DEVELOPMENT AGREEMENT BETWEEN CITY OF ANGLETON, TEXAS AND TEJAS-ANGLETON DEVELOPMENT, L.L.C.

This Development Agreement (this "Agreement") is made and entered into by the City of Angleton, Texas (the "City"), a home-rule municipality in Brazoria County, Texas, acting by and through its governing body, the City Council of the City of Angleton, Texas, and Tejas-Angleton Development, L.L.C., a Texas Limited Liability Company ("Developer").

RECITALS

WHEREAS, Developer owns or is under contract to purchase approximately 164.5 acres of land located within the corporate boundaries of the City, and more particularly described on **Exhibit "A"** attached and incorporated herein by reference (the "Property"); and

WHEREAS, Developer plans a Mixed-Use Development with Single-Family Homes and a Commercial/Retail Development to be known as Austin Colony, (the "Project") as depicted on the Land Development Plan of Austin Colony attached hereto as **Exhibit "B"** and incorporated herein by referenced (the "Land Plan"); and

WHEREAS, Section 6 of Austin Colony may be developed for approximately fifty-five (55) single-family residential lots if Developer has not sold the Property included in Section 6 for Commercial/Retail Development within four (4) years after the date of this Agreement; and

WHEREAS, Developer requests that the City approve and adopt an ordinance to zone the Property pursuant to Chapter 28 Zoning, Article III Zoning Districts, Section 28-45, SF-5 Single Family Residential ("Ordinance") subject to this Agreement which will govern and permit the development of the Project in accordance with the Land Plan attached hereto as **Exhibit "B"**; and

WHEREAS, Developer requests that the City consider, approve, and adopt an ordinance to create the Austin Colony Public Improvement District upon petition, application, review, and consideration by the City; and

WHEREAS, the Developer and the City desire to enter into this Agreement and it is the intent of this Agreement to establish certain restrictions and commitments imposed and made in connection with the development of the Property; and

WHEREAS, the City and the Developer are proceeding in reliance on the enforceability of this Agreement; and

WHEREAS, the City is authorized by the Constitution and laws of the State of Texas to enter into this Agreement.

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

Definitions

The terms "*Agreement*", "*City*", "*Developer*", "*Austin Colony*", "*Project*", *"Land Plan"* shall have the meanings provided in the recitals above, however "Property" is further defined as 164.5 acres of land described in **Exhibit "A"**. Except as may be otherwise defined, or the context clearly requires otherwise, the following terms and phrases used in this Agreement shall the meanings as follows:

Capacity Acquisition Fee means the fee that is a one-time charge to Developer by the City and is a fee based on the roughly proportional fair share guidelines and standards set forth in Ordinance Number 20190528-021 adopting a Capacity Acquisition Fee, and LDC Sec. 23-32 per Equivalent Single-family Connection ("ESFC") platted to cover the capital costs incurred by the City and as related to the provision of water supply and sewage treatment.

Development Ordinances means those regulations adopted by ordinance by the City of Angleton, in Chapter 23 *Land Development Code* ("LDC"), and Chapter 28 *Zoning*, Code of Ordinances of the City of Angleton, Texas, and not including any future amendments or changes, except future amendments or changes exempted from Chapter 245, Local Government Code, Section 245.004; provided, however, that Developer may elect to have such future amendments or changes apply to the development of the Property.

HOA means the homeowners association(s) for the homes within the Property.

Utility Improvements means all infrastructure, public developments including but not limited to water, wastewater drainage system, and sanitary sewer utilities for the Project.

Effective Date means the date of mutual execution by all necessary parties on this Agreement.

ARTICLE I

Covenants

Section 1.01 **Permitted Uses.** The Project shall be limited to the development of single-family dwellings and commercial or retail.

Section 1.02 **Height Restrictions.** No dwellings built in the Single-Family Residential portion of the Project shall exceed a maximum height of thirty-five feet (35') or be more than two and one-half (2.5) stories tall.

Section 1.03 **Lot Dimensions and Development.** The lots shall be the size depicted on the Land Development Plan, approximately 120 feet in length, with the front width of each lot as set forth below:

SECTIONS AND LOTS SUMMARY				
Section	Lot Width 50 Feet	Lot Width 55 Feet	Lot Width 60 Feet	Section Lot Total
1	100			100
2		84		84
3			84	84
4		75	41	116
5		64	19	83
6			55	55
Lot Size Total	100	223	199	522
Size %	20%	42%	38%	100%

Section 1.04 **Entry Monument.** An Entry Monument shall be placed at the corner of Austin Colony Boulevard and County Road 44, which is the entry to the Project off County Road 44. The Entry Monument shall be either brick or stone with landscaping, planted grass, shrubs, irrigation system and lighting.

Section 1.05 **Playground.** A playground behind the entry monument shall include playground equipment.

1.06 **Section One.** The first section to be developed is identified as Section 1 (50' lots) on the attached Land Plan and shall include:

a) an entry monument with landscaping that is irrigated and lighted.
b) a playground with playground equipment.
c) Austin Colony Boulevard will be 28 feet wide, concrete paved from County Road 44 to the entry of Section 1 and will be divided at the entry off County Road 44 and have a turn lane at the entry of Section 1 and Section 3.
d) A dry retention pond will be graded and planted for recreation.
e) 100 single-family residential lots – 50' x 120' (6,000 sq.ft.).

1.07 **Section Two.** The second section to be developed is identified as Section 2 (55' lots) on the Land Plan and shall include:

a) concrete extension of Tigner Street, from the end of pavement behind Wal-Mart to the entrance to Section 2, will be 28 feet wide (2 lanes in each direction) with turn lanes. The detention pond started in Section 1 will be completed as part of Section 2.
b) 84 single-family residential lots – 55' x 120' (6,600 sq. ft.)

1.08 **Section Three.** The third section to be developed is identified as Section 3 (60' lots) on the Land Plan and shall include:

a) A 28-feet wide (2 lanes in each direction) with turn lanes concrete extension with of Tigner Street to the north entrance of Section 3 and the connecting section of Austin Colony Boulevard to Tigner Street.
b) Retention for Section 3 is included in the Section 1 and 2 retention pond.

c) 84 single-family residential lots – 60’ x 120’ (7,200 sq. ft.)

1.09 **Section Four.** The fourth section to be developed is identified as Section 4 (55’ and 60’ lots) on the Land Plan and shall include:

a) 75 single-family residential lots – 55’ x 120’ (6,600 sq.ft.)
b) 41 single-family residential lots – 60’ x 120’ (7,200 sq.ft.)
c) The first part of the northerly detention pond will be graded and planted for recreation.

1.10 **Section Five.** The fifth section to be developed is identified as Section 5 (55’ and 60’ lots) on the Land Plan and shall include:

a) The completion of the north detention pond with a reflective feature, graded and planted for recreation.
b) 64 single-family residential lots – 55’ x 120’ (6,600 sq.ft.)
c) 19 single-family residential lots – 60’ x 120’ (7,200 sq.ft.)

1.11 **Section Six.** The sixth section to be developed is identified as Section 6 on the Land Plan and shall be set aside, listed, and advertised for commercial development. Beginning the fifth year and continuing thereafter, if the property has not sold for commercial development and Sections 1 through 5 have been developed, Section 6 may be developed as single-family residential lots at least 60 feet in front width, 60’ x 120’ (7,200 sq.ft.)

Section 1.12 **Compliance with Additional City Ordinances.** In addition to those ordinances applicable to the Project by virtue of its zoning as a Section 28-45, SF-5 single-family residential and as otherwise set forth in this Agreement; the Project shall also comply with the Development Ordinances.

Section 1.13 **Fees-in-Lieu.** The Developer agrees to pay a City fee in lieu of dedication of park acres in the amount of Five Hundred Seventy-Five and No/100 Dollars ($575.00) per lot. The fee shall be paid to the City prior to recording of any final plat of the Project, as set forth in Sec. 23-20 of the Angleton Code of Ordinances.

Section 1.14 Sewer **CAF.** Developer agrees to pay a Sewer CAF. The Sewer CAF is One Thousand Three Hundred Eighty-Seven and 25/100 dollars ($1,387.25) per lot, which is the amount set forth in the Capacity Acquisition Fee Memo attached hereto as **Exhibit “C”**. The fee shall be paid to the City at the filing of the Final Plat for the lots included in the Final Plat for each Section.

Section 1.15 **Water CAF.** Developer agrees to pay a Water CAF. The Water CAF is Five Hundred Thirty-Six and 70/100 dollars ($536.70) per lot. The Water CAF shall be paid to the City at the filing of the Final Plat for the lots included in the Final Plat for each Section. The City agrees to provide Water Service to the Project.

Section 1.16 **Fencing.** Developer agrees to install perimeter fencing as depicted in **Exhibit “ ”** attached hereto. Developer agrees to install premium, stained, crowned cedar fencing along the property lines of all lots along Austin Colony Boulevard and Tigner Street. All

perimeter fencing shall be maintained by the HOA. Perimeter fencing shall not be installed within any street intersection sight triangles. All fencing for each proposed development phase shall be installed prior to the occupancy of any residence in that phase. All wood fencing will have a top cap.

Section 1.17 **Conduit.** Developer agrees to install and provide conduit for the installation of fiber internet in the entire Project.

Section 1.18 **Streetlights.** Developer agrees that all streetlights will be LED, and all streetlight poles will be permitted and satisfy the requirements of Texas New Mexico Power Company. (TXNM).

Section 1.19 **Homeowner's Association**. Developer will create detailed Deed Restrictions and a homeowner's association ("HOA") that will enforce the restrictions set forth herein. In the event Owner's Association becomes insolvent or fails to maintain proper documentation and filings with the State of Texas as required and loses its authority to operate and transact business as a property owner's association in the State of Texas then the City shall have the right to but is not obligated to enforce deed restrictions and other matters as set forth in this agreement and shall have all authority granted to the Association by virtue of this document and related Property Owner's Association Bylaws including but not limited to the authority to impose and collect maintenance fees and other necessary fees and assessments to further the upkeep of subdivision improvements as stipulated herein and as deemed necessary by the City.

A. Maintenance of such open spaces shall be the responsibility of the subdivider or the homeowners' association, unless accepted by the city council.

b. The articles of the homeowner's association shall require homeowner assessment sufficient to meet the necessary annual cost of the improvements that are calculated by the city engineer and shall provide that assessments are not subject to subrogation to mortgage lenders. Further, the articles shall provide that the board of directors shall be required to expend money for the improvements and repairs to maintain all infrastructures under its jurisdiction. Further, the articles shall require that board of directors file with the city annual reports of maintenance and that the board of directors shall be required to initiate any and all repairs in a timely manner as shall be identified by either the board or the city.

Section 1.20 **Design Standards for Public Improvements.** The Developer shall provide streets, drainage, utilities, parks, and recreational facilities according to the Development Plan at Developer's sole cost. All facilities shall comply with the City's design criteria set forth in the Development Ordinances for such streets, paving, drainage, water, wastewater, and park improvements; and, shall be subject to the approval of the City Engineer, Planning Commission and City Council as provided in the Development Ordinance.

Section 1.21 **Conflict.** Notwithstanding the foregoing provisions of this section: (i) in the event of a conflict with Agreement and the Development Ordinances, the Development Ordinances shall prevail.

Section 1.22 **Notification.** The City shall notify the Developer in writing of any alleged failure by the Developer to comply with a provision of this Agreement or the Development

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

ARTICLE II
PROVISIONS FOR DESIGNATED MORTGAGEE

Section 2.01 Notice to Designated Mortgagee. Pursuant to Section 4.03, any Designated Mortgagee shall be entitled to simultaneous notice any time that a provision of this Agreement requires notice to Developer.

Section 2.02 Right of Designated Mortgagee to Cure Default. Any Designated Mortgagee shall have the right, but not the obligation, to cure any default in accordance with the provisions of Section 2.03 and Article II.

Section 2.03 Designated Mortgagee. At any time after execution and recordation in the Real Property Records of Brazoria County, Texas, of any mortgage, deed of trust, or security agreement encumbering the Tract or any portion thereof, the Developer (a) shall notify the City in writing that the mortgage, deed of trust, or security agreement has been given and executed by the Developer, and (b) may change the Developer's address for notice pursuant to Section 5.05 to include the address of the Designated Mortgagee to which it desires copies of notice to be provided.

At such time as a full and final release of any such lien is filed in the Real Property Records of Brazoria County, Texas, and the Developer gives notice of such release to the City as provided herein, all rights and obligations of the City with respect to the Designated Mortgagee under this Agreement shall terminate.

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

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

foreclosure) by a Designated Mortgagee, any development of the property shall be in accordance with this Agreement.

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

ARTICLE III
PROVISIONS FOR DEVELOPER

Section 3.01 Waiver of Actions Under Private Real Property Rights Preservation Act. The Developer hereby waives its right, if any, to assert any causes of action against the City accruing under the Private Real Property Rights Preservation Act, Chapter 2007, Texas Government Code (the "Act"), that the City's execution or performance of this Agreement or any authorized amendment or supplements thereto may constitute, either now or in the future, a "Taking" of Developer's, Developer's grantee's, or a grantee's successor's "Private Real Property," as such terms are defined in the Act, provided, however, that this waiver does not apply to, and the Developer and Developer's grantees and successors do not waive their rights under the Act to assert a claim under the Act for any action taken by the City beyond the scope of this Agreement which otherwise may give rise to a cause of action under the Act.

Section 3.02 Developer's Right to Continue Development. The City and the Developer hereby agree that, subject to Section 5.04 of this Agreement, the Developer may sell all or a portion of the Tract to one or more Persons who shall be bound by this Agreement and perform the obligations of Developer hereunder relative to the portion of the Tract acquired by such Persons, provided that the Developer shall retain ultimate responsibility for complying with the terms of this Agreement unless the City agrees in writing that the purchaser shall be responsible for and perform the Developer's obligations, which such consent shall not be unreasonably delayed, conditioned or withheld.

ARTICLE IV

MATERIAL BREACH, NOTICE AND REMEDIES

Section 4**.01 Material Breach of Agreement.** It is the intention of the parties to this Agreement that the Property be developed in accordance with the terms of this Agreement.

(a) The parties acknowledge and agree that any material deviation from the material terms of this Agreement would frustrate the intent of this Agreement, and therefore, would be a material breach of this Agreement. A material breach of this Agreement by Developer shall be deemed to have occurred upon the failure of the Developer to substantially comply with a provision of this Agreement or the Development Ordinances applicable to the Property.

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

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

1. The imposition or attempted imposition of any moratorium on building or growth on the Property prohibited by State law or that treats development authorized under this Agreement differently than other development occurring throughout the City's regulatory jurisdiction;

2. The imposition of a requirement to provide regionalization or oversizing of public utilities through some method substantially or materially different than as set forth in this Agreement;

3. An attempt by the City to enforce any City ordinance within the Property that is inconsistent with the terms and conditions of this Agreement, unless such ordinance is required by state or federal law; or

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

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

Section 4**.02 Notice of Developer's Default.**

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

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

(c) In the event that the City determines that such failure has not occurred, or that such failure either has been or will be cured in a manner and in accordance with a schedule reasonably

satisfactory to the City, or that such failure is excusable, such determination shall conclude the investigation.

(d) If the City determines that a failure to comply with a provision has occurred and that such failure is not excusable and has not been or will not be cured by the alleged defaulting Developer or a Designated Mortgagee in a manner and in accordance with a schedule reasonably satisfactory to the City, then the City Council may proceed to mediation under Section 2.04 and subsequently exercise the applicable remedy under Section 2.05.

Section 4.03 Notice of City's Default.

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

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

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

(d) If the Developer determines that a failure to comply with a provision has occurred and that such failure is not excusable and has not been or will not be cured by the City in a manner and in accordance with a schedule reasonably satisfactory to the Developer, then the Developer may proceed to mediation under Section 2.04 and subsequently exercise the applicable remedy under Section 2.05.

Section 4.04 Mediation. In the event the parties to this Agreement cannot, within a reasonable time, resolve their dispute pursuant to the procedures described in Sections 2.02 or 2.03, the parties agree to submit the disputed issue to non-binding mediation. The parties shall participate in good faith, but in no event shall they be obligated to pursue mediation that does not resolve the issue within fourteen (14) days after the mediation is initiated or thirty (30) days after mediation is requested, whichever is later. The parties participating in the mediation shall share the costs of the mediation equally.

Section 4.05 Remedies.

(a) In the event of a determination by the City that the Developer has committed a material breach of this Agreement that is not resolved in mediation pursuant to Section 2.04, the City may

file suit in a court of competent jurisdiction in Brazoria County, Texas, and seek any relief available at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgment Act and or termination of this Agreement as to the breaching Developer.

(b) In the event of a determination by a Developer that the City has committed a material breach of this Agreement that is not resolved in mediation pursuant to Section 2.04, the Developer may, without expanding City's liability beyond the statutory limits of the Texas Tort Claims Act or under other law; and, without the City waiving or demising its immunity beyond the scope of that allowed by the Texas Tort Claims Act or other law, and without the City ever being liable for Developer's consequential, special, indirect or incidental losses or damages, file suit in a court of competent jurisdiction in Brazoria County, Texas, for the limited remedy of seeking City's specific performance of its obligations under this Agreement.

ARTICLE V

ADDITIONAL TERMS

Section 5.01 This Agreement shall be effective upon the mutual execution of this Agreement (the "Effective Date") and shall terminate thirty (30) years from the date of execution.

Section 5.02 Any person who acquires the Property or any portion of the Property shall take the Property subject to the terms of this Agreement. The terms of this Agreement are binding upon Developer, its successors, and assigns, as provided herein; provided, however, notwithstanding anything to the contrary herein, the Developer's assignee shall not acquire the rights and obligations of Developer unless Developer expressly states in the deed of conveyance or by separate instrument placed of record that said assign is to become the Developer for purposes of this Agreement and notice is sent by the Developer to the City. Provided, however, the Developer's assignee shall not acquire the rights and obligations of the Developer unless the Developer and assignee enter into a written assignment agreement in a form satisfactory to the City, and the City agrees in writing to such assignment, which approval will not be unreasonably delayed, conditioned, or withheld. Any contract, agreement to sell land, or instrument of conveyance of land which is a part of the Property shall recite and incorporate this Agreement as binding on any purchaser or assignee. Notwithstanding the above if developer sells the lots to its own or other builders the subject and terms of this agreement shall automatically pass with the lot to said builder who shall retain the rights and obligations of this agreement which shall be set out in a separate recorded document.

Section 5.03 This Agreement may be amended only upon written amendment executed by the City and Developer. In the event Developer sells any portion of the Property, the Developer may assign to such purchaser the right to amend this Agreement as to such purchased property by written assignment and notice thereof to the City. Such assignment shall not grant such purchaser the authority to amend this Agreement as to any other portions of the Property.

Section 5.04 The Developer shall notify the City within fifteen (15) business days after any substantial change in ownership or control of the Developer. As used herein, the words "substantial change in ownership or control" shall mean a change of more than 49% of the stock or equitable ownership of the Developer. Any sale of the Property or agreement for the sale,

transfer, or assignment of control or ownership of the Developer shall recite and incorporate this Agreement as binding on any purchaser, transferee, or assignee.

3.05 The parties contemplate that they will engage in informal communications with respect to the subject matter of this Agreement. However, any formal notices or other communications ("Notice") required to be given by one party to another by this Agreement shall be given in writing addressed to the party to be notified at the address set forth below for such party, (a) by delivering the same in person, (b) by depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified; (c) by depositing the same with Federal Express or another nationally recognized courier service guaranteeing "next day delivery," addressed to the party to be notified, or (d) by sending the same by telefax with confirming copy sent by mail.

City: City of Angleton
Chris Whittaker
City Manager
121 S. Velasco
Angleton, Texas 77515
Attn: City Secretary

Developer: Tejas-Angleton Development, L.L.C.
Attn: Wayne L. (Sandy) Rea, II
1306 Marshall Street
Houston, Texas 77006
Telephone No.: 713-993-6453
Email: waynerea@swbell.net

Section 5.06 Time is of the essence in all things pertaining to the performance of the provisions of this Agreement.

Section 5.07 **INDEMNIFICATION**. DEVELOPER HEREBY BINDS ITSELF, ITS SUCCESSORS, ASSIGNS, AGENTS, CONPROPERTYORS, OFFICERS AND DIRECTORS TO INDEMNIFY AND HOLD HARMLESS THE CITY FROM AND AGAINST ANY CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, LIABILITIES, COSTS, LOSSES, EXPENSES AND DAMAGES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COSTS) ASSOCIATED WITH ANY PERSONAL INJURY OR PROPERTY DAMAGE ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT BY DEVELOPER UNLESS SUCH DAMAGE IS CAUSED BY THE INTENTIONAL OR WILLFUL MISCONDUCT OF THE CITY.

Section 5.08 If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected.

Section 5.09 Any failure by a party hereto to insist upon strict performance by the other party of any provision of this Agreement shall not be deemed a waiver thereof or of any other provision hereof, and such party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement, unless otherwise expressly provided herein or in a writing signed by the Party alleged to be waiving any such right.

Section 5.10 The construction and validity of this Agreement shall be governed by the laws of the State of Texas without regard to conflicts of law principles. Venue shall be in Brazoria County, Texas.

Section 5.11 To the extent not inconsistent with this Agreement, each party reserves all rights, privileges, and immunities under applicable laws, including sovereign immunity, except to enforce any rights and remedies under this Agreement.

Section 5.12 The Agreement is not intended to, and shall not be construed to, create any joint enterprise between or among the Parties. The City has exclusive control over and under the public highways, streets, and alleys of the City.

Section 5.13 This Agreement is public information. To the extent, if any, that any provision of this Agreement is in conflict with Texas Government Code Chapter 552 et seq., as amended (the "Texas Public Information Act"), such provision shall be void and have no force or effect.

Section 5.14 This Agreement is entered solely by and between and may be enforced only by and among the parties hereto. Except as set forth herein, this Agreement shall not be deemed to create any rights in, or obligations to, any third parties.

Section 5.15 The parties expressly acknowledge that the City's authority to indemnify and hold harmless any third party is governed by Article XI, Section 7 of the Texas Constitution, and any provision that purports to require indemnification by the City is invalid. Nothing in this Agreement requires that either the City incur debt, assess, or collect funds, or create a sinking fund.

Section 5.16 THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT NO PROVISION OF THIS AGREEMENT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY ANY PARTY OF ANY IMMUNITY FROM SUIT OR LIABILITY THAT A PARTY MAY HAVE BY OPERATION OF LAW. THE CITY RETAINS ALL GOVERNMENTAL IMMUNITIES.

Section 5.17 This Agreement shall not be assigned by either Party without the express written consent of the other Parties.

Section 5.18 **Further Documents.** The parties agree that at any time after execution of this Agreement, they will, upon request of another party, execute and deliver such further documents and do such further acts and things as the other party may reasonably request in order to effectuate the terms of this Agreement.

Section 5.19 **Incorporation of Exhibits and Other Documents by Reference.** All Exhibits and other documents attached to or referred to in this Agreement are incorporated herein by reference for the purposes set forth in this Agreement.

Section 5.20 **Effect of State and Federal Laws.** Notwithstanding any other provisions of this Agreement, Developer, its successors or assigns, shall comply with all applicable statutes or regulations of the United States and the State of Texas, as well as any City ordinances not in conflict with this Agreement, and any rules implementing such statutes or regulations.

Section 5.21 **Authority for Execution.** The City hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the City Charter, City ordinances and laws of the State of Texas. The Developer hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the articles of incorporation and bylaws of such entity.

Section 5.22 **Non-Waiver.** No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein or in a writing signed by the Party alleged to be waiving any such right.

Section 5.23 **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement to be effective as of the Effective Date.

[Signature Page Immediately Follows]

CITY OF ANGLETON, TEXAS

By: _____
Jason Perez, Mayor

Date: _____

ATTEST

By: _____
Frances Aguilar, City Secretary

Date: _____

THE STATE OF TEXAS

COUNTY OF BRAZORIA

This instrument was acknowledged before me on _____, 2021, by Jason Perez, Mayor of the City Angleton, Texas.

_____
Notary Public, State of Texas

DEVELOPER

TEJAS-ANGLETON DEVELOPMENT, L.L.C.
a Texas Limited Liability Company

Wayne L. Rea, II
Title: Manager
Date:_____

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me, the undersigned authority, this ___ day of _____, 2021, by Wayne L. Rea, II, of TEJAS-ANGLETON DEVELOPMENT, L.L.C., a Texas Limited Liability Company, on behalf of said entity.

_____
Notary Public, State of Texas

EXHIBIT "A"

THE PROPERTY

EXHIBIT A

DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ANGLETON, TEXAS AND TEJAS-ANGLETON DEVELOPMENT, L.L.C.

AUSTIN COLONY

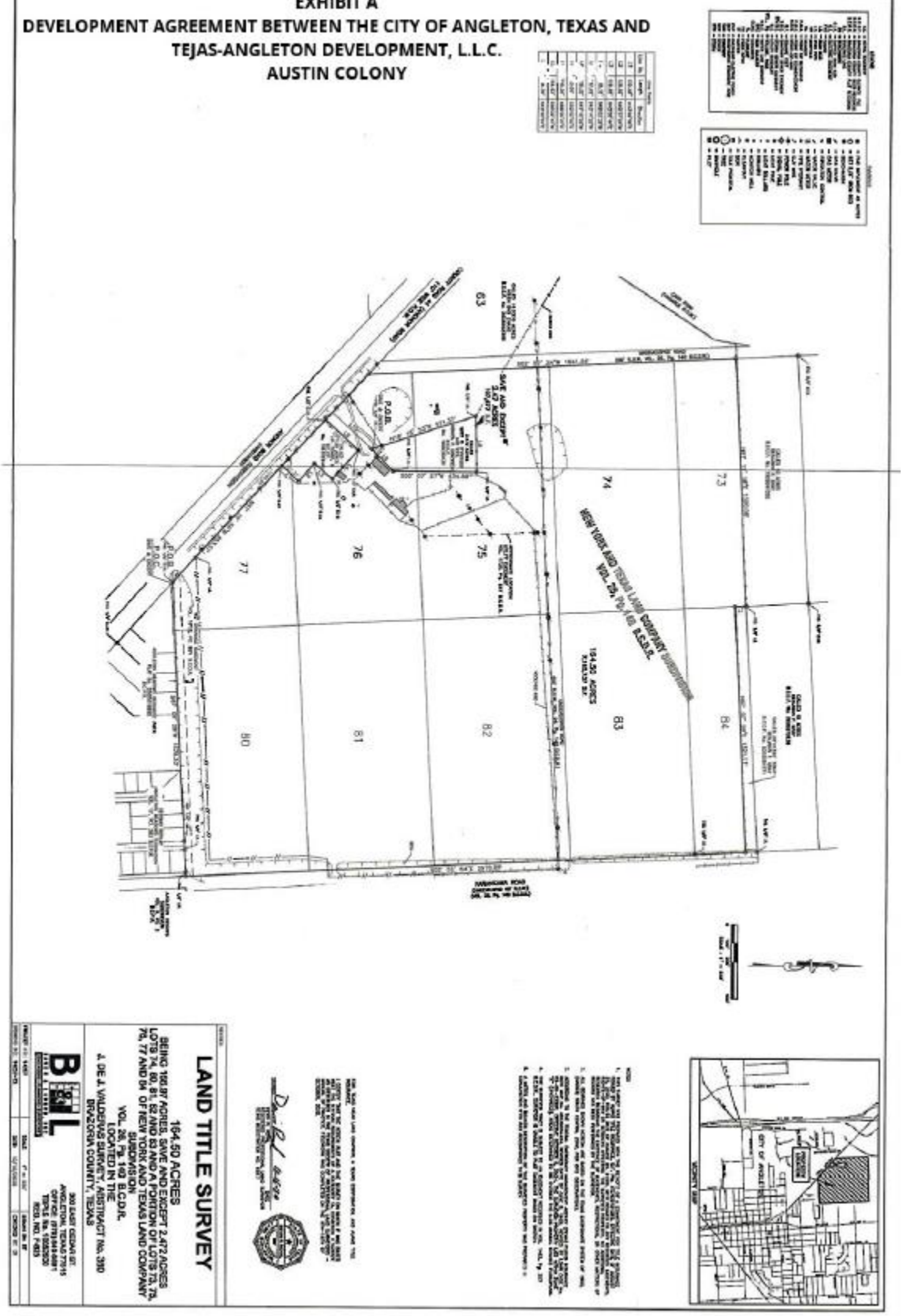
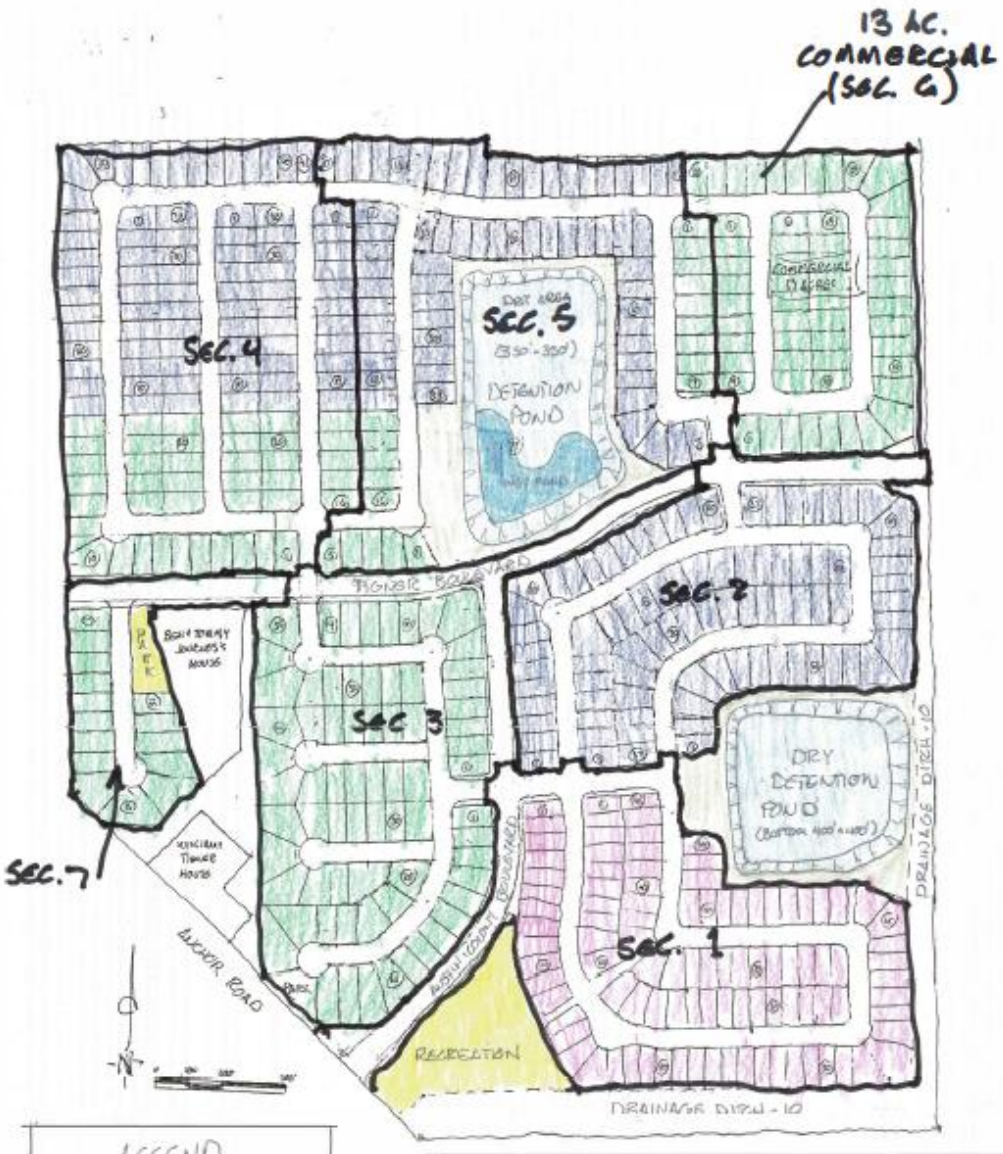


EXHIBIT "B"

LAND DEVELOPMENT PLAN

EXHIBIT B
DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ANGLETON, TEXAS AND TEJAS-ANGLETON DEVELOPMENT, L.L.C.
LAND PLAN
AUSTIN COLONY



LEGEND	
50' LOTS	100
55' LOTS	223
60' LOTS	189

SECTIONS AND LOTS SUMMARY				
Section #	50' Lots	55' Lots	60' Lots	Section Lot Total
1	100			100
2		84		84
3			84	84
4		75	41	116
5		64	19	83
6*				55
Lot Size Total	100	223	199	522
Size %	20%	42%	38%	100%

EXHIBIT "C"

CAPACITY ACQUISITION FEE MEMO

Memo

Date:	Friday, March 05, 2021
Project:	Austin Colony Subdivision (Tigner Tract)
To:	Walter Reeves, Director of Development Services
From:	John Peterson, PE, CFM
Subject:	Water and Wastewater Capacity Acquisition Fee

The City of Angleton has coordinated with a Developer for the proposed subdivision at Austin Colony, along Anchor Road (CR 44) to the east of Highway 288. The proposed development consists of 558 single-family residences on approximately 166 acres and is currently planned to be a phased development. Based on this information and using the planning criteria for water demand and sewer loading from the utility master plan, below is the summary of the assumptions, analysis and model results.

Capacity Verification

- Water Demand
  - Average Daily Demand (ADD): 300 gallons per day per connection, 558 x 300 = 167,400 gpd or 116.25 gpm
  - Max Daily Demand (MDD): 1.7 x ADD = 197.63 gpm
  - Peak Hour Demand (PHD): 1.25 x MDD = 247.03 gpm
- Water Model Run
  - There are two existing water mains located in the vicinity of the proposed subdivision (see Exhibit #1). One is a 12" water main that runs along the north side of Anchor Road, that will be required to be extended northwest along CR 44 to and across the property in order to service the subdivision. The second is a 10" water main that runs along the north side of Tigner Road that will also be required to be extended to the west to serve as a second point of connection for the proposed subdivision. It is currently assumed that the proposed development will make connections to both of these water mains in order to create a looped system within the subdivision.
  - **The existing model was run for the scenario above. The model shows that there is sufficient pressure and fire flow when the systems are looped together (See Exhibit #2).**
- Wastewater Flows
  - Average Daily Flow (ADF): 255 gallons per day per connection, 558 x 255 = 142,290 gpd or 98.81 gpm
  - Peak Hour Wet Weather Flow (PWF): 4 x ADF = 395.25 gpm
- Wastewater Model Run
  - The existing model was run for PWF scenario, which uses a peaking factor of 4.

- There is an existing 24" sewer main along the western boundary of the proposed subdivision that has available capacity at that location. For the wastewater assessment, it was assumed that the wastewater loading for the subdivision will discharge into the City's collection system near the unimproved western portion of Tigner Street.
- This 24" gravity sewer main continues south and discharges into Lift Station No. 7 (N Kaysie Lift Station).
- The Lift Station No. 7 then pumps wastewater through an 18" force main directly to the Oyster Creek WWTP along Sebesta Road.

Capacity Acquisition Fee:

Please see Appendix A for the calculations for the Capacity Acquisition Fee.

- Water Service
  - The City has adopted a flat fee of $536.70 per ESU for water service throughout the City.

- Wastewater Service
  - Total Capacity of 24" Sanitary Sewer set at TCEQ minimum slope is 2,871 gpm
    - Percentage utilization of 24" gravity sanitary sewer for Austin Colony is 14% (peak flow)
  - Total Capacity of 36" Sanitary Sewer set at TCEQ minimum slope is 6,348 gpm
    - Percentage utilization of 36" gravity sanitary sewer for Austin Colony is 6% (peak flow)
  - Total Firm Capacity (assumed) of LS No. 7 is 2,380 gpm
    - Based on the assumed capacity of the lift station, the percent utilization of LS No. 7 pumping capacity and 18" force main for Austin Colony is 17% (peak flow)
  - Fee for sewer service is $850.55 per ESU

Therefore, the combined cost per ESU (water and wastewater) will be approximately $1,387.25. The total fee for the projected 558 homes for Austin Colony is approximately $774,085.50. It is noted that any changes in the projected number of ESUs will need to be updated accordingly in the CAF review. Additionally, proposed ESUs for clubhouses or pools were not considered and shall be included accordingly in the total ESU projection for the proposed Austin Colony Subdivision.

ATTACHMENTS

Appendix A – Capacity Acquisition Fee Calculations

Exhibit 1 – Water Model System Map (Before Development – Available Fire Flow and Pressure)

Exhibit 2 – Water Model System Map (After Development – Available Fire Flow and Pressure)

Exhibit 3 – Wastewater System Map (Austin Colony Subdivision Sanitary Sewer Trace)

APPENDIX A - PROPOSED COST PER CONNECTION

Water Plants

Asset Name	Current Construction Cost Estimate	Year Constructed	ENR Value for Construction Year	Estimated Construction Cost in Year of Construction	Number of Assets	Total Estimated Construction Cost	Production (gpd)	Cost per ESU (1 ESU = 300 gpd)
Henderson Water Plant								
1 MG GST	$ 2,000,000	1988	4519	$ 825,992	1	$ 825,992		
750 gpm pumps	$ 51,250	2006	7751	$ 36,304	2	$ 72,608		
850 gpm pumps	$ 51,250	2010	8802	$ 41,227	3	$ 123,680		
Total Henderson Water Plant						$ 1,022,280	3,672,000	$83.52
Chenango Water Plant								
1 MG GST	$ 2,000,000	1953	600	$ 109,669	1	$ 109,669		
850 gpm pumps	$ 51,250	2005	7446	$ 34,875	3	$ 104,626		
Total Chenango Water Plant						$ 214,296	3,672,000	$17.51
Jamison Water Plant								
450k GST	$ 987,500	2009	8570	$ 773,430	1	$ 773,430		
850 gpm pumps	$ 51,250	2015	10035	$ 47,002	3	$ 141,005		
10k Hydro Tanks	$ 77,500	2009	8570	$ 60,700	2	$ 121,399		
Total Jamison Water Plant						$ 1,035,835	3,672,000	$84.63
Water Well #11	$ 1,062,500	1985	4195	$ 407,347	1	$ 407,347	1,224,000	$99.84
Asset Name	**Current Construction Cost Estimate**	**Year Constructed**	**ENR Value for Construction Year**	**[1] Estimated Construction Cost in Year of Construction**	**Number of Assets**	**Total Estimated Construction Cost**	**Production (gpd)**	**Cost per ESU (1 ESU = 200 gpd)**
Northside EST	$ 2,000,000	1961	847	$ 154,816	1	$ 154,816	500,000	$61.93
Southside EST	$ 2,000,000	1977	2576	$ 470,846	1	$ 470,846	500,000	$188.34
						[1] Total Cost Per Connection for Water Purchased From Brazoport Water Authority (BWA)		$0.94
							[2] Total Estimated Cost Per Water Connection	$536.70

Wastewater Plants

Asset Name	Current Construction Cost Estimate	Year Constructed	ENR Value for Construction Year	[3] Estimated Construction Cost in Year of Construction	Number of Assets	Total Estimated Construction Cost	Production (gpd)	Cost per ESU (1 ESU = 155 gpd)
Oyster Creek Sanitary Sewer Treatment Plant	$ 16,000,000	1980	3237	$ 10,163,265	1	$ 10,163,265	1,600,000	$ 719.90

Wastewater Infrastructure

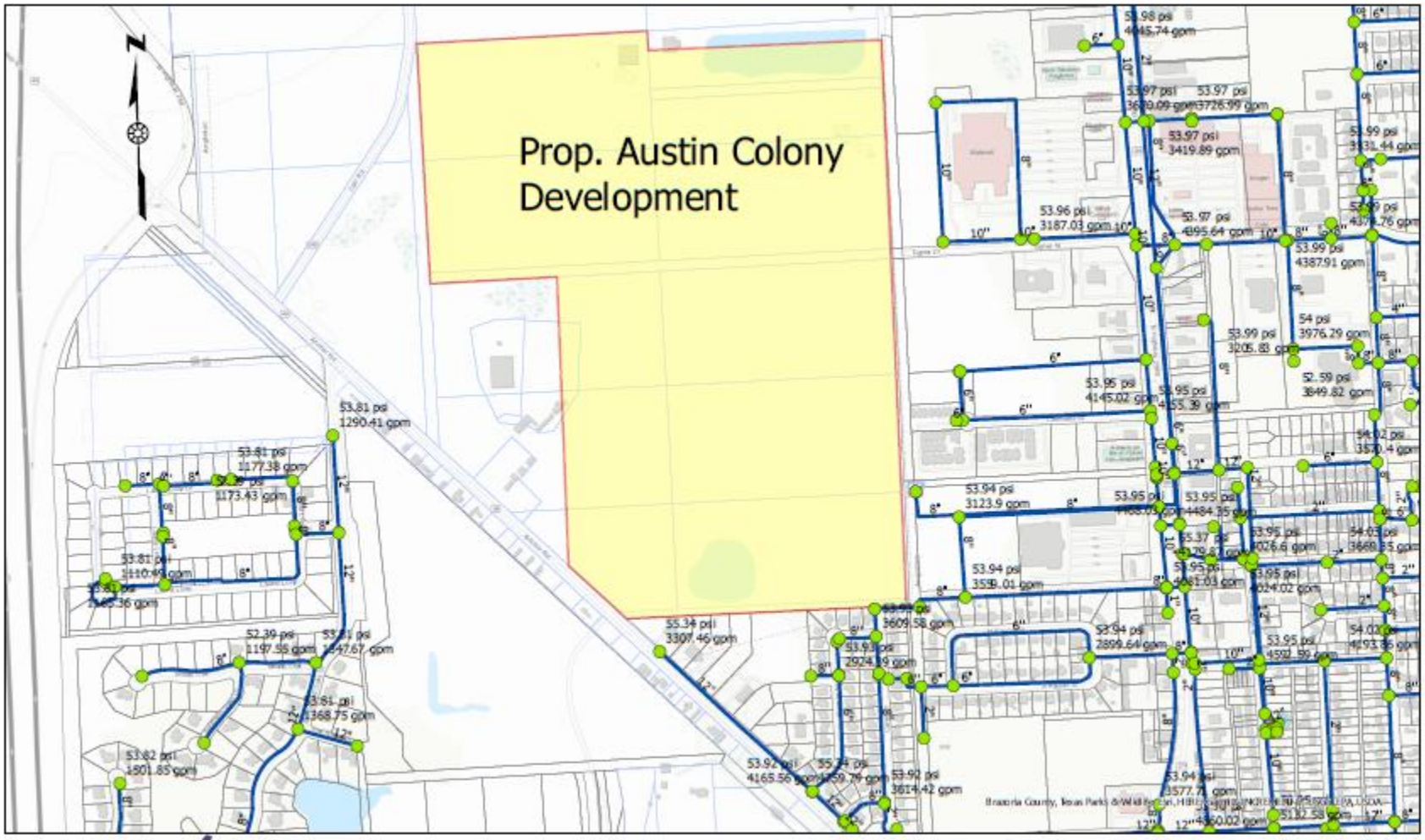
Asset Name	Current Construction Cost Estimate	Est. Year Constructed	ENR Value for Construction Year	[3] Estimated Construction Cost in Year of Construction	% of Capacity	Total Estimated Construction Cost	Development ESU's	Cost per ESU (1 ESU = 155 gpd)
Gravity Sewer								
24" Main (2,740 feet)	$ 753,500	1970	1381	$ 90,754	14%	$ 12,495		$ 22.39
30" Main (390 feet)	$ 165,750	1970	1381	$ 19,963	6%	$ 1,243		$ 2.23
Total Gravity Sewer						$ 13,738		$ 24.62
Force Main								
18" Force Main (12,300 feet)	$ 1,807,900	1970	1381	$ 217,749	17%	$ 36,162	558	$ 64.81
Total Force Main						$ 36,162		$ 64.81
Lift Station								
No. 7	$ 1,150,000	1970	1381	$ 138,510	17%	$ 23,002		$ 41.22
Total Lift Station						$ 23,002		$ 41.22
Total Wastewater Infrastructure						$ 72,902		$ 130.65

Total Estimated Cost Per Wastewater Connection	**$850.55**

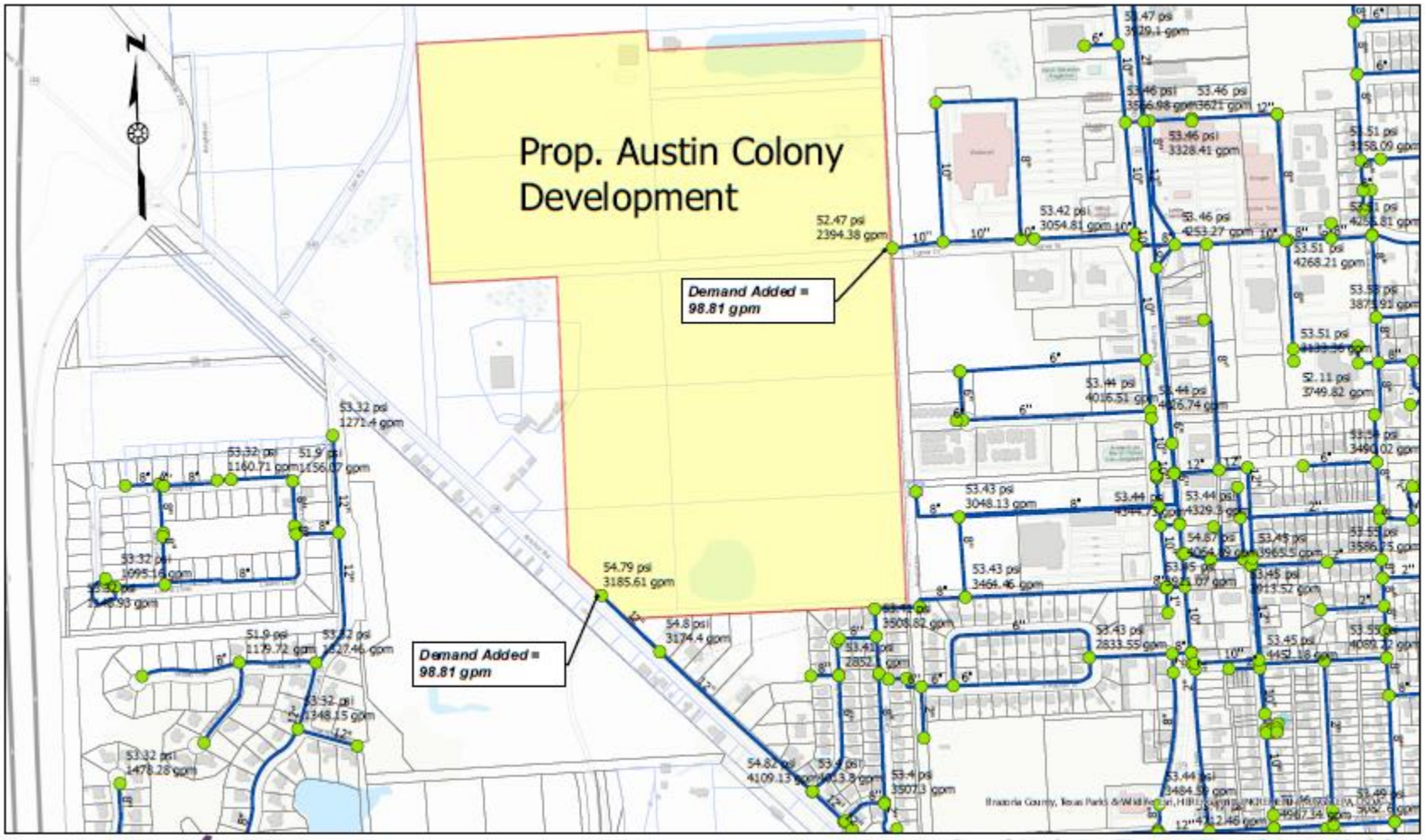
[1] The City purchases approximately 1.8 MGD from BWA which is provided at a rate of $3.12 per 1,000 gallons. Therefore, one (1) ESU or 300 gallons, is approximately $0.94.

[2] The cost shown is the adopted flat fee per ESU for water service.

[3] The cost shown is taken by dividing the current construction cost estimate by the 2020 ENR Value of 11466.



City of Angleton, Texas - Water System Modeling
Austin Colony Development - Existing System Pressure and Available Fire Flow


Prop. Austin Colony Development
Demand Added = 98.81 gpm
Demand Added = 98.81 gpm
52.47 psi 2394.38 gpm
54.79 psi 3185.61 gpm
53.32 psi 1271.4 gpm
1 inch equals 500 feet
0 250 500 1,000 Feet
5 of 6
City of Angleton, Texas - Water System Modeling
Austin Colony Development - Proposed System Pressure and Available Fire Flow
Demand Factor = 1.70 (Max. Daily)

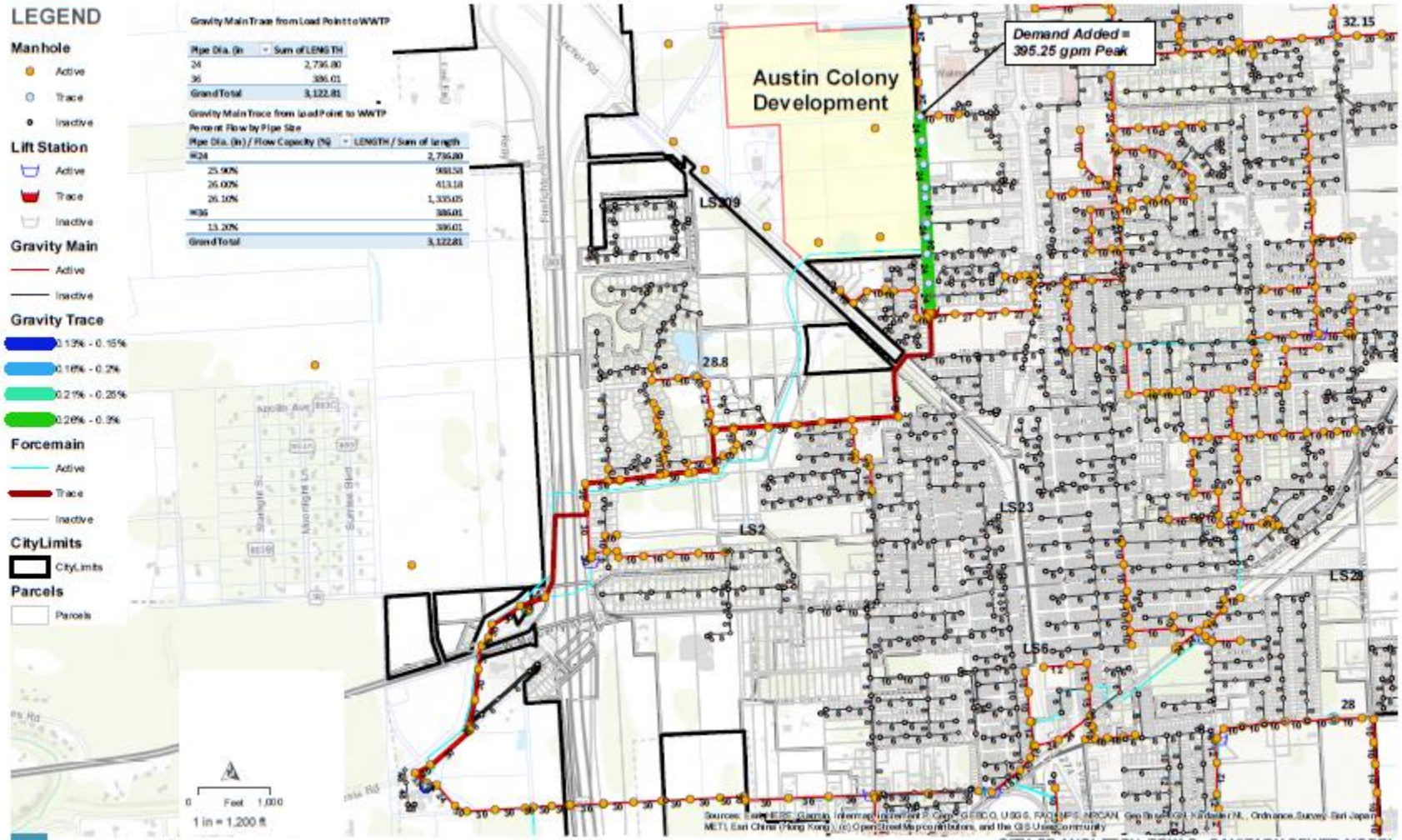

LEGEND
Manhole
Active
Trace
Inactive
Lift Station
Active
Trace
Inactive
Gravity Main
Active
Inactive
Gravity Trace
0.13% - 0.15%
0.16% - 0.2%
0.21% - 0.25%
0.26% - 0.3%
Forcemain
Active
Trace
Inactive
CityLimits
CityLimits
Parcels
Parcels
Gravity Main Trace from Load Point to WWTP
Pipe Dia. (in) | Sum of LENGTH
24 | 2,736.80
36 | 386.01
Grand Total | 3,122.81
Gravity Main Trace from Load Point to WWTP
Percent Flow by Pipe Size
Pipe Dia. (in) / Flow Capacity (%) | LENGTH / Sum of length
#24 | 2,736.80
25.90% | 988.58
26.00% | 413.18
26.10% | 1,335.05
#36 | 386.01
13.20% | 386.01
Grand Total | 3,122.81
Austin Colony Development
Demand Added = 395.25 gpm Peak
32.15
LS309
28.8
LS23
LS2
LS29
LS6
28
0 Feet 1,000
1 in = 1,200 ft
CITY OF ANGLETON, TEXAS - SANITARY SEWER MODEL
AUSTIN COLONY DEVELOPMENT - SEWER TRACE AND FLOW CAPACITY
6 of 6

EXHIBIT “A”

PROPERTY DESCRIPTION

Being a tract of land containing 164.50 acres (7,165,737 square feet), located within J. De J Valderas Survey, Abstract Number (No.) 380, in Brazoria County, Texas; Said 164.50 acre tract being all of Lots 74, 80, 81, 82 and 83 and a portion of Lots 73, 75, 76, 77 and 84 of the New York and Texas Land Company Subdivision recorded under Volume (Vol.) 26, Page 140 of the Brazoria County Deed Records (B.C.D.R.), being a 166.97 acre tract save and except a 2.472 acre tract recorded in the name of Thomas H. Journeay and Elizabeth Journeay under Brazoria County Clerk's File (B.C.C.F.) No. 2014047617; Said 164.50 acres being more particularly described by metes and bounds as follows (bearings are based on the Texas Coordinate System of 1983, (NAD83) South Central Zone, per GPS observations):

Overall 166.97 acre tract:

BEGINNING at a 1/2-inch iron rod with cap found on the northeast right-of-way (R.O.W.) line of Anchor Road (AKA County Road 44, one hundred ten feet wide), on the south line of said Lot 77, at the northwest corner of Lot 1 of the Angleton Meadows Business Park recorded under Plat No. 2005019895 of the Brazoria County Plat Records (B.C.P.R.), for the southwest corner of the herein described tract;

THENCE, with the northeast R.O.W. line of said Anchor Road, North 47 degrees 10 minutes 56 seconds West, a distance of 853.57 feet to a 5/8-inch iron rod with cap stamped "Baker & Lawson" set at the south corner of a called 1.50 acre tract recorded in the name of Williams M. Tigner, II under B.C.C.F. No. 2019055977, for an angle point of the herein described tract;

THENCE, with the easterly lines of said 1.50 acre tract the following four (4) courses:

1. North 43 degrees 09 minutes 58 seconds East, at a distance of 1.35 feet pass a 1/2-inch iron rod with cap found for reference, continue in all a distance of 122.66 feet to a 5/8-inch iron rod with cap stamped "Baker & Lawson" set for an interior corner of the herein described tract;

2. North 49 degrees 37 minutes 04 seconds West, a distance of 128.89 feet to a 1/2-inch iron rod with cap found for an angle point;

3. North 42 degrees 06 minutes 44 seconds East, a distance of 126.66 feet to a 1/2-inch iron rod with cap found for an interior corner of the herein described tract;

4. North 49 degrees 03 minutes 29 seconds West, a distance of 208.32 feet to a 1/2-inch iron rod with cap found at the north corner of said 1.50 acre tract, for an interior corner of the herein described tract;

SAVE AND EXCEPT 2.47 ACRES:

COMMENCING at a 1/2-inch iron rod with cap found on the northeast right-of-way (R.O.W.) line of Anchor Road (AKA County Road 44, one hundred ten feet wide), on the south line of said Lot 77, at the northwest corner of Lot 1 of the Angleton Meadows Business Park recorded under Plat No. 2005019895 of the Brazoria County Plat Records (B.C.P.R.);

THENCE, with the northeast R.O.W. line of said Anchor Road, North 47 degrees 10 minutes 56 seconds West, a distance of 1,245.66 feet to an angle point;

THENCE, through and across said Lot 76 the following five (5) courses:

1. North 42 degrees 49 minutes 04 seconds East, a distance of 284.35 feet to a 5/8-inch iron rod found for the south corner and **POINT OF BEGINNING** of the herein described tract;

2. North 18 degrees 16 minutes 53 seconds West, a distance of 571.37 feet to a 5/8-inch iron rod found at the northwest corner of the herein described tract;

3. North 88 degrees 50 minutes 27 seconds East, a distance of 299.56 feet to a 5/8-inch iron rod found at the northeast corner of the herein described tract;

4. South 00 degrees 07 minutes 27 seconds West, a distance of 434.88 feet to a 5/8-inch iron rod found at the southeast corner of the herein described tract;

5. South 46 degrees 22 minutes 47 seconds West, a distance of 164.83 feet to the **POINT OF BEGINNING** and containing 2.47 acres of land.

OVERALL: 166.97 ACRES

SAVE AND EXCEPT: 2.47 ACRES

TOTAL: 164.50 ACRES