

## ROAD AGREEMENT

This Road Agreement ("Agreement") is between the **City of Dripping Springs**, a Type A General Law City located in Hays County, Texas (the "City"), and **CRTX Development, LLC** (a Texas limited liability company).

### RECITALS:

**WHEREAS**, Owner is under contract to purchase ("Purchase") from SK7 Development, LLC, approximately 8.547 acres of land (the "Land") as shown on **Exhibit A** and more particularly described on **Exhibit B**, which Land is receiving variances from regulations on the same date; and

**WHEREAS**, it is intended that the Land will be developed as a multi-family community by Owner, its affiliates and/or their successors and assigns, including future owners and developers (the "Project"); and

**WHEREAS**, the City approved on the same date as this Agreement that certain "Affordable Housing Agreement and Restrictive Covenant" that contains terms and agreements regarding the density the development of the Land; and

**WHEREAS**, the Owner wishes to design and construct, or cause to be designed and constructed, Offsite Road Improvements (as hereinafter defined) or wishes to have the option to provide funding for the Offsite Road Improvements in order to provide a special benefit for the proposed development of the Land.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including the agreements set forth below, the City and Owner agree as follows:

### ARTICLE 1 RECITALS

**1.1** The recitals set forth above are true and correct and are incorporated herein and made a part hereof as findings for all purposes.

### ARTICLE 2 DEFINITIONS

**2.1 Affordable Housing and Restrictive Covenant Agreement:** That certain 2.1 Affordable Housing and Restrictive Covenant Agreement executed between Owner and the City on the same date as this Agreement.

**2.2 City Administrator:** The chief administrative officer of the City of Dripping Springs, Texas. The term also includes the Deputy City Administrator or the City Administrator's designee.

- 2.3 **City Council:** The governing body of the City of Dripping Springs, Texas.
- 2.4 **City Engineer:** The person or firm designated by the City Council as engineer for the City of Dripping Springs, Texas.
- 2.5 **City Review Fees:** The fees set out in the City’s Fees Schedule Ordinance as may be amended from time to time.
- 2.6 **City Construction Standards:** City standards for planning, design, location, and construction of the Road Improvements in effect on the date hereof, and as the same may be amended by the cross-sections or design descriptions
- 2.7 **Contractor:** A person or entity that constructs the Offsite Road or related improvements.
- 2.8 **Effective Date:** The date upon which this Agreement is approved by the City.
- 2.9 **Land:** Has the meaning set forth in the Recitals.
- 2.10 **Notice:** Notice as defined in Section 7.3 of this Agreement.
- 2.11 **Offsite Road Improvements:** Has the meaning set forth in Section 3.1.
- 2.12 **Parties:** Parties are the City of Dripping Springs and CRTX Development, LLC, a Texas limited liability company.
- 2.13 **Project:** Has the meaning set forth in the Recitals.

**ARTICLE 3**  
**DESIGN AND CONSTRUCTION OF OFFSITE ROAD IMPROVEMENTS**

**3.1 Offsite Road and Other Improvements:**

- a. The Owner will construct, or cause to be constructed, an extension of Rob Shelton Boulevard as a two-lane divided major collector with a sidewalk and separated bicycle lanes from the intersection of Sports Park Road to the south along the site frontage.
- b. The Owner will construct, or cause to be constructed, improvements to the south leg of the Rob Shelton Boulevard and US 290 intersection between US 290 and the H-E-B Driveway to provide two northbound left-turn bays and one through/right-turn shared lane. Improvements required to facilitate the new configuration include removal of the existing median and modifications to the Rob Shelton Boulevard and US 290 curb returns to accommodate the revised approach to the intersection. The improvements also include the provision of truck turning movements which shall be maintained with the Rob Shelton improvements. The improvements will be constructed in the location shown on **Exhibit B**. Construction shall include modifications to the traffic signal equipment, traffic signal timing, improvements for pedestrian crossings including

striping, signage, sidewalk bridges, curb ramps, intersection radii enhancements, and modifications to the center median as required to provide a three-lane northbound approach which achieve the dual left-turn lanes on Rob Shelton Boulevard.

- c. Construction of all improvements shall be generally in accordance with the cross-sections and design specifications as required by the City Code, subject to plan review and acceptance by the City pursuant to Section 3.6. The obligation to construct the Offsite Road is predicated on the first phase of infrastructure of the Project being under construction.
- d. The Owner will dedicate a right-of-way easement of a sixty foot (60') for the extension of Rob Shelton Boulevard to the City of Dripping Springs to align with the existing right-of-way north of Sports Park Road and, in addition, a ten foot (10') trail easement to the City of Dripping Springs as shown in **Exhibit C**. The improvements will also include separated bike lanes on Rob Shelton Boulevard within the right-of-way. Sidewalks will be provided within the 10' trail easement. As part of the improvements and right-of-way, the Owner and City will coordinate to construct a minimum five foot (5') sidewalk on the west side of Rob Shelton Boulevard.
- e. Owner shall be required to commence construction of the Offsite Road at such time that the Owner has begun construction of the first phase of infrastructure of the Project. Approval of the site development permit on the Owner's property shall not occur until the Offsite Road and related improvements' plans are approved by the City and the Texas Department of Transportation, as appropriate.

**3.2 Other Offsite Improvements.** The Traffic Impact Analysis may show the need for other offsite improvements.

**3.3 Infrastructure Standards.**

- a. Offsite Road shall be planned, designed, and constructed in compliance with this Article 3 and the City Construction Standards and any requirements of the Texas Department of Transportation that apply to the Land. Owner agrees to engage a professional engineer registered in the State of Texas to provide design phase, bid phase, and construction phase services necessary for the design, bidding, and construction and installation of the Offsite Road and other improvements. Owner shall not be required to publicly bid the project in accordance with all applicable City procedures and the Laws of the State of Texas. However, the Owner will request at least three bids from qualified firms for each construction contract for the Offsite Road and to work with the City to provide locally-based, qualified firms access to bidding opportunities as allowed by state law.
- b. Final alignment will be approved by the City as well as the City Engineer during the platting and Construction Site Plan review process. Any trees that are approved for removal for the Rob Shelton Extension or any offsite improvements will not be subject to the City standards of Tree Preservation. Any fees associated with trees under this

section shall be waived upon written confirmation and approval by the City Engineer of the tree removal for the Rob Shelton Extension.

- 3.4 Engagement of Contractor.** Owner shall engage a contractor to construct the Offsite Road in accordance with the terms and conditions of this Agreement and with the approved construction plans and specifications. The Owner agrees to copy the City on all change orders to the construction Contract and shall incorporate the requirements of this Article 3 and shall provide that the City is a third-party beneficiary of the contract and may enforce such contracts against the Contractor.
- 3.5 Plan Review, Payment of Fees, and Pre-Construction Conference.** Construction of the Offsite Road shall not commence until the plans and specifications have been reviewed and accepted by the City for compliance with the City Construction Standards and the Texas Department of Transportation for compliance with state construction standards; a pre-construction conference has been held by the Contractor, the Owner's Engineer, the City Engineer; and TxDOT, and the applicable City Review Fees have been paid. At such pre-construction conference, the City's Engineer, in consultation with TxDOT, shall designate the individual who will serve as the City's project manager and inspector (the "City Inspector").
- 3.6 Inspection by City and TxDOT.** The City and TxDOT have the right, but not the obligation, to inspect and test the Offsite Road and related improvements at any time. Further, the City and TxDOT has the right to participate in a final inspection of the Offsite Road and related improvements. The Owner, or its Engineer or Contractor, shall notify the City Inspector when the Offsite Road is ready for final inspection. If the City Inspector concurs that construction of the Offsite Road is substantially complete, then the City Inspector will schedule a final inspection by the City's Engineer within 15 days. Upon such final inspection and correction of any punch list items, the Owner shall request that City formally accept the improvements, subject to the provisions of this Agreement specifically Article 5.

## ARTICLE 4

### FEES, PERFORMANCE, PAYMENT AND MAINTENANCE BONDS

- 4.1 Payment of Fees.** Owner shall be responsible for paying to the City all City Review Fees and City Inspection Fees for the Offsite Road constructed by Owner as set out in the City's Fee Schedule.
- 4.2 Payment of Costs.** Except as otherwise provided herein, Owner will pay all costs incurred by Owner associated with the design and construction of the Offsite Road and any cost overruns.
- 4.3 Payment, Performance and Maintenance Bonds.** The City shall require the Owner or Owner's Contractor(s) to provide performance and payment bonds at the time of construction of the Offsite Road, as applicable, in accordance with Applicable Rules. Owner or Contractor shall provide a two (2) year maintenance bond upon acceptance by

the City for all improvements other than those set aside for particular maintenance in Article 5, Rob Shelton extension.

**ARTICLE 5  
OWNERSHIP AND OPERATION OF OFFSITE ROAD AND RELATED  
IMPROVEMENTS**

- 5.1** Within sixty (60) days after the City's final approval of the Offsite Road, and the inspection and correction of punch list items pursuant to Section 3.6 above, City will accept the Offsite Road and related improvements.
- a. The Owner shall provide the City Engineer with a set of digital and paper as-built drawings, for the City's permanent record.
  - b. The Owner or Owner's Contractor shall provide the City Administrator or designee with a two year maintenance bond for the Offsite Road except a three (3) year maintenance bond will be required for the Rob Shelton extension (as applicable).
- 5.2** All warranties secured for construction of the Offsite Road and all bonds, guarantees, other assurances of performance, record drawings, project manuals, and all other documentation related to the Offsite Road will be delivered to the City. Owner agrees that the City will not accept the Offsite Road burdened by any mechanic's lien created by, through or under Owner. Owner or Owner's Contractor shall provide a two year maintenance bond for the Offsite Road.
- 5.3** At the sole discretion of the City, the City may determine that the Owner shall maintain the Rob Shelton Extension constructed by PDD 11 for a period of three (3) years from the City of Dripping Springs acceptance thereof.
- 5.4** Owner maintenance of the Rob Shelton Extension constructed by PDD 11 shall include all roadway infrastructure as well as associated storm water facilities. At such time as the time for maintenance by the Owner has passed as required by 5.3, PDD 11 maintenance of roadway and storm water infrastructure within the Right-of -Way will become the responsibility of the City through acceptance by the City Council under the current ordinances. The Owner and the City Engineer shall coordinate the connection of any Rob Shelton Extension storm water infrastructure to the existing Rob Shelton Blvd. storm water system, if any. All storm water infrastructure associated with the Rob Shelton Extension that is outside the Right-of-Way will remain the maintenance responsibility of the Owner.
- 5.5** After the acceptance by the City, the City will operate and maintain the Offsite Road and related improvements according to the City's policies and ordinances, as amended from time to time. Nothing in this Agreement will be construed to limit, restrict, modify, or abrogate the City's governmental authority or ordinances respecting the operation and maintenance of its road systems nor its duty to provide for the public health, safety, and welfare in the operation and maintenance of the same.

**ARTICLE 6**  
**INSURANCE AND INDEMNIFICATION**

**6.1 Insurance.** Owner or its Contractor(s) shall acquire and maintain, during the period of time when any of the Offsite Road is under construction by Owner (with full coverage in force for matters occurring prior to City's acceptance of the Offsite Road, respectively, until expiration of two (2) years after the latter to occur of full and final completion of the Offsite Road and acceptance thereof by the City): (a) workers compensation insurance in the amount required by law and (b) commercial general liability insurance including personal injury liability, premises operations liability, and contractual liability (e.g. deletion of exclusions for liability assumed under any indemnification provisions of this Agreement) , with limits of liability for bodily injury, death and property damage of not less than \$1,000,000.00 per occurrence and general aggregate coverage for bodily injury, death and property damage of not less than \$2,000,000.00 (per project); provided, however, if the applicable construction contract is for a sum greater than \$3,000,000.00, then either (at Owner's election) the general aggregate coverage for bodily injury, death and property damage shall be no less than \$5,000,000.00 (on a per project basis), or an additional \$3,000,000.00 of umbrella or excess liability insurance shall be acquired and maintained. Such insurance shall cover claims for bodily injury, death and property damage which might arise out of the construction contracts for the Offsite Road and related improvements, whether by Owner, a contractor, subcontractor, material man, or otherwise. Commercial general liability insurance coverage in the amount of \$1,000,000.00 must be on a "per occurrence" basis. All such insurance shall be issued by a carrier which is rated "A-1" or better by A.M. Best's Key Rating Guide and licensed to do the business of insurance in the State of Texas. The commercial general liability insurance shall name the City including its current and future officers, councilmembers, employees, representatives, and other agents as additional insureds and contain a waiver of subrogation endorsement in favor each additional insured. Upon the later to occur of Owner's execution of a construction contract for the Offsite Road or related improvements or five (5) days prior to commencement of construction under a construction contract for the Offsite Road or related improvements, Owner shall provide to the City certified copies of all declarations, contracts and policies of insurance, including all riders, exclusions, and all other attachments to each, evidencing such insurance coverage, along with the endorsement naming the City as an additional named insured. As to insurance required for current and for future Owners, even where Owner or the insurer has the right to cancel, fail to renew, or modify insurance coverage, each such policy shall provide that, at least thirty (30) days' prior to the cancellation (including for non-payment of premiums), non-renewal or modification of the same, the City and Owner or Owner's contractor shall receive written notice of such cancellation, non-renewal or modification; furthermore, if Owner receives ten (10) days' written notice for non-payment of premiums pursuant to Section 551.053 of the Texas Insurance Code, or if Owner is provided such notice by Owner's contractor, then Owner shall provide such notice to the City within five (5) business days. The commercial general liability insurance discussed in this Section 6.1 will not have exclusions or reduced limits for risks assumed pursuant to this Agreement. If insurance coverage that names a city as an "additional named insured" is commercially available to contractors which would bid for a construction project within the Project at commercially reasonable rates, then the

City shall be named as an “additional named insured” to the insurance policy for such construction project.

**6.2 DEFENSE, INDEMNIFICATION and HOLD HARMLESS.** THE OWNER (IN THE EVENT OF AN ASSIGNMENT PURSUANT TO SECTION 8.5 BELOW “OWNER” FOR PURPOSES OF THIS SECTION 6.2 SHALL MEAN SUCH ASSIGNEE) HEREBY COVENANTS AND AGREES, TO THE EXTENT PERMITTED BY CHAPTER 151 OF THE TEXAS INSURANCE CODE, AND NO FURTHER, TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, AND ITS PAST, PRESENT, AND FUTURE OFFICIALS, OFFICERS, REPRESENTATIVES, EMPLOYEES, AND OTHER AGENTS (IN THIS SECTION, COLLECTIVELY THE “CITY”) AGAINST AND FROM (AND WILL PAY TO THE CITY OR THE CLAIMANT, AS APPLICABLE, THE AMOUNT OF SUCH DAMAGES TO THE EXTENT THAT PAYMENT OBLIGATIONS UNDER THIS INDEMNITY ARISE) ALL ACTIONS, DAMAGES, CLAIMS, LOSSES, OR EXPENSE OF ANY TYPE (COLLECTIVELY, “DAMAGES”), ARISING FROM (i) THE BREACH OF ANY PROVISION OF THIS AGREEMENT BY OWNER OR (ii) ANY THIRD PARTY CLAIMS RELATING TO ANY PUBLIC IMPROVEMENT CONSTRUCTED BY OWNER ACQUIRED UNDER THIS AGREEMENT, INCLUDING ANY CLAIM RELATING TO THE CONCURRENT NEGLIGENCE OF THE CITY OR RESULTING FROM ANY INJURY TO ANY PERSON OR DAMAGE TO PROPERTY RESULTING FROM THE ACTS OR OMISSIONS OF OWNER, ITS CONTRACTOR OR SUBCONTRACTORS, IN OWNER’S CONSTRUCTION OF THE OFFSITE ROAD OR RELATED IMPROVEMENTS FOR THE PROJECT, EXCLUDING, HOWEVER, ANY CLAIM RELATING TO THE SOLE NEGLIGENCE OR INTENTIONAL ACTS OF THE CITY. OWNER WILL DEFEND THE CITY AGAINST ALL SUCH CLAIMS AND THE CITY WILL REASONABLY COOPERATE AND ASSIST IN PROVIDING SUCH DEFENSE. THE CITY SHALL HAVE THE RIGHT TO REASONABLY APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY THE OWNER IN FULFILLING ITS OBLIGATIONS HEREUNDER SUBJECT TO THE TERMS AND CONDITIONS OF ANY INSURANCE POLICY APPLICABLE TO SUCH CLAIM AND THE INSURER’S RIGHT TO RETAIN COUNSEL ON BEHALF OF ANY INSURED OR ADDITIONAL INSURED. THE CITY RESERVES THE RIGHT, BUT IS NOT REQUIRED, TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE AT ITS OWN EXPENSE. OWNER SHALL RETAIN DEFENSE COUNSEL WITHIN 10 BUSINESS DAYS OF WRITTEN NOTICE THAT THE CITY IS INVOKING ITS RIGHTS TO DEFENSE AND INDEMNIFICATION, AND IF OWNER DOES NOT DO SO, THE CITY MAY RETAIN ITS OWN DEFENSE COUNSEL IF REASONABLY NECESSARY AND OWNER WILL BE LIABLE FOR ALL REASONABLE COSTS AND EXPENSES OF SUCH COUNSEL INCURRED UNTIL OWNER HAS RETAINED DEFENSE COUNSEL. THIS SECTION SURVIVES THE TERMINATION OF THIS AGREEMENT WITH RESPECT TO MATTERS OCCURRING PRIOR TO CITY’S ACCEPTANCE OF THE OFFSITE ROAD OR RELATED IMPROVEMENTS, RESPECTIVELY, SUBJECT TO APPROPRIATE STATUTES OF LIMITATIONS, AS THEY MAY BE TOLLED OR EXTENDED BY AGREEMENT OR OPERATION OF LAW. OWNER WILL NOT SETTLE ANY CLAIM IF SUCH SETTLEMENT

PROVIDES FOR INJUNCTIVE OR DECLATORY RELIEF AGAINST THE CITY WITHOUT THE WRITTEN CONSENT OF THE CITY, WHICH SHALL NOT BE UNREASONABLY WITHHELD (CITY SHALL NOT HAVE APPROVAL RIGHTS OVER MONETARY SETTLEMENTS, UNLESS AFFIRMATIVE ACTION IS REQUIRED BY THE CITY IN CONNECTION WITH SUCH SETTLEMENT); HOWEVER, LIMITS ON FUTURE GOVERNMENT ACTION AND PRECEDENTIAL CONSIDERATIONS RELATED TO OR POTENTIALLY ARISING FROM ANY PROPOSED SETTLEMENT ARE AMONG REASONS ON WHICH THE CITY MAY BASE REFUSAL TO CONSENT TO ANY PROPOSED SETTLEMENT.

- 6.3 At no time shall the City have any control over or charge of the Owner's design, construction, or installation of any of the Offsite Road, nor the means, methods, techniques, sequences, or procedures utilized for said design, construction or installation. This Agreement does not create a joint enterprise or venture between the City and Owner.
- 6.4 **Insurance and Indemnity by Contractors:** Insurance and Indemnity by Contractors: If Owner engages a Contractor to construct the Offsite Road or related improvements, Owner shall include in the contract requirements that the Contractor must provide commercial general liability insurance naming the City as an additional insured as required in Section 6.1. To the extent allowed by applicable law, Owner shall use reasonable efforts to cause the contract to provide THAT THE CONTRACTOR COVENANT AND AGREE, TO THE EXTENT PERMITTED BY CHAPTER 151 OF THE TEXAS INSURANCE CODE, AND NO FURTHER, TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY AGAINST ANY AND ALL SUITS OR CLAIMS FOR DAMAGES OF ANY NATURE ARISING OUT OF THE PERFORMANCE OF SUCH CONTRACT, EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO STRICT LIABILITY OR TO THE CONCURRENT NEGLIGENCE OF THE CITY.

## ARTICLE 7 DEFAULT AND REMEDIES FOR DEFAULT

- 7.1 **Preventative Default Measures.** The Parties presently enjoy a good working relationship and understand the meaning and intent of this Agreement; however, the Parties recognize that individual representatives of each of the Parties will likely change over the course of this Agreement. The City agrees that day-to-day oversight of the implementation of this Agreement shall at all times during the Term be assigned directly to the City Administration. In the event of a dispute involving an interpretation or any other aspect of this Agreement, upon Owner's request, the City Administration shall convene a meeting of the Parties as soon as reasonably practical and use all reasonable efforts to avoid processing delays and to resolve the dispute and carry out the spirit and purpose of this Agreement.
- 7.2 **Default.** If either Party defaults in its obligations under this Agreement, the other Party must, prior to exercising a remedy available to that Party arising out of the default, give written notice to the defaulting Party specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting Party at least



thirty (30) days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the thirty (30) day period, the commencement of the cure within the thirty (30) day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period.

- 7.3 Remedies Between the City and Owner.** If a Party contends that the other Party is in default of this Agreement, the non-defaulting Party shall give written notice of such contention to the defaulting Party, specifying the nature of the alleged default, and allow the applicable time period for cure of the default set forth in Section 7.02 above. The defaulting Party shall either cure the alleged default timely, or if the non-defaulting Party and defaulting Party agree in writing for an extension of the time to cure, not later than the extended cure deadline, or, within the time for cure stated in the non-defaulting Party's initial notice of default, give written notice to the non-defaulting Party denying the existence of the alleged default and invoking the following dispute resolution mechanisms. First, if both Parties shall mutually agree to submit to mediation, they shall attempt to resolve the dispute amicably. If mediation is unsuccessful or if one or both of the Parties decline to engage in mediation, then either Party may institute legal proceedings in a state district court in Hays County, Texas, pursuing all available remedies at law or equity, including without limitation a suit for specific performance and/or a Writ of Mandamus in the event of a default by the City. All matters of fact and law shall be submitted to and determined by the court (subject to appeal). Each party shall pay its own costs and attorney fees.

## ARTICLE 8 MISCELLANEOUS

- 8.1 Governing Law; Jurisdiction and Venue:** This Agreement shall be construed under and in accordance with the laws of The State of Texas. All obligations of the parties created hereunder are performable in Hays County, Texas and venue for any action arising hereunder shall be in Hays County.
- 8.2 Conspicuous Provisions:** The City and Owner acknowledge that the provisions of this Agreement set out in bold, CAPITALS (or any combination thereof) satisfy the requirements for the express negligence rule or are conspicuous.
- 8.3 Notices:** Any notices, approvals, or other communications required to be given by one Party to another under this Agreement (a "Notice") shall be given in writing addressed to the Party to be notified at the address set forth below and shall be deemed given: (a) when the Notice is delivered in person to the person to whose attention the Notice is addressed; (b) when received if the Notice is deposited in the United States Mail, certified or registered mail, return receipt requested, postage prepaid; (c) when the Notice is delivered by Federal Express, UPS, or another nationally recognized courier service with evidence of delivery signed by any person at the delivery address. If any date or period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the Notice shall be extended to the first business day following the Saturday, Sunday, or legal holiday. For the purpose of giving any Notice, the addresses of the Parties

are set forth below. The Parties may change the information set forth below by sending Notice of such changes to the other Party as provided in this section.

**To the City:**

City of Dripping Springs  
Attn: City Secretary  
P.O. Box 384  
Dripping Springs, Texas 78620

City of Dripping Springs  
Attn: City Administrator  
P.O. Box 384  
Dripping Springs, Texas 78620

**To Owner:**

CRTX Development LLC  
ATTN: Doug Cobb  
9699 CR 132  
Celina, Texas 75009

- 8.4 **City Consent and Approval:** In any provision of this Agreement that provides for the consent or approval of the City staff or City Council, such consent or approval must be granted in writing, and unless otherwise specified in this Agreement may be withheld or conditioned by the staff or City Council based on compliance with the terms of this Agreement and applicable laws and ordinances.
  
- 8.5 **Assignment:** This Agreement and the rights and obligations of Owner hereunder may be assigned by Owner to an affiliate of Owner, without the consent of the City, provided that the assignee assumes all of the assigned obligations of Owner hereunder and the assignee has provided Owner with a writing, certified by an officer with the authority to bind the assignee, stating that such assignee (i) does not owe delinquent taxes or fees to the City, (ii) is not in material default (beyond any applicable notice and cure period) under any development agreement with City, and (iii) has the experience, expertise and the financial capacity and ability to perform the duties or obligations so assigned under this Agreement.

For assignments other than an affiliate as provided in the above paragraph, Owner may, in its sole and absolute discretion, assign this Agreement with respect to all or part of the Project from time to time to any party provided that the assignee has provided to Owner with a copy to the City in a writing, certified by an officer with the authority to bind the assignee, stating that such assignee (i) does not owe delinquent taxes or fees to the City, (ii) is not in material default (beyond any applicable notice and cure period) under any development agreement with City, and (iii) has the experience, expertise and the financial capacity and ability to perform the duties or obligations so assigned under this Agreement.

In the event the proposed assignee is a company that is publicly traded and listed on the New York Stock Exchange, then an officer of such proposed assignee shall provide this information in the certification described in this Section 8.5 in lieu of the requirements of (iii), above. Owner shall provide the City sixty (60) days prior written notice of any such assignment, and Owner shall provide the City with a copy of the writing described in this Section 8.5. Upon assignment pursuant to this Section 8.5, Owner shall be released of any further obligations under this Agreement.

- 8.6 No Third Party Beneficiary:** This Agreement is solely for the benefit of the Parties, and neither the City nor Owner intends by any provision of this Agreement to create any rights in any third-party beneficiaries or to confer any benefit upon or enforceable rights under this Agreement or otherwise upon anyone other than the City and Owner.
- 8.7 Amendment:** This Agreement may be amended only with the written consent of the Owner and with approval of the governing body of the City.
- 8.8 No Waiver:** Any failure by a Party to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any Party hereto of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.
- 8.9 Severability:** The provisions of this Agreement are severable and, in the event any word, phrase, clause, sentence, paragraph, section, or other provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held or determined to be invalid, illegal, or unenforceable for any reason, and the extent of such invalidity or unenforceability does not cause substantial deviation from the underlying intent of the Parties as expressed in this Agreement, then such provision shall be deemed severed from this Agreement with respect to such person, entity or circumstance, without invalidating the remainder of this Agreement or the application of such provision to other persons, entities or circumstances, and a new provision shall be deemed substituted in lieu of the provision so severed which new provision shall, to the extent possible, accomplish the intent of the Parties as evidenced by the provision so severed.
- 8.10 Captions:** Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of the agreement.
- 8.11 Interpretation:** The Parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto. As used in this Agreement, the term "shall include" means "shall include without limitation."

**8.12 Exactions Roughly Proportionate:** Owner hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Texas Local Government Code, arising out of this Agreement. Both Owner and the City further agree to waive and release all claims one may have against the other related to any and all rough proportionality and individual determination requirements mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the projected impact of the terms of this Agreement or the future zoning ordinance covering the Land. Owner further acknowledges that the benefits of platting and master planning have been accepted with full knowledge of potential claims and causes of action which may be raised now and, in the future, and Owner acknowledges the receipt of good and valuable consideration for the release and waiver of such claims. Notwithstanding the foregoing, Owner does not waive any of its rights or claims with respect to any future requests or exactions from the City not covered or determined by this Agreement or the future zoning ordinance covering the Land.

**8.13 Counterpart and Originals:** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.

**8.14 Term:** The term of this Agreement will commence on the Effective Date and continue until the City's acceptance of the Offsite Road (or earlier termination of Owner's obligation to construct the Offsite Road pursuant to Section 3.1(d) above) and related improvements, unless terminated on an earlier date by written agreement of the City and Owner.

**8.45 Incorporation of Exhibits by Reference:** All exhibits attached to this Agreement are incorporated into this Agreement by reference for the purposes set forth herein, as follows:


<b>Exhibit A</b>	<b>Depiction of Land</b>
<b>Exhibit B</b>	<b>Rob Shelton Conceptual Improvements</b>
<b>Exhibit C</b>	<b>Street Section</b>

The Effective Date of this Agreement is **May 12, 2020**.

**THE UNDERSIGNED PARTIES HEREBY EXECUTE THIS AGREEMENT:**

**CITY OF DRIPPING SPRINGS:**

**CRTX DEVELOPMENT, LLC:**

  
\_\_\_\_\_  
Bill Foulds, Jr., Mayor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name & Title

ATTEST:

*Andrea Cunningham*  
Andrea Cunningham, City Secretary



EXHIBIT A  
Property Location



**EXHIBIT A (CONTINUED)**  
**Property Legal Description**

**LEGAL DESCRIPTION:** Being 7.82 acres of land out of the P. A. Smith League No. 26, Abstract No. 415, Hays County, Texas and also being that certain 5.314 acre tract of land described in Volume 5057, Page 320 of the Official Public Records of Hays County, Texas and that certain 2.500 acre tract described in Volume 360, Page 405 of said Official Public Records; Said 7.82 acre tract being more particularly described as follows and as surveyed under the supervision of Intrepid Surveying & Engineering Corporation in June, 2018:

BEGINNING at a wood fence corner post found in the northeast line of Ranch Road No. 12 for the southwest corner of that certain 4.27 acre tract described in Volume 2535, Page 838 of said Official Public Records, the northwest corner of said 5.314 acre tract and the northwest corner hereof;

THENCE along the south lines of said 4.27-acre tract, the following 3 courses:

1. North 87°48'10" East a distance of 767.14 feet along the north line of said 5.314-acre tract to a 1/2-inch iron rod found for the northeast corner of said 5.314-acre tract and a northeast corner hereof;
2. South 01°27'22" East a distance of 0.35 feet along the east line of said 5.314-acre tract to a 1/2-inch iron rod set for the northwest corner of said 2.500-acre tract and an interior corner hereof;
3. North 87°44'36" East a distance of 336.25 feet along the north line of said 2.500 acre tract to an iron pipe found in the west line of that certain 40.00 acre tract described in Volume 1462, Page 671 of said Official Public Records for the northeast corner of said 2.500 acre tract and the northeast corner hereof;

THENCE South 01°25'32" East a distance of 326.29 feet along the common line of said 40.00-acre tract and said 2.500-acre tract to a 1/2-inch iron rod set in the north line of that certain 82.2-acre tract described in Volume 1265, Page 776 of said Official Public Records for the southwest corner of said 40.00-acre tract, the southeast corner of said 2.500-acre tract and the southeast corner hereof;

THENCE along the north lines of said 82.02-acre tract, the following 3 courses:

1. South 88°24'53" West a distance of 336.04 feet along the south line of said 2.500 acre tract to a 1/2 inch iron rod set in the east line of said 5.314 acre tract for the southwest corner of said 2.500 acre tract and a south interior corner hereof;
2. South 01°27'22" East a distance of 1.99 feet along the east line of said 5.314-acre tract to a 1/2-inch iron rod found for the southeast corner of said 5.314-acre tract and a southeast corner hereof;
3. South 88°08'17" West a distance of 668.55 along the south line of said 5.314-acre tract to a 1/2-inch iron rod set in the east line of Ranch Road No. 12 for the southwest corner of said 5.314-acre tract and the southwest corner hereof;



THENCE along the northeast lines of Ranch Road No. 12 and the southeast lines of said 5.314-acre tract, the following 2 courses:

1. Following a curve turning to the right through the angle of  $00^{\circ}36'32''$ , having a radius of 1597.42 feet, and whose long chord bears North  $19^{\circ}17'43''$  West a distance of 16.98 feet to a concrete monument found for a west corner hereof;
2. North  $18^{\circ}33'47''$  West a distance of 317.34 feet to POINT OF BEGINNING containing 7.82 acres more or less, and as shown on certified plat herewith.

Note: Bearings, distances and acreage shown hereon are NAD 83, South Central Zone and are derived from GPS techniques. Iron Rods set are a 1/2-inch rod with plastic caps marked "INTREPID".

Together with:

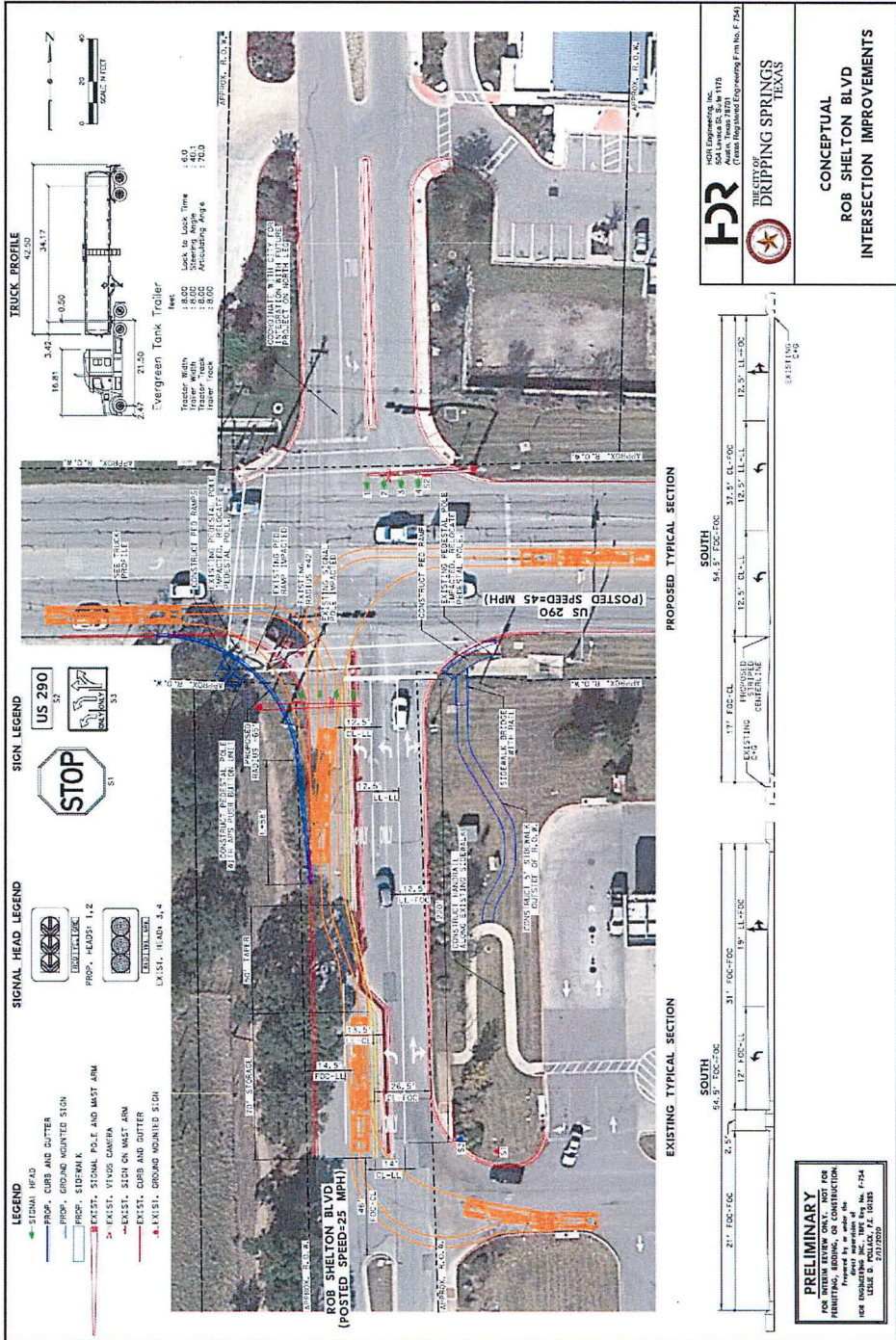
**BEING A 0.750 ACRE (32,670 SF) TRACT OF LAND, OIJT OF A 4.27 ACRE TRACT OF LAND CONVEYED BY WARIWITY DEED TO SPRING VALLEY FELLOWSHIP D/B/A CHURCH OF THE SPRINGS, AS RECORDED IN VOLUME 2535, PAGE 636 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS.**

**THE UNDERSIGNED DOES HEREBY CERTIFY TO STEWART TITLE GUARANTY COMPANY, THAT THIS PLAT CORRECTLY REPRESENTS A SURVEY MADE UPON THE GROUND OF THE PROPERTY SHOWN HEREON, AND THAT THERE ARE NO ENCROACHMENTS OF VISIBLE IMPROVEMENTS, EXCEPT AS SHOWN HEREON, AND THAT THIS PROPERTY HAS ACCESS TO A PUBLIC ROADWAY, EXCEPT AS SHOWN HEREON.**

**THIS SURVEY SUBSTANTIALLY COMPLIES WITH THE CURRENT TEXAS SOCIETY OF PROFESSIONAL SURVEYORS STANDARDS AND SPECIFICATIONS FOR A CATEGORY 1A SURVEY.**



EXHIBIT B  
Rob Shelton Conceptual Improvements



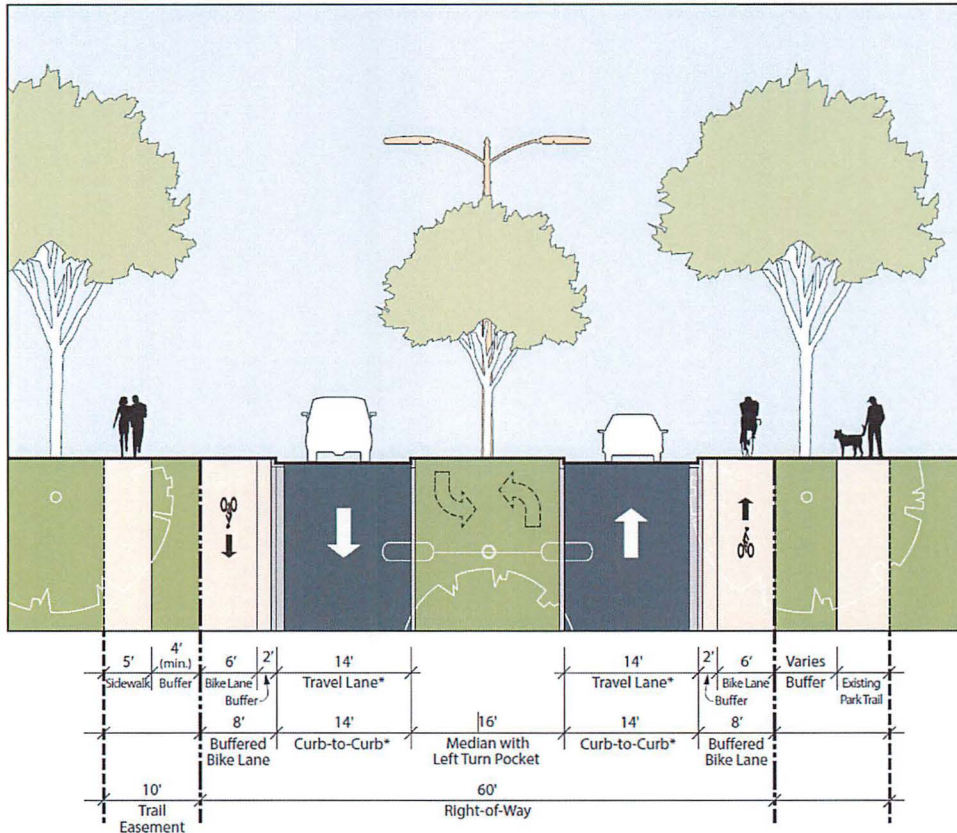
**HDR**

HDR Engineering, Inc.  
11115  
Avenue, Texas 77374  
Central Registered Engineering Firm No. F 7541

**THE CITY OF DRIPPING SPRINGS TEXAS**

**CONCEPTUAL  
ROB SHELTON BLVD  
INTERSECTION IMPROVEMENTS**

## EXHIBIT C IMPROVEMENTS



\* Parking is prohibited to allow for fire truck access.



### 2 Lane Major Collector - For Rob Shelton City of Dripping Springs

Draft: April 29, 2020