texas, L.P., 90.93 acre tract, along the south line of said City of Pflugerville 10.16 acre tract, and the south line of Highland Park, Phase 'D', Section 7, a subdivision in Travis County, Texas, as recorded under Document No. 2015002116 of said Official Public Records, at 521.13 feet passing a ½" iron rod w/ cap stamped "TLS, Inc.", set for the southeast corner of said City of Pflugerville 10.16 acre tract, and an angle point in the south line of said Highland Park, Phase 'D', Section 7, continuing in all 761.13 feet to a ½" iron rod w/ cap stamped "TLS, Inc.", set in the west line of Kingston Lacy Blvd., being the west line of Highland Park, Phase 'D', Section 2, a subdivision in Travis County, Texas, as recorded under Document No. 201000152 of said Official Public Records, for the southeast corner of said Highland Park, Phase 'D', Section 7, and the northeast corner of this parcel.

THENCE: S 27°34'35" W, 307.03 feet, in part, along the west line of said Highland Park, Phase 'D', Section 2, in part, the west line of Highland Park, Phase 'D', Section 1, a subdivision in Travis County, Texas, as recorded under Document No. 200800121 of said Official Public Records, the east line of said Continental Homes of Texas, L.P., 90.93 acre tract, and this parcel, to a ½" iron rod w/ cap stamped "TLS, Inc.", set for the northeast corner of said City of Pflugerville 75.38 acre tract, an angle point in the west line of said Highland Park, Phase 'D', Section 1, and the southeast corner of this parcel.

FIELD NOTES

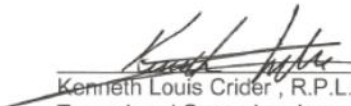
JOB NO. 0584-00

DATE: 6-13-16

PAGE 2 OF 3

THENCE: N 62°25'25" W, 759.86 feet, through, over and across said Continental Homes of Texas, L.P., 90.93 acre tract, along the north line of said City of Pflugerville 75.38 acre tract, and the south line of this parcel, to the Point of Beginning.

Bearings cited hereon based on Grid North Texas State Plane Coordinate System Central Zone (NAD83).

 6-15-16
Kenneth Louis Crider, R.P.L.S. No. 5624
Texas Land Surveying, Inc.
3613 Williams Drive, Suite 903
Georgetown, Texas 78628



Texas Land Surveying, Inc.

3613 Williams Drive, Suite 903 – Georgetown, Texas 78628
(512) 930-1600 www.texas-ls.com
TBPLS FIRM No. 10056200

R:\Egpt_01\0584_HIGHLAND_PARK\PLATS\HP_PHC\HP_PHC_SEC1\0584 C3 REMAINDER TRACT 5.36 AC FIELD NOTES.odt

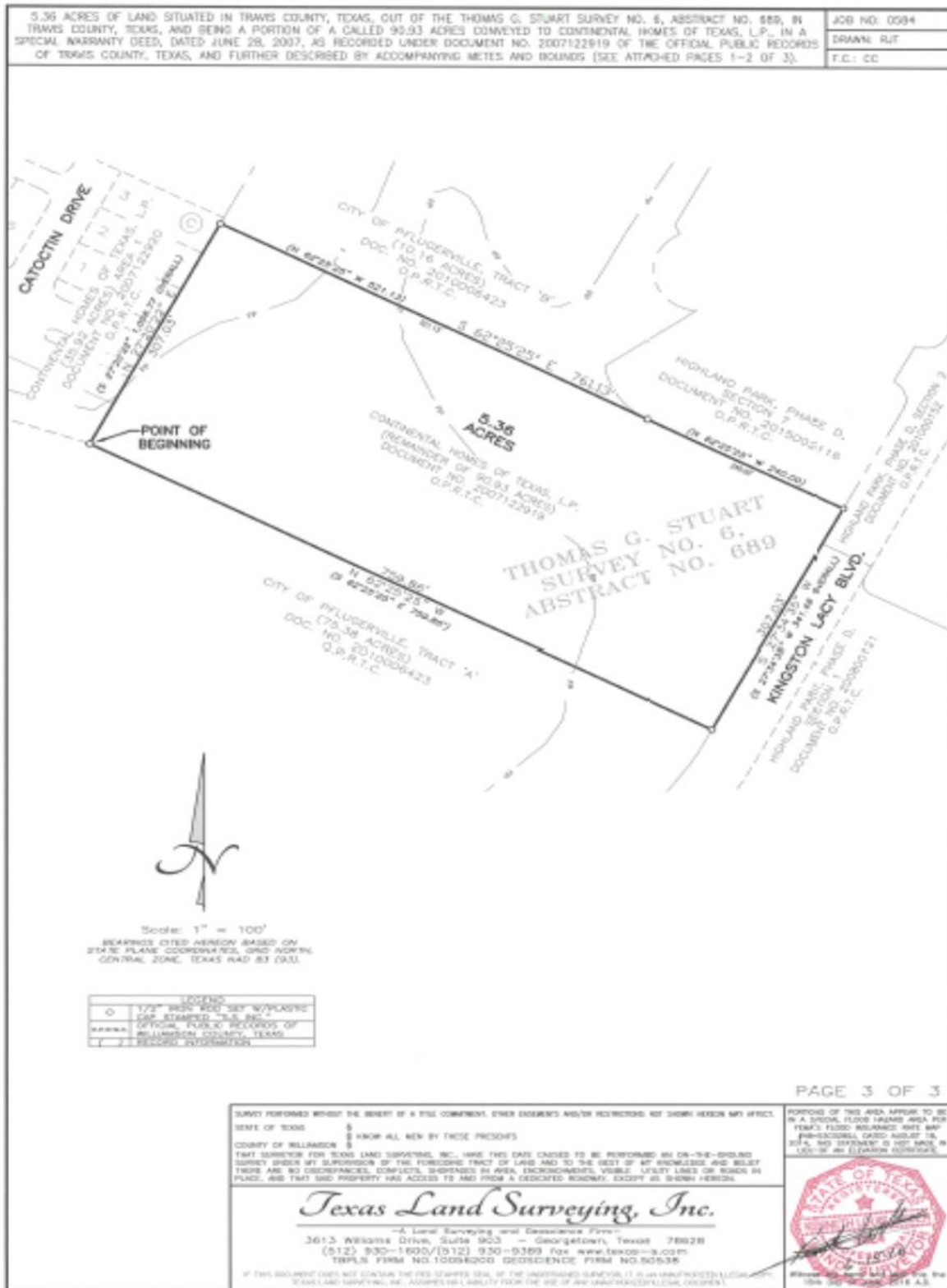


Exhibit 1 - Page 3

EXHIBIT 2 **City Improvements**

1417

ENGINEER'S OPINION OF DEVELOPMENT COST FOR CITY REQUESTED IMPROVEMENTS				
Project: HIGHLAND PARK PHASE C-SECTION 3 Project No: 56658-63 Prepared By: PAPE DAWSON ENGINEERS, INC. Quantities From: Preliminary Construction Plans Unit Costs From: Contractor		Client: DR HORTON Date: Aug 24, 2016 Lot: UPA: Acres:		
SUMMARY OF PROBABLE COSTS				
ITEM	ORIGINAL ENGINEER'S OPC TOTAL COST	REVISED ENGINEER'S OPC TOTAL COST	DELTA (A) TOTAL COST	
Street Improvements	\$341,000.00	\$468,682.00	\$127,682.00	
Drainage Improvements	\$450,390.00	\$596,445.00	\$136,055.00	
Water Improvements	\$6,500.00	\$6,500.00		
Wastewater Improvements	\$1,200.00	\$1,200.00		
ESC Improvements	\$29,150.00	\$31,310.00	\$2,160.00	
Miscellaneous Improvements	\$30,000.00	\$35,300.00	\$4,300.00	
SUBTOTAL	\$859,840.00	\$1,129,441.00	\$269,591.00	
CONTINGENCY (10%)	\$85,984.00	\$112,944.10	\$26,959.10	
GRAND TOTAL	\$945,824.00	\$1,242,385.10	\$296,451.10	

The quantities shown are based upon preliminary Construction Plans information prior to City of Highland Park approval and are subject to change to reflect City of Highland Park's review comments.

Since the ENGINEER has no control over cost of labor, materials, equipment, or services furnished by others, or over the contractor's competitive bidding or market conditions, the ENGINEER'S opinion and construction cost estimates provided above have been made on the basis of the ENGINEER'S best judgment as an experienced and qualified professional ENGINEER familiar with the construction industry for which this estimate was prepared. But the ENGINEER cannot and does not guarantee that actual construction costs will not vary from this estimate.



Phase C3 OPC 10064 (D:\hwy\rd\1606\)

8/24/2016

ENGINEER'S OPINION OF DEVELOPMENT COST FOR CITY REQUESTED IMPROVEMENTS

Project: **HIGHLAND PARK PHASE C-SECTION 3**
 Project No: **50658-63**
 Prepared By: **PAPE-DAWSON ENGINEERS, INC.**
 Quantities From: **Preliminary Construction Plans**
 Unit Costs From: **Contractor**

Client: **DR HORTON**
 Date: **Aug 24, 2016**
 Lots:
 UPA:
 Acres:

STREET IMPROVEMENTS

Item No.	Description-Street	Unit	Original Quantity	Original Unit Cost	Original Item Total	Revised Quantity	Revised Unit Cost	Revised Item Total	Delta (a) Quantity	Delta (a) Item Total
1	CLEAR AND GRUB (ROW-ROW)	SY	5,957	\$1.00	\$5,957.00	8,145	\$1.00	\$8,145.00	2,188	\$2,188.00
2	EXCAVATION/EMBANKMENT (ROW-ROW)	SY	5,957	\$13.00	\$77,441.00	8,145	\$13.00	\$105,885.00	2,188	\$28,444.00
3	SUBGRADE PREPARATION (3' BOC)	SY	4,220	\$2.40	\$10,128.00	5,765	\$2.40	\$13,836.00	1,545	\$3,708.00
4	8" LIME STABILIZATION (3' BOC)	SY	4,220	\$7.40	\$31,228.00	5,765	\$7.40	\$42,661.00	1,545	\$11,433.00
5	15" FLEXIBLE BASE (3' BOC)	SY	4,220	\$15.00	\$63,300.00	5,765	\$15.00	\$86,475.00	1,545	\$23,175.00
6	2" HMAC (LOG-LOG)	SY	3,126	\$11.00	\$34,386.00	4,260	\$11.00	\$46,860.00	1,134	\$12,474.00
7	STOP SIGNS W/ STREET NAMES/STOP BARS	EA	1	\$1,000.00	\$1,000.00	1	\$1,000.00	\$1,000.00	--	--
8	STRIPING	LS	1	\$2,000.00	\$2,000.00	1	\$8,100.00	\$8,100.00	--	\$6,100.00
9	10' CONCRETE HIKE & BIKE TRAIL	LF	780	\$35.00	\$27,300.00	780	\$35.00	\$27,300.00	--	--
10	6' CONCRETE SIDEWALK	LF	780	\$30.00	\$23,400.00	833	\$30.00	\$24,990.00	53	\$1,590.00
11	PEDESTRIAN HANDRAIL	LF	294	\$75.00	\$22,050.00	359	\$75.00	\$26,925.00	65	\$4,875.00
12	SAWCUT AND TIE INTO EXISTING STREET	EA	2	\$1,700.00	\$3,400.00	2	\$1,700.00	\$3,400.00	--	--
13	TRAFFIC CONTROL	LS	1	\$3,000.00	\$3,000.00	1	\$300.00	\$300.00	--	(\$2,700.00)
14	CURB & GUTTER	LF	2,014	\$15.00	\$30,210.00	2,387	\$15.00	\$35,805.00	373	\$5,595.00
15	RELOCATE EXISTING STREET LIGHT	EA	2	\$3,500.00	\$7,000.00	2	\$3,500.00	\$7,000.00	--	--
16	MOBILIZATION	LS		N/A		1	\$30,000.00	\$30,000.00	1	\$30,000.00
	TOTAL PRICE FOR STREET IMPROVEMENTS				\$341,800.00			\$468,682.00		\$126,882.00

Exhibit 2 - Page 4

DR Horton Developer Participation Agreement
16110974v.7

ENGINEER'S OPINION OF DEVELOPMENT COST FOR CITY REQUESTED IMPROVEMENTS	
Project: HIGHLAND PARK PHASE C-SECTION 3 Project No: 50658-63 Prepared By: PAPE-DAWSON ENGINEERS, INC. Quantities From: Preliminary Construction Plans Unit Costs From: Contractor	Client: DR HORTON Date: Aug 24, 2016 Lots: UPA: Acres:
WASTEWATER IMPROVEMENTS	

Item No.	Description	Unit	Original Quantity	Original Unit Cost	Original Item Total	Revised Quantity	Revised Unit Cost	Revised Item Total	Delta (Δ) Quantity	Delta (Δ) Item Total
1	ADJUST EXISTING CASTING TO GRADE	EA	1	\$1,200.00	\$1,200.00	1	\$1,200.00	\$1,200.00	--	--
	TOTAL PRICE FOR WATER IMPROVEMENTS				\$1,200.00			\$1,200.00		

ENGINEER'S OPINION OF DEVELOPMENT COST
FOR CITY REQUESTED IMPROVEMENTS

Project: HIGHLAND PARK PHASE C-SECTION 3	Client: DR HORTON
Project No: 50658-63	Date: Aug 24, 2016
Prepared By: PAPE-DAWSON ENGINEERS, INC.	Lots:
Quantities From: Preliminary Construction Plans	UPA:
Unit Costs From: Contractor	Acres:

MISC IMPROVEMENTS

Item No.	Description	Unit	Original Quantity	Original Unit Cost	Original Item Total	Revised Quantity	Revised Unit Cost	Revised Item Total	Delta (Δ) Quantity	Delta (Δ) Item Total
1	DRY UTILITY INSTALLATION (ELECTRIC)	LS	1	\$15,000.00	\$15,000.00	1	\$15,000.00	\$15,000.00	--	--
2	LOT PIN REPLACEMENT/VERIFICATION	LS	1	\$1,500.00	\$1,500.00	1	\$1,500.00	\$1,500.00	--	--
3	PERFORMANCE AND PAYMENT BOND	LS	1	\$14,400.00	\$14,400.00	1	\$18,800.00	\$18,800.00	--	\$4,400.00
	TOTAL PRICE FOR MISC IMPROVEMENTS				\$30,900.00			\$35,300.00		\$4,400.00

EXHIBIT 3

City Improvement Estimate



Memo

TO: Thomas Anker

DATE: September 27, 2016

FROM: Dustin Goss *dg*

PROJECT NO.: 50658-63

CC:

RE: Highland Park C3 – Developer Participation Contract – Exhibit 3

This memo shall act as Exhibit 3 for the Developer Participation Contract between the City of Pflugerville, Texas and Continental Homes of Texas, L.P. in regards to the Highland Park Phase C Section 3 project.

“City Improvements” costs (as defined in the recitals of the Developer Participation Contract):

Estimated Construction Costs:	\$297,551
Estimated Developer Costs:	\$11,990
Total Estimated Costs:	\$309,541

Construction Costs		Developer Costs	
Construction Improvements		Fiscal Surety	
Original Engineer's OPC	\$859,940	Estimated Increase (Δ) Fiscal Req's	\$5,400
10% contingency	\$85,994	10% contingency	\$540
Total	\$945,934	Total (Δ)	\$5,940
Revised Engineer's OPC		Attorney's Fees	
10% contingency	\$1,129,441	Estimated fees	\$5,500
Total	\$1,242,385	10% contingency	\$550
Increase (Δ)		Total	\$6,050
10% contingency	\$269,501		
Total (Δ)	\$296,451		
Field Lab Testing			
Estimated Increase (Δ)	\$1,000		
10% contingency	\$100		
Total	\$1,100		
Construction Costs Total	\$297,551	Developer Costs Total	\$11,990

H:\projects\506\58\63\301 Construction Documents\Documents\Plan Processing\City\Highland Park C3 Developer Contract Exhibit 3 - Memo.docx

TBPE Firm Registration #470 | TBPLS Firm Registration #10028801
Austin | San Antonio | Houston | Fort Worth | Dallas
Transportation | Water Resources | Land Development | Surveying | Environmental
7800 Shoal Creek Blvd., Suite 220 West, Austin, TX 78757 T: 512.454.8711 www.Pape-Dawson.com