



# City of Round Rock

## City Council

### Meeting Agenda

Craig Morgan, Mayor  
Will Peckham, Mayor Pro-Tem, Place 4  
Tammy Young, Place 1  
Rene Flores, Place 2  
Frank Leffingwell, Place 3  
Writ Baese, Place 5  
Kris Whitfield, Place 6

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Thursday, June 22, 2017

7:00 PM

City Council Chambers, 221 East Main St.

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**A. CALL REGULAR SESSION TO ORDER – 7:00 P.M.**

**B. ROLL CALL**

**C. PLEDGES OF ALLEGIANCE**

**D. CITIZEN COMMUNICATION**

*Any citizen wishing to speak during citizen communication regarding an item on or off the agenda may do so after completing the required registration card. All comments must be no more than 3 minutes in length. Any comments regarding items not on the posted agenda may not be discussed or responded to by the City Council. The Mayor may deny any presenter the opportunity to address the City Council if the presentation or comments offered is substantially repetitive of those previous made, per §2-26(b)(d), of the Round Rock Code of Ordinances, 2010 Edition.*

**E. CONSENT AGENDA:**

*All items listed under the Consent Agenda are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless requested by a Council member in which event, the item will be removed from the consent agenda and considered separately.*

E.1 [2017-4539](#) [Consider approval of the minutes for the June 8, 2017 City Council meeting.](#)

E.2 [2017-4490](#) [Consider an ordinance adopting Amendment No. 2 to the FY 2016-2017 Operating Budget. \(Second Reading\)](#)

**F. ORDINANCES:**

F.1 [2017-4515](#) [Consider public testimony regarding, and an ordinance granting a partial tax exemption from ad valorem taxes for certain qualified historically significant properties located in the City. \(First Reading\)\\*](#)

**G. RESOLUTIONS:**

- G.1     [2017-4516](#)     [Consider a resolution directing the Planning Director to prepare a service plan concerning the proposed annexation of a tract at the Northeast Corner of North A.W. Grimes Boulevard and CR186 \(Hickerson-Keith Annexation\).](#)
- G.2     [2017-4540](#)     [Consider a resolution authorizing the City Manager to issue a Purchase Order to Motorola Solutions, Inc. for handheld radios and mobile radios for the Police Department.](#)
- G.3     [2017-4524](#)     [Consider a resolution authorizing the Mayor to execute a Contract with Lone Star Paving for the 2017 Street Maintenance Program Chip Seal Project.](#)
- G.4     [2017-4526](#)     [Consider a resolution authorizing the Mayor to execute a Public Highway At-Grade Crossing and Advanced Signal Agreement with Union Pacific Railroad Company for the St. Williams Street Quite Zone Project.](#)
- G.5     [2017-4509](#)     [Consider a resolution authorizing the Mayor to execute Change Order No. 4 with Muniz Concrete & Contracting Inc. regarding the Brushy Creek Regional Trail Gap Project.](#)
- G.6     [2017-4529](#)     [Consider a resolution authorizing the Mayor to execute a Real Estate Contract with MFT-The Creek, LLC for the purchase of a trail easement interest totaling 0.592 acres necessary for the Brushy Creek Trail Project \(Parcel 3\).](#)
- G.7     [2017-4537](#)     [Consider a resolution authorizing the Mayor to execute Supplemental Agreement No.1 with Halff Associates, Inc. for the Heritage Trail West Project.](#)
- G.8     [2017-4531](#)     [Consider a resolution authorizing the Mayor to execute a Sponsorship Agreement with xRedfoxx, LLC and the Play for All Foundation for a Village Pod building at the Play for All Abilities Park.](#)
- G.9     [2017-4532](#)     [Consider a resolution authorizing the Mayor to execute a Sponsorship Agreement with Nolan Ryan Foundation and the Play for All Foundation for a Train-Themed Play Structure at the Play for All Abilities Park.](#)
- G.10    [2017-4533](#)     [Consider a resolution authorizing the Mayor to execute a Sponsorship Agreement with Dell Children's Medical Center and the Play for All Foundation for a Treehouse at the Play for All Abilities Park.](#)
- G.11    [2017-4534](#)     [Consider a resolution authorizing the Mayor to execute a Sponsorship Agreement with Atmos Energy Corporation and the Play for All Foundation for a Village Pod building at the Play for All Abilities Park.](#)
- G.12    [2017-4535](#)     [Consider a resolution authorizing the Mayor to execute a Sponsorship Agreement with Chick Fil A, Inc. and the Play for All Foundation for a Village Pod building at the Play for All Abilities Park.](#)

- G.13     [2017-4536](#)     [Consider a resolution authorizing the Mayor to execute a Sponsorship Agreement with Nyle Maxwell Family of Dealerships and the Play for All Foundation for a Pit Structure Building at the Play for All Abilities Park.](#)

**H.        COUNCIL COMMENTS REGARDING ITEMS OF COMMUNITY INTEREST**

**I.        EXECUTIVE SESSION:**

- I.1       [2017-4564](#)     [Consider Executive Session as authorized by §551.072, Government Code, related to the value and possible sale of real property located at the northwest corner of the intersection of Main Street and Mays Street.](#)
- I.2       [2017-4573](#)     [Consider Executive Session as authorized by §551.072, Government Code, related to the purchase and/or value of real property located at 416 and 420 N. Mays Streets, Round Rock, Texas.](#)

**J.        ADJOURNMENT**

*\*Pursuant to the terms of Section 3.13 of the Round Rock Home Rule Charter, the second reading of this ordinance may be dispensed with by an affirmative vote of all the City Council members present.*

*In addition to any executive session already listed above, the City Council for the City of Round Rock reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code for the following purposes:*

*§551.071 Consultation with Attorney  
§551.072 Deliberations regarding Real Property  
§551.073 Deliberations regarding Gifts and Donations  
§551.074 Personnel Matters  
§551.076 Deliberations regarding Security Devices  
§551.087 Deliberations regarding Economic Development Negotiations*

**POSTING CERTIFICATION**

*I certify that this notice of the Round Rock City Council Meeting was posted on the 16th day of June 2017 at 5:00 p.m. as required by law in accordance with Section 551.043 of the Texas Government Code.*

*/ORIGINAL SIGNED/  
Sara L. White, TRMC, City Clerk*



# City of Round Rock

## Agenda Item Summary

**Agenda Number: E.1**

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**Title:** Consider approval of the minutes for the June 8, 2017 City Council meeting.

**Type:** Minutes

**Governing Body:** City Council

**Agenda Date:** 6/22/2017

**Dept Director:** Sara White, City Clerk

**Cost:**

**Indexes:**

**Attachments:** 060817 Draft Minutes

**Department:** City Clerk's Office

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**Text of Legislative File 2017-4539**





# City of Round Rock

## Meeting Minutes - Draft City Council

Thursday, June 8, 2017

### CALL REGULAR SESSION TO ORDER – 7:00 P.M.

*The Round Rock City Council met in regular session on June 8, 2017 in the City Council chambers at 221 E. Main Street. Mayor Morgan called the meeting to order at 7:00 pm.*

### ROLL CALL

**Present:** 7 - Mayor Craig Morgan  
Councilmember Tammy Young  
Councilmember Rene Flores  
Councilmember Frank Leffingwell  
Councilmember Will Peckham  
Councilmember Writ Baese  
Councilmember Kris Whitfield

**Absent:** 0

### PLEDGES OF ALLEGIANCE

*Mayor Morgan led the following Pledges of Allegiance: United States and Texas*

### CITIZEN COMMUNICATION

*Nancy Rabb, 2317 Woodway, presented a request to rename the Round Rock Sports Center the Alan R. McGraw Sports Complex.*  
*Fred Jewell, 22 Forest Mesa, spoke to Council about the upcoming Sertoma Duck Races.*  
*There being no further citizens wishing to speak, Mayor Morgan closed citizen communication.*

### CONSENT AGENDA:

*All items listed on the consent agenda were enacted by one motion. There was a staff presentation made by Chad McDowell, General Services Director for consent items E.2 through E.13, however no items were removed from the consent agenda.*

#### E. CONSENT AGENDA:

**Aye:** 7 - Councilmember Young  
Councilmember Flores  
Councilmember Leffingwell  
Councilmember Peckham  
Councilmember Baese  
Councilmember Whitfield  
Mayor Morgan

Nay: 0

Absent: 0

- E.1**    [2017-4502](#)    Consider the approval of the minutes for the May 16, 2017 Special Called and May 25, 2017 Special Called and Regular City Council meetings.  
**The minutes were approved under the consent agenda.**
- E.2**    [2017-4423](#)    Consider a resolution authorizing the Mayor to execute Supplemental Agreement No. 3 with 5-F Mechanical Group, Inc. for the purchase of general building trade services (HVAC).  
**This resolution was approved under the consent agenda.**
- E.3**    [2017-4425](#)    Consider a resolution authorizing the Mayor to execute Supplemental Agreement No. 3 with 5-F Mechanical Group, Inc. for the purchase of general building trade services (Plumbing).  
**This resolution was approved under the consent agenda.**
- E.4**    [2017-4426](#)    Consider a resolution authorizing the Mayor to execute Supplemental Agreement No. 3 with 360 Roofing, LLC for purchase of general building trade services (roofing).  
**This resolution was approved under the consent agenda.**
- E.5**    [2017-4427](#)    Consider a resolution authorizing the Mayor to execute Supplemental Agreement No. 3 with TDIndustries, Inc. for purchase of general building trade services (HVAC).  
**This resolution was approved under the consent agenda.**
- E.6**    [2017-4428](#)    Consider a resolution authorizing the Mayor to execute Supplemental Agreement No. 3 with TDIndustries Inc. for purchase of general building trade services (plumbing).  
**This resolution was approved under the consent agenda.**
- E.7**    [2017-4429](#)    Consider a resolution authorizing the Mayor to execute Supplemental Agreement No. 3 with ACM Services, LLC for the purchase of electrical trade services.  
**This resolution was approved under the consent agenda.**
- E.8**    [2017-4430](#)    Consider a resolution authorizing the Mayor to execute Supplemental Agreement No. 3 with Texas Roofing Co., LP for purchase of general building trade services (Roofing).  
**This resolution was approved under the consent agenda.**
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- E.9**    [2017-4431](#)        Consider a resolution authorizing the Mayor to execute Supplemental Agreement No. 3 with M&C Electric, Inc. for the purchase of general building trade services (Electric).

**This resolution was approved under the consent agenda.**

- E.10**    [2017-4432](#)        Consider a resolution authorizing the Mayor to execute Supplemental Agreement No. 3 with Cobos Design & Construction, Inc. for the purchase of general building trade services (Painting).

**This resolution was approved under the consent agenda.**

- E.11**    [2017-4434](#)        Consider a resolution authorizing the Mayor to execute Supplemental Agreement No. 3 with Cobos Design & Construction, Inc. for the purchase of general building trade services (Drywall).

**This resolution was approved under the consent agenda.**

- E.12**    [2017-4435](#)        Consider a resolution authorizing the Mayor to execute Supplemental Agreement No. 3 with Cobos Design & Construction, Inc. for the purchase of general building trade services (Carpentry).

**This resolution was approved under the consent agenda.**

- E.13**    [2017-4436](#)        Consider a resolution authorizing the Mayor to execute Supplemental Agreement No. 3 with Partners Remodeling Restoration & Waterproofing, LLC for purchase of general building trade services (masonry/concrete finishing).

**This resolution was approved under the consent agenda.**

- E.14**    [2017-4475](#)        Consider a resolution authorizing the Mayor to execute an Agreement with Brenntag Southwest, Inc. for the purchase of swimming pool chemicals.

**This resolution was approved under the consent agenda.**

#### **PUBLIC HEARINGS:**

- F.1**    [2017-4489](#)        Consider public testimony regarding the draft CDBG 2017-2018 Annual Action Plan.

*Raynesha Hudnell made the staff presentation.*

*Mayor Morgan opened the hearing for public testimony.*

*There being none, the public hearing was closed.*

**STAFF PRESENTATIONS:**

- G.1**    [2017-4503](#)            Consider a presentation regarding the Forest Creek Golf Course executive summary overview and 5-year vision and plan.
- Brian Stillman, Sports Facilities & Operations Manager, made the staff presentation.*

**ORDINANCES:**

- H.1**    [2017-4490](#)            Consider on ordinance adopting Amendment No. 2 to the FY 2016-2017 Operating Budget. (First Reading)(Requires Two Readings)
- A motion was made by Councilmember Baese, seconded by Councilmember Leffingwell, that this ordinance be approved. The motion carried by the following vote:**
- Aye:**    7 -    Councilmember Young  
                 Councilmember Flores  
                 Councilmember Leffingwell  
                 Councilmember Peckham  
                 Councilmember Baese  
                 Councilmember Whitfield  
                 Mayor Morgan
- Nay:**    0
- Absent:**    0

**RESOLUTIONS:**

- I.1**    [2017-4504](#)            Consider a resolution authorizing the Mayor to execute a Professional Consulting Services Agreement with KemperSports, Inc. for design services related to the Forest Creek Golf Course Renovation Project.
- Brian Stillman, Sports Facilities & Operations Manager, made the staff presentation under item G1.*
- A motion was made by Councilmember Whitfield, seconded by Councilmember Peckham, that this resolution be approved. The motion carried by the following vote:**
- Aye:**    7 -    Councilmember Young  
                 Councilmember Flores  
                 Councilmember Leffingwell  
                 Councilmember Peckham  
                 Councilmember Baese  
                 Councilmember Whitfield  
                 Mayor Morgan
- Nay:**    0
- Absent:**    0

**I.2**     [2017-4488](#)

Consider a resolution authorizing the Mayor to execute one or more electrical power purchase contracts with a Retail Electric Provider to provide electric power to the City.

*Susan Morgan, CFO, made the staff presentation.*

**A motion was made by Councilmember Flores, seconded by Councilmember Baese, that this resolution be approved. The motion carried by the following vote:**

**Aye:** 7 - Councilmember Young  
Councilmember Flores  
Councilmember Leffingwell  
Councilmember Peckham  
Councilmember Baese  
Councilmember Whitfield  
Mayor Morgan

**Nay:** 0

**Absent:** 0

**I.3**     [2017-4493](#)

Consider a resolution authorizing the Mayor to execute Supplemental Contract No. 1 with Freese and Nichols, Inc. for the West Wastewater Treatment Plant Force Main Project.

*Michael Thane, Utilities and Environmental Services Director made the staff presentation.*

**A motion was made by Councilmember Young, seconded by Councilmember Peckham, that this resolution be approved. The motion carried by the following vote:**

**Aye:** 7 - Councilmember Young  
Councilmember Flores  
Councilmember Leffingwell  
Councilmember Peckham  
Councilmember Baese  
Councilmember Whitfield  
Mayor Morgan

**Nay:** 0

**Absent:** 0

**I.4**     [2017-4483](#)

Consider a resolution authorizing the City Manager to issue a Purchase Order to The Playwell Group, Inc. for the purchase of playground equipment at Rabb Pavilion.

*David Buzzell, Assistant Parks and Recreation Director made the staff presentation.*

**A motion was made by Councilmember Whitfield, seconded by Councilmember Young, that this resolution be approved. The motion carried by the following vote:**

**Aye:** 7 - Councilmember Young  
Councilmember Flores  
Councilmember Leffingwell  
Councilmember Peckham  
Councilmember Baese  
Councilmember Whitfield  
Mayor Morgan

**Nay:** 0

**Absent:** 0

**I.5**     [2017-4484](#)

Consider a resolution authorizing the City Manager to issue a Purchase Order to PlayWorks Group, Inc. for the installation of playground equipment at Rabb Pavilion.

*David Buzzell, Assistant Parks and Recreation Director made the staff presentation.*

**A motion was made by Councilmember Peckham, seconded by Councilmember Whitfield, that this resolution be approved. The motion carried by the following vote:**

**Aye:** 7 - Councilmember Young  
Councilmember Flores  
Councilmember Leffingwell  
Councilmember Peckham  
Councilmember Baese  
Councilmember Whitfield  
Mayor Morgan

**Nay:** 0

**Absent:** 0

**I.6**     [2017-4491](#)

Consider a resolution approving the action of the Round Rock Transportation and Economic Development Corporation in authorizing the issuance of the Corporation's Senior Lien Sales Tax Revenue Refunding Bond, Series 2017; Approving Documents Related to the Sale of the Bond and Other Matters Related Thereto.

*Susan Morgan, CFO made the staff presentation.*

**A motion was made by Councilmember Whitfield, seconded by Councilmember Leffingwell, that this resolution be approved. The motion carried by the following vote:**

**Aye:** 7 - Councilmember Young  
Councilmember Flores  
Councilmember Leffingwell  
Councilmember Peckham  
Councilmember Baese  
Councilmember Whitfield  
Mayor Morgan

**Nay:** 0

**Absent:** 0

**I.7**     [2017-4519](#)

Consider a resolution approving the action of the Round Rock Transportation and Economic Development Corporation in amending the Transportation Capital Improvement Program (TCIP).

*Gary Hudder, Transportation Director made the staff presentation.*

**A motion was made by Councilmember Young, seconded by Councilmember Whitfield, that this resolution be approved. The motion carried by the following vote:**

**Aye:** 7 - Councilmember Young  
Councilmember Flores  
Councilmember Leffingwell  
Councilmember Peckham  
Councilmember Baese  
Councilmember Whitfield  
Mayor Morgan

**Nay:** 0

**Absent:** 0

**I.8**     [2017-4482](#)

Consider a resolution authorizing the Mayor to execute a Contract with Smith Contracting Company for the North Mays Right Turn Lane at Meridian School Project.

*Gary Hudder, Transportation Director made the staff presentation.*

**A motion was made by Councilmember Flores, seconded by Councilmember Young, that this resolution be approved. The motion carried by the following vote:**

**Aye:** 7 - Councilmember Young  
Councilmember Flores  
Councilmember Leffingwell  
Councilmember Peckham  
Councilmember Baese  
Councilmember Whitfield  
Mayor Morgan

**Nay:** 0

**Absent:** 0

**I.9**     [2017-4492](#)

Consider a resolution authorizing the Mayor to execute a Development Agreement with United Parcel Service regarding the construction of certain roadway and waterline improvements servicing the Roundville Lane Development.

*Gary Hudder, Transportation Director made the staff presentation.*

**A motion was made by Councilmember Whitfield, seconded by Councilmember Leffingwell, that this resolution be approved. The motion carried by the following vote:**

**Aye:** 7 - Councilmember Young  
Councilmember Flores  
Councilmember Leffingwell  
Councilmember Peckham  
Councilmember Baese  
Councilmember Whitfield  
Mayor Morgan

**Nay:** 0

**Absent:** 0

## APPOINTMENTS:

**J.1**    [2017-4494](#)    Consider the appointment of a Mayor Pro-Tem.

**A motion was made by Councilmember Baese, seconded by Councilmember Whitfield, to appoint Will Peckham as Mayor Pro-Tem. The motion carried by the following vote:**

**Aye:** 7 - Councilmember Young  
Councilmember Flores  
Councilmember Leffingwell  
Councilmember Peckham  
Councilmember Baese  
Councilmember Whitfield  
Mayor Morgan

**Nay:** 0

**Absent:** 0

**J.2**    [2017-4499](#)    Consider one (1) appointment of an Associate Municipal Judge to fill an expired term.

**A motion was made by Councilmember Whitfield, seconded by Councilmember Baese, to reappoint Sandra Fitzpatrick as Associate Municipal Judge. The motion carried by the following vote:**

**Aye:** 7 - Councilmember Young  
Councilmember Flores  
Councilmember Leffingwell  
Councilmember Peckham  
Councilmember Baese  
Councilmember Whitfield  
Mayor Morgan

**Nay:** 0

**Absent:** 0



**J.3**     [2017-4495](#)

Consider four (4) appointments to the Planning and Zoning Commission/Capital Improvements Advisory Committee to fill expired terms.

**A motion was made by Councilmember Whitfield, seconded by Councilmember Baese, to reappoint Jennifer Sellers, Selicia Sanchez-Adame, Greg Rabaey, and Casey Clawson to the Planning and Zoning Commission. The motion carried by the following vote:**

**Aye:** 7 - Councilmember Young  
Councilmember Flores  
Councilmember Leffingwell  
Councilmember Peckham  
Councilmember Baese  
Councilmember Whitfield  
Mayor Morgan

**Nay:** 0

**Absent:** 0

**J.4**     [2017-4498](#)

Consider one (1) appointment of an Ad-Hoc member to the Capital Improvements Advisory Committee fill an expired term.

**A motion was made by Councilmember Whitfield, seconded by Councilmember Leffingwell, to reappoint David Sour to CIAC-Ad Hoc. The motion carried by the following vote:**

**Aye:** 7 - Councilmember Young  
Councilmember Flores  
Councilmember Leffingwell  
Councilmember Peckham  
Councilmember Baese  
Councilmember Whitfield  
Mayor Morgan

**Nay:** 0

**Absent:** 0

**J.5**     [2017-4496](#)

Consider three (3) appointments to the Historic Preservation Commission to fill expired terms.

**A majority of Council voted to appoint Blane Conklin and reappoint Paul Emerson and Pattie Clements-Jordan to the Historic Preservation Commission.**

**J.6**     [2017-4497](#)

Consider two (2) regular member appointments and two (2) alternate member appointments to the Zoning Board of Adjustment to fill expired terms.

**A motion was made by Councilmember Baese, seconded by Councilmember Whitfield, to reappoint Patrick Gove and Lora Kaasch as regular members to the Zoning Board of Adjustment. The motion carried by the following vote:**

**Aye:** 7 - Councilmember Young  
Councilmember Flores  
Councilmember Leffingwell  
Councilmember Peckham  
Councilmember Baese  
Councilmember Whitfield  
Mayor Morgan

**Nay:** 0

**Absent:** 0

**A motion was made by Councilmember Peckham, seconded by Councilmember Whitfield, to appoint Andrew Wolfe and Victor Mares as alternative members to the Zoning Board of Adjustment. The motion carried by the following vote:**

**Aye:** 7 - Councilmember Young  
Councilmember Flores  
Councilmember Leffingwell  
Councilmember Peckham  
Councilmember Baese  
Councilmember Whitfield  
Mayor Morgan

**Nay:** 0

**Absent:** 0

**J.7**     [2017-4500](#)

Consider the confirmation of the City Manager's appointment to the Civil Service Commission to fill an expired term.

**A motion was made by Councilmember Whitfield, seconded by Councilmember Leffingwell, to confirm City Manager Laurie Hadley's reappointment of Gisele Schaefer to the Civil Service Commission. The motion carried by the following vote:**

**Aye:** 7 - Councilmember Young  
Councilmember Flores  
Councilmember Leffingwell  
Councilmember Peckham  
Councilmember Baese  
Councilmember Whitfield  
Mayor Morgan

**Nay:** 0

**Absent:** 0

**J.8**     [2017-4501](#)

Consider the appointment of a Council Director and Citizen Director to the Brushy Creek Regional Utility Authority (BCRUA).

**A motion was made by Morgan, seconded by Councilmember Peckham, to appoint Frank Leffingwell as the Council Director and Kris Whitfield as the Citizen Director to the Brushy Creek Regional Utility Authority. The motion carried by the following vote:**

**Aye:** 7 - Councilmember Young  
Councilmember Flores  
Councilmember Leffingwell  
Councilmember Peckham  
Councilmember Baese  
Councilmember Whitfield  
Mayor Morgan

**Nay:** 0

**Absent:** 0

## COUNCIL COMMENTS REGARDING ITEMS OF COMMUNITY INTEREST

### EXECUTIVE SESSION:

*The City Council recessed to Executive Session.  
Mayor Morgan called the session to order at 8:05 p.m. and adjourned it at 9:57 p.m.*

- L.1**    [2017-4521](#)    Consider Executive Session as authorized by §551.072, Government Code, related to the value and possible sale of real property, to wit: 15.05 acres of land adjacent to Chisholm Trail Road.
- L.2**    [2017-4522](#)    Consider Executive Session as authorized by §551.072, Government Code, related to the purchase and/or value of real property located at 416 and 420 N. Mays Streets, Round Rock, Texas.
- L.3**    [2017-4523](#)    Consider Executive Session as authorized by §551.087, Government Code, to deliberate the offer of a financial or other incentive to business prospects considering Round Rock as a location for new businesses that would bring economic development to the City.

### ADJOURNMENT

*There being no further business, Mayor Morgan adjourned the meeting at 9:58 pm.*

*Respectfully Submitted,*

*Sara L. White, City Clerk*



# City of Round Rock

## Agenda Item Summary

**Agenda Number: E.2**

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**Title:** Consider an ordinance adopting Amendment No. 2 to the FY 2016-2017 Operating Budget. (Second Reading)

**Type:** Ordinance

**Governing Body:** City Council

**Agenda Date:** 6/22/2017

**Dept Director:** Susan Morgan, CFO

**Cost:**

**Indexes:**

**Attachments:** Ordinance, Exhibit A

**Department:** Finance Department

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### **Text of Legislative File 2017-4490**

This ordinance is to amend the FY 2016-17 Operating Budget for the Forest Creek Golf Club (FCGC) operating and capital costs and to allocate funding. At the time of the original budget adoption, the City was in the middle of evaluating needs for the course and selecting a new management company. Therefore, there was not yet adequate information to adopt a budget for FCGC.

KemperSports, the City's selected management company, and staff have now done a more thorough evaluation of the course conditions and current year needs. As a result of the change in the management contract structure, the operations are now presented with gross revenues and expenditures instead as a small net number as in prior years. Kemper took over the course in January 2017, so these amounts represent 9 months of operations, start-up costs and revenues for FCGC.

The 9-month budget for the course is proposed at \$1,790,000 for start-up and operating costs. The operating revenues and existing fund will cover \$1,530,000 of operating costs with \$260,000 transferred from the General Self Finance Construction Fund to cover capital projects and initial start-up costs.

**ORDINANCE NO. O-2017-4490**

**AN ORDINANCE ADOPTING AMENDMENT NO. 2 TO THE  
OPERATING BUDGET OF THE CITY OF ROUND ROCK, TEXAS FOR  
FISCAL YEAR 2016-2017.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROUND ROCK,  
TEXAS:**

That the operating budget for the City of Round Rock, Texas for Fiscal Year 2016-2017 is hereby revised for municipal purposes pursuant to §102.010, Local Government Code and in accordance with the proposal submitted to the Council by the City Manager, which proposal is attached hereto as Exhibit "A" and is incorporated into this ordinance by reference for all purposes.

The City Clerk is directed to file a certified copy of this ordinance along with a true copy of the attached revised budget with the County Clerk of Williamson County, Texas.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Ordinance was adopted was posted and that such meeting was open to the public as required by law at all times during which this Ordinance and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

**READ** and **APPROVED** on first reading this the \_\_\_\_ day of \_\_\_\_\_,  
2017.

**READ, APPROVED** and **ADOPTED** on second reading this the \_\_\_\_ day of \_\_\_\_\_, 2017.

ATTEST:

\_\_\_\_\_  
CRAIG MORGAN, Mayor  
City of Round Rock, Texas

\_\_\_\_\_  
SARA L. WHITE, City Clerk

**EXHIBIT****"A"****2016-2017 Budget Amendment  
Golf Course****Golf Course***Source of Funds:*

Revenues	\$ (965,000)
Fund Balance	(565,000)
Transfer from General Self Finance Construction Fund	(260,000)

*Expenditure:*

Kemper Operating & Capital Expenses	1,730,000
Prior Mgmt Company Pay-out	60,000
	<hr/>
	\$ -
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**General Self Finance Construction Fund***Source of Funds:*

Fund Balance	\$ (260,000)
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*Expenditures:*

Transfer to Golf Course Fund	260,000
	<hr/>
	\$ -
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# City of Round Rock

## Agenda Item Summary

**Agenda Number: F.1**

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**Title:** Consider public testimony regarding, and an ordinance granting a partial tax exemption from ad valorem taxes for certain qualified historically significant properties located in the City. (First Reading)\*

**Type:** Ordinance

**Governing Body:** City Council

**Agenda Date:** 6/22/2017

**Dept Director:** Brad Wiseman, Planning and Development Services Director

**Cost:**

**Indexes:**

**Attachments:** Ordinance, Exhibit A

**Department:** Planning and Development Services Department

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### **Text of Legislative File 2017-4515**

The partial tax exemption program for historically significant properties, created in 1982, encourages owners of historic properties to use money saved on taxes to provide regular maintenance and/or repair to their historic structures. With this program, property owners receive a 75% exemption of municipal property taxes. The Historic Preservation Commission is responsible for inspecting properties that participate in the program and recommending to the City Council whether a property is eligible to receive the tax exemption.

**ORDINANCE NO. O-2017-4515**

**AN ORDINANCE GRANTING A PARTIAL EXEMPTION FROM AD VALOREM TAXES FOR CERTAIN QUALIFIED HISTORICALLY SIGNIFICANT PROPERTIES LOCATED WITHIN THE CITY LIMITS OF ROUND ROCK, TEXAS; PROVIDING FOR A SAVINGS CLAUSE AND REPEALING CONFLICTING ORDINANCES OR RESOLUTIONS.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROUND ROCK, TEXAS:**

**I.**

That the owners of the following real properties, described in Exhibit "A" attached hereto, have complied with Chapter 46, Section 46-108, Code of Ordinances (2010 Edition), City of Round Rock, Texas.

**II.**

That the real properties described in Exhibit "A" be granted an exemption of seventy-five percent (75%) of the assessed value of the structure and land for the tax year 2017, pursuant to the provisions of said Section 46-108.

**III.**

**A.** All ordinances, parts of ordinances, or resolutions in conflict herewith are expressly repealed.

**B.** The invalidity of any section or provision of this ordinance shall not invalidate other sections or provisions thereof.

**C.** The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Ordinance was adopted was posted and that such meeting was open to the public as required by law at all times during which this Ordinance and the subject matter hereof were discussed, considered and



formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

Alternative 1.

By motion duly made, seconded and passed with an affirmative vote of all the Council members present, the requirement for reading this ordinance on two separate days was dispensed with.

**READ, PASSED, and ADOPTED** on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Alternative 2.

**READ and APPROVED** on first reading this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**READ, APPROVED and ADOPTED** on second reading this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
CRAIG MORGAN, Mayor  
City of Round Rock, Texas

ATTEST:

\_\_\_\_\_  
SARA L. WHITE, City Clerk

# EXHIBIT "A"

## 2017 PROPERTY TAX EXEMPTION APPLICATIONS ("Exhibit A") CITY OF ROUND ROCK

Page 1 of 3

PARCEL ID#	ADDRESS	OWNER	APPRAISED VALUE (Preliminary)			Est. Tax rate of \$ 0.42500** per \$100			INSPECTION		
			LAND	IMPROV.	TOTAL	CITY TAX	TAX EXEMPTION	TAXES DUE	RATING		
									P	NM	F
R-16-4660-0004-0009	803 E. Liberty Avenue	Apelt, Kurt Charles Jr. & Sondra	\$69,601	\$339,582	\$409,183	\$1,739	\$1,304	\$435	X		
R-16-5120-0019-0006	400 E. Main Street	Avery, John S., Sr.	\$75,143	\$263,828	\$338,971	\$1,441	\$1,080	\$360		X	
R-16-5120-0023-0013	106 N. Mays Street	Bakir, Beverly	\$182,341	\$90,149	\$272,490	\$1,158	\$869	\$290		X	
R-16-5120-0009-0013	105 E. Main Street	Bakir, Issam & Beverly	\$243,000	\$475,143	\$718,143	\$3,052	\$2,289	\$763	X		
R-16-5120-0039-0001	202 N. Stone Street	Barrett, Brenda Eileen	\$65,693	\$353,312	\$419,005	\$1,781	\$1,336	\$445		X	
R-16-4660-0008-0004	1104 E. Liberty Avenue	Brader, Trey	\$60,825	\$431,226	\$492,051	\$2,091	\$1,568	\$523	X		
R-16-5120-0022-0008	102 E. Main Street	Celsius Investments, LLC (Bryan Hunter)	\$243,000	\$584,977	\$827,977	\$3,519	\$2,639	\$880		X	
R-16-5120-0012-0001	405 E. Main Street	Crier, William T., Trust & Jack Stanley Crier	\$255,150	\$1,256,251	\$1,511,401	\$6,423	\$4,818	\$1,606		X	
R-16-5120-0009-0014A	111 E. Main Street	Eckert, Mike & Doris	\$178,394	\$328,794	\$507,188	\$2,156	\$1,617	\$539	X		
R-16-5120-0002-0001	208 S. Blair Street	Franco, Emilia Irene Cantu	\$191,241	\$34,374	\$225,615	\$959	\$719	\$240	X		
R-16-5120-0009-0016	115 E. Main Street	Hendrix, Burkley J.	\$243,065	\$389,294	\$632,359	\$2,688	\$2,016	\$672	X		
R-16-3314-000A-0001	22 Chisholm Trail	Hoover, Sue (#22 Chisholm Trail LLC)	\$42,688	\$62,284	\$104,972	\$446	\$335	\$112	X		
R-16-5120-0022-0002	116 E. Main Street	Huggins-Three, L.P.	\$243,000	\$636,664	\$879,664	\$3,739	\$2,804	\$935		X	
R-16-5120-0025-0001B	302 W. Main Street	JasPas Properties LLC (Ms. Patti Smith)	\$222,750	\$252,966	\$475,716	\$2,022	\$1,516	\$505	X		
R-16-3526-0000-0002	18 Chisholm Trail	JMB Commercial Property Investments LP	\$73,912	\$101,281	\$175,193	\$745	\$558	\$186	X		
R-16-3526-0000-0001	20 Chisholm Trail	JMB Commercial Property Investments LP	\$71,719	\$183,284	\$255,003	\$1,084	\$813	\$271		X	
R-16-5120-0040-0004B	207 N. Stone Street	Jordan, Thomas R. & Patricia C.	\$40,856	\$216,555	\$257,411	\$1,094	\$820	\$273		X	
R-16-5120-0022-0001	118 E. Main Street	Lewis RR Properties Ltd. (Kip Lewis)	\$243,000	\$412,811	\$655,811	\$2,787	\$2,090	\$697		X	
R-16-5120-0009-0019	121 E. Main Street	Lewis RR Properties Ltd. (Kip Lewis)	\$243,065	\$387,662	\$630,727	\$2,681	\$2,010	\$670		X	
R-16-5120-0010-0011	201/203 E. Main Street	Lewis RR Properties Ltd. (Kip Lewis)	\$450,668	\$2,082,968	\$2,533,636	\$10,768	\$8,076	\$2,692		X	
R-16-5120-0022-0004	112 E. Main Street	Luna, Bertha	\$243,000	\$225,311	\$468,311	\$1,990	\$1,493	\$498	X		
R-16-5120-0040-0003	602 E. Liberty Avenue	Macaulay, Kent B. Trustee of the Kent Macaulay Trust	\$50,482	\$430,912	\$481,394	\$2,046	\$1,534	\$511		X	
R-16-5120-0009-0017	117 E. Main Street	Monteith, Kevin D.	\$243,065	\$426,984	\$670,049	\$2,848	\$2,136	\$712		X	

## Exhibit "A"

PARCEL ID#	ADDRESS	OWNER	APPRAISED VALUE (Preliminary)			Est. Tax rate of \$ 0.42500** per \$100			INSPECTION		
			LAND	IMPROV.	TOTAL	CITY TAX	TAX EXEMPTION	TAXES DUE	P	NM	F
R-16-5120-0009-0018	119 E. Main Street	Monteith, Kevin D. and Kathi	\$243,065	\$231,088	\$474,153	\$2,015	\$1,511	\$504		X	
R-16-5120-0009-0014B	109 E. Main Street	Monteith, Mabel O Living Trust	\$159,473	\$333,781	\$493,254	\$2,096	\$1,572	\$524		X	
R-16-5120-0022-0009	100 E. Main Street	Morris, R J - LLC	\$243,000	\$781,038	\$1,024,038	\$4,352	\$3,264	\$1,088		X	
R-16-5120-0027-0004	106 N. San Saba Street	Munson, Dorothy	\$251,505	\$66,848	\$318,353	\$1,353	\$1,015	\$338		X	
R-16-5120-0026-0001	400 W. Main Street	Nagle Holdings LP	\$485,508	\$720,143	\$1,205,651	\$5,124	\$3,843	\$1,281	X		
R-16-5120-0009-0012	103 E. Main Street	Omega Pizza Co., Inc. (Mr. Jon Creasey)	\$243,000	\$338,892	\$581,892	\$2,473	\$1,855	\$618		X	
R-16-5120-0022-0005	108/110 E. Main Street	Palmer Investments, LP	\$371,250	\$593,021	\$964,271	\$4,098	\$3,074	\$1,025		X	
R-16-4932-0011-0001	107 S. Sheppard Street	Portillo, Juan and Margo	\$121,370	\$122,425	\$243,795	\$1,036	\$777	\$259		X	
R-16-5120-0013-0003	507 E. Main Street	Quick, Darren E. and Rebecca	\$70,977	\$449,375	\$520,352	\$2,211	\$1,659	\$553		X	
R-16-0284-0000-0151X	603 Chisholm Trail	Quick, Edward Don and Eugenia G.	\$124,500	\$302,776	\$427,276	\$1,816	\$1,362	\$454	X		
R-16-0284-0000-0111	1000 N. IH-35	Quick, Edward D. and Eugenia G.	\$284,962	\$693,567	\$978,529	\$4,159	\$3,119	\$1,040	X		
R-16-5120-0021-0007A	204 E. Main Street	QQQ Round Rock LLC Series 1 (c/o Mr. De	\$243,000	\$427,314	\$670,314	\$2,849	\$2,137	\$712	X		
R-16-5120-0022-0003	114 E. Main Street	R&R Eastside Partners LLC	\$243,000	\$339,878	\$582,878	\$2,477	\$1,858	\$619		X	
R-16-5211-000A-0001	4 Chisholm Trail	Rhode & Martino Ventures LLC	\$250,840	\$254,254	\$505,094	\$2,147	\$1,610	\$537		X	
R-16-5120-0011-0014	307 E. Main Street	Round Rock Main Street Venture LLC	\$212,625	\$116,613	\$329,238	\$1,399	\$1,049	\$350		X	
R-16-5120-0015-0001	104 S. Georgetown Street	Schaefer, Eric	\$53,955	\$347,899	\$401,854	\$1,708	\$1,281	\$427		X	
R-16-0284-0000-0167	10 Chisholm Trail	Scowden, Douglas A. etux, Sandra	\$133,531	\$184,812	\$318,343	\$1,353	\$1,015	\$338		X	
R-16-5120-0011-0001	309 E. Main Street	Sheets, Stephan L.	\$367,416	\$486,130	\$853,546	\$3,628	\$2,721	\$907		X	

# Exhibit "A"

PARCEL ID#	ADDRESS	OWNER	APPRAISED VALUE (Preliminary)			Est. Tax rate of \$ 0.42500** per \$100			INSPECTION		
						CITY TAX	TAX EXEMPTION	TAXES DUE	RATING		
			LAND	IMPROV.	TOTAL				P	NM	F
R-16-5120-0017-0013	609 E. Liberty Avenue	Sliva, Charles H.	\$48,635	\$376,535	\$425,170	\$1,807	\$1,355	\$452		X	
R-16-5120-0009-0008	107 S. Mays Street	Tischler-Kocurek (Attn: Lial Tischler)	\$248,771	\$392,720	\$641,491	\$2,726	\$2,045	\$682		X	
R-16-4932-0011-0002	109 S. Sheppard St.	TLIM Sheppard, LLC	\$138,305	\$119,769	\$258,074	\$1,097	\$823	\$274	X		
R-16-5120-0021-0006	206 E. Main Street	TRJ Nelson Partnership	\$243,000	\$112,115	\$355,115	\$1,509	\$1,132	\$377	X		
R-16-4660-0004-0001	808 E. Main Street	Wendt, William Robert and Kellie N.	\$47,910	\$318,485	\$366,395	\$1,557	\$1,168	\$389		X	
R-16-5120-0021-0009	200 E. Main Street	Wilson, William J. (Estate)	\$303,750	\$788,128	\$1,091,878	\$4,640	\$3,480	\$1,160		X	
R-16-5120-0017-0010A	603 E. Liberty Avenue	Wright, Caren	\$53,955	\$224,215	\$278,170	\$1,182	\$887	\$296	X		
Total (All Applicants):			\$9,162,961	\$19,088,433	\$28,251,394	\$120,068	\$90,051	\$30,017			

## Key:

Inspection Rating                      P= Pass              NM= Needs Maintenance              F= Fail

\*\* The tax rate provided in this calculation is the adopted tax rate from the 2016-2017 City of Round Rock Annual Operating Budget. The partial tax exemption for historically significant properties must be adopted by the City prior to July 15th. The property owner's actual exemption may increase or decrease depending on the 2017 tax rate which becomes effective on October 1.



# City of Round Rock

## Agenda Item Summary

**Agenda Number: G.1**

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**Title:** Consider a resolution directing the Planning Director to prepare a service plan concerning the proposed annexation of a tract at the Northeast Corner of North A.W. Grimes Boulevard and CR186 (Hickerson-Keith Annexation).

**Type:** Resolution

**Governing Body:** City Council

**Agenda Date:** 6/22/2017

**Dept Director:** Brad Wiseman, Planning and Development Services Director

**Cost:**

**Indexes:**

**Attachments:** Resolution, Exhibit A

**Department:** Planning and Development Services Department

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### **Text of Legislative File 2017-4516**

The subject area is on the west side of North A.W. Grimes Blvd and north of CR 186. The existing City limits is adjacent to the property to the south and east. The area contains one ownership tract covering 114.47 acres. The land is currently vacant and is located in the northeast where the City Council has directed staff to pursue feasible annexations and development agreements as part of the Strategic Planning process.

Pursuant to State statutes, the City Council is required to officially direct staff to prepare a service plan for land to be annexed unilaterally. The service plan identifies the necessary infrastructure, along with the costs, to extend City water and sewer services to the property. State statutes require that the City provide these services within 2 1/2 years to an area subject to unilateral annexation.

Written notices will be sent by certified mail to the property owners of the land proposed for annexation and to all public and private utility providers in the affected service area. Two public hearings are required before the annexation can be approved.

Upon annexation, the properties will be assigned the SF-R (single-family - rural) zoning district, unless otherwise assigned by the rezoning process. Existing uses will be allowed to operate, but any change in land use, new development or expansion of existing development will be subject to the City's codes and standards.

**RESOLUTION NO. R-2017-4516**

**WHEREAS**, Section 43.065(a) of the Texas Local Government Code requires that, within certain specified statutory timeframes, the City Council of the City of Round Rock must direct the City's Planning Director to prepare a service plan that provides for the extension of full municipal services to the areas which are proposed for annexation, Now Therefore

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,**

That the City Council hereby directs the City's Planning Director to prepare a service plan that provides for the extension of full municipal services to the following area proposed for annexation, said property being further described in Exhibit "A" attached hereto and incorporated herein for all purposes.

- (1) Approximately 114 acres located at the Northeast corner of North A.W. Grimes Boulevard and CR 186.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

**RESOLVED** this 22nd day of June, 2017.

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CRAIG MORGAN, Mayor  
City of Round Rock, Texas

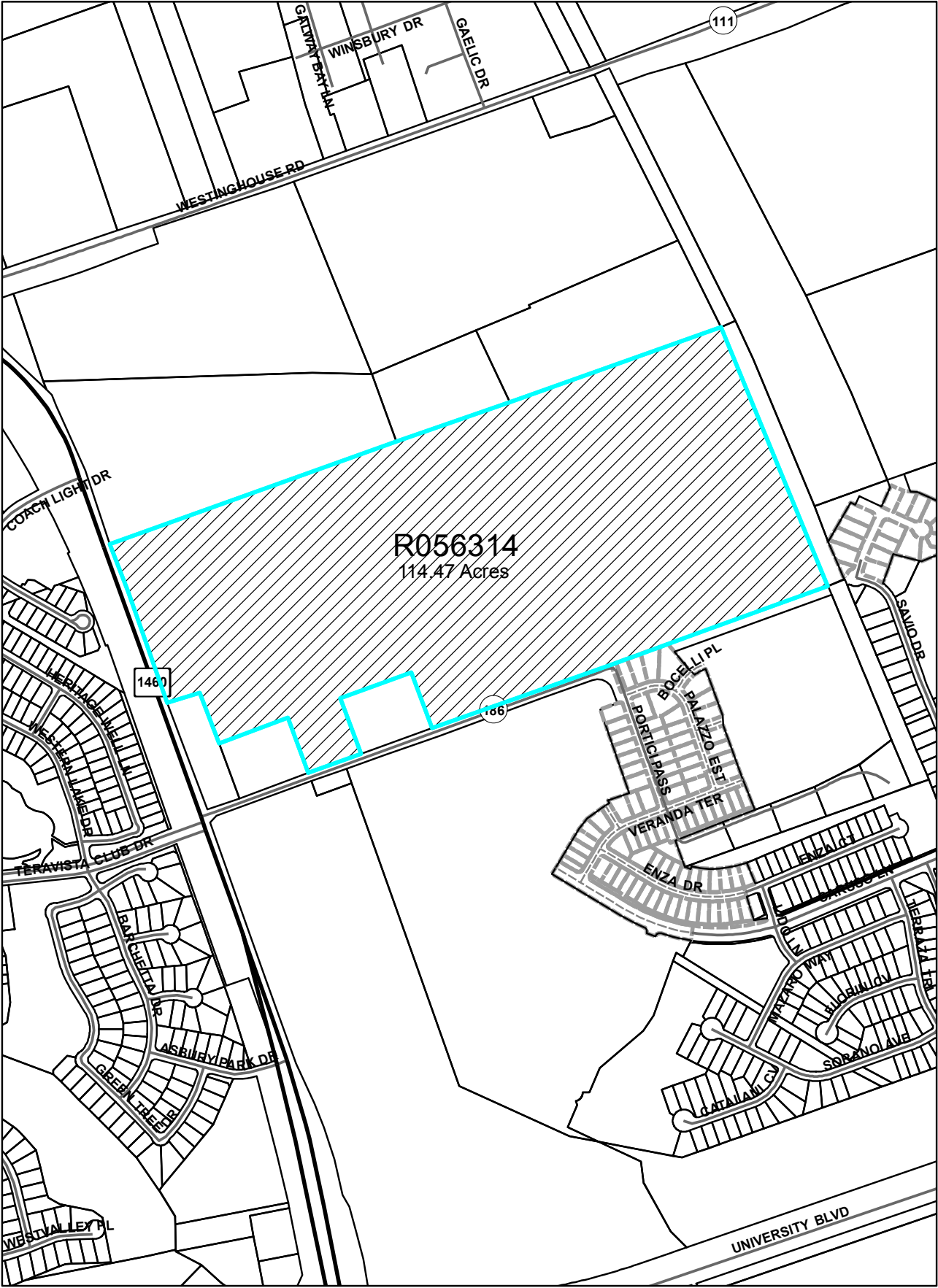
ATTEST:

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SARA L. WHITE, City Clerk

Exhibit A

Area Proposed for Annexation





# City of Round Rock

## Agenda Item Summary

**Agenda Number: G.2**

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**Title:** Consider a resolution authorizing the City Manager to issue a Purchase Order to Motorola Solutions, Inc. for handheld radios and mobile radios for the Police Department.

**Type:** Resolution

**Governing Body:** City Council

**Agenda Date:** 6/22/2017

**Dept Director:** Allen Banks, Police Chief

**Cost:** \$399,982.84

**Indexes:**

**Attachments:** Resolution, Quote, Form 1295

**Department:** Police Department

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### Text of Legislative File 2017-4540

This item seeks final council approval for the replacement of Police Department radios, as the products currently in use face obsolescence. This project was first presented to Council as part of the FY2015 Capital Spending Plan for the General Self-Financed Construction Fund in November 2014.

Motorola is discontinuing its XTL/XTS line of public safety radios in 2018. The last production run was in 2013, and after 2018, it will no longer provide support for those radios. The need for radio replacements eventually will affect all City departments with radios on the Williamson County Radio Communication System.

The Department had begun purchasing radios in the new product line a few years ago. The nature of the phase-out allows the City to plan the transition to this new product line over several years, as the old radios will continue to work on the system after 2018. The Department seeks to spread the cost over several years so as to not be surprised by the sudden need for replacements. The total cost of replacing Police Department radios is estimated to be \$2.3 million, and the current plan is to complete the replacements over a seven-year horizon.

This purchase is in accordance with (a) the Texas Local Government Code (Title 8, Subtitle C, Chapter 271, Subchapter F, Section 271-102); (b) the inter-local agreement (Resolution 1491R) between the City and the Houston-Galveston Area Council (HGAC); and (c) HGAC Contract No. RA05-15 for radio communication, emergency response, and mobile



interoperability equipment (expires 04/30/18).

**Cost: \$399,982.84**

**Source of Funds: General Fund**

**RESOLUTION NO. R-2017-4540**

**WHEREAS**, the City of Round Rock (“City”) desires to purchase replacement radios for the Police Department; and

**WHEREAS**, Houston-Galveston Area Council (“HGAC”), acting as the agent for various local governmental entities who are “End Users” under Interlocal Agreements, including the City, has solicited proposals for radio communications equipment, in accordance with the competitive procurement procedures of Texas law; and

**WHEREAS**, Motorola is an approved vendor of HGAC pursuant to Contract #RA05-15 for radio communication, emergency response and mobile interoperability equipment; and

**WHEREAS**, the City wishes to issue a purchase order to Motorola for replacement radios,  
Now Therefore

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,**

That the City Manager is hereby authorized and directed to issue a purchase order to Motorola for the purchase of replacement radios for the Police Department.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

**RESOLVED** this 22nd day of June, 2017.

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CRAIG MORGAN, Mayor  
City of Round Rock, Texas

ATTEST:

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SARA L. WHITE, City Clerk



Account Manager: Clay Cassard  
6500 River Place Blvd, Austin TX 78730

Date: date 5-2-17  
Quote#: scc5717v2  
HGAC RA05-15

<b>Prepared For:</b> Damaris Morales <b>Phone Number:</b> <b>Email :</b> <b>Agency:</b> City of Round Rock Police Dept <b>Customer #:</b>	<b>Ship to Address:</b>	<b>Bill to Address:</b>
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Item	Qty	Description	Model	List Price	Contract Price	Extended
		<b>APX 8000 ALL BAND PORTABLE MODEL 3.5</b>				
28		APX 8000 ALL BAND PORTABLE MODEL 3.5	H91TGD9PW7 N	\$6,292	4,467.32	125,084.96
28		ADD: ASTRO DIGITAL CAI OPERATION	Q806	\$515.00	365.65	10,238.20
28		ADD: SMARTZONE OPERATION	H38	\$1,500.00	1,065.00	29,820.00
28		ADD: P25 9600 BAUD TRUNKING	Q361	\$300.00	213.00	5,964.00
28		ADD: TDMA OPERATION	QA00580	\$450.00	319.50	8,946.00
28		ADD: 5 YEAR SERVICE FROM THE START LITE	Q887	\$213.00	151.23	4,234.44
28		ADD: ADVANCED SYSTEM KEY - HARDWARE KEY	QA01648	\$5.00	3.55	99.40
28		ADD: PROGRAMMING OVER P25 (OTAP)	G996	\$100.00	71.00	1,988.00
28		ADD: GROUP SERVICES	QA09008	\$150.00	106.50	2,982.00
28		ADD: P25 LINK LAYER AUTHENTICATION	QA01767	\$100.00	71.00	1,988.00
28		DEL: DELETE UHF BAND	QA05509	(\$800.00)	-568.00	-15,904.00
28		Standard Battery		\$150.00	106.50	2,982.00
28		RADIO MANAGEMENT SOFTWARE	T7914	\$100.00	71.00	1,988.00
28		RM DELIVERY OPTION - EMAIL Catherine Roberts	UA00049AA	\$0.00	0.00	0.00
28		PROMO	PROMO	(\$300.00)	-300.00	-8,400.00
28		ENCRIPTION				
28		ENH: MULTIKEY	H869	\$330.00	234.30	6,560.40
28		ENH: AES/DES,DES-XL,DES-OFB	Q15	\$799.00	567.29	15,884.12
				<b>TOTAL</b>		<b>194,455.52</b>
		<b>RADIO ACCESSORIES</b>				



Account Manager: Clay Cassard  
6500 River Place Blvd, Austin TX 78730

Date: date 5-2-17  
Quote#: scc5717v2  
HGAC RA05-15

<b>Prepared For:</b> Damaris Morales <b>Phone Number:</b> <b>Email :</b> <b>Agency:</b> City of Round Rock Police Dept <b>Customer #:</b>	<b>Ship to Address:</b>	<b>Bill to Address:</b>
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Item	Qty	Description	Model	List Price	Contract Price	Extended
	40	SPARE BATT IMPRES 2 LIION R IP68 3400T	PMNN4486	\$150.00	112.50	4,500.00
	28	APX 7000 IMPRES CG SU APX7000 US/NA/CA/LA	NNTN8860	\$125.00	93.75	2,625.00
	28	IMPRES RSM, 3.5MM AUDIO JACK	PMMN4069A	\$110.00	82.50	2,310.00
	44	Belt Clip conversion kits	NTN9179	\$42.00	31.50	1,386.00
	16	APX6000 UNIVERSAL CARRY HOLDER	PMLN5709A	\$29.00	21.75	348.00

<b>Total With Accessories</b>		<b>205,624.52</b>
<b>Trade In Credit</b>	<b>-400.00</b>	<b>-11,200.00</b>
<b>TOTAL</b>		<b>194,424.52</b>

<b>APX8500 ALL BAND MP MOBILE Dual Band, Dash Mount, Single Head</b>						
33	APX8500 ALL BAND MP MOBILE	M37TSS9PW1 N	\$4,770.00	3,386.70	111,761.10	
33	ENH: ASTRO DIGITAL CAI OP APEX	G806	\$515.00	365.65	12,066.45	
33	ENH: SMARTZONE OPERATION APX	G51	\$1,500.00	1,065.00	35,145.00	
33	ADD: P25 TRUNKING SOFTWARE	G361	\$300.00	213.00	7,029.00	
33	ADD: ADVANCED SYSTEM KEY - HARDWARE KEY	QA01648	\$5.00	3.55	117.15	
33	ADD: O5 CONTROL HEAD	G442	\$432.00	306.72	10,121.76	
33	ADD: APX CONTROL HEAD SOFTWARE	G444	\$0.00	0.00	0.00	
33	ADD: DASH MOUNT	G66	\$125.00	88.75	2,928.75	

**MOTOROLA**

Account Manager: Clay Cassard  
6500 River Place Blvd, Austin TX 78730

Date: date 5-2-17  
Quote#: scc5717v2  
HGAC RA05-15

Prepared For: Damaris Morales Phone Number: Email : Agency: City of Round Rock Police Dept Customer #:	Ship to Address:	Bill to Address:
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Item	Qty	Description	Model	List Price	Contract Price	Extended
33		ADD: ALL BAND MOBILE ANTENNA (7/8/V/U)	GA01513	\$95.00	67.45	2,225.85
33		ADD: GPS/WI-FI ANTENNA	GA00226	\$75.00	25.00	825.00
33		ADD: KEYPAD MIC GCAI	W20	\$180.00	127.80	4,217.40
33		ADD: AUXILARY SPKR 7.5 WATT	B18	\$60.00	42.60	1,405.80
33		ADD: 4 YR SFS LITE	GA00318	\$363.00	257.73	8,505.09
33		ADD: DIGITAL TONE SIGNALING	GA09000	\$150.00	106.50	3,514.50
33		ADD: TDMA OPERATION	GA00580	\$450.00	319.50	10,543.50
33		ENH: OVER THE AIR PROVISIONING	G996	\$100.00	71.00	2,343.00
33		ADD: APX MOBILE RADIO AUTHENTICAT	GA01767	\$100.00	71.00	2,343.00
33		ADD: GROUP SERVICES	GA09008	\$150.00	106.50	3,514.50
33		DEL: DELETE UHF BANDGA05509681(\$800.00)	GA05509681	(\$800.00)	-568.00	-18,744.00
33		RADIO MANAGEMENT SOFTWARE	T7914	\$100.00	71.00	2,343.00
33		RM DELIVERY OPTION - EMAIL Catherine Roberts	UA00049AA	\$0.00	0.00	0.00
33		PROMO	PROMO	(\$300.00)	-300.00	-9,900.00
		ENCRIPTION				
33		ADD: MULTIPLE KEY ENCRYPTION OPERATION	W969	\$330.00	234.30	7,731.90
33		ADD: AES/DES-XL/DES-OFB ENCRYPTION	G851	\$799.00	567.29	18,720.57

<b>GRAND TOTAL</b>		<b>218,758.32</b>
Trade In Credit	-400.00	-13,200.00
<b>GRAND TOTAL</b>		<b>205,558.32</b>

<b>GRAND TOTAL</b>		<b>399,982.84</b>
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A CONTRACT BETWEEN  
HOUSTON-GALVESTON AREA COUNCIL  
Houston, Texas  
AND  
MOTOROLA SOLUTIONS, INC.  
Farmers Branch, Texas

This Contract is made and entered into by the Houston-Galveston Area Council of Governments, hereinafter referred to as H-GAC, having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, AND, Motorola Solutions, Inc. hereinafter referred to as the CONTRACTOR, having its principal place of business at Park West C-2, 1507 I.B.J Freeway, Farmers Branch, Texas 75234

**ARTICLE 1: SCOPE OF SERVICES**

The parties have entered into a Radio Communication/Emergency Response & Mobile Interoperability Equipment Contract to become effective as of May 1, 2015, and to continue through April 30, 2018 (the "Contract"), subject to extension upon mutual agreement of the CONTRACTOR and H-GAC. H-GAC enters into the Contract as Agent for participating governmental agencies, each hereinafter referred to as END USER, for the purchase of Radio Communication/Emergency Response & Mobile Interoperability Equipment offered by the CONTRACTOR. The CONTRACTOR agrees to sell Radio Communication/Emergency Response & Mobile Interoperability Equipment through the H-GAC Contract to END USERS

**ARTICLE 2: THE COMPLETE AGREEMENT**

The Contract shall consist of the documents identified below in order of precedence:

1. The text of this Contract form, including but not limited to, Attachment A
2. General Terms and Conditions
3. Proposal Specifications No. RA05-15, including any relevant suffixes
4. CONTRACTOR's Response to Proposal No. RA05-15, including but not limited to, prices and options offered

All of which are either attached hereto or incorporated by reference and hereby made a part of this Contract, and shall constitute the complete agreement between the parties hereto. This Contract supersedes any and all oral or written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Contract cannot be modified without the written consent of both parties.

**ARTICLE 3: LEGAL AUTHORITY**

CONTRACTOR and H-GAC warrant and represent to each other that they have adequate legal counsel and authority to enter into this Contract. The governing bodies, where applicable, have authorized the signatory officials to enter into this Contract and bind the parties to the terms of this Contract and any subsequent amendments thereto.

**ARTICLE 4: APPLICABLE LAWS**

The parties agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, directives, issuances, ordinances, and laws in effect or promulgated during the term of this Contract.

**ARTICLE 5: INDEPENDENT CONTRACTOR**

The execution of this Contract and the rendering of services prescribed by this Contract do not change the independent status of H-GAC or CONTRACTOR. No provision of this Contract or act of H-GAC in performance of this Contract shall be construed as making CONTRACTOR the agent, servant or employee of H-GAC, the State of Texas or the United States Government. Employees of CONTRACTOR are subject to the exclusive control and supervision of CONTRACTOR. CONTRACTOR is solely responsible for employee payrolls and claims arising therefrom.

**ARTICLE 6: END USER AGREEMENTS**

H-GAC acknowledges that the END USER may choose to enter into an End User Agreement with the CONTRACTOR through this Contract and that the term of said Agreement may exceed the term of the H-GAC Contract. However this acknowledgement is not to be construed as H-GAC's endorsement or approval of the End User Agreement terms and conditions. CONTRACTOR agrees not to offer to, agree to or accept from END USER any terms or conditions that conflict with or contravene those in CONTRACTOR's H-GAC contract. Further, termination of this Contract for any reason shall not result in the termination of the underlying End User Agreements entered into between CONTRACTOR and any END USER which shall, in each instance, continue pursuant to their stated terms and duration. The only effect of termination of this Contract is that CONTRACTOR will no longer be able to enter into any new End User Agreements with END USERS pursuant to this Contract. Applicable H-GAC order processing charges will be due and payable to H-GAC on any End User

Agreements surviving termination of this Contract between H-GAC and CONTRACTOR.

**ARTICLE 7:**

**SUBCONTRACTS & ASSIGNMENTS**

CONTRACTOR agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Contract or any right, title, obligation or interest it may have therein to any third party without prior written notice to H-GAC. H-GAC reserves the right to accept or reject any such change. CONTRACTOR shall continue to remain responsible for all performance under this Contract regardless of any subcontract or assignment. H-GAC shall be liable solely to CONTRACTOR and not to any of its Subcontractors or Assignees.

**ARTICLE 8:**

**EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS**

CONTRACTOR shall maintain during the course of its work, complete and accurate records of items that are chargeable to END USER under this Contract. H-GAC, through its staff or its designated public accounting firm, the State of Texas, or the United States Government shall have the right at any reasonable time to inspect copy and audit those records on or off the premises of CONTRACTOR. Failure to provide access to records may be cause for termination of this Contract. CONTRACTOR shall maintain all records pertinent to this Contract for a period of not less than five (5) calendar years from the date of acceptance of the final contract closeout and until any outstanding litigation, audit or claim has been resolved. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. CONTRACTOR further agrees to include in all subcontracts under this Contract, a provision to the effect that the subcontractor agrees that H-GAC'S duly authorized representatives, shall, until the expiration of five (5) calendar years after final payment under the subcontract or until all audit findings have been resolved, have access to, and the right to examine and copy any directly pertinent books, documents, papers, invoices and records of such subcontractor involving any transaction relating to the subcontract. To the extent allowed by law, nothing contained herein shall authorize H-GAC and/or END USER to audit confidential information regarding product cost.

**ARTICLE 9:**

**REPORTING REQUIREMENTS**

CONTRACTOR agrees to submit reports or other documentation in accordance with the General Terms and Conditions of the Proposal Specifications. If CONTRACTOR fails to submit to H-GAC in a timely and satisfactory manner any such report or documentation, or otherwise fails to satisfactorily render performance hereunder, such failure may be considered cause for termination of this Contract.

**ARTICLE 10:**

**MOST FAVORED CUSTOMER CLAUSE**

If CONTRACTOR at any time during a contract period, routinely enters into agreements with other governmental customers within the State of Texas, and offers the same or substantially the same products offered to H-GAC on a basis that provides prices more favorable than those provided to H-GAC, CONTRACTOR shall within ten (10) business days thereafter notify H-GAC of that offering. The contract with H-GAC shall be deemed to be automatically amended and effective retroactively to the effective date of the most favorable contract, wherein CONTRACTOR shall provide the same quantity discount to H-GAC and its End Users for equal or larger orders purchased the same quantity and under the same circumstances. H-GAC shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If CONTRACTOR believes any apparently more favorable price charged and/or offered a customer during the term of this agreement is not in fact most favored treatment, CONTRACTOR shall within ten (10) business days notify H-GAC in writing, setting forth the detailed reasons CONTRACTOR believes aforesaid offer which has been deemed to be a most favored treatment, is not in fact most favored treatment. H-GAC, after due consideration of such written explanation, may decline to accept such explanation and thereupon the contract between H-GAC and CONTRACTOR shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices to H-GAC.

The most favored price structure set forth in this paragraph shall not apply to any pre-existing contracts Contractor has in the State of Texas. The term "pre-existing contracts" shall refer to contracts in existence as of the original effective date of the HGAC contract, i.e 5/1/15.

The Parties agree that the above MFC provision shall not apply to the sale of large communications systems (one million dollars (\$1,000,000.00) and above). The term "Communications System" shall refer to a project that includes the sale of infrastructure hardware and/or software, user devices, and Motorola engineering and installation service. The contract for a "Communication System" will always have a Statement of Work and an Acceptance Test Plan.

The Parties accept the following definition of routine. *A prescribed, detailed course of action to be followed regularly; a standard procedure.*

**ARTICLE 11:**

**SEVERABILITY**

All parties agree that should any provision of this Contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this Contract, which shall continue in full force and effect.

**ARTICLE 12:**

**DISPUTES**

Any and all disputes concerning questions of fact or of law arising under this Contract, which are not disposed of by agreement, shall be decided by the Executive Director of H-GAC or his designee, who shall reduce his decision to writing and provide notice thereof to CONTRACTOR. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such notice, CONTRACTOR requests a rehearing from the Executive Director of H-GAC. In connection with any rehearing under this Article, CONTRACTOR shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. CONTRACTOR may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder, CONTRACTOR shall proceed diligently with the performance of this Contract and in accordance with H-GAC'S final decision.

**ARTICLE 13:**

**LIMITATION OF CONTRACTOR'S LIABILITY**

Except as specified in any separate writing between the CONTRACTOR and an END USER, CONTRACTOR's total liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, but excluding its obligation to indemnify H-GAC described in Article 14, is limited to the price of the particular products/services sold hereunder, and CONTRACTOR agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. In no event will CONTRACTOR be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. CONTRACTOR understands and agrees that it shall be liable to repay and shall repay upon demand to END USER any amounts determined by H-GAC, its independent auditors, or any agency of State or Federal government to have been paid in violation of the terms of this Contract.

**ARTICLE 14:**

**LIMIT OF H-GAC'S LIABILITY AND INDEMNIFICATION OF H-GAC**

H-GAC's liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to its order processing charge. In no event will H-GAC be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. Contractor agrees, to the extent permitted by law, to defend and hold harmless H-GAC, its board members, officers, agents, officials, employees, and indemnities from any and all claims, costs, expenses (including reasonable attorney fees), actions, causes of action, judgments, and liens arising as a result of CONTRACTOR's negligent act or omission under this Contract. CONTRACTOR shall notify H-GAC of the threat of lawsuit or of any actual suit filed against CONTRACTOR relating to this Contract.

**ARTICLE 15:**

**TERMINATION FOR CAUSE**

H-GAC may terminate this Contract for cause based upon the failure of CONTRACTOR to comply with the terms and/or conditions of the Contract; provided that H-GAC shall give CONTRACTOR written notice specifying CONTRACTOR'S failure. If within thirty (30) days after receipt of such notice, CONTRACTOR shall not have either corrected such failure, or thereafter proceeded diligently to complete such correction, then H-GAC may, at its option, place CONTRACTOR in default and the Contract shall terminate on the date specified in such notice. CONTRACTOR shall pay to H-GAC any order processing charges due from CONTRACTOR on that portion of the Contract actually performed by CONTRACTOR and for which compensation was received by CONTRACTOR.

**ARTICLE 16:**

**TERMINATION FOR CONVENIENCE**

Either H-GAC or CONTRACTOR may cancel or terminate this Contract at any time by giving thirty (30) days written notice to the other. CONTRACTOR may be entitled to payment from END USER for services actually performed; to the extent said services are satisfactory to END USER. CONTRACTOR shall pay to H-GAC any order processing charges due from CONTRACTOR on that portion of the Contract actually performed by CONTRACTOR and for which compensation is received by CONTRACTOR.

**ARTICLE 17:**

**CIVIL AND CRIMINAL PROVISIONS AND SANCTIONS**

CONTRACTOR agrees that it will perform under this Contract in conformance with safeguards against fraud and abuse as set forth by H-GAC, the State of Texas, and the acts and regulations of any funding entity. CONTRACTOR agrees to notify H-GAC of any suspected fraud, abuse or other criminal activity related to this Contract through filing of a written report promptly after it becomes aware of such activity.

**ARTICLE 18:**

**GOVERNING LAW & VENUE**

This Contract shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with this Contract shall lie exclusively in Harris County, Texas. Disputes between END USER and CONTRACTOR are to be resolved in accord with the law and venue rules of the state of purchase. CONTRACTOR shall immediately notify H-GAC of such disputes.

**ARTICLE 19:**

**PROCEDURAL STEPS ENUMERATED FOR SALES TO END USERS**

1. All Cooperative Purchasing business will be processed in accordance with H-GAC's policies and procedures, at contracted prices, and shall include approved order processing charges.
2. END USER will access the Cooperative Purchasing Program through the H-GAC website and /or by submission of any duly



executed purchase order to a contractor having a valid contract with H-GAC and in a format acceptable to H-GAC.

3. **END USER** will submit order(s) electronically through **CONTRACTOR'S** on-line ordering process or issue Purchase Order(s) directly to **CONTRACTOR** at contract prices, and also submit a copy to **H-GAC**.
4. The **H-GAC CONTRACTOR** will deliver products/services as specified by the contract between **CONTRACTOR** and **H-GAC**, and invoice each **END USER** for (1) products/services purchased and (2) **H-GAC'S** applicable order processing charge.
5. Upon delivery, acceptance, and receipt of an **H-GAC CONTRACTOR'S** documented invoice, **END USER** shall pay the **H-GAC CONTRACTOR** the full amount of the invoice.
6. For orders of less than \$100,000, **CONTRACTOR** will promptly pay to **H-GAC** any order processing charges due, and in any case, not later than sixty (60) calendar days after **End User** order is processed. Payments will be processed to **H-GAC** on a monthly basis. For orders of \$100,000 or more, **CONTRACTOR** will promptly pay to **H-GAC** any order processing charges due, and in any case not later than forty-five (45) calendar days after receipt of **End User** payment by **Motorola**.
7. Failure to promptly remit **H-GAC's** order processing charges may result in sanctions including, but not limited to, contract termination.
8. **CONTRACTOR** shall be responsible for delivery and acceptance of each unit by **END USER**, according to the requirements of the specifications, this Contract, and purchase order issued to **CONTRACTOR** by an **END USER**. All required equipment tests shall be borne by **CONTRACTOR**.
9. **CONTRACTOR** shall promptly provide **H-GAC** and **END USER** with all information pertaining to delivery schedules. **CONTRACTOR** shall also use its best efforts to expedite unit deliveries on shorter notice than set forth in its verification for any specific purchase order when requested.
10. All prices are **F.O.B. END USER'S** location with all transportation charges prepaid and included in any invoice.
11. All pricing shall be based on the current contract unless the **H-GAC CONTRACTOR** prior to receipt of **END USER's** purchase order for delivery of any products/services has received **H-GAC's** prior written approval for any price increases.
12. The **H-GAC CONTRACTOR** agrees to accept the terms of this agreement and to conduct all transactions based on pricing and other terms of the contract including, but not limited to, the applicable **H-GAC** order processing charge. The **CONTRACTOR** agrees to encourage **END USERS** to execute authorizing Interlocal contracts with **H-GAC**.

**ARTICLE 20:**

**LIQUIDATED DAMAGES**

Any liquidated damages terms will be determined between **CONTRACTOR** and **END USER** at the time **END USER's** purchase order is placed.

**ARTICLE 21:**

**PERFORMANCE BONDS FOR INDIVIDUAL ORDERS**

Except as described below for fire apparatus, **CONTRACTOR** agrees to provide a Performance Bond at the request of **END USER** within ten (10) days of receipt of **END USER's** purchase order.

It shall be standard procedure for every order received for fire apparatus that a Performance Bond in the amount of the order be provided to the **END USER**. Failure of **CONTRACTOR** to provide such performance bond within ten (10) days of receipt of **END USER's** order may constitute a total breach of contract and shall be cause for cancellation of the order at **END USER's** sole discretion. **END USER** may choose to delete the requirement for a Performance Bond at **END USER's** sole discretion. If the bond requirement is waived, **END USER** shall be entitled to a price reduction commensurate with the cost that would have been incurred by **CONTRACTOR** for the bond.

**ARTICLE 22:**

**CHANGE OF CONTRACTOR STATUS**

**CONTRACTOR** shall immediately notify **H-GAC**, in writing, of ANY change in ownership, control, dealership/franchisee status, Motor Vehicle license status, or name, and shall also advise whether or not this Contract shall be affected in any way by such change. **H-GAC** shall have the right to determine whether or not such change is acceptable, and to determine what action shall be warranted, up to and including cancellation of Contract.

**ARTICLE 23:**

**LICENSING REQUIRED BY TEXAS MOTOR VEHICLE BOARD (IF APPLICABLE)**


**CONTRACTOR** will for the duration of this Contract maintain current licenses that are required by the Texas Motor Vehicle Commission Code. If at any time during this Contract period, any **CONTRACTOR'S** license is not renewed, or is denied or revoked, **CONTRACTOR** shall be deemed to be in default of this Contract unless the Motor Vehicle Board issues a stay or waiver. **Contractor** shall promptly provide copies of all current applicable Texas Motor Vehicle Board documentation to **H-GAC** upon request.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their duly authorized representatives.

Signed for Houston-Galveston  
Area Council, Houston, Texas:

  
Greg Blum, Executive Director

Attest for Houston-Galveston  
Area Council, Houston, Texas:


  
Beldre Vick, Director of Public Services  
Date: May 5, 2015

Signed for Motorola Solutions, Inc.  
Farmers Branch, Texas:

  
Printed Name & Title: Edward Fuerst MSSSI Vice President

Date: 4/30 2015

Attest for Motorola Solutions, Inc.  
Farmers Branch, Texas:

  
Printed Name & Title: Howard Cherise MSSSI V.P.

Date: 4/30 2015

Attachment A  
Motorola Solutions, Inc.  
Radio Communication/Emergency Response & Mobile Interoperability Equipment  
Contract No.: RA05-15

Product Category	Description	Base Offered Price
OA, OB, OC	<i>Per the RFP Motorola has included an Electronics Catalogue (ECAT disk) on a CD media in lieu of listing each individual product and its options. In addition, a discount APC sheet is attached in the pricing section and used to calculate all individual prices within the ECAT disk.</i>	See APC Discounts per ECAT Pricebook Effective 2/14/2015
OD	<b>Motorola Integration Services LMR</b>	
	Motorola offers wide range of services including Integration, Installation and Training. The cost of these services is regional in nature. Samples below are listed for reference only.	
OD	Project Management Daily Rate*	\$ 1,818.00
OD	System Technologist Daily Rate*	\$ 2,173.00
OD	Standard Shop Installation: Hourly Rate*	\$ 150.00
OD	Standard Shop Installation: Daily Rate*	\$ 1,200.00
OD	Mobile Radio Installation*	\$180-\$500
OD	Radio Programming*	\$55-\$125
OD	Data Installation*	\$180-\$428
	*Prices may vary by Region and Stated Scope. Travel Not Included	
OD	<b>Motorola Integration Services Advanced Services</b>	
	Motorola offers wide range of services including Integration, Installation and Training. The cost of these services is regional in nature. Samples below are listed for reference only.	
OD	NG9-1-1 Consulting Services-Daily Rate*	\$1,694
OD	Security Project/Program Management-Daily Rate*	\$1,694
OD	Wireless Security Technician-Daily Rate*	\$1,580
OD	Security Penetration Tester (Wired Network)-Daily Rate*	\$1,580
OD	Security Trainer-Daily Rate*	\$1,328
OD	Application Security Code Reviewer-Daily Rate*	\$2,033
OD	IT Incident Response and I-I-Discovery Assistance-Daily Rate*	\$1,694
OD	IT Disaster Recovery Planner-Daily Rate*	\$1,580
OD	IT Disaster Recovery Plan Tester-Daily Rate*	\$1,580
OD	Business Continuity/Continuity of Government Planner-Daily Rate*	\$1,580
OD	Business Continuity/Continuity of Government Plan Tester-Daily Rate*	\$1,580
OD	Mobile Application Services Project Management-Daily Rate*	\$565
OD	Mobile Application Services Solution Architect-Daily Rate*	\$2,033
OD	Mobile Application Services Application and Solution Design-Daily Rate*	\$2,033
OD	Mobile Application Services Application and Solution Implementation-Daily Rate*	\$2,033
OD	Application Integration and Customization Services Project Management-Daily Rate*	\$1,694
OD	Application Integration and Customization Services Solution Architect-Daily Rate*	\$2,033
OD	Application Integration and Customization Services Application and Solution Design-Daily Rate*	\$2,033
OD	Application Integration and Customization Services Application and Solution Implementation-Daily Rate*	\$1,694
OD	Unified Communications Services Project Management-Daily Rate*	\$1,694
OD	Unified Communications Services Solution Architect-Daily Rate*	\$2,033
OD	Unified Communications Services Application and Solution Design-Daily Rate*	\$2,033
OD	Unified Communications Services Application and Solution Implementation-Daily Rate*	\$1,694

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Motorola Solutions  
Austin, TX United States

Certificate Number:  
2017-224005

Date Filed:  
06/14/2017

Date Acknowledged:

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Round Rock

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

Portable/Mobile Radios 2017  
Portable and Mobile Radio Purchase 2017

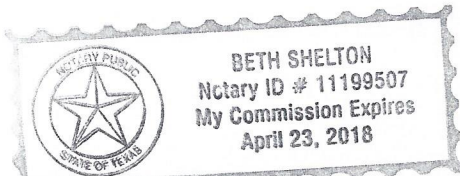
4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.




### 6 AFFIDAVIT


I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



AFFIX NOTARY STAMP / SEAL ABOVE

  
Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said Richard R Russek, this the 14 day of June, 2017, to certify which, witness my hand and seal of office.

  
Signature of officer administering oath

Beth Shelton  
Printed name of officer administering oath

Notary  
Title of officer administering oath



# City of Round Rock

## Agenda Item Summary

**Agenda Number: G.3**

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**Title:** Consider a resolution authorizing the Mayor to execute a Contract with Lone Star Paving for the 2017 Street Maintenance Program Chip Seal Project.

**Type:** Resolution

**Governing Body:** City Council

**Agenda Date:** 6/22/2017

**Dept Director:** Gary Hudder, Transportation Director

**Cost:** \$527,623.75

**Indexes:** RR Transportation and Economic Development Corporation (Type B)

**Attachments:** Resolution, Bid Tab, Letter of recommendation, Form 1295

**Department:** Transportation Department

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### **Text of Legislative File 2017-4524**

The 2017 SMP - Seal Coat/Chip Seal will include seal coating University Boulevard, from A.W. Grimes to C.R. 110, as well as chip sealing Deep Wood Drive, from Round Rock Ave. to Dragon Dr./Oakridge Dr.; in addition to the full depth repairs required at specific locations along both roads. Additionally, the parking lot to the City of Round Rock's Recycling Center and the Play for All Abilities Park driveways & parking lots, will be repaired and overlaid, respectively.

Lone Star Paving was the apparent low bidder for the 2017 SMP - Seal Coat/Chip Seal Project with a bid in the amount of \$527,623.75. The Transportation Department recommends awarding the contract to Lone Star Paving in exchange for providing the services outlined by the 2017 Street Maintenance Project-Seal Coat/Chip Seal.

**Cost: \$527,623.75**

**Source of Funds: RR Transportation and Economic Development Corporation**

**RESOLUTION NO. R-2017-4524**

**WHEREAS**, the City of Round Rock has duly advertised for bids for the 2017 Street Maintenance Program Chip Seal Project; and

**WHEREAS**, Lone Star Paving has submitted the lowest responsible bid; and

**WHEREAS**, the City Council wishes to accept the bid of Lone Star Paving, Now Therefore

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,**

That the Mayor is hereby authorized and directed to execute on behalf of the City a contract with Lone Star Paving for the 2017 Street Maintenance Program Chip Seal Project.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

**RESOLVED** this 22nd day of June, 2017.

---

CRAIG MORGAN, Mayor  
City of Round Rock, Texas

ATTEST:

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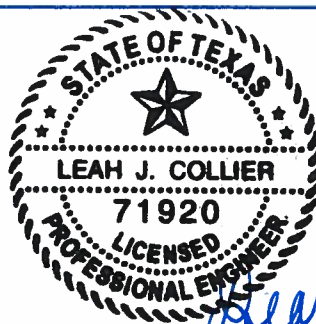
SARA L. WHITE, City Clerk

## BID TABULATION

**THE CITY OF ROUND ROCK**  
**Transportation Department**

2008 Enterprise Dr.  
 Round Rock, Texas. 78664

**PROJECT NAME:** 2017 SMP Chip Seal  
**PROJECT ID:**  
**PROJECT DURATION:** 60 Calendar Days



**Bid Extended By:**

**Print Name** **Initials**

**Bid Opening Date:** 6-Jun-17

**Bid Opening Location:** 2008 Enterprise Dr

**Liquidated Damages:** \$500/ 60 Calendar Days

**No. of Responses:** 2

**Project Manager:** Chris Lopez

**Project Consultant:**

BIDDER'S NAME:				Lone Star Paving		Oldcastle Materials			
CONTRACTOR'S BUSINESS LOCATION:				Austin, TX		Cedar Park, TX			
GUARANTEE: BB-Bid Bond  CC-Cashier Check CTC Certified Check				Yes		Yes			
STATEMENT OF SAFETY EXPERIENCE: Y=yes N-No				Yes		Yes			
ADDENDUM(S) ACKNOWLEDGED? Y=yes N-No				N/A		N/A			
ITEM #	ITEM DESCRIPTION	APPROX. QTY.	UNIT	UNIT PRICE	COST	UNIT PRICE	COST	UNIT PRICE	COST
1	Seal Coat	75500	S.Y.	\$3.10	\$234,050.00	\$5.50	\$415,250.00		\$0.00
2	Pavement Repair	615	Ton	\$177.50	\$109,162.50	\$140.00	\$86,100.00		\$0.00
3	Type D HMAC Surface Course	755	Ton	\$108.75	\$82,106.25	\$80.00	\$60,400.00		\$0.00
4	Traffic Control	2	Mo	\$4,375.00	\$8,750.00	\$3,000.00	\$6,000.00		\$0.00
TOTAL BASE BID:					\$434,068.75		\$567,750.00		\$0.00
A1	Pavement Repair	630	Ton	\$148.50	\$93,555.00	\$150.00	\$94,500.00		\$0.00
TOTAL ADD ALTERNATE:					\$93,555.00		\$94,500.00		\$0.00
TOTAL:					\$527,623.75		\$662,250.00		\$0.00

**\*Error in bid totals**



**ROUND ROCK TEXAS**  
TRANSPORTATION DEPARTMENT

**Mayor**  
Alan McGraw

**Mayor Pro-Tem**  
Craig Morgan

**Councilmembers**  
Rene Flores  
Frank Leffingwell  
Will Peckham  
Writ Baese  
Kris Whitfield

**City Manager**  
Laurie Hadley

**City Attorney**  
Stephan L. Sheets

June 6, 2017

**Subject: Recommendation to Award – 2017 Street Maintenance Program  
Chip Seal**

Dear Mr. Hudder,

On June 6, 2017 at 1:30 p.m., bids were opened for the above referenced project. Two (2) responsive bid proposal was submitted with a total bid price of \$527,623.75 by Lone Star Paving and \$662,250.00 by Oldcastle Materials.

Based upon my review of the Bid Tabulation, I recommend the City of Round Rock accept the bid of Lone Star Paving in the amount of \$527,623.75. If additional information is required, please advise.

Sincerely,

Leah Collier, P.E.  
Chief Transportation Engineer

Attachments: Bid Tabulation



# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 2

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Asphalt Inc., LLC dba Lone Star Paving  
Austin, TX United States

Certificate Number:  
2017-223142

Date Filed:  
06/13/2017

Date Acknowledged:

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Round Rock

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

2017 SMP Project - Seal Coat  
2017 SMP Project - Seal Coat

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Ramming, John	Austin, TX United States	X	
	Haydon, Roger	San Antonio, TX United States	X	
	Playfair, Thomas	Austin, TX United States	X	
	Ohlendorf, Ryan	San Antonio, TX United States	X	
	Lundquist, Dean	Leander, TX United States	X	
	KNox, Allen	Austin, TX United States	X	
	Spinn, Steve	Austin, TX United States	X	
	Wheeler, John	Austin, TX United States	X	
	Cabaza, Aaron	AUSTIN, TX United States	X	
	Asphalt Inc Employee Investments	Austin, TX United States	X	
	Preferred Materials., Inc	Round Rock , TX United States	X	
	Patrick Wheeler Heritage Trust	Austin, TX United States	X	
	Nolan Wheeler Heritage Trust	Austin, TX United States	X	
	Kaitlin Wheeler Heritage Trust	Austin, TX United States	X	

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

2 of 2

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Asphalt Inc., LLC dba Lone Star Paving  
Austin, TX United States

Certificate Number:  
2017-223142

Date Filed:  
06/13/2017

Date Acknowledged:

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Round Rock

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

2017 SMP Project - Seal Coat  
2017 SMP Project - Seal Coat

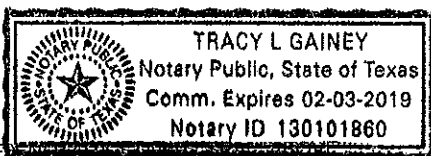
4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



### 6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



Signature of authorized agent of contracting business entity

AFFIDAVIT

Sworn to and subscribed before me, by the said Peyton Kurio, this the 13th day of June, 2017, to certify which, witness my hand and seal of office.

Signature of officer administering oath

Tracy L Gainey  
Printed name of officer administering oath

Notary  
Title of officer administering oath



# City of Round Rock

## Agenda Item Summary

**Agenda Number: G.4**

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**Title:** Consider a resolution authorizing the Mayor to execute a Public Highway At-Grade Crossing and Advanced Signal Agreement with Union Pacific Railroad Company for the St. Williams Street Quite Zone Project.

**Type:** Resolution

**Governing Body:** City Council

**Agenda Date:** 6/22/2017

**Dept Director:** Gary Hudder, Transportation Director

**Cost:** \$730,393.00

**Indexes:** RR Transportation and Economic Development Corporation (Type B)

**Attachments:** Resolution, Exhibit A

**Department:** Transportation Department

---

### Text of Legislative File 2017-4526

Please consider a resolution to approve an Agreement with Union Pacific Railroad for the at-grade crossing and advance signal installation at St. Williams Drive and McNeil Road, mile post 162.59.

This agreement with Union Pacific is for the installation of four quad gates with loop detection circuits, new constant warning technology, gates and lights, and advance preemption circuitry. This equipment is necessary to bring this crossing into compliance for the Railroad Quiet Zone.

The estimate for the signal work is \$730,393.00 and the City is responsible for the actual costs of the construction. Payment is due as Union Pacific Railroad completes the work typically on a monthly basis. This does not include any flagging while construction is under way. The funding was previously approved with City Council item 2017-3905.

**RESOLUTION NO. R-2017-4526**

**WHEREAS**, in connection with the St. Williams Street Quiet Zone Project, the City of Round Rock (“City”) desires to upgrade the existing grade crossing protection devices located on the Union Pacific Railroad Company’s property (DOT No. 439694X) at Mile Post 162.59 at St. Williams Street and McNeil Road, as shown on Exhibit “A” of the Public Highway At-Grade Crossing and Advanced Signal Agreement, and

**WHEREAS**, the City wishes to enter into a Public Highway At-Grade Crossing and Advanced Signal Agreement with Union Pacific Railroad Company, Now Therefore

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,**

That the Mayor is hereby authorized and directed to execute on behalf of the City a Public Highway At-Grade Crossing and Advanced Signal Agreement with Union Pacific Railroad Company, a copy of same being attached hereto as Exhibit “A” and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

**RESOLVED** this 22nd day of June, 2017.

---

CRAIG MORGAN, Mayor  
City of Round Rock, Texas

ATTEST:

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SARA L. WHITE, City Clerk

**EXHIBIT**  
**"A"**

UPRR Folder No.: 2984-59  
UPRR Audit No.: \_\_\_\_\_

**PUBLIC HIGHWAY AT-GRADE CROSSING  
AND ADVANCED SIGNAL AGREEMENT**

**THIS PUBLIC HIGHWAY AT-GRADE CROSSING AND ADVANCED SIGNAL AGREEMENT** (this "**Agreement**") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2016 (the "**Effective Date**"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, with a mailing address at 1400 Douglas Street, MS 1690, Omaha, Nebraska, 68179-1690 (the "**Railroad**"), and the **CITY OF ROUND ROCK**, a Texas municipal corporation with a mailing address at 2008 Enterprise Dr, Transportation Services, Round Rock TX , 78664 (the "**Political Body**").

**RECITALS:**

Presently, the Political Body utilizes the Railroad's property for the existing St. Williams Street at-grade public road crossing, DOT No. 439694X, at Railroad's Mile Post 162.59 on its Austin Subdivision, in or near Round Rock, Williamson County, Texas (hereinafter the "**Roadway**"), as such area is generally shown on the railroad location print marked **Exhibit A**, attached hereto and hereby made a part hereof. Such area where the Roadway crosses a portion of the Railroad's right of way is hereinafter referred to as the "**Crossing Area**".

The Political Body has requested the Railroad's cooperation in connection with upgrading the existing grade crossing protection devices at the Crossing Area, at least in part, in furtherance of the Public Body's creation or use of a "Quiet Zone" in accordance with Part 222 of Title 49 of the Code of Federal Regulations (49 CFR s.222.1 et seq.), including the installation, use, maintenance, and repair of four quad gates with loop detection circuits, new constant warning technology, gates, and lights (including installation of the necessary relays and other materials required to interconnect and coordinate the operation of said railroad grade crossing protection devices with the operation of said highway traffic control signals) (collectively, the "**Quad Gates Facility**") for the Crossing Area (the "**Project**"). The Project and said work is to be done at the sole expense of Political Body.

The Railroad is willing to cooperate with the Political Body in facilitating the Project, and has agreed to perform the Work (hereinafter defined), subject to the terms and conditions of this Agreement.

The Railroad and the Political Body desire to enter into this Agreement to set forth their understanding and agreement with respect to the Project and the Crossing Area.

**AGREEMENT:**

NOW THEREFORE, in consideration of the premises and of the promises and conditions

hereinafter set forth, the parties hereto agree as follows:

**SECTION 1. LIST OF EXHIBITS.**

The exhibits below are attached hereto and hereby made a part hereof.

Exhibit A	Railroad Location Print
Exhibit B	Railroad Front Sheet – Design Schematic
Exhibit C	Railroad's General Terms and Conditions
Exhibit D	Railroad's Material and Force Account Estimate
Exhibit E	Railroad's Form of Contractor's Right of Entry Agreement

**SECTION 2. SCOPE OF WORK TO BE PERFORMED BY THE RAILROAD.**

The Railroad, at Political Body's expense, shall furnish all labor, material, equipment, and supervision for the following work in connection with the Project (collectively, the "**Work**"), to wit:

- Installation of the Quad Gates Facility within the Crossing Area in accordance with the design schematic marked **Exhibit B**, hereto attached and hereby made a part hereof (the "**Designs**");
- Preparation of the Designs (and any changes or modification to the Designs, if approved by Railroad in its sole discretion);
- Installation of the necessary relays and other materials required to interconnect and coordinate the operation of the Quad Gates Facility in accordance with the Designs. If additional Railroad signal activation circuitry is required at the crossing to properly activate the Quad Gates Facility and the signalization at such crossing then, in accordance with 49 CFR Part 222, the Railroad will install such circuitry, at the sole cost and expense of the Political Body;
- The Railroad will install, own, maintain and repair, at the Political Body's sole cost and expense, all components within the Railroad's signal crossing cabin necessary for the interconnection, including without limitation, relays, wiring and terminal connections. The Railroad will not install, own, maintain or repair any interconnect cables provided by the Political Body.
- Engineering; and
- Flagging.

**SECTION 3. CROSSING AREA RIGHTS AND TERMS.**

For avoidance of doubt the Railroad and Political Body desire to clarify the terms and conditions that govern the Roadway and the Crossing Area. To that end: (i) Railroad, subject to the terms and conditions of this Agreement, hereby grants and confirms to the Political Body the right to reconstruct, use, maintain, repair, and renew the Roadway and any and all appurtenances or improvements related thereto over and across the Crossing Area; and (ii) the General Terms and Conditions marked **Exhibit C**, are attached hereto and hereby made a part hereof.

**SECTION 4. POLITICAL BODY'S SOLE FINANCIAL  
RESPONSIBILITY FOR THE WORK AND PROJECT.**

A. The Political Body shall be solely responsible for all costs and expenses associated with the Work and/or the Project or required to facilitate and implement the Quad Gates Facility, including without limitation, all costs and expenses incurred by the Railroad in connection with the Work and/or the Project.

B. The Political Body shall pay and fully reimburse the Railroad for any and all costs and expenses incurred by the Railroad in connection with the Work and/or the Project, including without limitation, those costs and expenses more particularly set forth in this Agreement.

**SECTION 5. WORK TO BE PERFORMED BY RAILROAD; PAYMENTS TO BE  
MADE BY POLITICAL BODY.**

A. The Work to be performed by the Railroad in support of the Political Body's Project, at the Political Body's sole cost and expense, is described in Railroad's Material and Force Account Estimate dated \_\_\_\_\_, marked Exhibit D, attached hereto and hereby made a part hereof (the "Estimate"). As set forth in the Estimate, the Railroad's estimated costs for the Railroad Work is **SEVEN HUNDRED THIRTY THOUSAND THREE HUNDRED NINETY-THREE AND NO/100 DOLLARS (\$730,393.00).**

B. The Railroad shall send progressive billing for its performance of the Work to the Political Body during the Project and final billing to the Political Body within one hundred eighty (180) days after receiving written notice from the Political Body that all Project work affecting the Railroad's property has been completed. The Political Body agrees to reimburse the Railroad for its costs associated with the Work within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad.

C. The Political Body acknowledges that the Estimate may not include a complete estimate of flagging or other protective service costs that may be provided by the Railroad in connection with the Project. All such flagging or other protective services shall be at the Political Body's sole cost and expense, and the Railroad (or a third party provider) may invoice the Political Body separately for these services.

D. If at any time during the Project, Railroad determines that the actual cost of the Work to be performed by the Railroad will likely exceed the total amount set forth in the Estimate, the Railroad may request additional funds for the projected or actual additional costs in connection with such Work. Within sixty (60) days after receipt of a request for any additional funds, the Political Body shall notify the Railroad in writing whether it agrees to pay the additional amounts. If the Political Body agrees to pay such amounts, then the writing evidencing such agreement shall become part of this Agreement. If the Political Body fails to pay the total amount set forth in the Estimate within the timeframe set forth herein, or if the Political Body does not agree to advance additional funds or fails to timely notify the Railroad of its decision regarding its obligation to advance additional funds in connection with the Railroad's portion of the Work, then such failure to timely pay or agree to pay the amounts associated with

the Railroad's portion of the Work as required hereunder shall be deemed a material breach under Section 12B below.

E. If the Railroad has overestimated the cost of the Work and the actual cost for the Railroad's portion of the Work is less than the total amount paid to the Railroad by the Political Body under the Estimate, then the Railroad shall, within one hundred twenty (120) days after completion of the Project, refund to the Political Body an amount equal to difference between the amount paid by the Political Body pursuant to the Estimate and the actual cost for the Railroad's portion of the Work.

F. In addition to the Political Body's obligation to pay the Railroad for the Work, the Political Body agrees to pay to Railroad the sum of **TWO HUNDRED SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$207,500.00)** to be paid by the Political Body to the Railroad upon the execution and delivery of this Agreement, as advanced payment for Railroad's maintenance of the railroad crossing warning for the next twenty (20) years. On or before the date that is the twentieth anniversary of the Effective Date ("**Twenty Year Anniversary Date**"), as well as on the anniversary date of each subsequent one year period, a new, annual, fee will be calculated for signal maintenance. This new annual fee will be determined by the Railroad and will be based on the then-current number of signal units at the Crossing Area, and the per unit amount will be determined at a rate based on the American Association of Railroad's (AAR) signal unit cost index. The Political Body shall pay to the Railroad such new annual maintenance fees and such changes in the maintenance fee may be made by the Railroad by means of automatic adjustment in billing. Such new annual fees calculated after the Twenty Year Anniversary Date may be re-determined by the Railroad at any time subsequent to the expiration of five (5) years following the date on which such annual fee was last determined or established. Such changes in the maintenance fee may be made by means of automatic adjustment in billing.

G. All payments to be made by the Political Body to the Railroad under this Agreement that do not otherwise have a specific date of payment set forth in this Agreement, shall be made within thirty (30) days after the Railroad's submittal of invoices to the Political Body. Interest on any overdue amounts shall be at prime plus two percent (2%), unless a lesser rate is required by state law (and in that event, the applicable interest rate shall be the highest rate allowable by state law).

H. The Railroad, for the period of three (3) years after completion of the Work, will maintain all books, papers, accounting records and other documentation relating to costs incurred under this Agreement and will make such materials available to the Political Body or its duly authorized representatives for review and inspection at the Railroad's headquarters building in Omaha, Nebraska, on reasonable prior notice and during regular business hours.

## **SECTION 6. SOUNDING OF LOCOMOTIVE HORNS.**

The Railroad's rights and duties regarding the sounding of the locomotive horns at the Crossing Area shall be as set out in 49 CFR Part 222, and by other applicable law. Nothing contained in this Agreement shall be construed to alter such rights and duties.



**SECTION 7.            OTHER RESPONSIBILITIES AND OBLIGATIONS OF THE POLITICAL BODY WITH RESPECT TO THE WORK AND THE PROJECT.**

A.        The Political Body shall comply with all applicable laws with respect to the Quad Gates Facility and the Project, including, but not limited to, 49 CFR Part 222. The Political Body shall comply with all applicable Federal Railroad Administration ("FRA") regulations and requirements with respect to the Quad Gates Facility.

B.        Costs and expenses associated with or resulting from any relocation of the Quad Gates Facility, including without limitation any relocation work that results from track alignment changes, new track construction, signal upgrades, or from any work implemented in the discretion of the Railroad, or resulting from the Railroad's business needs or the requirements of an administrative agency, shall be at the Political Body's sole cost and expense. The Railroad shall provide reasonable prior notification of such relocation or other work.

**SECTION 8.            PROTECTIVE MEASURES FOR CROSSING WORK.**

The Political Body, at its sole cost and expense, shall, if applicable, (i) provide traffic control, barricades, and all detour signing for the Project and/or Work; (ii) provide all labor, material and equipment to install any concrete or asphalt street approaches and highway traffic control signals; and (iii) install advanced warning signs, and, if required, pavement markings, in compliance and conformance with the Manual on Uniform Traffic Control Devices.

**SECTION 9. SUCCESSORS AND ASSIGNS; ASSIGNMENT.**

Covenants herein shall inure to or bind each party's successors and assigns; provided, however, that no right of the Political Body shall be transferred or assigned, either voluntarily or involuntarily, except by express prior written consent of the Railroad.

**SECTION 10.          LIABILITY AND INDEMNITY FOR PROJECT AND WORK.**

A.        Cooperation in Defense. The Political Body and the Railroad agree to cooperate, as necessary, in defense of any claim, demand, investigation or litigation arising out of or related to this Agreement, the Work, the Project or the Quad Gates Facility.

B.        Definition of Losses. The term "Losses" shall include all damages, costs, expenses, attorneys' fees, other fees, or liabilities of any nature whatsoever, in any way related to or arising out of, any actual or alleged violation of law, order, or regulation; damage to any property, the environment or to natural resources; bodily injury or death of any person; or the breach of any contract.

C.        **INDEMNITY OBLIGATIONS OF THE POLITICAL BODY.**

(i)        **TO THE EXTENT PERMITTED BY LAW, AND SUBJECT TO SECTION 10C(ii) BELOW, THE POLITICAL BODY SHALL FULLY INDEMNIFY**

**AND HOLD THE RAILROAD HARMLESS, AND DEFEND THE RAILROAD AGAINST ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS, AND LOSSES ARISING FROM THE POLITICAL BODY'S ACTS OR OMISSIONS OR FAULT RELATING TO OR ARISING OUT OF THIS AGREEMENT, THE WORK, THE PROJECT OR THE QUAD GATES FACILITY.**

**(ii) NOTHING CONTAINED IN THIS SECTION OR ANY OTHER PART OF THIS AGREEMENT SHALL BE CONSTRUED TO CONSTITUTE AN AGREEMENT OR OBLIGATION OF THE POLITICAL BODY TO INDEMNIFY THE RAILROAD AGAINST LIABILITY OR LOSSES TO THE EXTENT ARISING FROM THE RAILROAD'S OWN ACTS OR OMISSIONS OR FAULT.**

D. If the Railroad notifies the Political Body of a claim for indemnification, the Political Body shall respond in writing within thirty (30) days after notification by the Railroad, unequivocally accepting the Railroad's demand and undertaking to indemnify the Railroad, or, if the Political Body rejects the demand, the Political Body shall state specifically the grounds for rejection.

**SECTION 11. ENFORCEABILITY AND CHOICE OF LAW.**

**UNLESS OTHERWISE PREEMPTED BY APPLICABLE FEDERAL LAWS, RULES AND REGULATIONS, THIS AGREEMENT SHALL BE GOVERNED, CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.**

**SECTION 12. EFFECTIVE DATE; TERM; TERMINATION.**

This Agreement shall be in full force and effect until terminated pursuant to the terms and conditions set forth in this Agreement or until it otherwise is terminated in accordance with law.

A. This Agreement immediately and automatically shall terminate if the Political Body is in material breach of any express or implied term of or obligation of 10C of this Agreement, the Railroad notifies the Political Body of the breach, and the Political Body fails to fully cure such breach within thirty (30) days after notice is given. If such breach is not timely cured in accordance herewith, such termination shall be effective at 12:01 a.m. of the 31<sup>st</sup> day after notice. A "material breach" under this Section 12A exists, without limitation, if the following occurs: the Political Body fails or without legal justification refuses to undertake the defense of or to indemnify the Railroad upon written demand by the Railroad or to fully defend and indemnify the Railroad, when it is required to do so under Section 10C.

B. This Agreement immediately and automatically shall terminate if either party is in material breach of any express or implied term or obligation of this Agreement other than those described in Section 12A above, the other party notifies the breaching party of the breach, and the breaching party fails to fully cure such breach within sixty (60) days after notice is given. If such breach is not timely cured in accordance herewith, the termination shall be effective at

12:01 a.m. of the 61<sup>st</sup> day after notice. A "material breach" under this Section 12B exists, without limitation, if the following occurs:

(i) The Political Body fails or refuses to comply with FRA regulations, including, but not limited to, 49 CFR Part 222 or any amendments thereto.

(ii) The Political Body fails or refuses to pay: (i) the amount set forth in the Estimate or to advance any additional amounts requested by Railroad in accordance with Section 5, and/or (ii) the initial maintenance fee set forth in Section 5F or any annual signal maintenance fee(s) after the Twenty Year Anniversary Date in accordance with Section 5F, and/or (iii) any other fees, charges or payments due the Railroad under this Agreement.

(iii) The Political Body fails or refuses to comply with the terms or conditions of Section 7.

C. Upon termination, the Railroad shall instruct its engineers to resume sounding the locomotive horns at the crossings in accordance with the Railroad's operating rules and Railroad will cease to have any obligations to Political Body pursuant to this Agreement except for any obligations which expressly survive termination pursuant to the terms of this Agreement.

D. Termination of this Agreement shall not excuse the Political Body from fully complying with all obligations and satisfying all liabilities and making all payments that have accrued prior to the termination date.

### **SECTION 13. FEDERAL FUNDING.**

If the Political Body will be receiving any federal funds for the Project, the Political Body agrees that it is solely responsible for performing and completing all requirements, including without limitation reporting requirements, in connection with the Project and receipt of any such funding and that the Railroad shall not have any responsibility in connection with the same. The Political Body also confirms and acknowledges that (A) the Railroad shall provide to the Political Body the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing and (B) such standard and customary billing and documentation from the Railroad provides the information needed by the Political Body to perform and complete any such reporting requirements in connection with any federal funding. The Railroad confirms that the Political Body shall have the right to audit the Railroad's billing and documentation for the Project.

### **SECTION 14. FUTURE PROJECTS.**

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Crossing Area and/or Roadway shall not commence until the Railroad and the Political Body agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms, and conditions.

**SECTION 15. AUTHORIZATION OF THE POLITICAL BODY.**

The Political Body shall, when returning this Agreement to the Railroad (signed), cause same to be accompanied by such Order, Resolution, or Ordinance of the governing body of the Political Body, passed and approved as by law prescribed, and duly certified, evidencing the authority of the person executing this Agreement on behalf of the Political Body with the power so to do, and which also will certify that funds have been appropriated and are available for the payment of any sums herein agreed to be paid by the Political Body.


**SECTION 16. MODIFICATION; ENTIRE AGREEMENT; RULES OF CONSTRUCTION; AND SEVERABILITY.**

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the Political Body and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the Political Body shall not affect or impair any right arising from any subsequent default. This Agreement (including the exhibits attached hereto and made a part hereof) constitute the entire understanding between the Political Body and the Railroad with respect to the Project, Roadway, and Crossing Area, and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral with respect thereto. This Agreement shall be construed without regard to who drafted or initiated the drafting of all or any provisions of this Agreement. Each of the parties is sophisticated in the matters at issue here, and each relies on its own expertise and its own officers', managers' and attorneys' advice. Neither party relied on any representations by the other party or on the other party's expertise or advice in entering into this Agreement. In the event any portion of this Agreement is deemed void or unenforceable, this will not void or render unenforceable any other provision hereof, and the voided or unenforceable portion shall be deemed severed from the rest of this Agreement and the remaining Agreement shall continue to be enforceable.

(Signatures on the Following Page)

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

UNION PACIFIC RAILROAD COMPANY, a  
Delaware corporation

Approved as to form:  
  
Attorney

By:   
Name: DANIEL A. LEIS  
Title: GENERAL DIRECTOR REAL ESTATE

CITY OF ROUND ROCK

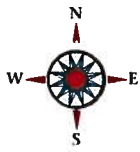
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# EXHIBIT A

To Public Highway At-Grade Crossing and  
Advanced Signal Agreement

Cover Sheet for the  
Railroad Location Print





# EXHIBIT "A"

## RAILROAD LOCATION PRINT FOR AN EXISTING AT GRADE PUBLIC ROAD CROSSING AGREEMENT



### UNION PACIFIC RAILROAD COMPANY

AUSTIN SUBDIVISION  
RAILROAD MILE POST 162.59  
ROUND ROCK, WILLIAMSON COUNTY, TEXAS

To accompany an agreement with  
**CITY OF ROUND ROCK AND ITS CONTRACTOR**  
covering an At Grade Public Road Crossing.

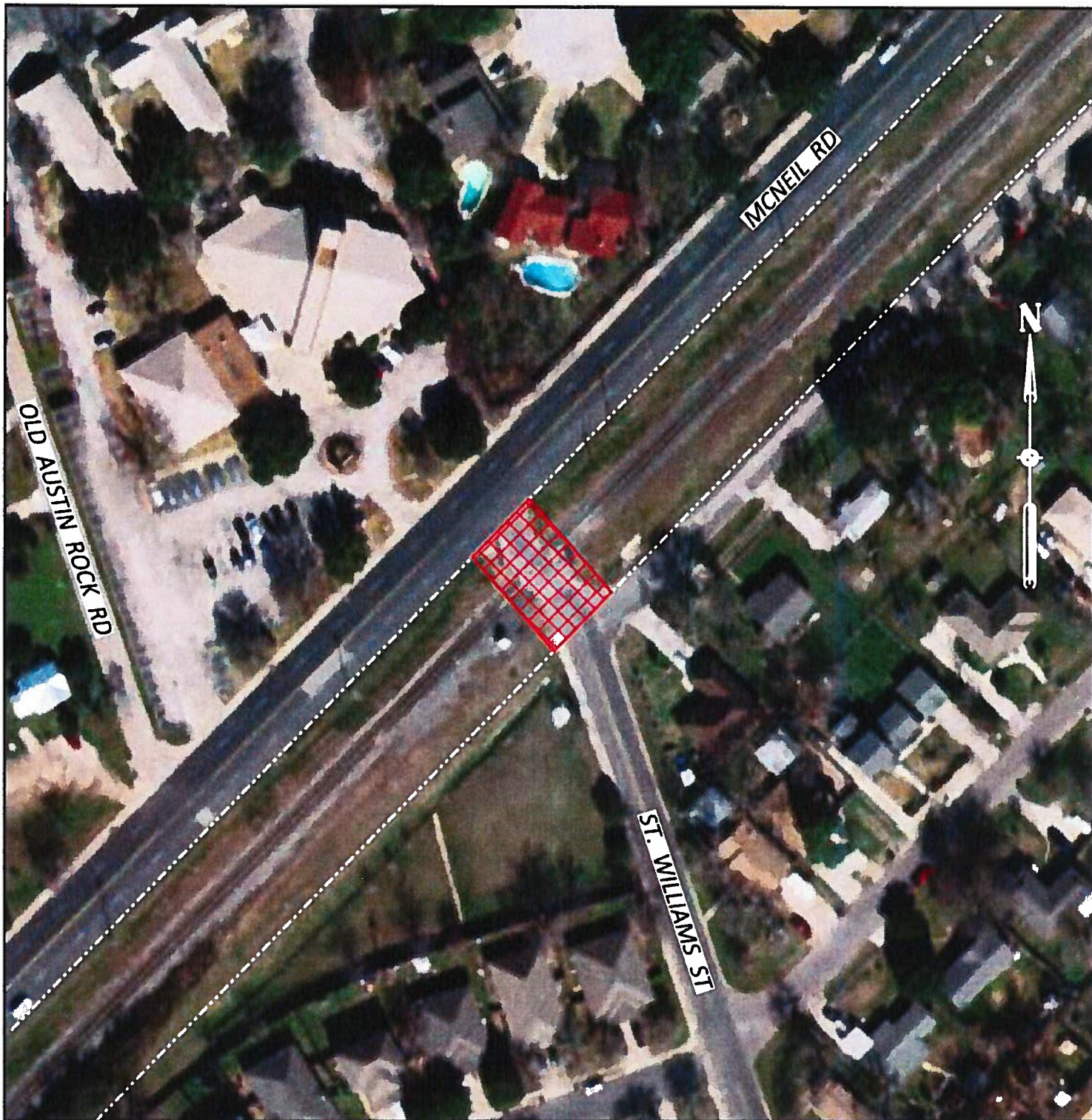
Folder No. 2984-59

Date: April 11, 2016

### WARNING

IN ALL OCCASIONS, U P COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN  
ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE  
PHONE: 1-(800) 336-9193





**LEGEND:**

CROSSING AREA ..... 

UPRRCO. R/W OUTLINED ..... 

NOTE: BEFORE YOU BEGIN ANY WORK, SEE  
AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

ROUND ROCK, WILLAMSON COUNTY, TEXAS

M.P. 162.59 - AUSTIN SUB.

TO ACCOMPANY AGREEMENT WITH  
CITY OF ROUND ROCK

MAP IGN V-7B / 11

SCALE: 1" = 100'

OFFICE OF REAL ESTATE  
OMAHA, NEBRASKA DATE: 2-13-2017

PJB FILE: 0298459

CADD FILENAME	0298459
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SCAN FILENAME	T246E011-298459.TIF
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# EXHIBIT B

To Public Highway At-Grade Crossing and  
Advanced Signal Agreement

Cover Sheet for the  
Railroad's Front Sheet—Design Schematic



# EXHIBIT C

To Public Highway At-Grade Crossing and  
Advanced Signal Agreement

Cover Sheet for the  
General Terms and Conditions

## **EXHIBIT C**

### **TO PUBLIC HIGHWAY AT-GRADE CROSSING AND ADVANCED SIGNAL AGREEMENT**

#### **GENERAL TERMS AND CONDITIONS**

##### **SECTION 1. CONDITIONS AND COVENANTS**

- A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Political Body shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the Political Body shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the Political Body for the purpose of conveying electric power or communications incidental to the Political Body's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the Political Body to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.
- B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. In the event the Railroad shall place additional tracks upon the Crossing Area, the Political Body shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.
- C. The rights of Political Body to the Crossing Area as set forth herein are subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The Political Body shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the Political Body at its own expense settles with and obtains releases from such nonparties.
- D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; and the right to cross the Crossing Area with all kinds of equipment.
- E. So far as it lawfully may do so, the Political Body will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.
- F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Roadway and its appurtenances, or for the performance of any work in connection with the Project, the Political Body will acquire all such other property and rights at its own expense and without expense to the Railroad.

##### **SECTION 2. DEFINITION OF CONTRACTOR.**

For purposes of this Agreement, the term "**Contractor**" shall mean the contractor or contractors hired by the Political Body to perform any work to be performed under this Agreement on any portion of the Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

##### **SECTION 3. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT; INSURANCE.**

- A. Prior to Contractor performing any work within the Crossing Area, including any maintenance and repair work, the Public Body shall require the Contractor to:
- i. execute the Railroad's then current Contractor's Right of Entry Agreement;
  - ii. obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
  - iii. provide such insurance policies, certificates, binders and/or endorsements to the Railroad.

- B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit E**, attached hereto and hereby made a part hereof. The Public Body confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on any Railroad property. Under no circumstances will the Contractor be allowed on the Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.
- C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:
- Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, Mail Stop 1690  
Omaha, NE 68179-1690  
UPRR Folder No. 2927-67*
- D. If the Public Body's own employees will be performing any of the such work, the Public Body may self-insure all or a portion of the insurance coverage, subject to the Railroad's prior review and approval.

#### **SECTION 4. INJURY AND DAMAGE TO PROPERTY**

If the Political Body, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Political Body is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the Political Body at the Political Body's own expense, or by the Railroad at the expense of the Political Body, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

#### **SECTION 5. RAILROAD MAY USE CONTRACTORS TO PERFORM WORK**

The Railroad may contract for the performance of any of its work by other than the Railroad forces. The Railroad shall notify the Political Body of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the Political Body shall reimburse the Railroad for the amount of the contract.

#### **SECTION 6. MAINTENANCE AND REPAIRS**

- A. The Political Body shall, at its sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except that the portions between the track tie ends and the area extending two (2) feet on either side the track tie ends shall be maintained by and at the expense of the Railroad.
- B. If, in the future, the Political Body elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, replaced with paving or some surfacing material other than timber planking, the Railroad, at the Political Body's expense, shall install such replacement surfacing, and in the future, to the extent repair or replacement of the surfacing is necessitated by repair or rehabilitation of the Railroad's tracks through the Crossing Area, the Political Body shall bear the expense of such repairs or replacement.

#### **SECTION 7. CHANGES IN GRADE**

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track(s) located within the Crossing Area, the Political Body shall, at its own expense, conform the Roadway to conform with the change of grade of the trackage.

#### **SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS**

It is understood and recognized that safety and continuity of the Railroad's operations and communications are

of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the Political Body that the work will be performed in a safe manner and in conformity with the following standards:

- A. **Definitions.** All references in this Agreement to the Political Body shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the Political Body shall include work both within and outside of the Railroad's property.
- B. **Entry on to Railroad's Property by Political Body.** If the Political Body's employees need to enter Railroad's property in order to perform an inspection of the Roadway, minor maintenance or other activities, the Political Body shall first provide at least ten (10) working days advance notice to the Railroad Representative. **With respect to such entry on to Railroad's property, the Political Body, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the Political Body's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of Political Body's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.**
- C. **Flagging.**
- (i) If the Political Body's employees need to enter Railroad's property as provided in Paragraph B above, the Political Body agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by Political Body in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad Representative will determine and inform Political Body whether a flagman need be present and whether Political Body needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Political Body for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Political Body agrees that Political Body is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
  - (ii) The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Political Body shall pay on the basis of the new rates and charges.
  - (iii) Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Political Body may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Political Body must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice



of cessation is not given, Political Body will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

- D. **Compliance With Laws.** The Political Body shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Political Body shall use only such methods as are consistent with safety, both as concerns the Political Body, the Political Body's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Political Body (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. **If any failure by the Political Body to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Political Body shall reimburse, and to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorneys' fees, court costs and expenses. The Political Body further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.**
- E. **No Interference or Delays.** The Political Body shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.
- F. **Supervision.** The Political Body, at its own expense, shall adequately police and supervise all work to be performed by the Political Body, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad.
- G. **Suspension of Work.** If at any time the Political Body's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the Political Body is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Political Body shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.
- H. **Removal of Debris.** The Political Body shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the Political Body at the Political Body's own expense or by the Railroad at the expense of the Political Body. The Political Body shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.
- I. **Explosives.** The Political Body shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "**vicinity of the Railroad's property**" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.
- J. **Excavation.** The Political Body shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The Political Body shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The Political Body, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Political Body in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.

- K. **Drainage.** The Political Body, at the Political Body's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The Political Body, at the Political Body's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the Political Body, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The Political Body shall not obstruct or interfere with existing ditches or drainage facilities.
- L. **Notice.** Before commencing any work, the Political Body shall provide or cause the Contractor to provide the advance notice to the Railroad that is required under the Contractor's ROE.
- M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. The Political Body shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's property to be used by the Political Body and/or its Contractors. If it is, the Political Body will telephone or shall cause its Contractor to telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's property.

#### **SECTION 9. INTERIM WARNING DEVICES**

If at anytime it is determined by a competent authority, by the Political Body, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the Political Body shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed.

#### **SECTION 10. OTHER RAILROADS**

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

#### **SECTION 11. BOOKS AND RECORDS**

The books, papers, records and accounts of Railroad, so far as they relate to the items of expense for the materials to be provided by Railroad under the Project, or are associated with the work to be performed by Railroad under this Project, shall be open to inspection and audit at Railroad's offices in Omaha, Nebraska, during normal business hours by the agents and authorized representatives of Political Body for a period of three (3) years following the date of Railroad's last billing sent to Political Body.

#### **SECTION 12. ADDITIONAL REMEDIES FOR BREACH OR NONUSE**

- A. If the Political Body shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Roadway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the Political Body will reimburse the Railroad for the expenses thereof.
- B. In addition to the terms set forth in Section 12 of this Agreement, nonuse by the Political Body of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the Political Body hereunder.
- C. The Political Body will surrender peaceable possession of the Crossing Area and Roadway upon any termination of this Agreement.



# EXHIBIT D

To Public Highway At-Grade Crossing and  
Advanced Signal Agreement

Cover Sheet for the  
Railroad's Material & Force Account Estimate

# Material And Force Account Estimate

## City of Round Rock

Estimate Creation Date: 01/24/2017 Number: 108663 Version: 1

Estimate Good for 6 Months Until 07/24/17

Location: AUSTIN SUB, SIMN, 161.84-179.72

Buy America: Yes

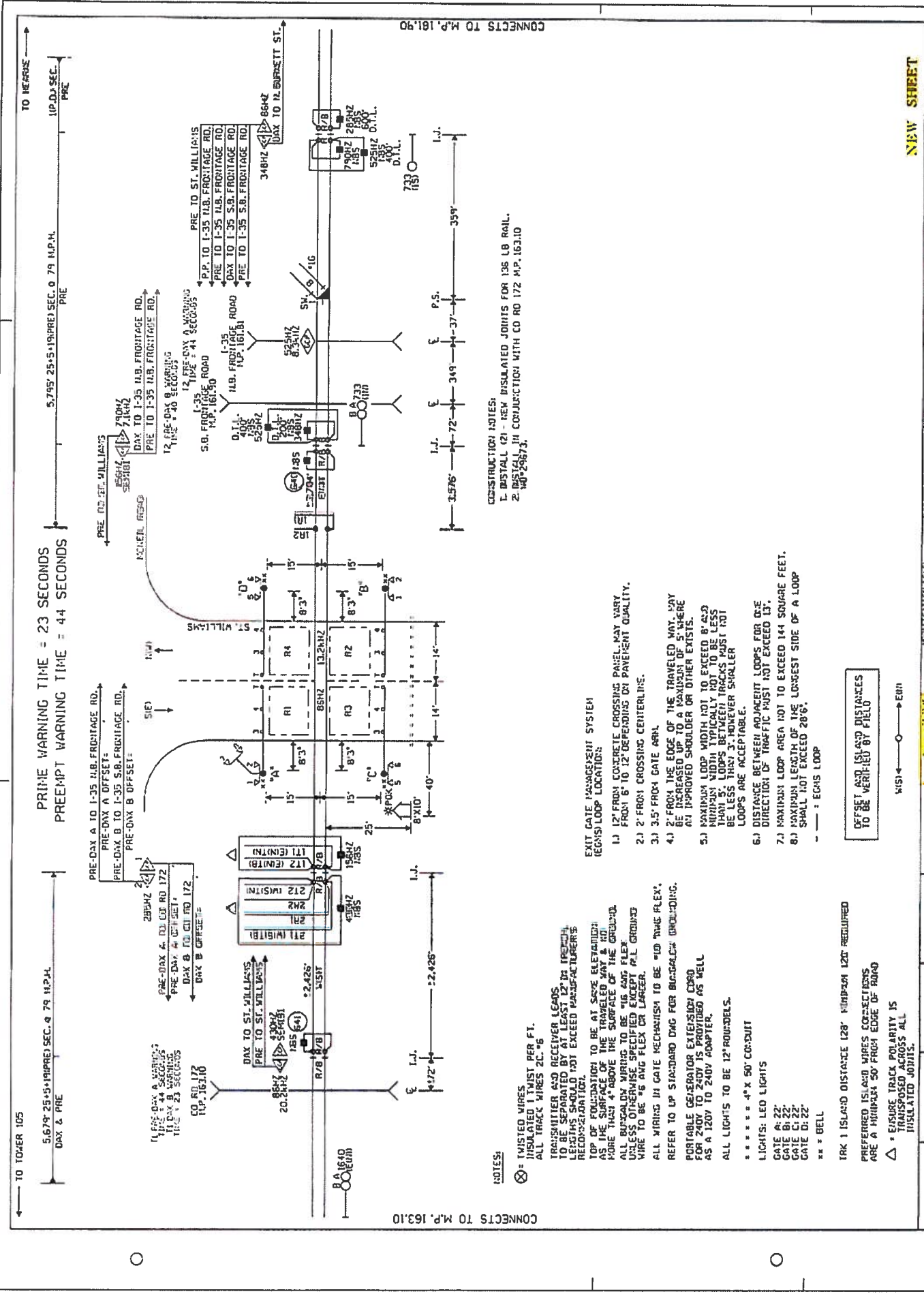
Description of Work: Round Rock, TX St. Williams st. MP. 162.50 Austin Sub 439694X WO 29673  
PID 90865 100% Recollectable

COMMENTS	Description	SubDivision	QTY	UOM	Unit Cost	LABOR	MATERIAL	TOTAL	UP%	Agency%
<b>SIGNAL</b>										
190.39%	King - Dax Cable 1000'	AUSTIN SUB	7	EA	9,486.00	33,579	32,823	66,402	0	66,402
Asphalt	King - Labor Additive		1	LS	283,146.00	283,146	0	283,146	0	283,146
	King - Misc.		1	LS	10,000.00	0	10,000	10,000	0	10,000
	King - Sidelight		1	EA	907.00	0	907	907	0	907
	King - 1 Trk House Only (Exis King Gates)		1	EA	81,944.00	29,370	52,574	81,944	0	81,944
	King - 1 Trk CWT EGMS (4 lo bus and entex)		1	EA	262,044.00	62,820	199,224	262,044	0	262,044
	King - Engineering Design		1	LS	22,950.00	22,950	0	22,950	0	22,950
	King - Fill/Rock/Gravel		1	LS	3,000.00	0	3,000	3,000	0	3,000
Sub-Total =						431,865	298,528	730,393	0	730,393

Totals = 431,865 298,528 730,393 0 730,393

Grand Total = \$730,393

Please Note: The above figures are estimates only and are subject to fluctuation. In the event of an increase or decrease in the cost or amount of material or labor required, City of Round Rock will pay actual construction costs at the current rates effective thereof.



PRIME WARNING TIME = 23 SECONDS  
PREEMPT WARNING TIME = 44 SECONDS

NOTES:

- ① TWISTED WIRES  
INSULATED 1 TWIST PER FT.  
ALL TRACK WIRES 2C. #6
- TRANSMITTER AND RECEIVER LEADS  
TO BE SEPARATED BY AT LEAST 12 IN. (FRENCH)  
LEADINGS SHOULD NOT EXCEED MANUFACTURER'S  
RECOMMENDATION.
- TOP OF FOUNDATION TO BE AT SAME ELEVATION  
AS THE SURFACE OF THE TRAVELED WAY & NOT  
MORE THAN 4" ABOVE THE SURFACE OF THE GROUND.
- ALL BURIED WIRING TO BE 16 AWG FLEX  
WIRE. ALL WIRING TO BE 16 AWG FLEX EXCEPT ALL GROUND  
WIRE TO BE #6 AWG FLEX OR LARGER.
- ALL WIRING IN GATE MECHANISM TO BE 16 AWG FLEX.
- REFER TO UP STANDARD DWG FOR BUDGETARY CHANGING.
- PORTABLE GENERATOR EXTENSION CORD  
FOR 240V TO 240V IS PROVIDED AS WELL  
AS A 120V TO 240V ADAPTER.
- ALL LIGHTS TO BE 12" ROUND.
- \*\*\*\*\* 4" X 50" CO. DUT
- LIGHTS: LED LIGHTS
- GATE A: 22"
- GATE B: 22"
- GATE C: 22"
- GATE D: 22"
- \*\* = BELL
- TRK 1 ISLAND DISTANCE 128' MINIMUM 120' REQUIRED
- PREFERRED ISLAND WIRE CONNECTIONS  
ARE A MINIMUM 50' FROM EDGE OF ROAD
- △ = ENSURE TRACK POLARITY IS  
TRANSPPOSED ACROSS ALL  
ISOLATED JOINTS.

EXIT GATE MANAGEMENT SYSTEM  
RECVS LOOP LOCATION

1. 12' FROM CONCRETE CROSSING PANEL MAY VARY  
FROM 6' TO 12' DEPENDING ON PAVEMENT QUALITY.
2. 2' FROM CROSSING CENTERLINE.
3. 3.5' FROM GATE ARM.
4. 2' FROM THE EDGE OF THE TRAVELED WAY. MAY  
BE INCREASED UP TO A MAXIMUM OF 5' WHERE  
AN IMPROVED SHOULDER OR OTHER EXISTS.
5. MAXIMUM LOOP WIDTH NOT TO EXCEED 8' AND  
MINIMUM WIDTH TYPICALLY NOT TO BE LESS  
THAN 5'. LOOPS BETWEEN TRACKS MUST NOT  
BE LESS THAN 3'. HOWEVER SMALLER  
LOOPS ARE ACCEPTABLE.
6. DISTANCE BETWEEN ADJACENT LOOPS FOR ONE  
DIRECTION OF TRAFFIC MUST NOT EXCEED 13'.
7. MAXIMUM LOOP AREA NOT TO EXCEED 144 SQUARE FEET.
8. MAXIMUM LENGTH OF THE LONGEST SIDE OF A LOOP  
SHALL NOT EXCEED 28'.

--- = EACH LOOP

OFFSET AND ISLAND DISTANCES  
TO BE VERIFIED BY FIELD

WEST ← ○ → EAST

NEW SHEET

UNION PACIFIC RAILROAD		DATE 03/20/15		SHEET 1	
ROUND ROCK, TEXAS		DATE PFS		DOT 43554K	
ST. WILLIAMS		DATE A/A/A/A		PFS 82/59	
AUSTIN SUBDIVISION		DATE		PFS 82/59	
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AUSTIN SUBDIVISION					

# EXHIBIT E

To Public Highway At-Grade Crossing and  
Advanced Signal Agreement

Cover Sheet for the  
Railroad's Current Form of  
Contractor's Right of Entry Agreement



Folder No.: 2984-59  
UPRR Audit No.:

## CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

**THIS AGREEMENT** is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and

\_\_\_\_\_  
(Name of Contractor)

a \_\_\_\_\_ corporation ("Contractor").

### **RECITALS:**

Contractor has been hired by the City of Round Rock ("City") to conduct upgrade the existing grade crossing protection devices; including the installation, use, maintenance, and repair of four quad gates with loop detection circuits, new constant warning technology, gates, and lights (including installation of the necessary relays and other materials required to interconnect and coordinate the operation of said railroad grade crossing protection devices with the operation of said highway traffic control signals, to the existing St. Williams Street at-grade public road crossing, DOT No. 439694X, at Railroad's Mile Post 162.59 on its Austin Subdivision, in or near Round Rock, Williamson County, Texas, in the general location shown on the Railroad Location Print marked **Exhibit A**, attached hereto and hereby made a part hereof, which work is the subject of an agreement dated \_\_\_\_\_, 2017, between the Railroad and the City.

The Railroad is willing to permit the Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

### **AGREEMENT:**

**NOW, THEREFORE**, it is mutually agreed by and between Railroad and Contractor, as follows:

#### **ARTICLE 1 - DEFINITION OF CONTRACTOR.**

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

#### **ARTICLE 2 - RIGHT GRANTED; PURPOSE.**

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of

performing the work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

**ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C & D.**

The General Terms and Conditions contained in **Exhibit B**, the Insurance Requirements contained in **Exhibit C**, and the Minimum Safety Requirements contained in **Exhibit D**, each attached hereto, are hereby made a part of this Agreement.

**ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.**

- A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.
- B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

Kamron Smith MGR Track Maintenance 402-596-5658 klsmith01@up.com
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- C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

**ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.**

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this Agreement and continue until this Agreement is terminated as provided in this Agreement or until the Contractor has completed all work on Railroad's property.

**ARTICLE 6 - TERM; TERMINATION.**

- A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until \_\_\_\_\_, unless sooner terminated as herein

(Expiration Date)

provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

- B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

**ARTICLE 7 - CERTIFICATE OF INSURANCE.**

- A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.

- B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

*Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, MS 1690  
Omaha, NE 68179-1690  
UPRR Folder No.: 2984-59*

**ARTICLE 8 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.**

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

**ARTICLE 9 - CROSSINGS.**

No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

**ARTICLE 10 - CROSSINGS; COMPLIANCE WITH MUTCD AND FRA GUIDELINES.**

- A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.
- B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the

Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such noncompliance.

**ARTICLE 11 - EXPLOSIVES.**

Explosives or other highly flammable substances shall not be stored or used on Railroad's property without the prior written approval of Railroad.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

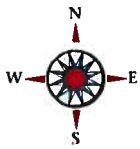
**UNION PACIFIC RAILROAD COMPANY**  
*(Federal Tax ID #94-6001323)*

By: \_\_\_\_\_  
DAVID C. LAPLANTE  
Senior Mgr. Contracts

*(Name of Contractor)*

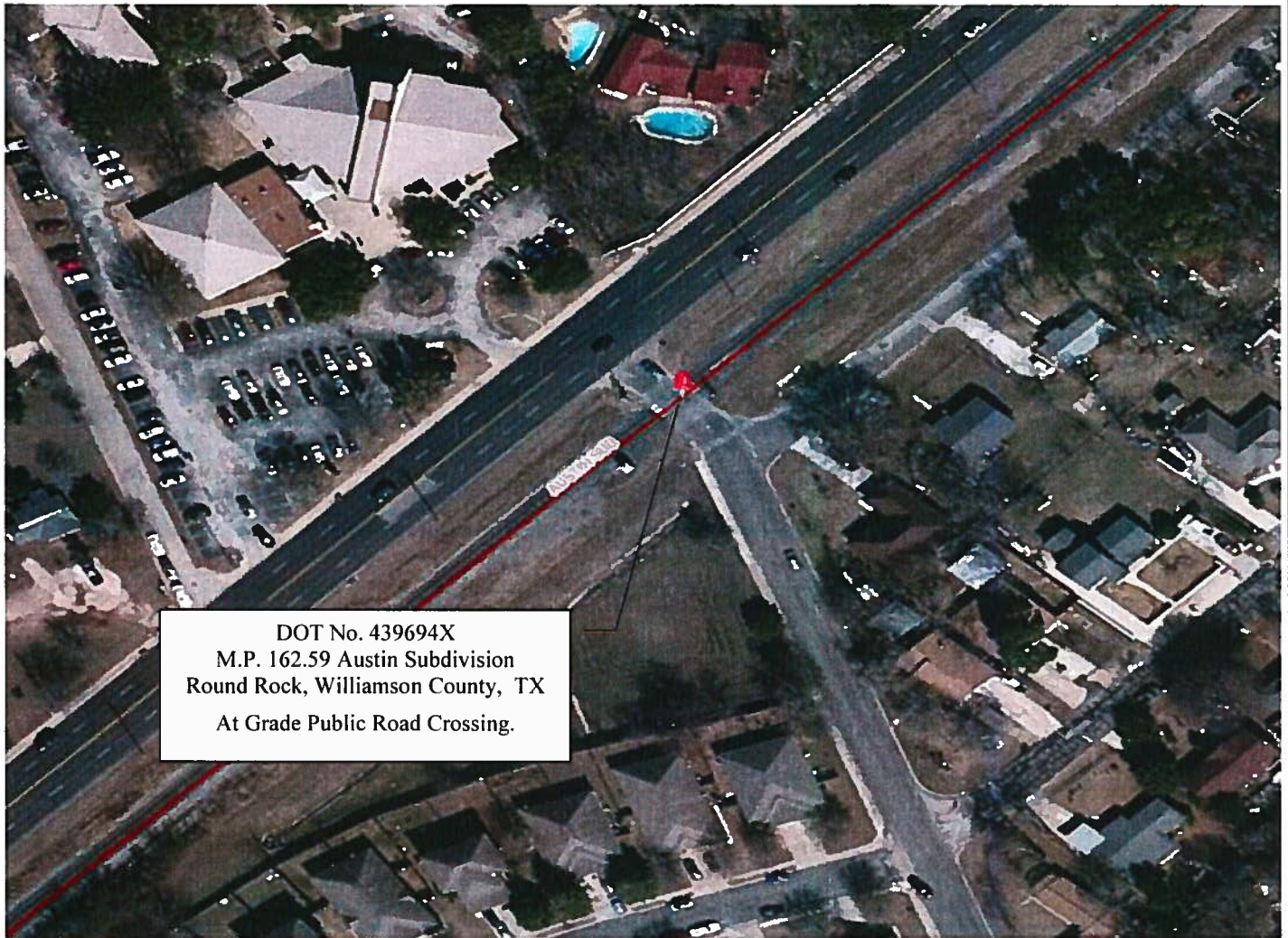
By \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_





# EXHIBIT "A"

## RAILROAD LOCATION PRINT FOR AN EXISTING AT GRADE PUBLIC ROAD CROSSING AGREEMENT



DOT No. 439694X  
M.P. 162.59 Austin Subdivision  
Round Rock, Williamson County, TX  
At Grade Public Road Crossing.

### UNION PACIFIC RAILROAD COMPANY

AUSTIN SUBDIVISION  
RAILROAD MILE POST 162.59  
ROUND ROCK, WILLIAMSON COUNTY, TEXAS

To accompany an agreement with  
**CITY OF ROUND ROCK AND ITS CONTRACTOR**  
covering an At Grade Public Road Crossing.

Folder No. 2984-59

Date: April 11, 2016

### WARNING

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN  
ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE  
PHONE: 1-(800) 336-9193

## **EXHIBIT B**

### **TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

#### **GENERAL TERMS & CONDITIONS**

##### **Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.**

- A. Contractor agrees to notify the Railroad Representative at least thirty (30) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
- B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

##### **Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED**

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.



- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

**Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.**

- A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.
- B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

**Section 4. LIENS.**

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

**Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

- A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.
- B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

**Section 6. PERMITS - COMPLIANCE WITH LAWS.**

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

**Section 7. SAFETY.**

- A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in

**Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

- B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.
- C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

#### **Section 8. INDEMNITY.**

- A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.
- B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.
- C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.
- D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.
- E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

#### **Section 9. RESTORATION OF PROPERTY.**

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

**Section 10. WAIVER OF DEFAULT.**

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

**Section 11. MODIFICATION - ENTIRE AGREEMENT.**

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

**Section 12. ASSIGNMENT - SUBCONTRACTING.**

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

## **EXHIBIT C**

### **TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

#### **INSURANCE REQUIREMENTS**

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

- A. COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

- B. BUSINESS AUTOMOBILE COVERAGE INSURANCE.** Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE.** Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided.

Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

- D. RAILROAD PROTECTIVE LIABILITY INSURANCE.** Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

- E. UMBRELLA OR EXCESS INSURANCE.** If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

- F. POLLUTION LIABILITY INSURANCE.** Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least



\$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

#### **OTHER REQUIREMENTS**

- G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

## **EXHIBIT D**

### **TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

#### **MINIMUM SAFETY REQUIREMENTS**

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

#### **I. CLOTHING**

- A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- i. Waist-length shirts with sleeves.
  - ii. Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
  - iii. Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

#### **II. PERSONAL PROTECTIVE EQUIPMENT**

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- i. Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- ii. Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- iii. Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
  - 100 feet of a locomotive or roadway/work equipment
  - 15 feet of power operated tools
  - 150 feet of jet blowers or pile drivers
  - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- iv. Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

#### **III. ON TRACK SAFETY**

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- i. Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.



- ii. Wear an orange, reflectorized workwear approved by the Railroad Representative.
- iii. Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

#### **IV. EQUIPMENT**

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
  - i. Familiar and comply with Railroad's rules on lockout/tagout of equipment.
  - ii. Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
  - iii. Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

#### **V. GENERAL SAFETY REQUIREMENTS**

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
  - i. Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
  - ii. Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
  - iii. In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
  - iv. Avoid walking or standing on a track unless so authorized by the employee in charge.
  - v. Before stepping over or crossing tracks, look in both directions first.
  - vi. Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.



# City of Round Rock

## Agenda Item Summary

**Agenda Number: G.5**

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**Title:** Consider a resolution authorizing the Mayor to execute Change Order No. 4 with Muniz Concrete & Contracting Inc. regarding the Brushy Creek Regional Trail Gap Project.

**Type:** Resolution

**Governing Body:** City Council

**Agenda Date:** 6/22/2017

**Dept Director:** Rick Atkins, Parks and Recreation Director

**Cost:** \$137,019.02

**Indexes:** General Self-Financed Construction

**Attachments:** Resolution, Exhibit A, Form 1295

**Department:** Parks and Recreation Department

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### Text of Legislative File 2017-4509

This item will authorize the mayor to execute Change Order No. 4 with the Contractor. This project includes approximately 2 miles of 10' wide concrete trail from A.W. Grimes Blvd. to the west end of the existing Brushy Creek East Trail behind the Sonoma subdivision. Additional project improvements include site furnishings, two (2) pedestrian bridges and trail head improvements (parking, bike locker, signage) at Rabb Park. The project has funding from FHWA/TxDOT (\$2,300,000), Williamson County (\$400,000), and the City of Round Rock (\$190,000). The construction reached substantial completion in November 2014. PARD has been working with the Contractor, Engineer, and TxDOT since project completion to close the project out. Because portions of the project were funded by state and federal dollars, the close out and change order procedures are more drawn out and time consuming. All requirements have now been satisfied and the change order has been approved by TxDOT and recommended for City approval.

This change order includes final post-construction quantity adjustments, as well as installation of parking lot sleeve, realigning a portion of the sidewalk, and installing a swale to direct water from entering neighboring private property. The engineer of record verified final quantities and approved the contractors claim of additional quantities. The bulk of the Change Order is associated with additional excavation and embankment. There were a couple of factors that contributed to the bust in quantities: first, in field adjustments were made on the alignment of the trail to avoid stresses on significant trees or other unforeseen conditions that the site survey did not accurately portray. Additionally, this trail tied in with another project and despite best efforts, the plans did not match up. Grades were off

significantly and the trail had to be majorly re-engineered and realigned to stay within ADA guidelines. Finally, some of the edges of the trail could not be graded out at the maximum slope shown in the plans in the designed trail buffer and additional grading was required. Ultimately, our engineer of record feels confident that the final quantities are accurately reflected in this final change order.

**Cost: \$137,019.02**

**Source of Funds: General Self-Financed Construction**

**RESOLUTION NO. R-2017-4509**

**WHEREAS**, the City of Round Rock has previously entered into a contract (“Contract”) with Muniz Concrete & Contracting Inc. for the Brushy Creek Regional Trail Gap Project, and

**WHEREAS**, the Council has determined that it is necessary to make adjustments/changes to the quantity of work to be performed or materials, equipment, or supplies to be provided, and

**WHEREAS**, it has been determined that it is necessary to adjust/change the quantities in said Contract in accordance with the attached Change Order No. 4, Now Therefore

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,**

That the Mayor is hereby authorized and directed to execute on behalf of the City, Change Order No. 4 to the Contract with Muniz Concrete & Contracting Inc. for the Brushy Creek Regional Trail Gap Project, a copy of said quantity adjustment/change order being attached hereto as Exhibit “A” and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

**RESOLVED** this 22nd day of June, 2017.

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CRAIG MORGAN, Mayor  
City of Round Rock, Texas

ATTEST:

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SARA L. WHITE, City Clerk

# EXHIBIT "A"

Form 2146-L  
(Rev. 10/11)  
Page 1 of 1

## CONSTRUCTION CONTRACT CHANGE ORDER NUMBER: 4

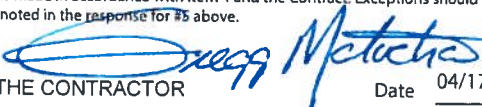
1. CONTRACTOR: Muniz Concrete & Contracting Inc.
2. Change Order Work Limits: Sta. A165/B100/ada1/spr1 to Sta. 7223/2843/364/314
3. Type of Change (on federal-aid non-exempt projects): Major (Major/Minor)
4. Describe the change and the reason for the change order. When necessary, include exceptions to this agreement.

Change Order #4 adds balance of agreed upon Proposal 8 items. Seeding, flagstone pavement, bench, excavation and embankment are quantity extensions. Remove and relocate Rock blocks, swale downstream of parking lot and realignment to tie into other subcontractor's sidewalk are new items.

CCSJ: 0914-05-161  
Project: STP 2009(376)MM  
Highway: \_\_\_\_\_  
County: Williamson  
District: \_\_\_\_\_  
Contract Number: \_\_\_\_\_

5. New or revised plan sheet(s) are attached and numbered: n/a

Each signatory hereby warrants that each has the authority to execute this Change Order.

<p>By signing this change order, the contractor agrees to waive any and all claims for additional compensation due to any and all other expenses; additional changes for time, overhead and profit; or loss of compensation as a result of this change. Further, the contractor agrees that this agreement is made in accordance with Item 4 and the Contract. Exceptions should be noted in the response for #5 above.</p>		<p>The following information must be provided</p>	
<p> THE CONTRACTOR Date <u>04/17/17</u></p>		<p>Time Ext. #: <u>4</u> Days added on this C.O.: <u>59</u></p>	
<p>By <u>Muniz Concrete &amp; Contracting, Inc.</u></p>		<p>Amt. added by this change order: <u>\$137,019.02</u></p>	
<p>Typed/Printed Name <u>Gregg Matocha</u></p>		<p>For TxDOT use only:</p>	
<p>Typed/Printed Title <u>Project Manager / Estimator</u></p>		<p>Days participating: _____</p>	
		<p>Amount participating: _____</p>	
		<p>Signature _____ Date _____</p>	
		<p>Name/Title _____</p>	

### RECOMMENDED FOR EXECUTION:

  
Name/Title PARK DEVELOPMENT MANAGER Date 5/16/17

Name/Title \_\_\_\_\_ Date \_\_\_\_\_  
☐ APPROVED ☐ REQUEST APPROVAL

Name/Title \_\_\_\_\_ Date \_\_\_\_\_

Name/Title \_\_\_\_\_ Date \_\_\_\_\_  
☐ APPROVED ☐ REQUEST APPROVAL

Name/Title \_\_\_\_\_ Date \_\_\_\_\_

Name/Title \_\_\_\_\_ Date \_\_\_\_\_  
☐ APPROVED ☐ REQUEST APPROVAL

  
Name/Title \_\_\_\_\_ Date 10 May 17

Name/Title \_\_\_\_\_ Date \_\_\_\_\_  
☐ APPROVED

Engineer's Seal:



  
10 May 17

## CONSTRUCTION CONTRACT CHANGE ORDER NUMBER: 4

Estimated Cost: \_\_\_\_\_

CCSJ: \_\_\_\_\_ Paid by Invoice? ( ☐ Yes ☐ No )

TABLE A: Force Account Work and Materials Placed into Stock

LABOR	HOURLY RATE	EQUIPMENT	HOURLY RATE

TABLE B: Contract Items

ITEM	DESCRIPTION	UNIT	UNIT PRICE	ORIGINAL + PREVIOUSLY REVISED		NEW		OVERRUN/ UNDERRUN
				QUANTITY	ITEM COST	QUANTITY	ITEM COST	
2	Excavation (Roadway)	CY	16.00	2,731.00	43,696.00	4,298.51	68,776.16	25,080.16
3	Embankment(Final)(Ord Comp)(C)	CY	24.00	2,195.00	52,680.00	5,113.54	122,724.96	70,044.96
4	Broadcast Seed (Perm)(Rural)(Clay)	SY	0.17	18,934.00	3,218.78	50,197.00	8,533.49	5,314.71
5	Broadcast Seed (Temp)(Warm)	SY	0.17	9,467.00	1,609.39	9,467.00	1,609.39	0.00
6	Broadcast Seed (Temp)(Cool)	SY	0.17	9,467.00	1,609.39	25,098.50	4,266.74	2,657.36
7	Soil Retention Blankets (CL 1)(TY A)	SY	1.38	5,360.00	7,396.80	3,996.00	5,514.48	- 1,882.32
8	Soil Retention Blankets (CL 2)(TY H)	SY	21.00	475.00	9,975.00	930.60	19,542.60	9,567.60
9	Flex Base(Cmp in Place)(TYA GR1)	CY	65.00	2,259.00	146,835.00	1,993.00	129,545.00	- 17,290.00
30	Concrete Curb (Ribbon)(Mod)(12")	LF	12.00	49.00	588.00	0.00	0.00	- 588.00
37	Ref Pav Mrk TY II (W) 12" (SLD)	LF	1.05	42.00	44.10	0.00	0.00	- 44.10
45	Retaining Wall (4x2x2 Limestone)	SF	26.00	3,865.00	100,490.00	4,196.00	109,096.00	8,606.00
51	Flagstone Pavement	SF	12.00	707.00	8,484.00	1,076.00	12,912.00	4,428.00
55	Bench	EA	1,300.00	14.00	18,200.00	17.00	22,100.00	3,900.00
62	Interpretive Signage (Allow \$7,000)	LS	3,500.00	2.00	7,000.00	0.00	0.00	- 7,000.00
63	Interpretive Sign Structures	EA	1,650.00	2.00	3,300.00	0.00	0.00	- 3,300.00
67	Pedestrian Handrail	LF	82.00	288.00	23,616.00	494.00	40,508.00	16,892.00
CO4-1	Rmv/Reloc Ret. Wall Blocks	SF	29.28	0.00	0.00	176.00	5,153.28	5,153.28
CO4-2	install Swale off Parking Lot	LS	5,752.50	0.00	0.00	1.00	5,752.50	5,752.50
CO4-3	Realign trail to tie into sidewalk	LS	7,393.13	0.00	0.00	1.00	7,393.13	7,393.13
CO4-4	Item 33; Conc Sidewalk 5" R & R	SY	39.50	0.00	0.00	32.50	1,283.75	1,283.75
CO4-5	Parking Lot Sleeves	LF	10.00	0.00	0.00	105.00	1,050.00	1,050.00
TOTALS					428,742.46		565,761.48	137,019.02

**CONSTRUCTION CONTRACT CHANGE ORDER NUMBER: 4**

**TABLE B: Contract Items (Continued)**

CCSJ: \_\_\_\_\_

[illegible]

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:  
2017-222715

Date Filed:  
06/13/2017

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Muñiz Concrete & Contracting, Inc.  
Austin, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Round Rock

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

000000  
Brushy Creek Regional Trail Gap Project, CSJ #0914-05-161

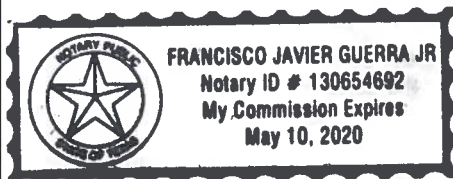
4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Rodriguez, Lonny D.	Austin, TX United States	X	
	Muñiz, Jose Juan	Austin, TX United States	X	

5 Check only if there is NO Interested Party.

☐

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Lonny D. Rodriguez, this the 13<sup>th</sup> day of June, 2017, to certify which, witness my hand and seal of office.

[Signature]  
Signature of authorized agent of contracting business entity

[Signature]  
Signature of officer administering oath

Francisco Guerra  
Printed name of officer administering oath

Project Manager  
Title of officer administering oath





# City of Round Rock

## Agenda Item Summary

**Agenda Number: G.6**

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**Title:** Consider a resolution authorizing the Mayor to execute a Real Estate Contract with MFT-The Creek, LLC for the purchase of a trail easement interest totaling 0.592 acres necessary for the Brushy Creek Trail Project (Parcel 3).

**Type:** Resolution

**Governing Body:** City Council

**Agenda Date:** 6/22/2017

**Dept Director:** Rick Atkins, Parks and Recreation Director

**Cost:** \$55,405.00

**Indexes:** 2014 General Obligation Bonds

**Attachments:** Resolution, Exhibit A

**Department:** Parks and Recreation Department

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### **Text of Legislative File 2017-4529**

This item will authorize the Mayor to execute a real estate contract with MFT-The Creek Apartments for purchase of the trail easement necessary for the Brushy Creek Trail - Georgetown St. to A.W. Grimes Blvd.

After this acquisition, only one additional easement will be necessary to complete the ROW acquisition associated with this project.

This portion of the trail will consist of an 10' wide concrete trail section connecting A.W. Grimes Blvd. to Georgetown St. and will eventually connect to Heritage Trail. This trail section has been identified as one of the highest priority trail gaps in the most recent trails master plan.

**Cost: \$55,405.00**

**Source of Funds: 2014 General Obligation Bonds**

**RESOLUTION NO. R-2017-4529**

**WHEREAS**, the City desires to purchase a trail easement interest in and to that certain parcel of land totaling 0.592 acres (Parcel 3); and

**WHEREAS**, MFT-The Creek, LLC, the owner of the Property, has agreed to sell said Property to the City, Now Therefore

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,**

That the Mayor is hereby authorized and directed to execute on behalf of the City a Real Estate Contract with MFT-The Creek, LLC, for the purchase of the above described Property, a copy of said Real Estate Contract being attached hereto as Exhibit "A" and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

**RESOLVED** this 22nd day of June, 2017.

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CRAIG MORGAN, Mayor  
City of Round Rock, Texas

ATTEST:

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SARA L. WHITE, City Clerk

# EXHIBIT

## "A"

### REAL ESTATE CONTRACT BRUSHY CREEK TRAIL EASEMENT

This Real Estate Contract ("Contract") is entered into between MFT-THE CREEK, LLC, a Texas limited liability company, ("Seller"), and the CITY OF ROUND ROCK, a Texas home-rule municipal corporation ("Buyer") upon the terms and conditions set forth as follows:

#### 1. Purchase and Sale of Property

1.01 Seller sells and agrees to convey, and Buyer purchases and agrees to pay for, a trail easement interest in and to that certain parcel of land totaling 0.592 acre (25,778 square feet) located in Williamson County, Texas, and being more particularly described by metes and bounds and accompanying plat in Exhibit "A", attached hereto and incorporated herein.

1.02 The real property interests described above, and any rights or appurtenances are referred to in this Contract as the "Property".

#### 2. Sales Price

2.01 Amount of Sales Price. The sales price for the Property, any improvements thereon, and any damage to the remaining property of Seller shall be the sum of FIFTY-FIVE THOUSAND FOUR HUNDRED FIVE and NO/100 DOLLARS (\$55,405.00) ("Sales Price").

2.02 Payment of Sales Price. The full amount of the Sales Price shall be payable in cash at the Closing.

#### 2.03. Special Provisions and Additional Compensation.

(A) As Additional Compensation for the Property, and as an obligation which shall survive the Closing of this transaction, Buyer agrees to remove the existing HMAC driveway surface course and replace it with a minimum of 2" inch new Type 'C' HMAC surface, at locations between its connection with Highway 79 and the beginning of the concrete bridge structure which crosses Brushy Creek, and as further shown in Exhibit "B" attached hereto and incorporated herein. The paving shall be constructed as part of the Buyer's proposed Brushy Creek Trail improvement project. During all construction related to this provision, the access to Seller's remaining Property shall not be unreasonably impaired and shall never be completely blocked and Buyer shall make reasonable efforts not to impede vehicular traffic to and from Seller's remaining Property by the residents and invitees thereof or by emergency vehicles. By execution of this Contract the Seller agrees to allow access to the remaining property of Seller, but only to the extent reasonably necessary in order to carry out the obligations of this paragraph.

(B) As Additional Compensation for the Property, and as an obligation which shall survive the Closing of this transaction, Buyer agrees to cause galvanized barbed wire fencing with metal posts to be installed on the northern boundary of the Property, in the location and according to the specifications as shown in Exhibit "C" attached hereto and incorporated herein. The fencing described herein shall be constructed as part of the Buyer's proposed Brushy Creek Trail improvement project. By execution of this Contract the Seller agrees to allow access to the

remaining property of Seller, but only to the extent reasonably necessary in order to carry out the obligations of this paragraph.

### 3. **Buyers Obligations**

3.01 Conditions to Buyer's Obligations. The Buyer's obligations under this Contract are subject to the satisfaction of each of the following conditions (any of which may be waived in whole or in part by Buyer at or before the closing).

3.02 Preliminary Title Report. Within 30 days of the execution of this Contract, Seller, at Seller's expense, will obtain from the Title Company a preliminary title report ("Title Report"), accompanied by copies of all recorded documents relating to easements, rights-of-way, etc., affecting the Property.

(A) Buyer will give Seller written notice on or before 10 days prior to the Closing of this transaction that the condition of title as set forth in the Title Report is not satisfactory.

(B) In the event that Buyer states that the condition is not satisfactory, Seller will promptly undertake to assist Buyer, with all costs to be borne by Buyer, to eliminate or modify all unacceptable matters to the reasonable satisfaction of Buyer. Otherwise, any objection by the Buyer may also be waived in writing prior to Closing.

3.03 Survey. Buyer, at Buyer's expense, will obtain a current plat or survey of the permanent easement Property, prepared by a licensed Texas land surveyor selected by Buyer.

3.04 Seller's Full Compliance. Seller will have complied with all of the covenants, agreements, and conditions required by this Contract by the closing date.

### 4. **Representations and Warranties of Seller**

Seller represents and warrants to Buyer, as of the closing date, as follows:

4.01 There are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or trespassers, other than previously disclosed to Buyer.

4.02 The Property herein is being conveyed to Purchaser under threat of condemnation.

4.03 Seller has complied with all applicable laws, ordinances, regulations, and restrictions relating to the Property, or any part of it.

4.04 Seller is not aware of any material physical defects to the Property.

4.05 Seller is not aware of any environmental hazards or conditions that affect the Property.



4.06 Seller is not aware that the Property is or has ever been used for the storage or disposal of hazardous materials or toxic waste, or any underground tanks or containers.

## 5. Closing

5.01 Date and Location. The Closing will be held at the office of Independence Title Company, 101 E. Settlers Blvd. #110, Round Rock Texas 78664 ("Title Company"), on or before June 30<sup>th</sup>, 2017 ("Closing Date"), or 10 days after completion of any title curative items as identified on Schedule C. of the Title Commitment, or at a time, date, and place agreed on by Seller and Buyer.

5.02 Sellers Responsibilities at Closing. At the Closing Seller will:

(A) Deliver to Buyer a properly executed and acknowledged Trail Easement (the "Easement") in and to the Property described in Exhibit "A", attached hereto and incorporated herein, conveying such property interest in and to all of the Property, free of all liens, encumbrances, conditions, easements, assessments, and restrictions, except for the following:

- (i) Any exceptions approved by Buyer in accordance with Section 3 of this Contract; and
- (ii) Any exceptions approved by Buyer in writing.

(B) Deliver to Buyer a Texas Owner's Title Policy, at Buyer's expense, issued by the Title Company in Buyer's favor in the full amount of the Sales Price, insuring Buyer's interest in and to the Property subject to the title exceptions listed in herein, to any other exceptions approved in writing by Buyer, and to those standard printed exceptions contained in the usual form of Texas Owner's Title Policy, with the following exceptions:

- (i) The boundary and survey exceptions will be deleted;
- (ii) The exception as to restrictive covenants will be endorsed "None of Record", if applicable; and
- (iii) The exception as to the lien for taxes will be limited to the year of closing and will be endorsed "Not Yet Due and Payable".

(C) Deliver to Buyer possession of the Property.

(D) The form of the Easement document shall be as shown in Exhibit "D" attached hereto and incorporated herein.

5.03 Buyer's Responsibilities at Closing. At the Closing Buyer will pay Seller the Sales Price.

5.04 Prorations. N/A.

5.05 Apportionment of Costs. All costs and expenses of closing in consummating the sale and purchase of the Property will be paid as follows:

- (A) Owner's Title Policy paid by Buyer.
- (B) Survey paid by Buyer.
- (C) Easement, tax certificates, and title curative matters, if any, paid by Buyer.
- (D) Lien partial release/subordination fee to be paid by Buyer in the amount of \$2,500.
- (E) All other closing costs to be paid by Buyer.
- (F) Attorney's fees paid by each respectively, except for any attorney's fees directly required by a lender for consent, subordination or other title curative matters shall be paid by Buyer in an amount not to exceed \$2,000.

#### 6. **Breach by Seller**

6.01 Buyer's Rights in the Event of Breach by Seller. If Seller fails to fully and timely perform any of its obligations under this Contract or fails to consummate the sale of the Property for any reason (except for Buyer's default), Buyer will have the right to:

- (A) Enforce specific performance of this Contract; or
- (B) Request that the Escrow Deposit, if any, will be returned by the Title Company to Buyer.

#### 7. **Breach by Buyer**

7.01 Seller's Rights in the Event of Breach by Buyer. In the event Purchaser should fail to consummate the purchase of the Property, the conditions to Buyer's obligations set forth herein having been satisfied and Buyer being in default and Seller not being in default hereunder, Seller shall have the right to receive the Escrow Deposit, if any, from the title company, the sum being agreed on as liquidated damages for the failure of Buyer to perform the duties, liabilities, and obligations imposed upon it by the terms and provisions of this Contract, and Seller agrees to accept and take this cash payment as its total damages and relief and as Seller's sole remedy hereunder in such event. If no Escrow Deposit has been made then Seller shall receive the amount of \$2,000 as liquidated damages for any failure by Buyer.

#### 8. **Miscellaneous Provisions**

8.01 Survival of Covenants. Any of the representations, warranties, covenants, and agreements of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the closing of the transactions contemplated by this Contract, will survive the closing.



8.02 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to Seller or Buyer, as the case may be, at the address set forth in the signature block below.

8.03 Texas Law to Apply. This Contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Williamson County, Texas.

8.04 Parties Bound. This Contract shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Contract.

8.05 Legal Construction. In case any one or more of the provisions contained in this Contract may for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability will not affect any other provision hereof, and this Contract will be construed as if the invalid, illegal, or unenforceable provision had never existed.

8.06 Prior Contracts Superseded. This Contract constitutes the sole and only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter of this Contract.

8.07 Time of Essence. Time is of the essence in this Contract.

8.08 Memorandum of Contract. Upon the request of either party, both parties will promptly execute a memorandum of this Contract suitable for filing of record.

8.9 Compliance. In accordance with the requirements of Section 20 of the Texas Real Estate License Act, Buyer is advised that it should be furnished with or obtain a policy of title insurance, or Buyer should have the abstract covering the Property examined by an attorney of Buyer's own selection.

8.10 Effective Date. This Contract shall be effective as of the date it is approved by the Round Rock City Council, which date is indicated beneath the City's signature below.

8.11 Counterparts. This Contract may be executed in any number of counterparts, which may together constitute the Contract. Signatures transmitted by facsimile or electronic mail may be considered effective as originals for purposes of this Contract.

8.12 Signature Warranty Clause. The signatories to this contract represent and warrant that they have the authority to execute this Contract on behalf of Seller and Buyer, respectively.

The parties are signing this Contract on the dates indicated.

*(signature page follows)*

SELLER:

MFT-The Creek, LLC  
a Texas limited liability company

By: 

Its: MANAGER

Date: 5-22-17

Address: 3145 CINCHA DE TIERRA  
ENCINITAS, CA 92024

BUYER:

**CITY OF ROUND ROCK, TEXAS**

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Address: 221 East Main Street  
Round Rock, Texas 78664



County: Williamson  
Parcel: PARCEL 3 (MFT-The Creek)  
Project: Heritage Trail

Page 1 of 3  
January 18, 2016

EXHIBIT **A**  
PROPERTY DESCRIPTION FOR PARCEL 3

DESCRIPTION OF A 0.592 ACRE (25,778 SQUARE FOOT), TRACT OF LAND SITUATED IN THE P. A. HOLDER SURVEY, ABSTRACT NO. 297, IN WILLIAMSON COUNTY, TEXAS, BEING A PORTION OF THAT CALLED 11.6049 ACRE TRACT OF LAND CONVEYED TO MFT-THE CREEK, LLC BY INSTRUMENT RECORDED IN DOCUMENT NO. 2012092901 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, SAID 0.592 ACRE (25,778 SQUARE FOOT) TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING** at a calculated point in the westerly boundary line of said 11.6049, same being in the easterly boundary line of that called 30.34 acre tract of land conveyed to the City of Round Rock by instrument recorded in Document No. 2001040257 of the Official Public Records of Williamson County, Texas, for the northwesterly corner of the herein described tract, and from which a 1/2" iron rod found, being the northwesterly corner of said 11.6049 acre tract, same being the northeasterly corner of said 30.34 acre tract in the existing southerly Right-of-Way (R.O.W.) of State Highway (S.H.) 79 (variable width R.O.W.) bears N 03°07'26" W at a distance of 87.56 feet;

**THENCE**, departing the boundary line of said 30.34 acre tract, through the interior of said 11.6049 acre tract, the following six (6) courses:

- 1) Along a curve to the right, having a delta angle of 08°10'08", a radius of 375.00 feet, an arc length of 53.46 feet and a chord which bears, S 81°47'06" E for a distance of 53.42 feet to a calculated point of reverse-curvature;
- 2) Along a curve to the left, having a delta angle of 36°18'20", a radius of 125.00 feet, an arc length of 79.21 feet and a chord which bears N 84°08'48" E, for a distance of 77.89 feet to a calculated point of reverse-curvature
- 3) Along a curve to the right, having a delta angle of 38°45'48", a radius of 125.00 feet, an arc length of 84.57 feet and a chord which bears N 85°22'32" E, for a distance of 82.96 feet to a calculated point of tangency;
- 4) S 75°14'34" E for a distance of 164.32 feet to a calculated point of curvature to the left;
- 5) Along said curve to the left, having a delta angle of 18°25'55", a radius of 175.00 feet, an arc length of 56.30 feet and a chord which bears, S 84°27'31" E for a distance of 56.05 feet to a calculated point of tangency;
- 6) N 86°19'32" E for a distance of 69.65 feet, to a calculated point in the easterly boundary line of said 11.6049 acre tract, same being in the westerly boundary line of Lot 1, Block A, Opus Subdivision, a subdivision of record in Cabinet Q, Slide 41-42 of the Plat Records of Williamson County, Texas for the northeasterly corner of the herein described tract;

**THENCE**, with the common boundary line of said 11.6049 acre tract and said Lot 1, Block A, the following two (2) courses:

- 7) S 50°24'47" E for a distance of 0.25 feet to a calculated angle point;
- 8) S 20°47'38" E for a distance of 52.93 feet to a calculated point, for the southeasterly corner of the herein described tract, and from which a 1/2" iron rod found, being an angle point in said common boundary line bears S 20°47'38" E at a distance of 10.91 feet;

**THENCE**, departing said Lot 1 boundary line, through the interior of said 11.6049 acre tract, the following seven (7) courses:

- 9) N 59°23'32" W, for a distance of 1.35 feet to a calculated angle point;
- 10) S 86°19'32" W, for a distance of 84.29 feet to a calculated point of curvature to the right;
- 11) Along said curve to the right, having a delta angle of 18°25'55", a radius of 225.00 feet, an arc length of 72.38 feet and a chord which bears, N 84°27'31" W for a distance of 72.07 feet to a calculated point of tangency;
- 12) N 75°14'34" W, for a distance of 164.32 feet to a calculated point of curvature to the left;
- 13) Along said curve to the left, having a delta angle of 38°45'48", a radius of 75.00 feet, an arc length of 50.74 feet and a chord which bears, S 85°22'32" W for a distance of 49.78 feet to a calculated point of reverse-curvature;
- 14) Along a curve to the right, having a delta angle of 36°18'20", a radius of 175.00 feet, an arc length of 110.89 feet and a chord which bears, S 84°08'48" W for a distance of 109.04 feet to a calculated point of reverse-curvature;

County: Williamson  
Parcel: Parcel 3 (MFT-The Creek)  
Project: Heritage Trail

Page 2 of 3  
January 18, 2016

- 15) Along a curve to the left, having a delta angle of  $07^{\circ}02'43''$ , a radius of 325.00 feet, an arc length of 39.96 feet and a chord which bears,  $N 81^{\circ}13'24'' W$  for a distance of 39.94 feet, to a calculated point in the westerly boundary line of said 11.6049 acre tract, same being in said easterly boundary line of said 30.34 acre tract for the southwesterly corner of the herein described tract;
- 16) **THENCE**, with said common boundary line,  $N 03^{\circ}07'26'' W$ , for a distance of 50.47 feet to the **POINT OF BEGINNING**, containing 0.592 acres, (25,778 square feet) of land, more or less.

This property description is accompanied by a separate parcel plat.

All bearings recited herein are based on the Texas State Plane Coordinate System, Central Zone No. 4203, NAD 83.

THE STATE OF TEXAS                    §  
   §        KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF WILLIAMSON           §

That I, Lawrence M. Russo, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct and that the property described herein was determined by a survey made on the ground under my direct supervision.

WITNESS MY HAND AND SEAL at Round Rock, Williamson County, Texas.

*Lawrence M. Russo*  
\_\_\_\_\_  
Lawrence M. Russo

Registered Professional Land Surveyor No. 5050  
Inland Geodetics, LLC  
Firm Registration No: 100591-00  
1504 Chisholm Trail Road, Suite 103  
Round Rock, TX 78681

*02/05/2016*  
\_\_\_\_\_  
Date

S:/\_CORR-PROJECTS/PARKS & REC/HERITAGE TRAIL/PARCELS/MFT-THE CREEK PARCEL 3.DOC

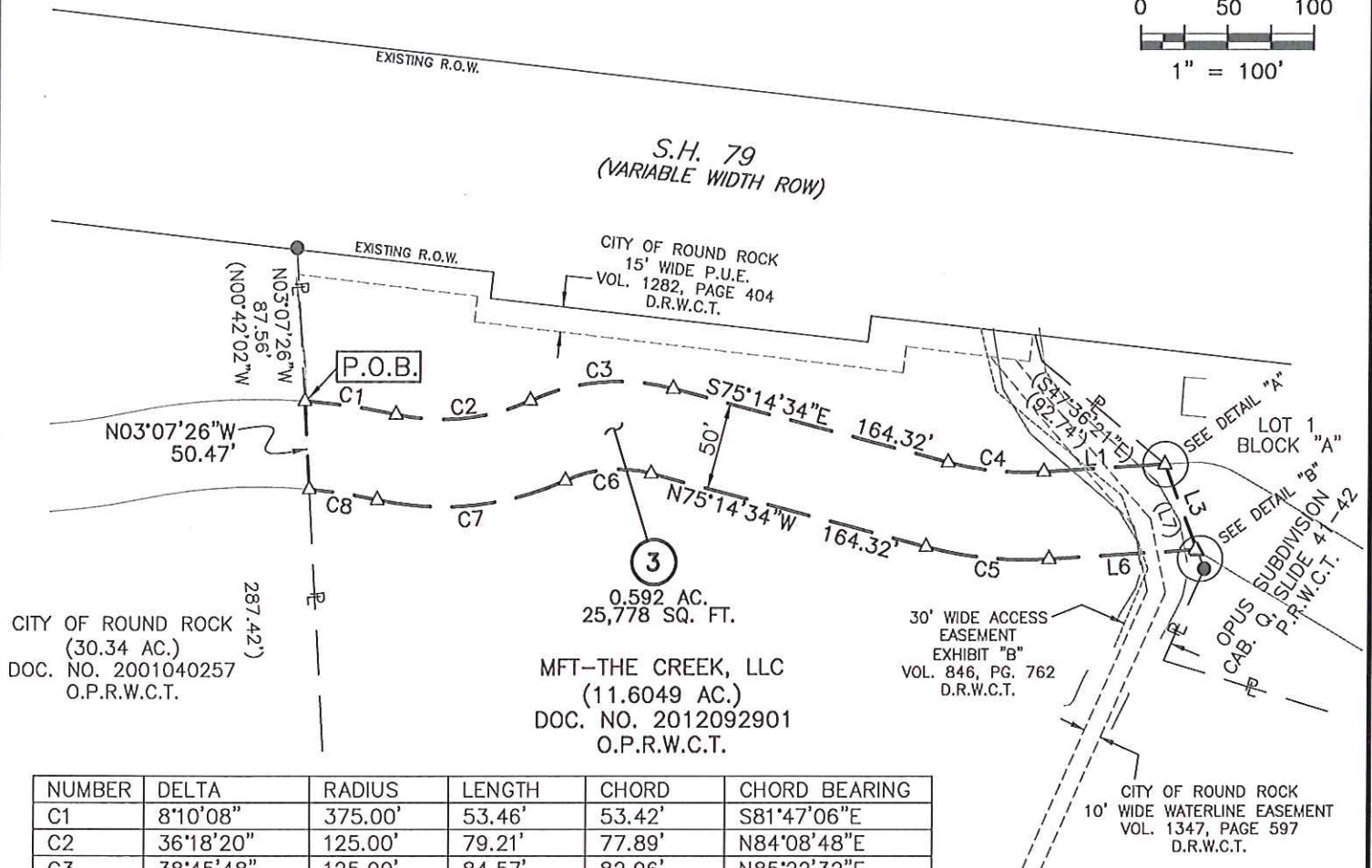
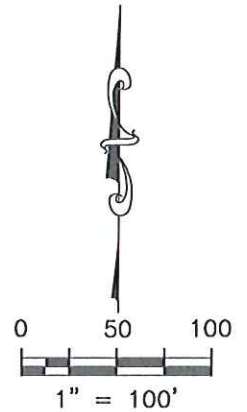




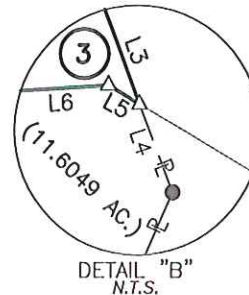
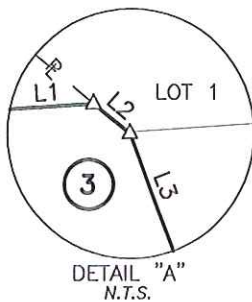
# EXHIBIT A PLAT TO ACCOMPANY DESCRIPTION

NO.	BEARING	DISTANCE
L1	N86°19'32"E	69.65'
L2	S50°24'47"E	0.25'
L3	S20°47'38"E	52.93'
L4	S20°47'38"E	10.91'
L5	N59°23'32"W	1.35'
L6	S86°19'32"W	84.29'
(L7)	(S18°08'22"E)	(63.86')

*P.A. HOLDER SURVEY  
ABSTRACT NO. 297*



NUMBER	DELTA	RADIUS	LENGTH	CHORD	CHORD BEARING
C1	8°10'08"	375.00'	53.46'	53.42'	S81°47'06"E
C2	36°18'20"	125.00'	79.21'	77.89'	N84°08'48"E
C3	38°45'48"	125.00'	84.57'	82.96'	N85°22'32"E
C4	18°25'55"	175.00'	56.30'	56.05'	S84°27'31"E
C5	18°25'55"	225.00'	72.38'	72.07'	N84°27'31"W
C6	38°45'48"	75.00'	50.74'	49.78'	S85°22'32"W
C7	36°18'20"	175.00'	110.89'	109.04'	S84°08'48"W
C8	7°02'43"	325.00'	39.96'	39.94'	N81°13'24"W



**INLAND GEODETICS**  
PROFESSIONAL LAND SURVEYORS  
1504 CHISHOLM TRAIL RD. STE. 103  
ROUND ROCK, TX. 78681  
PH. (512) 238-1200, FAX (512) 238-1251  
FIRM REGISTRATION NO. 100591-00

**PARCEL 3  
EASEMENT  
0.592 ACRES  
25,778 SQUARE FEET**

## PLAT TO ACCOMPANY DESCRIPTION

## LEGEND

⊙	IRON ROD WITH CAP FOUND	O.P.R.W.C.T.	OFFICIAL PUBLIC RECORDS WILLIAMSON COUNTY, TEXAS
●	1/2" IRON ROD FOUND UNLESS NOTED	P.U.E.	PUBLIC UTILITY EASEMENT
△	CALCULATED POINT	P.O.B.	POINT OF BEGINNING
ℙ	PROPERTY LINE	( )	RECORD INFORMATION
D.R.W.C.T.	DEED RECORDS WILLIAMSON COUNTY, TEXAS		
P.R.W.C.T.	PLAT RECORDS WILLIAMSON COUNTY, TEXAS		
O.R.W.C.T.	OFFICIAL RECORDS WILLIAMSON COUNTY, TEXAS		

## NOTES:

1) BEARINGS SHOWN HEREON ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, CENTRAL ZONE. DISTANCES ARE SURFACE DISTANCES.

2) THIS SURVEY WAS PERFORMED WITHOUT BENEFIT OF A TITLE ABSTRACT. THERE MAY BE OTHER INSTRUMENTS OF RECORD THAT AFFECT THIS TRACT NOT DEPICTED HEREON.

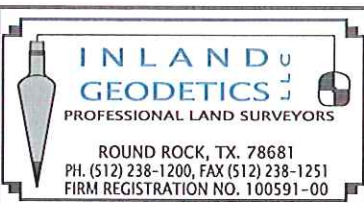
I HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECT AND THAT THE PROPERTY SHOWN HEREON WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY DIRECT SUPERVISION.

*Lawrence M. Russo* 02/05/2016  
 LAWRENCE M. RUSSO DATE

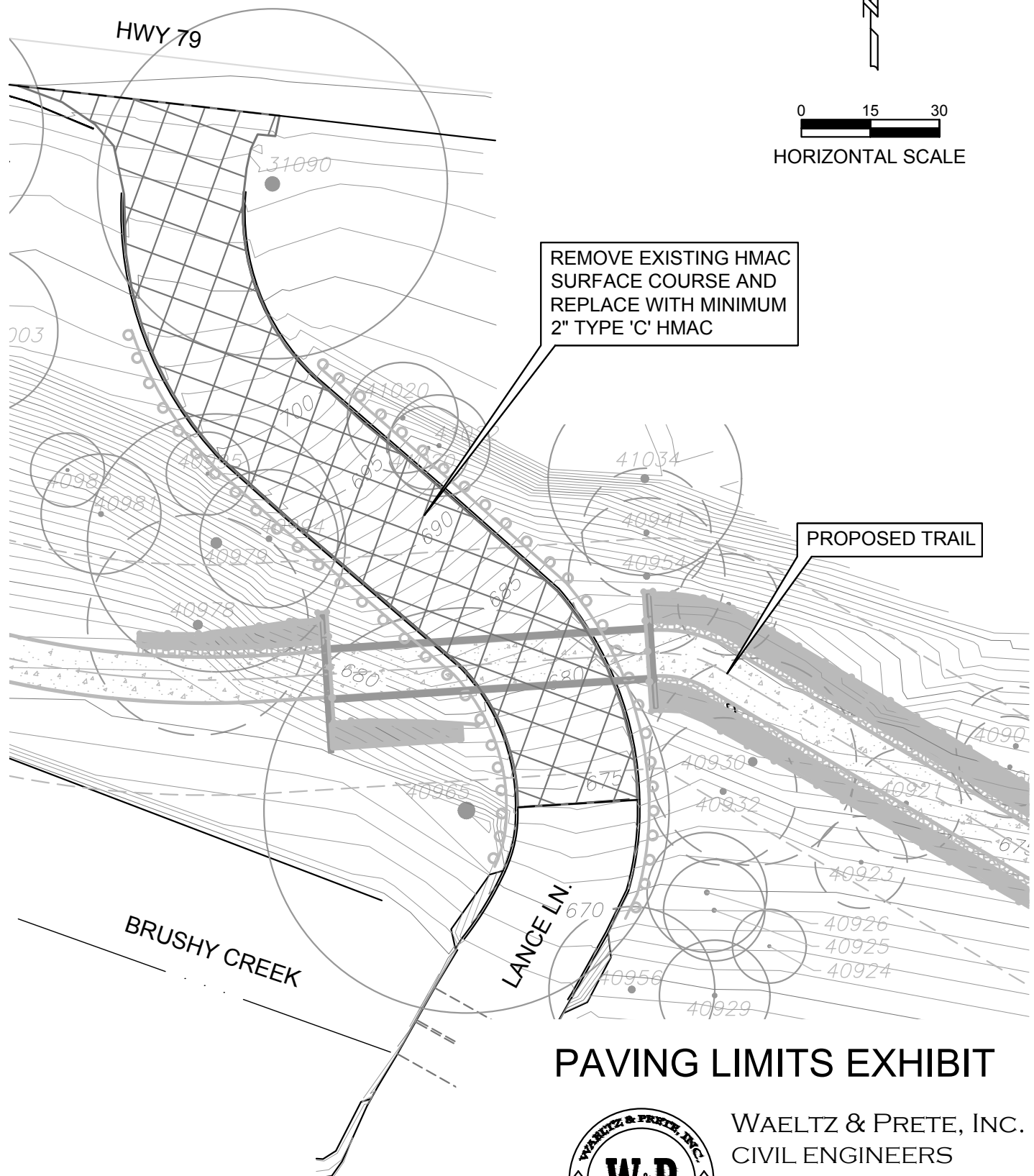
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5050  
 INLAND GEODETICS, LLC  
 FIRM REGISTRATION NO. 100591-00  
 1504 CHISHOLM TRAIL ROAD, SUITE 103  
 ROUND ROCK, TEXAS 78681



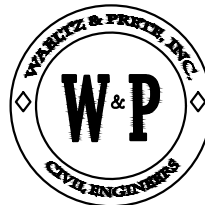
PARCEL 3  
 EASEMENT  
 0.592 ACRES  
 25,778 SQUARE FEET



# EXHIBIT "B"



ALL INFORMATION FURNISHED REGARDING THIS PROPERTY IS FROM SOURCES DEEMED RELIABLE. HOWEVER, WAELTZ & PRETE, INC. HAS NOT INDEPENDENTLY VERIFIED ANY OF THESE SOURCES. NO WARRANTY OR GUARANTEE IS MADE BY WAELTZ & PRETE, INC. AS TO THE ACCURACY. THE INFORMATION SHOWN IS CONCEPTUAL IN NATURE AND DOES NOT REPRESENT ANY REGULATORY APPROVAL.



WAELTZ & PRETE, INC.  
CIVIL ENGINEERS

3000 JOE DIMAGGIO BLVD. #72  
ROUND ROCK, TX. 78665  
PH (512) 505-8953  
FIRM TX. REG. #F-10308

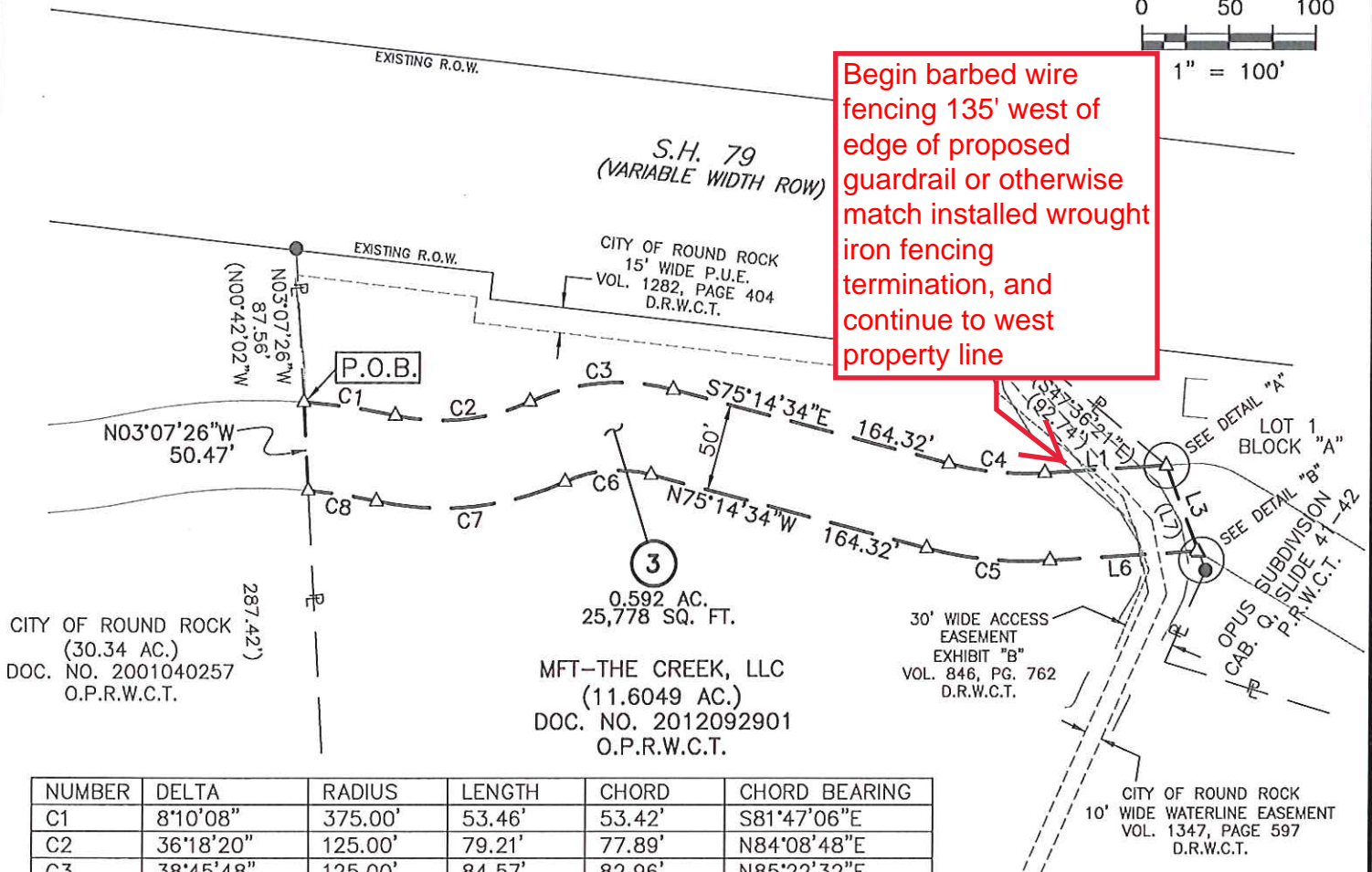
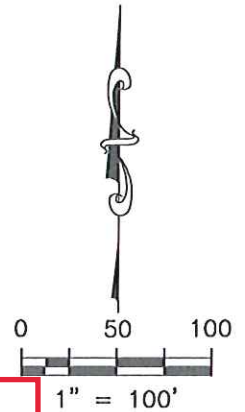


# EXHIBIT C (Page 1 of 2)

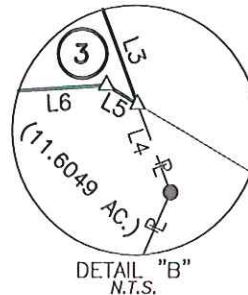
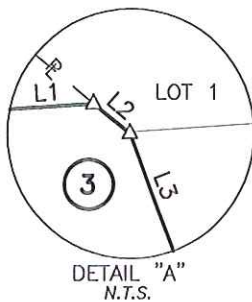
## PLAT TO ACCOMPANY DESCRIPTION

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(L7)	(S18°08'22"E)	(63.86')

*P.A. HOLDER SURVEY  
ABSTRACT NO. 297*



NUMBER	DELTA	RADIUS	LENGTH	CHORD	CHORD BEARING
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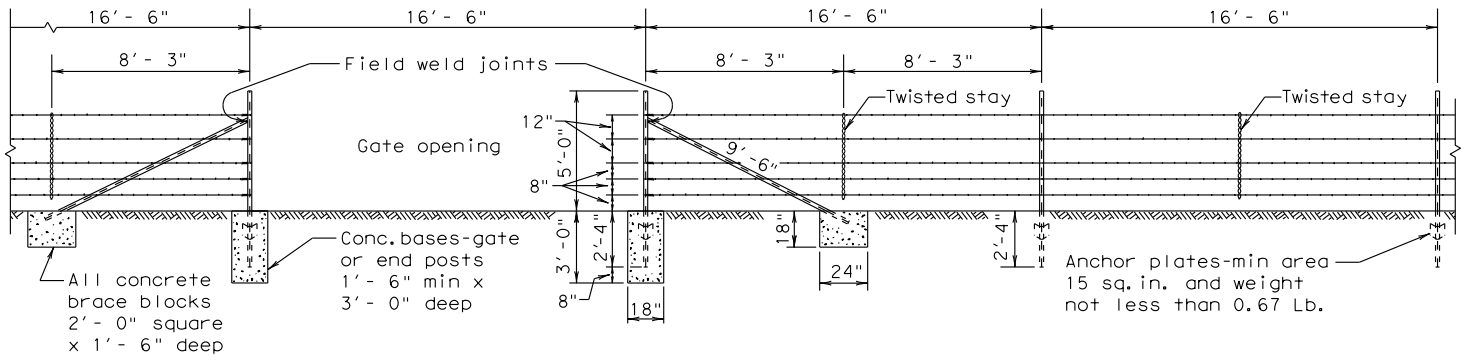


**INLAND GEODETICS**  
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1504 CHISHOLM TRAIL RD. STE. 103  
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PH. (512) 238-1200, FAX (512) 238-1251  
FIRM REGISTRATION NO. 100591-00

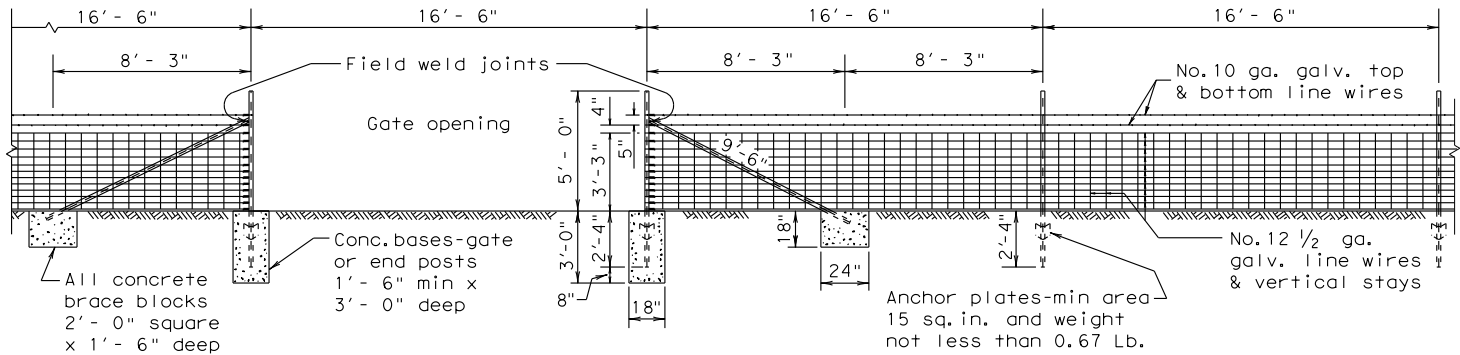
**PARCEL 3  
EASEMENT  
0.592 ACRES  
25,778 SQUARE FEET**

DISCLAIMER: The use of this standard is governed by the "Texas Engineering Practice Act". No warranty of any kind is made by TxDOT for any purpose whatsoever. TxDOT assumes no responsibility for the conversion of this standard to other formats or for incorrect results or damages resulting from its use.

DATE:  
FILE:



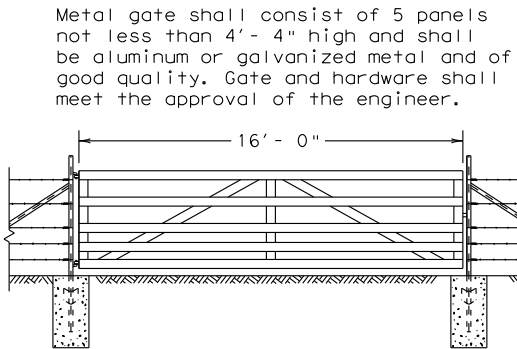
**SECTION GALVANIZED BARBED WIRE FENCE WITH METAL POSTS**  
BRACING DETAIL USED AT ENDS AND GATES  
**TYPE "C" FENCE**  
(See General Note 8)



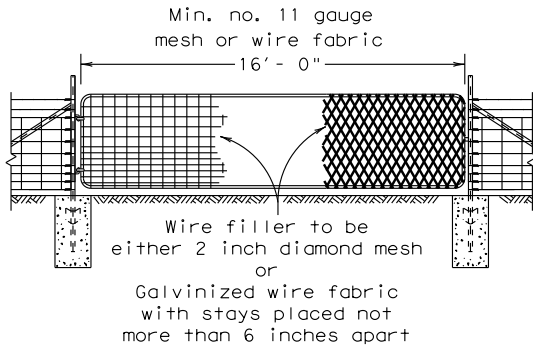
**SECTION GALVANIZED WOVEN WIRE FENCE WITH METAL POSTS**  
BRACING DETAIL USED AT ENDS AND GATES  
**TYPE "D" FENCE**  
(See General Note 8)

**GENERAL NOTES**

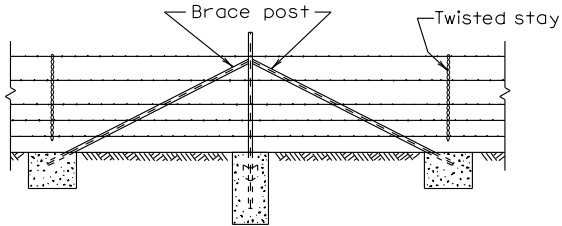
- Any high point which interferes with the placing of wire mesh shall be excavated to provide a 2 inch clearance.
  - Latches for Type 1 and Type 2 gates shall be good commercial quality and design latch of the spring, fork or chain type. All latches shall be suitable to the gate and shall be approved by the Engineer.
  - Hinges for Type 2 gates shall be a commercial design approved by the Engineer suitable for post and gate.
  - Concrete shall be of the design and consistency approved by the Engineer and shall contain not less than 4 sacks of cement per cubic yard. Concrete footings are to be crowned at the top to shed water.
  - Steel anchor plates shall be of a design and thickness sufficient to prevent turning of the post in firm soil.
  - Steel pipe end posts, corner and pull posts shall be a minimum of 2" Std. pipe (2.375" O.D., 0.154" wall thickness) with a 1/4" Std. pipe brace (1.660" O.D., 0.140" wall thickness), with a 2"x2"x1/4" angle, or other as approved by the Engineer. Fasteners for securing barbed wire or woven wire fence to metal posts shall be a minimum of 11 gauge galvanized steel wire. Tubular posts shall be fitted with water malleable iron caps.
  - If Steel pipe is used for posts and braces, use standard pipe in accordance with ASTM A 53, Class B or A 501. For T-Posts use steel that meets ASTM A 702. Metal line posts shall be not less than 6'-6" in length and shall weigh not less than (1.33 lbs./lin.ft.). These items shall be in accordance with Item 552, "Wire Fence."
  - Barbed Wire shall be in accordance with ASTM A 121, Class 1 Design designation 12-2-4-1 4R or 12-2-5-1 4R, or as approved by the Engineer.
- Woven Wire Fence (Type D) shall be in accordance with ASTM A 116, Class 1 No. 12-1/2 Grade 60 (See Table 1 ASTM A 116) to the height and design shown on the plans, or as approved by the Engineer.
- The location of gates and corner posts will be as indicated elsewhere in these plans.



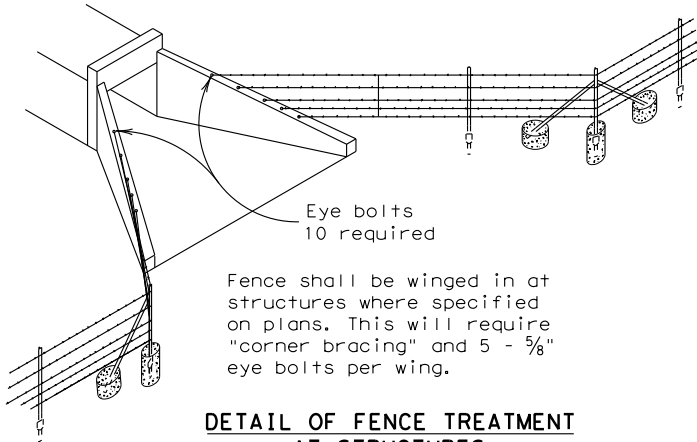
**DETAIL TYPE 1 GATE**



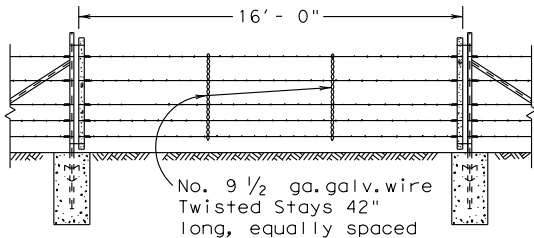
**DETAIL TYPE 2 GATE**



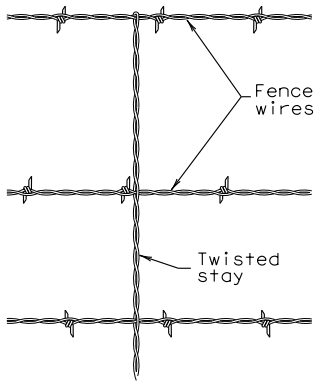
**CORNER OR PULL POST ASSEMBLY**



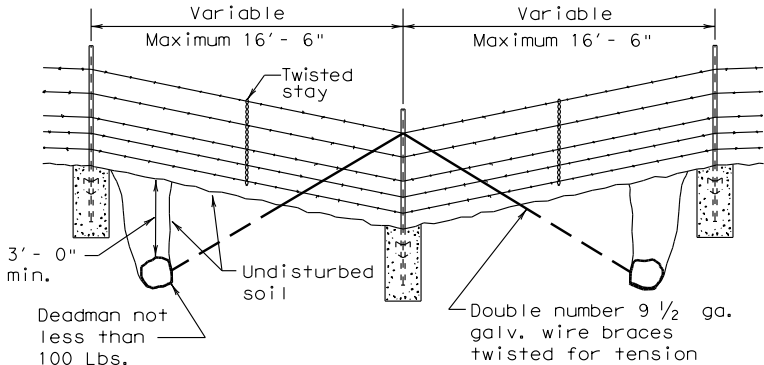
**DETAIL OF FENCE TREATMENT AT STRUCTURES**



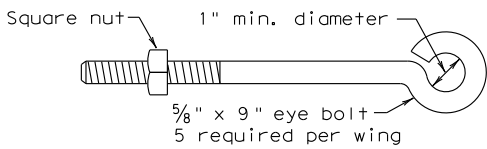
**DETAIL TYPE 3 GATE**




**DETAIL OF STAY (Barbed Wire Fence)**



**DETAIL OF FENCE SAG**



**DETAIL OF EYE BOLT**

 <i>Texas Department of Transportation</i>				<i>Design Division Standard</i>	
<b>BARBED WIRE AND WOVEN WIRE FENCE (STEEL POSTS)</b>					
<b>WF (2) - 10</b>					
FILE: wf210.dgn		DN: TxDOT	CK: AM	DW: VP	CK:
© TxDOT 1996		CONT	SECT	JOB	HIGHWAY
REVISIONS		DIST		COUNTY	SHEET NO.

# EXHIBIT "D"

## TRAIL EASEMENT

THE STATE OF TEXAS

§

§ **KNOW ALL BY THESE PRESENTS:**

COUNTY OF WILLIAMSON

§

That MFT-THE CREEK, LLC, and its successors and assigns, ("Grantor"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the CITY OF ROUND ROCK, TEXAS, a home-rule municipality situated in the County of Williamson and State of Texas ("Grantee"), the receipt and sufficiency of which is hereby acknowledged, does hereby GRANT, SELL and CONVEY unto Grantee certain rights and interests in the nature of a public trail easement, for the benefit of the general public, in the form of recreational trails over and across the below-described property, for use by the public for the purpose of walking, running, hiking, bicycling, or traversing over, upon and across, and otherwise using such trails; together with the express right to construct such recreational trails and associated facilities and maintain the easement area by clearing and removing vegetation, silt and debris therefrom, in, upon, over, under, above and across the below-described property:

All of that certain 0.592 acre (25,778 Sq. Ft.) tract of land in the P.A. Holder Survey, Abstract No. 297, Williamson County, Texas; being more fully described by metes and bounds in Exhibit "A", attached hereto and incorporated herein (**Parcel 3**) (the "Easement")

The perpetual easement, rights-of-way, rights and privileges herein granted shall be used for the purposes of location, placement, relocation, construction, operation, enlargement, maintenance, alteration, repair, rebuilding, removal and patrol of public recreational trail facilities, public trail materials and related appurtenances, equipment and signage.

This conveyance is made and accepted subject to any and all conditions and restrictions, if any, relating to the hereinabove described property to the extent, and only to the extent, that the same may still be in force and effect and shown of record in the office of the County Clerk of Williamson County, Texas.

Except as otherwise noted, the easements, rights and privileges herein granted shall be perpetual, provided however that said easements, rights, and privileges shall cease and revert to Grantor in the event the facilities are abandoned, or shall cease to be used, for a period of five (5) consecutive years.



The easements, rights and privileges granted herein are exclusive, and Grantor covenants that they will not convey any future easement or conflicting rights within the premises covered by this grant, unless otherwise specified herein, without the express written consent of Grantee, which consent shall not be unreasonably withheld. Grantee shall have the right to review any proposed easement or conflicting use of the easement to determine the effect, if any, on the facilities contemplated herein. Prior to granting its consent for other easements, Grantee may require reasonable safeguards to protect the integrity of the facilities thereon. As required by this paragraph, express written consent of Grantee shall be obtained by Grantor in the following manner: advance written notice must be given by certified mail to the (1) City of Round Rock City Manager at 221 East Main Street, Round Rock, Texas 78664, and (2) City Engineer at 2008 Enterprise Drive, Round Rock, Texas 78664. Following receipt of such notice, the City of Round Rock shall have ten (10) days in which to respond in writing granting consent, conditioning consent upon reasonable safeguards, or denying consent.

Grantor reserves the right to grant additional easements for utility use across the Easement, but not longitudinally over the Easement, provided (1) crossings are made at not less than approximate 45° angle to the trail facilities; (2) sufficient clearance between facilities is maintained; and (3) such construction does not interfere with the access to, or with the operation, maintenance and safety of the Grantee's trail facilities, as reasonably determined by Grantee. If approval by City of Round Rock is required, then such approval shall not be unreasonably withheld.

Grantor further grants to Grantee:

- (a) the right to grade the Easement for the full width thereof and to extend the cuts and fills for such grading into and on the land along and outside the easement to such extent as Grantee may find reasonably necessary;
- (b) the right from time to time to trim and to cut down and clear away any and all trees and brush now or hereafter on the Easement and to trim and to cut down and clear away any trees on either side of the Easement which now or hereafter in the opinion of Grantee may be a hazard to any of the facilities, by reason of the danger of falling thereon or root infiltration therein, or which may otherwise interfere with the exercise of Grantee's rights hereunder, provided, however, that all trees which Grantee is hereby authorized to cut and remove, if valuable for timber or firewood, shall continue to be the property of Grantor, but all tops, lops, brush and refuse wood shall be removed by Grantee;
- (c) the right to mark the location of the Easement by suitable markers set in the ground; provided that such markers shall be placed in fences or other locations which will not interfere with any reasonable use Grantor shall make of the Easement;

Grantee hereby covenants and agrees:

- (a) Grantee shall promptly backfill any trench made by it on the Easement and repair any damage it shall do to Grantor's private roads or lanes on the lands;
- (b) To the extent allowed by law, Grantee shall indemnify Grantor against any loss and damage which shall be caused by the exercise of the rights of ingress and egress or by any wrongful or negligent act or omission of Grantee's agents or employees in the course of their employment.

Grantor also retains, reserves, and shall continue to enjoy the surface of such Easement for any and all purposes which do not interfere with and prevent the use by Grantee of the easement. Grantee shall not be responsible or liable for the removal, repair or damage to any property, structure, building, or other use inconsistent with the rights conveyed to Grantee by the easements; provided, however, before constructing any improvements, at least ten (10) days written notice shall be provided to Grantee of the general plans of the improvement to be constructed on the Easement, and Grantor must first obtain the consent and approval from Grantee of the construction and location of any improvements within the easements.

Grantee shall have the right and privilege at any and all times to enter said premises, or any part thereof, for the purpose of constructing and maintaining said facilities, all upon the condition that Grantee will at all times after doing work in connection with the construction or repair of said facilities restore the surface of said premises as nearly as is reasonably possible to the condition in which the same was in before the work was undertaken, considering the uses and purposes of the rights granted herein.

Grantor hereby dedicates the Easement as a trail easement for the purposes stated herein.

TO HAVE AND TO HOLD the rights and interests described unto Grantee and its successors and assigns, forever, and Grantor does hereby itself, and its successors and assigns, and legal representatives, to warrant and forever defend, all and singular, the above-described Easement and rights and interests unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming, or to claim same, or any part thereof, when the claim is by, through, or under Grantor, but not otherwise.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

*[signature pages follow]*

GRANTOR:  
MFT-The Creek, LLC

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ACKNOWLEDGMENT**

THE STATE OF TEXAS §

§

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this the \_\_\_\_ day of the month of \_\_\_\_\_, 2017, by \_\_\_\_\_, known by me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same in the capacity and for the purposes and consideration therein expressed.

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

**After recording please return to:**

Sheets & Crossfield, P.C.  
309 East Main Street  
Round Rock, Texas 78664

**Consent and Subordination by Lienholder**

Federal National Mortgage Association a/k/a Fannie Mae, as the holder of liens and encumbrances against the Property which is subject to the foregoing easement (the "Easement"), such lien evidenced by Deed of Trust recorded in Document No. 2012092901 of the Official Public Records of Williamson County, Texas, and Assignment of Security Instrument recorded in Document No. 2012092904 of the Official Records of Williamson County, Texas, hereby consents to the above grant of the Easement, including the terms and conditions of the grant and hereby subordinates its liens and encumbrances to the rights and interests of the Grantee under the Easement, so that a foreclosure of the liens and encumbrances will not extinguish the rights and interests of said Grantee.

Federal National Mortgage Association  
a/k/a Fannie Mae

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, the \_\_\_\_\_ of the Federal National Mortgage Association a/k/a Fannie Mae, in the capacity and for the purposes and consideration recited herein.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



# City of Round Rock

## Agenda Item Summary

**Agenda Number: G.7**

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**Title:** Consider a resolution authorizing the Mayor to execute Supplemental Agreement No.1 with Halff Associates, Inc. for the Heritage Trail West Project.

**Type:** Resolution

**Governing Body:** City Council

**Agenda Date:** 6/22/2017

**Dept Director:** Rick Atkins, Parks and Recreation Director

**Cost:** \$94,800.00

**Indexes:** 2014 General Obligation Bonds

**Attachments:** Resolution, Exhibit A, Form 1295

**Department:** Parks and Recreation Department

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### Text of Legislative File 2017-4537

This supplemental agreement is for engineering services associated with floodplain permitting. As the floodplain model was completed, it was determined that a CLOMR/LOMR would be since no-adverse impact could not be shown. Elements of the design, such as pedestrian underpasses under the Union Pacific railroad, as well as additional bridge columns have triggered the need for the CLOMR/LOMR at Heritage Trail West. In an effort to save the City money, flood models were run for the other portions of trail along Brushy Creek (Heritage Trail East and Brushy Creek Trail Georgetown to A.W. Grimes). It was determined that elements of design on those sections of trail would also trigger the need for the CLOMR/LOMR. As a result, the engineering required for the CLOMR/LOMR on those projects has also been included in this supplemental agreement. By rolling all three CLOMR/LOMR into one, it will save the City over \$20,000. Additional items included in this supplemental agreement include structural engineering for an area of washout at the existing pedestrian bridge which has progressively gotten worse since the start of project. Finally, through project plan review, the stormwater division was able to suggest an alternative method to drain water which required additional surveying. The alternative method will ultimately save the City significantly during the construction phase of the project.

This project includes a 10' wide trail detailing the history of Round Rock as a timeline. The project spans from Bathing Beach at Chisholm Trail Road to Mays St and include improvements at Bathing Beach Park, Chisholm Trail Crossing Park, and Memorial Park. The programmatic elements of the project will include historical elements, educational

elements, arts & cultural elements, general park elements and elements that encourage community events and development revitalization along the corridor.

**Cost: \$94,800.00**

**Source of Funds: 2014 General Obligation Bonds**

**RESOLUTION NO. R-2017-4537**

**WHEREAS**, the City of Round Rock has previously entered into an Agreement for Professional Consulting Services for Design Services (“Agreement”) with Halff Associates, Inc.; and

**WHEREAS**, Halff Associates, Inc. has submitted Supplemental Agreement No. 1 to amend the Agreement to modify the Scope of Services, the Fee, and the Term of services; and

**WHEREAS**, the City Council desires to enter into said Supplemental Agreement No. 1 with Halff Associates, Inc., Now Therefore

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,**

That the Mayor is hereby authorized and directed to execute on behalf of the City Supplemental Agreement No. 1 to “City of Round Rock Agreement for Professional Consulting Services for Design Services with Halff Associates, Inc.,” a copy of same being attached hereto as Exhibit “A” and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

**RESOLVED** this 22nd day of June, 2017.

---

CRAIG MORGAN, Mayor  
City of Round Rock, Texas

ATTEST:

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SARA L. WHITE, City Clerk

**EXHIBIT**

**"A"**

**SUPPLEMENTAL AGREEMENT NO. 1  
TO "CITY OF ROUND ROCK AGREEMENT  
FOR PROFESSIONAL CONSULTING SERVICES FOR  
DESIGN SERVICES  
WITH  
HALFF ASSOCIATES, INC."**

**CITY OF ROUND ROCK**

§

**STATE OF TEXAS**

§

**KNOW ALL BY THESE PRESENTS:**

§

**COUNTY OF TRAVIS**

§

**COUNTY OF WILLIAMSON**

§

§

THIS SUPPLEMENTAL AGREEMENT NO. 1 to "City of Round Rock Agreement for Professional Consulting Services for Design Services with Halff Associates, Inc.," related to the Heritage Trail West Project, hereinafter called "Supplemental Agreement No. 1," is made by and between the City of Round Rock, Texas, a home-rule municipality, hereinafter called the "City" and Halff Associates, Inc., hereinafter called the "Consultant."

**WHEREAS**, the City and Consultant executed the referenced "City of Round Rock Agreement for Professional Consulting Services for Design Services," hereinafter called the "Agreement," on July 23, 2015; and

**WHEREAS**, the City desires to amend the Scope of Services to add additional services for the Heritage Trail West Project, including design, construction documents, specifications, construction observation, and FEMA permitting for trail and parks along Brushy Creek from Chisholm Trail to Mays Street; and

**WHEREAS**, it is necessary to amend the Scope of Services, the Fee and the Term of services provided in the Agreement;

**NOW THEREFORE**, in consideration of the mutual promises and obligations in the Agreement and this Supplemental Agreement No. 1, the City and Consultant agree that said Agreement is amended and supplemented as follows:

**I.**

Section 1.0 of the Agreement is hereby amended to read as follows:

**1.0 EFFECTIVE DATE, DURATION, AND TERM**

This Agreement shall be effective on the date this Agreement has been signed by each party hereto, and shall remain in full force and effect until it expires by operation of the term



indicated herein, or is terminated or extended as provided herein.

The term of this Agreement shall be until full and satisfactory completion of the work specified herein is achieved in accordance with Section 3.0, which is estimated to be completed no later than December of 2018.

## II.

Section 3.0 of the Agreement is hereby amended to read as follows:

### 3.0 SCOPE OF SERVICES

Consultant shall satisfactorily provide all services described herein and as set forth in Exhibit "B" and the Addendum to Exhibit "B."

Consultant shall perform the Scope of Services in accordance with the Tentative Work Schedule set forth in Exhibit "C" and the Addendum to Exhibit "C."

## III.

Section 5.0 of the Agreement is hereby amended to read as follows:

### 5.0 CONTRACT AMOUNT

**Not-to-Exceed Fee:** In consideration for the professional consulting services to be performed by Consultant, City agrees to pay Consultant an amount not-to-exceed ~~Three Hundred Sixty Five Thousand and No/Dollars (\$365,000.00)~~ Four Hundred Fifty-Nine Thousand Eight Hundred and No/100 Dollars (\$459,800.00), in accordance with Exhibit "D" entitled "Fee Schedule," and the Supplemental Exhibit "D," which document is attached hereto and incorporated herein by reference for all purposes, in payment for services and the Scope of Services deliverables as delineated in Exhibit "B" and the Addendum to Exhibit "B."

## IV.

This Supplemental Agreement No. 1 shall amend the original Agreement only as set forth herein with no other changes in terms or conditions of the original Agreement.

[Signatures appear on the following page.]

**IN WITNESS WHEREOF**, the City and Consultant have executed this Supplemental Agreement No. 1 to be effective as of the last date of due execution by both parties.

**CITY OF ROUND ROCK, TEXAS**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

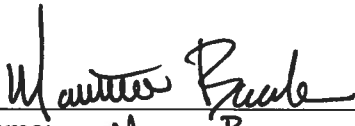
**ATTEST:**

By: \_\_\_\_\_  
Sara L. White, City Clerk

**FOR CITY, APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Stephan L. Sheets, City Attorney

**HALFF ASSOCIATES, INC.**

By:   
Printed Name: Matt Buchen  
Title: DIRECTOR OF PUMPING / TEAM LEAD  
Date Signed: 5/26/17

## ADDENDUM TO EXHIBIT B: SCOPE OF CONSULTANT'S BASIC SERVICES

### **General Scope**

The purpose of the services proposed herein is to provide professional consulting services necessary for the development of the Heritage Trail West project. It is the Consultants intent to work in effective cooperation with the City to achieve an efficient and acceptable implementation of the project.

### **Program**

In addition to the original scope, Consultant shall provide services as later described for, but not limited to the following general program elements.

- Conditional Letter of Map Revision (CLOMR) and Letter of Map Revision (LOMR) for sections of Brushy Creek later defined.
- Structural support to the eroded bank along the southern bank of Brushy Creek, at the existing pedestrian bridge under IH35.
- Domestic water to service a family restroom located next to the Cantina building along Chisholm Trail Rd.
- Adjust the WPAP to incorporate the Stagecoach Inn and restroom building at the Cantina site.

### **Basic Services**

In addition to the original scope of basic services and above stated general scope and program previously defined, The Consultant will provide: Plans, specifications and OPCC to be included with the Heritage Trail West project.

### **Task 3: Construction Documents**

The Consultant will develop working/construction drawings and technical specifications necessary to construct the work. Construction drawings may include, but not be limited to the following information: structural walls, utilities, grading, drainage, dimension control/layout, erosion/sedimentation/tree protection, site construction details, incorporating Stagecoach Inn building footprint, water line for new restroom building, and electrical details. Consultant shall compliment drawings with Contract Documents and Technical Specifications including quantity take-offs, which describe materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the work. Consultant shall coordinate any utility needs and adjustment with the City and utility service provider(s).

- Prepare ninety percent (90%) construction drawings, specifications/project manual and OPCC including appropriate escalation factors and contingencies.
- Review 90% construction drawings, specifications/project manual and OPCC with City.
- Prepare one hundred percent (100%) construction drawings, specifications, reports, permit applications and other documents required for permitting and construction; update OPCC including appropriate escalation factors and contingencies.

\*Deliverable quantities to be determined by City, billed as reimbursable expenses.

### **Opinions of Probable Construction Costs (OPCC)**

*Opinions of probable construction costs provided by the Consultant are based on the Consultant's familiarity with the construction industry and are provided only to assist the City's budget planning; such opinions shall not be construed to provide a guarantee or warranty of the actual construction costs at the time construction bids are solicited or construction contracts negotiated. Unless expressly agreed in writing and signed by the parties, no fixed limit of construction costs is established as a condition of this Agreement by the furnishing of opinions of probable construction costs.*

**Task 4: Project Design Survey**

The Consultant shall include the following services:

- Conduct horizontal and vertical control survey on State Plane Grid and North American Vertical Datum of 1988, NAVD88
- A topographic survey with one-foot contours of the eroded bank under the IH-35 pedestrian bridge and survey ordinary high water mark for CLOMR study.
- Amend existing survey provided by City.

**Task 6: Bidding Assistance**

The Consultant shall provide services as defined in Prime Agreement Exhibit B for added scope items.

**Task 7: Construction Phase Services**

The Consultant shall provide construction observation services as defined in Prime Agreement Exhibit B for added scope items.

**Task 8: Environmental Services**

The Consultant's Environmental Scientist shall work with the floodplain engineers and surveyors to identify the ordinary high water mark along Brushy Creek to aid in the CLOMR study.

**Task A.1: FEMA Conditional/Letter of Map Revision**

The following is Halff Associates, Inc. (Halff) proposed scope and fee to prepare and submit a detailed hydraulic analysis and floodplain and floodway delineation of Brushy Creek in Williamson County. The section of creek being proposed to be improved with trail and park improvements is located approximately 620 feet upstream of Chisholm Trail extending downstream to A. W. Grimes and is approximately 2.4 stream miles in length. The study reach is located on FEMA FIRM Panel 48491C0490E and 48491C0495E.

This proposal is separated into two tasks which will consists of a Conditional Letter of Map Revision (CLOMR) and Letter of Map Revision (LOMR). Halff understands the Heritage Trail project is separated into three phases. Halff is currently preparing construction documents for Phase 1 extending from upstream of Chisholm Trail to Mays Street. Phase 2 extends from Mays Street to Georgetown Street and is being prepared by SRA. Finally, Wetz and Prete is working on Phase 3 extending from Georgetown Street to A. W. Grimes Blvd. Halff understands the City will have design plans completed for Phase 1 and 3 to prepare a C/LOMR submittal this year. A C/LOMR submittal for Phase 2 will be submitted at a later date when construction plans are available.

This proposal assumes that Halff will obtain all required information including 100% signed and sealed construction documents and environmental assessments for the CLOMR submittals and as-built plans for the LOMR submittal. The proposal also assumes an Environmental Assessment has been conducted for all Phases of the Heritage Trail Project and will be provided to Halff as required as part of a FEMA CLOMR submittal. If an Environmental Assessment is needed for Phase 3, Halff will request additional services at that time. Halff also understands that Upper Brushy Creek is currently under FEMA review and preliminary FEMA models will be used as baseline models in the development of the post-project hydraulic models.

**Task A1: CLOMR Preparation and Submittal – Phase 1 and 3**

The purpose of this task is to prepare supporting documentation in a FEMA compliant format necessary to request a Conditional Letter of Map Revision (CLOMR) for Phase 1 and 3 for a length of approximately 1.8 stream miles of Brushy Creek. This scope of work includes one meeting with Wetz and Prete to discuss the Phase 3 results.

- A. Conduct a site visit to fully understand the project scope of the proposed project, obtain site photos, and to gather hydraulic data parameters such as channel and overbank roughness.
- B. Obtain best available data including preliminary FEMA hydraulic models and associated GIS data, existing survey, LiDAR terrain and contour data, soils data, Environmental Assessment of the project area, final Heritage Trail design plans

signed and sealed by a licensed engineer.

- C. Develop FEMA models including Duplicate Effective, Corrected Effective, Pre-Project, and Post-Project hydraulic models. Development of these models will be based on preliminary FEMA models for the Upper Brushy Creek watershed study recently completed. Preliminary FEMA discharges (10%, 2%, 1%, and 0.2%) annual chance floodplains will be utilized and no hydrologic models will be developed for this submittal.
- D. Prepare a CLOMR submittal to include required items including a narrative of CLOMR request detailing study parameters of the proposed project, an exhibit of the Annotated FIRM showing the proposed floodplain and floodway modifications, FEMA compliant flood profiles showing the 10%, 2%, 1%, and 0.2% annual chance floodplains, Flood Insurance Study (FIS) tables, prepare FEMA MT-2 CLOMR forms, and preparation of written notification of impacted properties if required by FEMA.
- E. Coordination with City Floodplain Administrator for review and city approval. CLOMR submittal to FEMA for review and coordination of administrative review and technical review. The scope assumes one meeting with the City and two comment iterations with FEMA.

\* FEMA CLOMR review fee of approximately \$6,500 will be paid for by the client.

#### **Task A2: CLOMR Preparation and Submittal – Phase 2**

The purpose of this task is to prepare supporting documentation in a FEMA compliant format necessary to request a Conditional Letter of Map Revision (CLOMR) for Phase 2 for a length of approximately 0.6 stream miles of Brushy Creek. This scope of work includes one meeting with SRA to discuss the Phase 2 results.

- A. Conduct a site visit to fully understand the project scope of the proposed project, obtain site photos, and to gather hydraulic data parameters such as channel and overbank roughness.
- B. Obtain best available data including preliminary FEMA hydraulic models and associated GIS data, existing survey, LiDAR terrain and contour data, soils data, Environmental Assessment of the project area, final Heritage Trail design plans signed and sealed by a licensed engineer.
- C. Develop FEMA models including Duplicate Effective, Corrected Effective, Pre-Project, and Post-Project hydraulic models. Development of these models will be based on preliminary FEMA models for the Upper Brushy Creek watershed study recently completed. Preliminary FEMA discharges (10%, 2%, 1%, and 0.2%) annual chance floodplains will be utilized and no hydrologic models will be developed for this submittal. Halff will ensure proper water surface elevation tie-ins of Phase 2 to Phase 1 upstream and Phase 3 downstream study limits.
- D. Prepare a CLOMR submittal to include required items including a narrative of CLOMR request detailing study parameters of the proposed project, an exhibit of the Annotated FIRM showing the proposed floodplain and floodway modifications, FEMA compliant flood profiles showing the 10%, 2%, 1%, and 0.2% annual chance floodplains, Flood Insurance Study (FIS) tables, prepare FEMA MT-2 CLOMR forms, and preparation of written notification of impacted properties if required by FEMA.
- E. Coordination with City Floodplain Administrator for review and city approval. CLOMR submittal to FEMA for review and coordination of administrative review and technical review. The scope assumes one meeting with the City and two comment iterations with FEMA.

\* FEMA CLOMR review fee of approximately \$6,500 will be paid for by the client.

#### **Task A3: LOMR Preparation and Submittal**

The purpose of this task is to prepare supporting documentation in a FEMA compliant format necessary to request a Letter of Map Revision (LOMR) for Phase 1, 2, and 3 for approximately 2.4 stream miles of Brushy Creek.

- A. Conduct a site visit to ensure as-builts match the field conditions, obtain site photos, and to gather hydraulic data parameters such as channel and overbank roughness.
- B. Obtain best available data including CLOMR hydraulic models and associated GIS

data submitted for the CLOMR submittal, as-built survey, LiDAR terrain and contour data, soils data, as-built Heritage Trail design plans signed and sealed by a licensed engineer.

- C. Develop and update the CLOMR models submitted to FEMA including Duplicate Effective, Corrected Effective, Pre-Project, and Post-Project hydraulic models. Development of these models will be based on preliminary FEMA for the Upper Brushy Creek watershed study recently completed. Preliminary FEMA discharges (10%, 2%, 1%, and 0.2%) annual chance floodplains will be used and no hydrologic models will be developed for this submittal.
- D. Prepare a LOMR submittal to include required items including a narrative of CLOMR request detailing study parameters of the proposed project, an exhibit of the Annotated FIRM showing the proposed floodplain and floodway modifications, FEMA compliant flood profiles showing the 10%, 2%, 1%, and 0.2% annual chance floodplains, Flood Insurance Study (FIS) tables, prepare FEMA MT-2 LOMR forms, and preparation of written notification of impacted properties if required by FEMA.
- E. Coordination with City Floodplain Administrator for review and city approval. LOMR submittal to FEMA for review and coordination of administrative review and technical review. The scope assumes one meeting with the City and two comment iterations with FEMA.

\* FEMA LOMR review fee of approximately \$9,000 will be paid for by the client.

#### **Task A4: Subsurface Utility Investigation**

Halff will perform SUE in accordance with ASCE CI/ASCE 38-02 "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data." This standard defines the following Quality Levels:

- A. Quality Level A: Precise horizontal and vertical location of utilities obtained by the actual exposure (or verification of previously exposed and surveyed utilities) and subsequent measurement of subsurface utilities, usually at a specific point. Minimally intrusive excavation equipment is typically used to minimize the potential for utility damage. A precise horizontal and vertical location, as well as other utility attributes, is shown on plan documents.
- B.
- C. Quality Level B: Information obtained through the application of appropriate surface geophysical methods to determine the existence and approximate horizontal position of subsurface utilities. Quality Level B data should be reproducible by surface geophysics at any point of their depiction. This information is surveyed to applicable tolerances defined by the project and reduced onto plan documents.
- D.
- E. Quality Level C: Information obtained by surveying and plotting visible above-ground utility features and by using professional judgment in correlating this information to Quality Level D information.
- F.
- G. Quality Level D: Information derived from existing records or oral recollections.

Halff's services will be performed in a manner consistent with that degree of skill and care ordinarily exercised by members of the same profession currently practicing under similar circumstances.

#### **Locating (Vacuum Excavation) – Level A**

Up to one (1) test hole will be performed on the 30" storm sewer at a location specified by the City and/or Halff's Design Engineer. Halff will dig an 8" x 8" test hole, record the depth, backfill and compact the hole, and restore the surface to its original condition. An iron rod with cap or "x-cut" will be set to mark the location of the test hole.

Halff will make a good faith effort to locate all utilities, but shall be compensated for work performed even if the utility is not located.

#### **SUE Deliverables / CADD**

A Test Hole Data Form will be completed and submitted to the City for each hole performed indicating depth, size, and material of utility. Electronic files will also be provided in Microstation format along with PDFs.

#### ADDENDUM TO EXHIBIT C: SCHEDULE

Refer to revised schedule provided on January 20<sup>th</sup>, 2017

#### SUPPLEMENTAL EXHIBIT D: COMPENSATION FOR SERVICES

The Consultant's "Scope of Services" and associated Base Fees for providing professional services for this project shall be according to the terms in this Agreement and outlined as follows:

<b>Basic Services</b>	<b>Initial Agreement</b>	<b>Supplemental Agreement</b>	<b>Total Fee</b>
Task 1: Project Management   Coordination	\$ 10,550	0	\$ 10,550
Task 2: Design Development	\$ 39,400	0	\$ 39,400
Task 3: Construction Documents	\$ 193,550	\$ 14,200	\$ 207,750
Task 4: Project Design Survey	\$ 2,000	\$ 4,100	\$ 6,100
Task 5: Regulatory Entitlement   Permitting	\$33,350	0	0
Task 5.1: WPAP (TCEQ)	\$ 1,100	0	\$ 1,100
Task 5.2: TxDot	\$ 5,800	0	\$ 5,800
Task 5.3: TAS (TDLR – Accessibility Compliance)	\$ 5,800	0	\$ 5,800
Task 5.4: Bldg. & Site Permits (DSO Services)	\$ 5,800	0	\$ 5,800
Task 5.5: Union Pacific Railroad	\$ 4,800	0	\$ 4,800
Task 5.6: Texas Historical Commission & RRHPC	\$ 1,800	0	\$ 1,800
Task 6: Bidding Assistance	\$ 20,150	\$ 500	\$ 20,650
Task 7: Construction Phase Services	\$ 60,850	\$ 2,600	\$ 63,450
Task 8: Environmental Services	\$ 2,650	\$ 1,100	\$ 3,750
Task 12: Reimbursable Expenses	\$ 2,500	0	\$ 2,500
Task A.1: CLOMR 1 and 3 Preparation and Submittal	0	\$30,900	\$ 30,900
Task A.2: CLOMR 2 Preparation and Submittal	0	\$ 17,100	\$ 17,100
Task A.3: LOMR Preparation and Submittal	0	\$22,800	\$22,800
Task A.4: Subsurface Utility Evaluation	0	\$ 1,500	\$ 1,500
<b>Total Fee</b>	<b>\$365,000</b>	<b>\$94,800</b>	<b>\$459,800</b>

Note: If additional services are required beyond the scope enumerated, then additional compensation will be requested. City shall be notified and authorize additional services and compensation beyond the total fee prior to Consultant performing requested services.



**CERTIFICATE OF INTERESTED PARTIES****FORM 1295**

1 of 2

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY  
CERTIFICATION OF FILING****1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Half Associates, Inc  
Richardson, TX United States

**Certificate Number:**  
2017-222225

**Date Filed:**  
06/12/2017

**Date Acknowledged:**

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

City of Round Rock

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

000000  
Design of Heritage Trail West park and trail system.

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Bucchin, Matt	Austin, TX United States	X	
	Zapalac, Russell	Austin, TX United States	X	
	Tanksley, Dan	Richardson, TX United States	X	
	Skipwith, Walter	Richardson, TX United States	X	
	Murray, Menton	McAllen, TX United States	X	
	Plugge, Roman	Richardson, TX United States	X	
	Moya, Mike	Austin, TX United States	X	
	Kunz, Pat	Richardson, TX United States	X	
	Kuhn, Greg	Richardson, TX United States	X	
	Killen, Russell	Richardson, TX United States	X	
	Ickert, Andrew	Fort Worth, TX United States	X	
	Jackson, Todd	Austin, TX United States	X	
	Edwards, Mark	Richardson, TX United States	X	
	Craig, Matthew	Richardson, TX United States	X	
	Bargainer, Tim	Austin, TX United States	X	
	Adams, Bobby	Houston, TX United States	X	

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

2 of 2

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Halff Associates, Inc  
Richardson, TX United States

Certificate Number:  
2017-222225

Date Filed:  
06/12/2017

Date Acknowledged:

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Round Rock

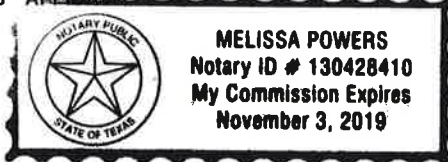
3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

000000  
Design of Heritage Trail West park and trail system.

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party. ☐

6 AFFIDAVIT



I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

*Matthew Buccchin*  
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Matthew Buccchin, this the 13<sup>th</sup> day of June, 20 17, to certify which, witness my hand and seal of office.

*[Signature]*  
Signature of officer administering oath

Melissa Powers  
Printed name of officer administering oath

Notary/Admin  
Title of officer administering oath



# City of Round Rock

## Agenda Item Summary

**Agenda Number: G.8**

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**Title:** Consider a resolution authorizing the Mayor to execute a Sponsorship Agreement with xRedfoxx, LLC and the Play for All Foundation for a Village Pod building at the Play for All Abilities Park.

**Type:** Resolution

**Governing Body:** City Council

**Agenda Date:** 6/22/2017

**Dept Director:** Rick Atkins, Parks and Recreation Director

**Cost:** \$0.00

**Indexes:**

**Attachments:** Resolution, Exhibit A

**Department:** Parks and Recreation Department

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### Text of Legislative File 2017-4531

This item will authorize the Mayor to execute a Sponsorship Agreement with Matt and Natasha Baker, Realtors, dba xRedfoxx, and the Play for All Foundation for a realty themed building in the Village Pod at Play for All. Matt and Natasha Baker, Realtors have donated \$25,000 to the foundation to sponsor this building. The Play for All Playground is located at 151 N. A.W. Grimes Blvd. and has become one of the most popular playgrounds in Round Rock with approximately 1000 visitors at the park daily. With the popularity and extreme use of the playground, it has become necessary to expand the park boundaries and offer additional play experiences. The Play for All Expansion Project includes adding additional parking, realigning the entry drive, addition of three (3) new playpods, and expanding the five (5) existing playpods. Lighting will also be added as part of the expansion.

The Play for All Expansion Project is a joint collaboration between the City and the Play for All Foundation. The Foundation has raised over \$500,000 to help fund the project and are continuing to raise funds.

**RESOLUTION NO. R-2017-4531**

**WHEREAS**, the City of Round Rock Parks and Recreation Department (“City”) wishes to enter into a three-party Sponsorship Agreement with xRedfoxx, LLC and Play for All, a 501(c)(3) non-profit organization, for a Village Pod building in the Village Pod Expansion at the Play for All Abilities Park, Now Therefore

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,**

That the Mayor is hereby authorized and directed to execute on behalf of the City said Agreement, a copy of same being attached hereto as Exhibit “A” and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

**RESOLVED** this 22nd day of June, 2017.

---

CRAIG MORGAN, Mayor  
City of Round Rock, Texas

ATTEST:

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SARA L. WHITE, City Clerk

# EXHIBIT

## "A"

### CITY OF ROUND ROCK PARKS AND RECREATION DEPARTMENT SPONSORSHIP AGREEMENT WITH XREDFOXX, LLC

This three-party Sponsorship Agreement (referred to herein as the "Agreement") is entered into on this \_\_\_\_ day of the month of May, 2017 by and between the CITY OF ROUND ROCK, TEXAS, a Texas home-rule municipality (referred to herein as the "City"), and XREDFOXX, LLC (referred to herein as the "Sponsor"), and PLAY FOR ALL, an organization with public charity status that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code.

#### WITNESSETH:

**WHEREAS**, Sponsor has evidenced a desire to become involved in a sponsorship role to enhance certain opportunities provided by the City's Parks and Recreation Department relating to the Play for All Abilities Project; and

**WHEREAS**, City believes such sponsorship would assist its Parks and Recreation Department to deliver quality, life-enriching activities to a targeted segment of the community; and

**WHEREAS**, the 501(c)(3) organization Play for All was formed March 13, 2009 to receive contributions for the Play for All Abilities Project, which contributions are deductible under Section 170 of the Internal Revenue Code; and

**WHEREAS**, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

#### NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

#### 1. TERM

1.1 This Agreement shall be effective on the date it has been signed by all parties hereto, and shall remain in full force and effect for ten (10) years unless and until it expires by operation of any specific term stated herein, or until terminated as provided herein. The term of the Agreement may be extended upon written agreement of both parties.

#### 2. SPONSORSHIP FEE

2.1 In consideration of the grant of specified sponsorship rights under this Agreement, Sponsor shall donate to the 501(c)(3) organization Play for All, for the benefit of the Parks and

Recreation Department Play for All Abilities Project, for the entire term of this Agreement, the following sponsorship fee: the sum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00).

2.2 Payment of such sponsorship fee shall be at the following times and in the following manner: Sponsor shall pay the referenced donated funds to Play for All upon final execution of this Agreement.

2.3 The sponsorship fee shall be the entire amount payable to Play for All, for the benefit of the City and its Parks and Recreation Department Play for All Abilities Project, under this Agreement.

2.4 City and its Parks and Recreation Department shall only use the sponsorship fee for the sponsored purpose/product delineated herein in Section 3.

### **3. SPONSORSHIP PURPOSE/PRODUCT DELINEATED**

3.1 City and its Parks and Recreation Department hereby designate Sponsor as a Village Building Sponsor, according to the Play for All Abilities Sponsorship Opportunities Program, and agree to have an 8' x 8' (minimum dimension) building in the Village Pod designed with real estate features and affixed with Sponsor's name/logo signage.

3.2 City agrees that Sponsor may advertise its sponsorship of the purpose/product in accordance with contractual requirements delineated herein.

### **4. SPONSORSHIP RIGHTS**

4.1 For the term of this Agreement, City grants to Sponsor the sponsorship rights set forth herein: the right to have one building in the "Village Pod" of the Play for All Abilities Project designed with real estate features and affixed with Sponsor's name/logo signage.

4.2 City shall, if, as and when the sponsored purpose/product is publicized, acknowledge Sponsor in accordance with the following or similar recognition rights:

4.2.1 Inclusion of name/logo on specific building within pod;

4.2.2 Inclusion of name/logo in park dedication art/architectural piece;

4.2.3 Recognition in the *Round Rock Leader*;

4.2.4 Awarding of sponsorship certificate plaque; and

4.2.5 Provision of photograph of Play for All Abilities Park Grand Opening Ceremony.

### **5. USE OF SPONSOR'S NAME AND/OR LOGO**

5.1 All advertising and promotional material produced, published, broadcast, displayed or exhibited by City in respect of the sponsored purpose/product shall acknowledge Sponsor in the manner delineated herein.

5.2 City shall immediately, upon the termination of this Agreement, cease to use or otherwise refer to Sponsor's name and/or logo except to the extent otherwise authorized by law or agreement of the parties.

5.3 Sponsor hereby grants to City a limited, non-exclusive, non-transferable license to use Sponsor's trademarks, service marks, trade names, logos, color combinations, insignia and other appropriate identifying marks and slogans related to the Sponsor (collectively, "Sponsor's Marks") within the corporate limits of the City of Round Rock, Texas in connection with the aforementioned sponsorship program. Except as expressly provided herein, no right, property, license, permission or interest of any kind in or to the Sponsor's Marks is intended to be given or transferred to or acquired by City by the execution, performance or non-performance of this Agreement. City understands, acknowledges and agrees that the Sponsor's Marks are the property of Sponsor, and City agrees that it shall in no way contest or deny the validity of the Sponsor's Marks, or the right or title of Sponsor in or to the Sponsor's Marks, and City will not encourage or assist others directly or indirectly to do so, during the term of this Agreement or hereafter. In addition, City recognizes the significant value of the goodwill associated with the Sponsor's Marks and acknowledges that the goodwill associated thereto belongs to Sponsor and that the Sponsor's Marks have secondary meaning in the minds of the public. City shall not, during the term of this Agreement or otherwise, take any action or fail to take any action that would have a materially adverse effect on the Sponsor's Marks or the rights of Sponsor in and to the Sponsor's Marks. Upon the termination of this Agreement, City shall immediately terminate all use of the Sponsor's Marks in every manner whatsoever.

## **6. USE OF CITY'S NAME AND/OR LOGO**

6.1 All advertising and promotional material produced, published, broadcast, displayed or exhibited by Sponsor in respect of the sponsored purpose/product shall acknowledge City in the manner delineated herein, and shall be approved in writing by City in advance of use.

6.2 Sponsor shall immediately, upon the termination of this Agreement, cease to use or otherwise refer to City's name and/or logo except to the extent otherwise authorized by law or agreement of the parties.

## **7. COMPETITIVE ADVERTISING**

7.1 The parties expressly acknowledge that City has disclosed that it has granted and, during the term of this Agreement, will grant to persons or entities other than Sponsor the right to sponsor or advertise in the Play for All Abilities Project, unless a written amendment or written agreement otherwise has been attached hereto. City expressly acknowledges, however, that this Section 7.1 is subject to the exclusivity conferred in Section 4.1 hereof, to-wit: the right of Sponsor to have one building in the "Village Pod" of the Play for All Abilities Project designed with real estate features and affixed with Sponsor's name signage. City acknowledges that it will have no other building in the named pod designed and named for a competitor real estate company.



## **8. APPLICABLE LAWS**

8.1 Sponsor expressly agrees that the rights and privileges granted by this Agreement are subject to all applicable policies, ordinances, laws, and regulations of the City of Round Rock, the State of Texas, and the United States of America, and Sponsor agrees to abide by same. Insofar as it relates to Sponsor's participation in the purpose/product delineated in this Agreement, Sponsor further agrees to observe and comply with any and all rules and regulations promulgated from time to time by City and its Parks and Recreation Department.

## **9. BREACH AND TERMINATION**

9.1 If any party breaches any of the terms and conditions of this Agreement and fails to rectify such default in accordance with a written notice from a non-defaulting party within fifteen (15) days after the date of such notice (or a longer period if all parties agree to same in writing), a non-defaulting party may terminate this Agreement at any time thereafter.

9.2 City may terminate this Agreement immediately if any of the following occur:

- 9.2.1 Sponsor is wound up or dissolved, becomes insolvent or enters into an agreement with its creditors, or if a receiver, manager or liquidator is appointed in respect of Sponsor;
- 9.2.2 Sponsor's business operations or the business or activities of any associated company are contrary to any City of Round Rock policy;
- 9.2.3 City determines that, for whatever reason, it should no longer use the sponsored purpose/product or be associated with Sponsor.

9.3 If this Agreement is terminated, Sponsor shall not be required to pay any unpaid installments of the sponsorship fee (if payment is by installment).

9.4 The expiration or termination of this Agreement shall not prevent any party from taking action to enforce a term or condition of this Agreement in respect of any breach occurring prior to such expiration or termination.

## **10. INDEMNIFICATION**

10.1 The parties shall defend (at the option of City), indemnify, and hold City, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the fault of either of the other parties, or either of their agents, employees or subcontractors, in the performance of their respective obligations under this Agreement, no matter how, or to whom, such loss may occur. Nothing herein shall be deemed to limit the rights of City or the other parties (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

10.2 To the extent permitted by law, City shall indemnify, and hold Sponsor, its successors, assigns, officers, employees and elected officials harmless from and against all suits, legal actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from any injury or accident occurring in or in connection with Sponsor's building in the Village Pod.

## **11. ASSIGNMENT AND DELEGATION**

11.1 The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. No party shall assign, sublet or transfer any interest in this Agreement without prior written authorization from the other parties.

## **12. NOTICES**

12.1 All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows: when delivered personally to the recipient's address as stated in this Agreement; or three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

### **Notice to Sponsor:**

xRedfoxx, LLC  
Matt and Natasha Baker  
P.O. Box 80268  
Austin, TX 78708

### **Notice to Play for All, a 501(c)(3) organization:**

Play for All  
P.O. Box 690  
Round Rock, TX 78680

### **Notice to City:**

City Manager and to:  
221 East Main Street  
Round Rock, TX 78664

Stephan L. Sheets, Attorney  
309 East Main Street  
Round Rock, TX 78664

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of the parties.

## **13. APPLICABLE LAW; ENFORCEMENT AND VENUE**

13.1 This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by any party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

#### **14. EXCLUSIVE AGREEMENT**

14.1 This document, and all appended documents, constitutes the entire Agreement between all parties hereto. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing.

#### **15. DISPUTE RESOLUTION**

15.1 If a dispute or claim arises under this Agreement, the parties agree to first try to resolve the dispute or claim by appropriate internal means, including referral to each party's senior management. If the parties cannot reach a mutually satisfactory resolution, then and in that event any such dispute or claim will be sought to be resolved with the help of a mutually selected mediator. If the parties cannot agree on a mediator, City and Sponsor shall each select a mediator and the two mediators shall agree upon a third mediator. Any costs and fees, other than attorney fees, associated with the mediation shall be shared equally by the parties. City and Sponsor hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

#### **16. SEVERABILITY**

16.1 The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision hereof void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

#### **17. MISCELLANEOUS PROVISIONS**

17.1 Time is of the Essence. The parties understand and agree that time is of the essence and that any failure of any party to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement.

17.2 Force Majeure. The parties shall not be deemed in violation of this Agreement if a party is prevented from performing any of its obligations hereunder by reasons for which it is not responsible as defined herein. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

17.3 Multiple Counterparts. This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated.

**City of Round Rock, Texas**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

**Attest:**

By: \_\_\_\_\_  
Sara L. White, City Clerk

**For City, Approved as to Form:**

By: \_\_\_\_\_  
Stephan L. Sheets, City Attorney

**xRedfoxx, LLC**

By: MBA  
Printed Name: MATT BAKER  
Title: OWNER  
Date Signed: 4/20/2012

**Play for All, a 501(c)(3) organization  
Sponsor**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_



# City of Round Rock

## Agenda Item Summary

**Agenda Number: G.9**

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**Title:** Consider a resolution authorizing the Mayor to execute a Sponsorship Agreement with Nolan Ryan Foundation and the Play for All Foundation for a Train-Themed Play Structure at the Play for All Abilities Park.

**Type:** Resolution

**Governing Body:** City Council

**Agenda Date:** 6/22/2017

**Dept Director:** Rick Atkins, Parks and Recreation Director

**Cost:** \$0.00

**Indexes:**

**Attachments:** Resolution, Exhibit A

**Department:** Parks and Recreation Department

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### Text of Legislative File 2017-4532

This item will authorize the Mayor to execute a Sponsorship Agreement with the Nolan Ryan Foundation and the Play for All Foundation for a train themed play structure in the large playscape pod at Play for All. The Nolan Ryan Foundation has donated \$50,000 to the foundation to sponsor this play equipment. The Play for All Playground is located at 151 N. A.W. Grimes Blvd. and has become one of the most popular playgrounds in Round Rock with approximately 1000 visitors at the park daily. With the popularity and extreme use of the playground, it has become necessary to expand the park boundaries and offer additional play experiences. The Play for All Expansion Project includes adding additional parking, realigning the entry drive, addition of three (3) new playpods, and expanding the five (5) existing playpods. Lighting will also be added as part of the expansion.

The Play for All Expansion Project is a joint collaboration between the City and the Play for All Foundation. The Foundation has raised over \$500,000 to help fund the project and are continuing to raise funds.

**RESOLUTION NO. R-2017-4532**

**WHEREAS**, the City of Round Rock Parks and Recreation Department (“City”) wishes to enter into a three-party Sponsorship Agreement with Nolan Ryan Foundation and Play for All, a 501(c)(3) non-profit organization, for a Train-Themed Play Structure in the Large Playscape Pod Expansion at the Play for All Abilities Park, Now Therefore

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,**

That the Mayor is hereby authorized and directed to execute on behalf of the City said Agreement, a copy of same being attached hereto as Exhibit “A” and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

**RESOLVED** this 22nd day of June, 2017.

---

CRAIG MORGAN, Mayor  
City of Round Rock, Texas

ATTEST:

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SARA L. WHITE, City Clerk

**EXHIBIT**

**"A"**

**CITY OF ROUND ROCK  
PARKS AND RECREATION DEPARTMENT  
SPONSORSHIP AGREEMENT WITH  
NOLAN RYAN FOUNDATION**

This three-party Sponsorship Agreement (referred to herein as the "Agreement") is entered into on this 1 day of the month of May, 2017 by and between the CITY OF ROUND ROCK, TEXAS, a Texas home-rule municipality (referred to herein as the "City"), and NOLAN RYAN FOUNDATION (referred to herein as the "Sponsor"), and PLAY FOR ALL, an organization with public charity status that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code.

**WITNESSETH:**

**WHEREAS**, Sponsor has evidenced a desire to become involved in a sponsorship role to enhance certain opportunities provided by the City's Parks and Recreation Department relating to the Play for All Abilities Project; and

**WHEREAS**, City believes such sponsorship would assist its Parks and Recreation Department to deliver quality, life-enriching activities to a targeted segment of the community; and

**WHEREAS**, the 501(c)(3) organization Play for All was formed March 13, 2009 to receive contributions for the Play for All Abilities Project, which contributions are deductible under Section 170 of the Internal Revenue Code; and

**WHEREAS**, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

**NOW, THEREFORE, WITNESSETH:**

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

**1. TERM**

1.1 This Agreement shall be effective on the date it has been signed by all parties hereto, and shall remain in full force and effect for five (5) years unless and until it expires by operation of any specific term stated herein, or until terminated as provided herein. The term of the Agreement may be extended upon written agreement of both parties.

**2. SPONSORSHIP FEE**

2.1 In consideration of the grant of specified sponsorship rights under this Agreement, Sponsor shall donate to the 501(c)(3) organization Play for All, for the benefit of the Parks and



Recreation Department Play for All Abilities Project, for the entire term of this Agreement, the following sponsorship fee: the sum of Fifty Thousand and No/100 Dollars (\$50,000.00).

2.2 Payment of such sponsorship fee shall be at the following times and in the following manner: Sponsor shall pay the referenced donated funds to Play for All upon final execution of this Agreement.

2.3 The sponsorship fee shall be the entire amount payable to Play for All, for the benefit of the City and its Parks and Recreation Department Play for All Abilities Project, under this Agreement.

2.4 City and its Parks and Recreation Department shall only use the sponsorship fee for the sponsored purpose/product delineated herein in Section 3.

### **3. SPONSORSHIP PURPOSE/PRODUCT DELINEATED**

3.1 City and its Parks and Recreation Department hereby designate Sponsor as a Pod Sponsor, according to the Play for All Abilities Sponsorship Opportunities Program, and agree to have a train-themed play structure in the Large Playscape Pod Expansion designed with features acknowledging the Nolan Ryan Foundation and Round Rock Express and affixed with the Sponsor's name/logo signage.

3.2 City agrees that Sponsor may advertise its sponsorship of the purpose/product in accordance with contractual requirements delineated herein.

### **4. SPONSORSHIP RIGHTS**

4.1 For the term of this Agreement, City grants to Sponsor the sponsorship rights set forth herein: the right to have one train-themed play structure in the "Large Playscape Pod Expansion" designed with features acknowledging the Nolan Ryan Foundation and Round Rock Express and affixed with Sponsor's name/logo signage.

4.2 City shall, if, as and when the sponsored purpose/product is publicized, acknowledge Sponsor in accordance with the following or similar recognition rights:

4.2.1 Inclusion of name/logo on specific building within pod;

4.2.2 Inclusion of name/logo in park dedication art/architectural piece;

4.2.3 Recognition in the *Round Rock Leader*;

4.2.4 Awarding of sponsorship certificate plaque; and

4.2.5 Provision of photograph of Play for All Abilities Park Grand Opening Ceremony.

## **5. USE OF SPONSOR'S NAME AND/OR LOGO**

5.1 All advertising and promotional material produced, published, broadcast, displayed or exhibited by City in respect of the sponsored purpose/product shall acknowledge Sponsor in the manner delineated herein.

5.2 City shall immediately, upon the termination of this Agreement, cease to use or otherwise refer to Sponsor's name and/or logo except to the extent otherwise authorized by law or agreement of the parties.

5.3 Sponsor hereby grants to City a limited, non-exclusive, non-transferable license to use Sponsor's trademarks, service marks, trade names, logos, color combinations, insignia and other appropriate identifying marks and slogans related to the Sponsor (collectively, "Sponsor's Marks") within the corporate limits of the City of Round Rock, Texas in connection with the aforementioned sponsorship program. Except as expressly provided herein, no right, property, license, permission or interest of any kind in or to the Sponsor's Marks is intended to be given or transferred to or acquired by City by the execution, performance or non-performance of this Agreement. City understands, acknowledges and agrees that the Sponsor's Marks are the property of Sponsor, and City agrees that it shall in no way contest or deny the validity of the Sponsor's Marks, or the right or title of Sponsor in or to the Sponsor's Marks, and City will not encourage or assist others directly or indirectly to do so, during the term of this Agreement or hereafter. In addition, City recognizes the significant value of the goodwill associated with the Sponsor's Marks and acknowledges that the goodwill associated thereto belongs to Sponsor and that the Sponsor's Marks have secondary meaning in the minds of the public. City shall not, during the term of this Agreement or otherwise, take any action or fail to take any action that would have a materially adverse effect on the Sponsor's Marks or the rights of Sponsor in and to the Sponsor's Marks. Upon the termination of this Agreement, City shall immediately terminate all use of the Sponsor's Marks in every manner whatsoever.

## **6. USE OF CITY'S NAME AND/OR LOGO**

6.1 All advertising and promotional material produced, published, broadcast, displayed or exhibited by Sponsor in respect of the sponsored purpose/product shall acknowledge City in the manner delineated herein, and shall be approved in writing by City in advance of use.

6.2 Sponsor shall immediately, upon the termination of this Agreement, cease to use or otherwise refer to City's name and/or logo except to the extent otherwise authorized by law or agreement of the parties.

## **7. COMPETITIVE ADVERTISING**

7.1 The parties expressly acknowledge that City has disclosed that it has granted and, during the term of this Agreement, will grant to persons or entities other than Sponsor the right to sponsor or advertise in the Play for All Abilities Project, unless a written amendment or written agreement otherwise has been attached hereto. City expressly acknowledges, however, that this Section 7.1 is subject to the exclusivity conferred in Section 4.1 hereof, to-wit: the right of Sponsor to have one train-themed play structure in the "Large Playscape Pod Expansion" designed with

features acknowledging the Nolan Ryan Foundation and Round Rock Express and affixed with Sponsor's name/logo signage. City acknowledges that it will have no other building in the named pod designed and named for a competitor sports facility.

## **8. APPLICABLE LAWS**

8.1 Sponsor expressly agrees that the rights and privileges granted by this Agreement are subject to all applicable policies, ordinances, laws, and regulations of the City of Round Rock, the State of Texas, and the United States of America, and Sponsor agrees to abide by same. Insofar as it relates to Sponsor's participation in the purpose/product delineated in this Agreement, Sponsor further agrees to observe and comply with any and all rules and regulations promulgated from time to time by City and its Parks and Recreation Department.

## **9. BREACH AND TERMINATION**

9.1 If any party breaches any of the terms and conditions of this Agreement and fails to rectify such default in accordance with a written notice from a non-defaulting party within fifteen (15) days after the date of such notice (or a longer period if all parties agree to same in writing), a non-defaulting party may terminate this Agreement at any time thereafter.

9.2 City may terminate this Agreement immediately if any of the following occur:

9.2.1 Sponsor is wound up or dissolved, becomes insolvent or enters into an agreement with its creditors, or if a receiver, manager or liquidator is appointed in respect of Sponsor;

9.2.2 Sponsor's business operations or the business or activities of any associated company are contrary to any City of Round Rock policy;

9.2.3 City determines that, for whatever reason, it should no longer use the sponsored purpose/product or be associated with Sponsor.

9.3 If this Agreement is terminated, Sponsor shall not be required to pay any unpaid installments of the sponsorship fee (if payment is by installment).

9.4 The expiration or termination of this Agreement shall not prevent any party from taking action to enforce a term or condition of this Agreement in respect of any breach occurring prior to such expiration or termination.

## **10. INDEMNIFICATION**

10.1 The parties shall defend (at the option of City), indemnify, and hold City, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the fault of either of the other parties, or either of their agents, employees or subcontractors, in the performance of their respective obligations under this Agreement, no matter how, or to whom, such loss may

occur. Nothing herein shall be deemed to limit the rights of City or the other parties (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

## **11. ASSIGNMENT AND DELEGATION**

11.1 The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. No party shall assign, sublet or transfer any interest in this Agreement without prior written authorization from the other parties.

## **12. NOTICES**

12.1 All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows: when delivered personally to the recipient's address as stated in this Agreement; or three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

### **Notice to Sponsor:**

Nolan Ryan Foundation  
3600 E. Palm Valley Blvd.  
Round Rock, TX 78665

### **Notice to Play for All, a 501(c)(3) organization:**

Play for All  
P.O. Box 690  
Round Rock, TX 78680

### **Notice to City:**

City Manager and to:  
221 East Main Street  
Round Rock, TX 78664

Stephan L. Sheets, Attorney  
309 East Main Street  
Round Rock, TX 78664

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of the parties.

## **13. APPLICABLE LAW; ENFORCEMENT AND VENUE**

13.1 This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by any party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

#### **14. EXCLUSIVE AGREEMENT**

14.1 This document, and all appended documents, constitutes the entire Agreement between all parties hereto. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing.

#### **15. DISPUTE RESOLUTION**

15.1 If a dispute or claim arises under this Agreement, the parties agree to first try to resolve the dispute or claim by appropriate internal means, including referral to each party's senior management. If the parties cannot reach a mutually satisfactory resolution, then and in that event any such dispute or claim will be sought to be resolved with the help of a mutually selected mediator. If the parties cannot agree on a mediator, City and Sponsor shall each select a mediator and the two mediators shall agree upon a third mediator. Any costs and fees, other than attorney fees, associated with the mediation shall be shared equally by the parties. City and Sponsor hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

#### **16. SEVERABILITY**

16.1 The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision hereof void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

#### **17. MISCELLANEOUS PROVISIONS**

17.1 Time is of the Essence. The parties understand and agree that time is of the essence and that any failure of any party to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement.

17.2 Force Majeure. The parties shall not be deemed in violation of this Agreement if a party is prevented from performing any of its obligations hereunder by reasons for which it is not responsible as defined herein. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

17.3 Multiple Counterparts. This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated.

**City of Round Rock, Texas**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_


**Attest:**

By: \_\_\_\_\_  
Sara L. White, City Clerk

**For City, Approved as to Form:**

By: \_\_\_\_\_  
Stephan L. Sheets, City Attorney

**Nolan Ryan Foundation**

By:  \_\_\_\_\_  
Printed Name: Desha Swain  
Title: Executive Director  
Date Signed: 5/1/17

**Play for All, a 501(c)(3) organization  
Sponsor**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_



# City of Round Rock

## Agenda Item Summary

**Agenda Number: G.10**

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**Title:** Consider a resolution authorizing the Mayor to execute a Sponsorship Agreement with Dell Children's Medical Center and the Play for All Foundation for a Treehouse at the Play for All Abilities Park.

**Type:** Resolution

**Governing Body:** City Council

**Agenda Date:** 6/22/2017

**Dept Director:** Rick Atkins, Parks and Recreation Director

**Cost:** \$0.00

**Indexes:**

**Attachments:** Resolution, Exhibit A

**Department:** Parks and Recreation Department

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### Text of Legislative File 2017-4533

This item will authorize the Mayor to execute a Sponsorship Agreement with Dell Children's Medical Center and the Play for All Foundation for a treehouse in the Nature Pod at Play for All. Dell Children's Medical Center has donated \$25,000 to the foundation to sponsor this tree house. The Play for All Playground is located at 151 N. A.W. Grimes Blvd. and has become one of the most popular playgrounds in Round Rock with approximately 1000 visitors at the park daily. With the popularity and extreme use of the playground, it has become necessary to expand the park boundaries and offer additional play experiences. The Play for All Expansion Project includes adding additional parking, realigning the entry drive, addition of three (3) new playpods, and expanding the five (5) existing playpods. Lighting will also be added as part of the expansion.

The Play for All Expansion Project is a joint collaboration between the City and the Play for All Foundation. The Foundation has raised over \$500,000 to help fund the project and are continuing to raise funds.



**RESOLUTION NO. R-2017-4533**

**WHEREAS**, the City of Round Rock Parks and Recreation Department (“City”) wishes to enter into a three-party Sponsorship Agreement with Dell Children’s Medical Center and Play for All, a 501(c)(3) non-profit organization, for a Treehouse at the Play for All Abilities Park, Now Therefore

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,**

That the Mayor is hereby authorized and directed to execute on behalf of the City said Agreement, a copy of same being attached hereto as Exhibit “A” and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

**RESOLVED** this 22nd day of June, 2017.

---

CRAIG MORGAN, Mayor  
City of Round Rock, Texas

ATTEST:

---

SARA L. WHITE, City Clerk

# EXHIBIT

## "A"

### CITY OF ROUND ROCK PARKS AND RECREATION DEPARTMENT SPONSORSHIP AGREEMENT WITH DELL CHILDREN'S MEDICAL CENTER

This three-party Sponsorship Agreement (referred to herein as the "Agreement") is entered into on this 22<sup>nd</sup> day of the month of May, 2017 (the "Effective Date"), by and between the CITY OF ROUND ROCK, TEXAS, a Texas home-rule municipality (referred to herein as the "City"), and SETON FAMILY OF HOSPITALS d/b/a DELL CHILDREN'S MEDICAL CENTER, a Texas non-profit corporation (referred to herein as the "Sponsor"), and PLAY FOR ALL, an organization with public charity status that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code.

#### WITNESSETH:

**WHEREAS**, Sponsor has evidenced a desire to become involved in a sponsorship role to enhance certain opportunities provided by the City's Parks and Recreation Department relating to the Play for All Abilities Project; and

**WHEREAS**, City believes such sponsorship would assist its Parks and Recreation Department to deliver quality, life-enriching activities to a targeted segment of the community; and

**WHEREAS**, the 501(c)(3) organization Play for All was formed March 13, 2009 to receive contributions for the Play for All Abilities Project, which contributions are deductible under Section 170 of the Internal Revenue Code; and

**WHEREAS**, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

#### NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

#### 1. TERM

1.1 This Agreement shall be effective on the Effective Date and shall remain in full force and effect for five (5) years unless and until it expires by operation of any specific term stated herein, or until terminated as provided herein. The term of the Agreement may be extended upon written agreement of both parties.

#### 2. SPONSORSHIP FEE

2.1 In consideration of the grant of specified sponsorship rights under this Agreement, Sponsor shall donate to the 501(c)(3) organization Play for All, for the benefit of the Parks and

Recreation Department Play for All Abilities Project, for the entire term of this Agreement, the following sponsorship fee: the sum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00).

2.2 Payment of such sponsorship fee shall be at the following times and in the following manner: Sponsor shall pay the referenced donated funds to Play for All upon final execution of this Agreement.

2.3 The sponsorship fee shall be the entire amount payable to Play for All, for the benefit of the City and its Parks and Recreation Department Play for All Abilities Project, under this Agreement.

2.4 City and its Parks and Recreation Department shall use the sponsorship fee only for the sponsored purpose/product delineated herein in Section 3.

### **3. SPONSORSHIP PURPOSE/PRODUCT DELINEATED**

3.1 City and its Parks and Recreation Department hereby designate Sponsor as a Treehouse Sponsor in the Nature Pod, according to the Play for All Abilities Sponsorship Opportunities Program, and agree to have an 8' x 8' (minimum dimension) treehouse in the Nature Pod designed and affixed with the Sponsor's name/logo signage.

3.2 City agrees that Sponsor may advertise its sponsorship of the purpose/product in accordance with contractual requirements delineated herein.

### **4. SPONSORSHIP RIGHTS**

4.1 For the term of this Agreement, City grants to Sponsor the sponsorship rights set forth herein: the right to have one treehouse structure in the "Nature Pod" of the Play for All Abilities Project designed and affixed with Sponsor's name/logo signage in a form approved in writing by Sponsor in advance of use.

4.2 City shall, if, as, and when the sponsored purpose/product is publicized, acknowledge Sponsor in accordance with the following or similar recognition rights, subject to the prior written approval of Sponsor:

- 4.2.1 Inclusion of name/logo on specific building within pod;
- 4.2.2 Inclusion of name/logo in park dedication art/architectural piece;
- 4.2.3 Recognition in the *Round Rock Leader*;
- 4.2.4 Awarding of sponsorship certificate plaque; and
- 4.2.5 Provision of photograph of Play for All Abilities Park Grand Opening Ceremony.

## **5. USE OF SPONSOR'S NAME AND/OR LOGO**

5.1 Subject to the prior written approval of Sponsor, all advertising and promotional material, including but not limited to press releases, that are produced, published, broadcast, displayed, or exhibited by City with respect of the sponsored purpose/product shall acknowledge Sponsor in the manner delineated herein.

5.2 City shall immediately, upon the termination of this Agreement, cease to use or otherwise refer to Sponsor's name and/or logo except to the extent otherwise authorized by law or agreement of the parties.

5.3 City understands, acknowledges, and agrees that Sponsor's trademarks, service marks, trade names, logos, color combinations, insignia, and other appropriate identifying marks and slogans related to Sponsor (collectively, "Sponsor's Marks") are the property of Sponsor. Prior to any use of Sponsor's Marks, City understands, acknowledges, and agrees that it must request and obtain Sponsor's approval of the proposed use. Except as approved in writing by Sponsor in advance of use, no right, property, license, permission, or interest of any kind in or to Sponsor's Marks is given or transferred to or acquired by City by the execution, performance, or non-performance of this Agreement. City agrees that it shall in no way contest or deny the validity of the Sponsor's Marks, or the right or title of Sponsor in or to Sponsor's Marks, and City will not encourage or assist others directly or indirectly to do so, during the term of this Agreement or hereafter. In addition, City recognizes the significant value of the goodwill associated with Sponsor's Marks and acknowledges that the goodwill associated thereto belongs to Sponsor and that Sponsor's Marks have secondary meaning in the minds of the public. City shall not, during the term of this Agreement or otherwise, take any action or fail to take any action that would have a materially adverse effect on Sponsor's Marks or the rights of Sponsor in and to Sponsor's Marks. Upon the termination of this Agreement, City shall immediately terminate all use of Sponsor's Marks in every manner whatsoever.

## **6. USE OF CITY'S NAME AND/OR LOGO**

6.1 All advertising and promotional material produced, published, broadcast, displayed or exhibited by Sponsor in respect of the sponsored purpose/product shall acknowledge City in the manner delineated herein, and shall be approved in writing by City in advance of use.

6.2 Sponsor shall immediately, upon the termination of this Agreement, cease to use or otherwise refer to City's name and/or logo except to the extent otherwise authorized by law or agreement of the parties.

## **7. COMPETITIVE ADVERTISING**

7.1 The parties expressly acknowledge that City has disclosed that it has granted and, during the term of this Agreement, will grant to persons or entities other than Sponsor the right to sponsor or advertise in the Play for All Abilities Project, unless a written amendment or written agreement otherwise has been attached hereto. City expressly acknowledges, however, that this Section 7.1 is subject to the exclusivity conferred in Section 4.1 hereof, to-wit: the right of

Sponsor to have one treehouse structure in the "Nature Pod" of the Play for All Abilities Project designed and affixed with Sponsor's name/logo signage. City acknowledges that it will have no other building in the named pod designed and named for a competitor medical facility.

## **8. APPLICABLE LAWS**

8.1 Sponsor expressly agrees that the rights and privileges granted by this Agreement are subject to all applicable policies, ordinances, laws, and regulations of the City of Round Rock, the State of Texas, and the United States of America, and Sponsor agrees to abide by same. Insofar as it relates to Sponsor's participation in the purpose/product delineated in this Agreement, Sponsor further agrees to observe and comply with any and all rules and regulations promulgated from time to time by City and its Parks and Recreation Department.

## **9. BREACH AND TERMINATION**

9.1 If any party breaches any of the terms and conditions of this Agreement and fails to rectify such default in accordance with a written notice from a non-defaulting party within fifteen (15) days after the date of such notice (or a longer period if all parties agree to same in writing), a non-defaulting party may terminate this Agreement at any time thereafter.

9.2 Any party may terminate this Agreement immediately if any of the following occur:

9.2.1 Another party is wound up or dissolved, becomes insolvent or enters into an agreement with its creditors, or if a receiver, manager or liquidator is appointed in respect to that party;

9.2.2 Another party's business operations or the business or activities of any associated company are contrary to the terminating party's policy;

9.2.3 The terminating party determines that, for whatever reason, it should no longer use the sponsored purpose/product or be associated with another party.

9.3 If this Agreement is terminated, Sponsor shall not be required to pay any unpaid installments of the sponsorship fee (if payment is by installment). If City or Play for All terminate this Agreement under Sections 9.2.2 or 9.2.3, Sponsor shall be reimbursed an amount equal to the pro-rated portion of the sponsorship fee covering the period of time between the termination and the expiration of this Agreement under Section 1.1.

9.4 The expiration or termination of this Agreement shall not prevent any party from taking action to enforce a term or condition of this Agreement in respect of any breach occurring prior to such expiration or termination.

## **10. INDEMNIFICATION**

10.1 Each party (the "Indemnifying Party") shall defend (at the option of the Indemnified Party), indemnify, and hold the other parties (each, an "Indemnified Party"), their successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the fault of the Indemnifying Party, or any of their agents, employees or subcontractors, in the performance of their respective obligations under this Agreement, no matter how, or to whom, such loss may occur. Nothing herein shall be deemed to limit the rights of the parties (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

## **11. ASSIGNMENT AND DELEGATION**

11.1 The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. No party shall assign, sublet or transfer any interest in this Agreement without prior written authorization from the other parties.

## **12. NOTICES**

12.1 All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows: when delivered personally to the recipient's address as stated in this Agreement; or three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

### **Notice to Sponsor:**

Seton Family of Hospitals and to:  
Dell Children's Medical Center  
Attn: Debra M. Brown  
1345 Philomena Street  
Austin, TX 78723

Seton Family of Hospitals  
Attn: General Counsel  
1345 Philomena Street  
Austin, TX 78723

### **Notice to Play for All, a 501(c)(3) organization:**

Play for All  
P.O. Box 690  
Round Rock, TX 78680

### **Notice to City:**

City Manager, Laurie Hadley and to:  
221 East Main Street  
Round Rock, TX 78664

Stephan L. Sheets, Attorney  
309 East Main Street  
Round Rock, TX 78664

### **13. APPLICABLE LAW; ENFORCEMENT AND VENUE**

13.1 This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by any party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

### **14. EXCLUSIVE AGREEMENT**

14.1 This document, and all appended documents, constitutes the entire Agreement between all parties hereto. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing.

### **15. DISPUTE RESOLUTION**

15.1 If a dispute or claim arises under this Agreement, the parties agree to first try to resolve the dispute or claim by appropriate internal means, including referral to each party's senior management. If the parties cannot reach a mutually satisfactory resolution, then and in that event any such dispute or claim will be sought to be resolved with the help of a mutually selected mediator. If the parties cannot agree on a mediator, City and Sponsor shall each select a mediator and the two mediators shall agree upon a third mediator. Any costs and fees, other than attorney fees, associated with the mediation shall be shared equally by the parties. City and Sponsor hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

### **16. SEVERABILITY**

16.1 The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision hereof void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

### **17. MISCELLANEOUS PROVISIONS**

17.1 Time is of the Essence. The parties understand and agree that time is of the essence and that any failure of any party to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement.

17.2 Force Majeure. The parties shall not be deemed in violation of this Agreement if a party is prevented from performing any of its obligations hereunder by reasons for which it is not



responsible as defined herein. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

17.3 Multiple Counterparts. This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated.

**City of Round Rock, Texas**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

**Attest:**

By: \_\_\_\_\_  
Sara L. White, City Clerk

**For City, Approved as to Form:**

By: \_\_\_\_\_  
Stephan L. Sheets, City Attorney

**Seton Family of Hospitals**

By: Debra Brown  
Printed Name: Debra Brown  
Title: CNO and COO  
Date Signed: 5/26/17

**Play for All, a 501(c)(3) organization  
Sponsor**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

**Reviewed by Legal**

Name BSM  
Date 5/22/17



# City of Round Rock

## Agenda Item Summary

**Agenda Number: G.11**

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**Title:** Consider a resolution authorizing the Mayor to execute a Sponsorship Agreement with Atmos Energy Corporation and the Play for All Foundation for a Village Pod building at the Play for All Abilities Park.

**Type:** Resolution

**Governing Body:** City Council

**Agenda Date:** 6/22/2017

**Dept Director:** Rick Atkins, Parks and Recreation Director

**Cost:** \$0.00

**Indexes:**

**Attachments:** Resolution, Exhibit A

**Department:** Parks and Recreation Department

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### Text of Legislative File 2017-4534

This item will authorize the Mayor to execute a Sponsorship Agreement with Atmos Energy Corporation and the Play for All Foundation for a gas utility building in the Village Pod Expansion at Play for All. Atmos has donated \$25,000 to the foundation to sponsor this building. The Play for All Playground is located at 151 N. A.W. Grimes Blvd. and has become one of the most popular playgrounds in Round Rock with approximately 1000 visitors at the park daily. With the popularity and extreme use of the playground, it has become necessary to expand the park boundaries and offer additional play experiences. The Play for All Expansion Project includes adding additional parking, realigning the entry drive, addition of three (3) new playpods, and expanding the five (5) existing playpods. Lighting will also be added as part of the expansion.

The Play for All Expansion Project is a joint collaboration between the City and the Play for All Foundation. The Foundation has raised over \$500,000 to help fund the project and are continuing to raise funds.

**RESOLUTION NO. R-2017-4534**

**WHEREAS**, the City of Round Rock Parks and Recreation Department (“City”) wishes to enter into a three-party Sponsorship Agreement with Atmos Energy Corporation and Play for All, a 501(c)(3) non-profit organization, for a Village Pod building at the Play for All Abilities Park, Now Therefore

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,**

That the Mayor is hereby authorized and directed to execute on behalf of the City said Agreement, a copy of same being attached hereto as Exhibit “A” and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

**RESOLVED** this 22nd day of June, 2017.

---

CRAIG MORGAN, Mayor  
City of Round Rock, Texas

ATTEST:

---

SARA L. WHITE, City Clerk

# **EXHIBIT**

## **"A"**

### **CITY OF ROUND ROCK PARKS AND RECREATION DEPARTMENT SPONSORSHIP AGREEMENT WITH ATMOS ENERGY CORPORATION**

This three-party Sponsorship Agreement (referred to herein as the "Agreement") is entered into on this 10<sup>th</sup> day of the month of May, 2017 by and between the CITY OF ROUND ROCK, TEXAS, a Texas home-rule municipality (referred to herein as the "City"), and ATMOS ENERGY CORPORATION (referred to herein as the "Sponsor"), and PLAY FOR ALL, an organization with public charity status that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code.

#### **WITNESSETH:**

**WHEREAS**, Sponsor has evidenced a desire to become involved in a sponsorship role to enhance certain opportunities provided by the City's Parks and Recreation Department relating to the Play for All Abilities Project; and

**WHEREAS**, City believes such sponsorship would assist its Parks and Recreation Department to deliver quality, life-enriching activities to a targeted segment of the community; and

**WHEREAS**, the 501(c)(3) organization Play for All was formed March 13, 2009 to receive contributions for the Play for All Abilities Project, which contributions are deductible under Section 170 of the Internal Revenue Code; and

**WHEREAS**, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

#### **NOW, THEREFORE, WITNESSETH:**

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

#### **1. TERM**

1.1 This Agreement shall be effective on the date it has been signed by all parties hereto, and shall remain in full force and effect for five (5) years unless and until it expires by operation of any specific term stated herein, or until terminated as provided herein. The term of the Agreement may be extended upon written agreement of both parties.

#### **2. SPONSORSHIP FEE**

2.1 In consideration of the grant of specified sponsorship rights under this Agreement, Sponsor shall donate to the 501(c)(3) organization Play for All, for the benefit of the Parks and

Recreation Department Play for All Abilities Project, for the entire term of this Agreement, the following sponsorship fee: the sum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00).

2.2 Payment of such sponsorship fee shall be at the following times and in the following manner: Sponsor shall pay the referenced donated funds to Play for All upon final execution of the Agreement.

2.3 The sponsorship fee shall be the entire amount payable to Play for All, for the benefit of the City and its Parks and Recreation Department Play for All Abilities Project, under this Agreement.

2.4 City and its Parks and Recreation Department shall only use the sponsorship fee for the sponsored purpose/product delineated herein in Section 3.

### **3. SPONSORSHIP PURPOSE/PRODUCT DELINEATED**

3.1 City and its Parks and Recreation Department hereby designate Sponsor as a Village Building Sponsor, according to the Play for All Abilities Sponsorship Opportunities Program, and agree to have an 8' x 8' (minimum dimension) building in the Village Pod Expansion designed with natural gas utility features and affixed with Sponsor's name/logo signage.

3.2 City agrees that Sponsor may advertise its sponsorship of the purpose/product in accordance with contractual requirements delineated herein.

### **4. SPONSORSHIP RIGHTS**

4.1 For the term of this Agreement, City grants to Sponsor the sponsorship rights set forth herein: the right to have one building in the "Village Pod" of the Play for All Abilities Project designed with natural gas utility features and affixed with Sponsor's name/logo signage.

4.2 City shall, if, as and when the sponsored purpose/product is publicized, acknowledge Sponsor in accordance with the following or similar recognition rights:

4.2.1 Inclusion of name/logo on specific building within pod;

4.2.2 Inclusion of name/logo in park dedication art/architectural piece;

4.2.3 Recognition in the *Round Rock Leader*;

4.2.4 Awarding of sponsorship certificate plaque; and

4.2.5 Provision of photograph of Play for All Abilities Park Grand Opening Ceremony.

### **5. USE OF SPONSOR'S NAME AND/OR LOGO**

5.1 All advertising and promotional material produced, published, broadcast, displayed or exhibited by City in respect of the sponsored purpose/product shall acknowledge Sponsor in the

manner delineated herein.

5.2 City shall immediately, upon the termination of this Agreement, cease to use or otherwise refer to Sponsor's name and/or logo except to the extent otherwise authorized by law or agreement of the parties.

5.3 Sponsor hereby grants to City a limited, non-exclusive, non-transferable license to use Sponsor's trademarks, service marks, trade names, logos, color combinations, insignia and other appropriate identifying marks and slogans related to the Sponsor (collectively, "Sponsor's Marks") within the corporate limits of the City of Round Rock, Texas in connection with the aforementioned sponsorship program. Except as expressly provided herein, no right, property, license, permission or interest of any kind in or to the Sponsor's Marks is intended to be given or transferred to or acquired by City by the execution, performance or non-performance of this Agreement. City understands, acknowledges and agrees that the Sponsor's Marks are the property of Sponsor, and City agrees that it shall in no way contest or deny the validity of the Sponsor's Marks, or the right or title of Sponsor in or to the Sponsor's Marks, and City will not encourage or assist others directly or indirectly to do so, during the term of this Agreement or hereafter. In addition, City recognizes the significant value of the goodwill associated with the Sponsor's Marks and acknowledges that the goodwill associated thereto belongs to Sponsor and that the Sponsor's Marks have secondary meaning in the minds of the public. City shall not, during the term of this Agreement or otherwise, take any action or fail to take any action that would have a materially adverse effect on the Sponsor's Marks or the rights of Sponsor in and to the Sponsor's Marks. Upon the termination of this Agreement, City shall immediately terminate all use of the Sponsor's Marks in every manner whatsoever.

## **6. USE OF CITY'S NAME AND/OR LOGO**

6.1 All advertising and promotional material produced, published, broadcast, displayed or exhibited by Sponsor in respect of the sponsored purpose/product shall acknowledge City in the manner delineated herein, and shall be approved in writing by City in advance of use.

6.2 Sponsor shall immediately, upon the termination of this Agreement, cease to use or otherwise refer to City's name and/or logo except to the extent otherwise authorized by law or agreement of the parties.

## **7. COMPETITIVE ADVERTISING**

7.1 The parties expressly acknowledge that City has disclosed that it has granted and, during the term of this Agreement, will grant to persons or entities other than Sponsor the right to sponsor or advertise in the Play for All Abilities Project, unless a written amendment or written agreement otherwise has been attached hereto. City expressly acknowledges, however, that this Section 7.1 is subject to the exclusivity conferred in Section 4.1 hereof, to-wit: the right of Sponsor to have one building in the "Village Pod" of the Play for All Abilities Project designed with natural gas utility features and affixed with Sponsor's name signage. City acknowledges that it will have no other building in the named pod designed and named for a direct competitor facility.

## **8. APPLICABLE LAWS**

8.1 Sponsor expressly agrees that the rights and privileges granted by this Agreement are subject to all applicable policies, ordinances, laws, and regulations of the City of Round Rock, the State of Texas, and the United States of America, and Sponsor agrees to abide by same. Insofar as it relates to Sponsor's participation in the purpose/product delineated in this Agreement, Sponsor further agrees to observe and comply with any and all rules and regulations promulgated from time to time by City and its Parks and Recreation Department.

## **9. BREACH AND TERMINATION**

9.1 If any party breaches any of the terms and conditions of this Agreement and fails to rectify such default in accordance with a written notice from a non-defaulting party within fifteen (15) days after the date of such notice (or a longer period if all parties agree to same in writing), a non-defaulting party may terminate this Agreement at any time thereafter.

9.2 City may terminate this Agreement immediately if any of the following occur:

9.2.1 Sponsor is wound up or dissolved, becomes insolvent or enters into an agreement with its creditors, or if a receiver, manager or liquidator is appointed in respect of Sponsor;

9.2.2 Sponsor's business operations or the business or activities of any associated company are contrary to any City of Round Rock policy;

9.2.3 City determines that, for whatever reason, it should no longer use the sponsored purpose/product or be associated with Sponsor.

9.3 If this Agreement is terminated, Sponsor shall not be required to pay any unpaid installments of the sponsorship fee (if payment is by installment).

9.4 The expiration or termination of this Agreement shall not prevent any party from taking action to enforce a term or condition of this Agreement in respect of any breach occurring prior to such expiration or termination.

## **10. INDEMNIFICATION**

10.1 The parties shall defend (at the option of City), indemnify, and hold City, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the fault of either of the other parties, or either of their agents, employees or subcontractors, in the performance of their respective obligations under this Agreement, no matter how, or to whom, such loss may occur. Nothing herein shall be deemed to limit the rights of City or the other parties (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.



## **11. ASSIGNMENT AND DELEGATION**

11.1 The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. No party shall assign, sublet or transfer any interest in this Agreement without prior written authorization from the other parties.

## **12. NOTICES**

12.1 All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows: when delivered personally to the recipient's address as stated in this Agreement; or three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

### **Notice to Sponsor:**

Atmos Energy Corporation  
3110 North Interstate 35  
Round Rock, TX 78681

### **Notice to Play for All, a 501(c)(3) organization:**

Play for All  
P.O. Box 690  
Round Rock, TX 78680

### **Notice to City:**

City Manager and to:  
221 East Main Street  
Round Rock, TX 78664

Stephan L. Sheets, Attorney  
309 East Main Street  
Round Rock, TX 78664

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of the parties.

## **13. APPLICABLE LAW; ENFORCEMENT AND VENUE**

13.1 This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by any party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

## **14. EXCLUSIVE AGREEMENT**

14.1 This document, and all appended documents, constitutes the entire Agreement between all parties hereto. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing.

## **15. DISPUTE RESOLUTION**

15.1 If a dispute or claim arises under this Agreement, the parties agree to first try to resolve the dispute or claim by appropriate internal means, including referral to each party's senior management. If the parties cannot reach a mutually satisfactory resolution, then and in that event any such dispute or claim will be sought to be resolved with the help of a mutually selected mediator. If the parties cannot agree on a mediator, City and Sponsor shall each select a mediator and the two mediators shall agree upon a third mediator. Any costs and fees, other than attorney fees, associated with the mediation shall be shared equally by the parties. City and Sponsor hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

## **16. SEVERABILITY**

16.1 The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision hereof void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

## **17. MISCELLANEOUS PROVISIONS**

17.1 Time is of the Essence. The parties understand and agree that time is of the essence and that any failure of any party to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement.

17.2 Force Majeure. The parties shall not be deemed in violation of this Agreement if a party is prevented from performing any of its obligations hereunder by reasons for which it is not responsible as defined herein. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

17.3 Multiple Counterparts. This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

[Signatures on the following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated.

**City of Round Rock, Texas**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

**Attest:**

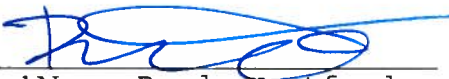
By: \_\_\_\_\_  
Sara L. White, City Clerk

**For City, Approved as to Form:**

By: \_\_\_\_\_  
Stephan L. Sheets, City Attorney

**Atmos Energy Corporation,  
Sponsor**

**Play for All, a 501(c)(3) organization**

By:   
Printed Name: Randy Hartford  
Title: Manager, Public Affairs  
Date Signed: May 10, 2017

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_



# City of Round Rock

## Agenda Item Summary

**Agenda Number: G.12**

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**Title:** Consider a resolution authorizing the Mayor to execute a Sponsorship Agreement with Chick Fil A, Inc. and the Play for All Foundation for a Village Pod building at the Play for All Abilities Park.

**Type:** Resolution

**Governing Body:** City Council

**Agenda Date:** 6/22/2017

**Dept Director:** Rick Atkins, Parks and Recreation Director

**Cost:** \$0.00

**Indexes:**

**Attachments:** Resolution, Exhibit A

**Department:** Parks and Recreation Department

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### **Text of Legislative File 2017-4535**

This item will authorize the Mayor to execute a Sponsorship Agreement with Chick-fil-A and the Play for All Foundation for a miniature Chick-fil-A building in the Village Pod Expansion at Play for All. Chick-fil-A has donated \$25,000 to the foundation to sponsor this building. The Play for All Playground is located at 151 N. A.W. Grimes Blvd. and has become one of the most popular playgrounds in Round Rock with approximately 1000 visitors at the park daily. With the popularity and extreme use of the playground, it has become necessary to expand the park boundaries and offer additional play experiences. The Play for All Expansion Project includes adding additional parking, realigning the entry drive, addition of three (3) new playpods, and expanding the five (5) existing playpods. Lighting will also be added as part of the expansion.

The Play for All Expansion Project is a joint collaboration between the City and the Play for All Foundation. The Foundation has raised over \$500,000 to help fund the project and are continuing to raise funds.

**RESOLUTION NO. R-2017-4535**

**WHEREAS**, the City of Round Rock Parks and Recreation Department (“City”) wishes to enter into a three-party Sponsorship Agreement with Chick-fil-A, Inc. and Play for All, a 501(c)(3) non-profit organization, for a Village Pod building at the Play for All Abilities Park, Now Therefore

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,**

That the Mayor is hereby authorized and directed to execute on behalf of the City said Agreement, a copy of same being attached hereto as Exhibit “A” and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

**RESOLVED** this 22nd day of June, 2017.

---

CRAIG MORGAN, Mayor  
City of Round Rock, Texas

ATTEST:

---

SARA L. WHITE, City Clerk

# EXHIBIT

## "A"

### CITY OF ROUND ROCK PARKS AND RECREATION DEPARTMENT SPONSORSHIP AGREEMENT WITH CHICK-FIL-A, INC.

This three-party Sponsorship Agreement (referred to herein as the "Agreement") is entered into on this \_\_\_\_\_ day of the month of May, 2017 by and between the CITY OF ROUND ROCK, TEXAS, a Texas home-rule municipality (referred to herein as the "City"), and CHICK-FIL-A, INC. (referred to herein as the "Sponsor"), and PLAY FOR ALL, an organization with public charity status that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code (referred to herein as "Play for All").

#### WITNESSETH:

**WHEREAS**, Sponsor has evidenced a desire to become involved in a sponsorship role to enhance certain opportunities provided by the City's Parks and Recreation Department relating to the Play for All Abilities Project; and

**WHEREAS**, City believes such sponsorship would assist its Parks and Recreation Department to deliver quality, life-enriching activities to a targeted segment of the community; and

**WHEREAS**, the 501(c)(3) organization Play for All was formed March 13, 2009 to receive contributions for the Play for All Abilities Project, which contributions are deductible under Section 170 of the Internal Revenue Code; and

**WHEREAS**, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

#### NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

#### 1. TERM

This Agreement shall be effective on the date it has been signed by all parties hereto, and shall remain in full force and effect for five (5) years unless and until it expires by operation of any specific term stated herein, or until terminated as provided herein. The term of the Agreement may be extended upon written agreement of all parties.

#### 2. SPONSORSHIP FEE

In consideration of the grant of specified sponsorship rights under this Agreement, Sponsor shall donate to the 501(c)(3) organization Play for All, for the benefit of the Parks and Recreation Department Play for All Abilities Project, for the entire term of this Agreement, the following sponsorship fee: the sum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00).

21 Payment of such sponsorship fee shall be at the following times and in the following manner: Sponsor shall pay the referenced donated funds to Play for All upon final execution of this Agreement.

22 The sponsorship fee shall be the entire amount payable to Play for All, for the benefit of the City and its Parks and Recreation Department Play for All Abilities Project, under this Agreement.

23 City and its Parks and Recreation Department shall only use the sponsorship fee for the sponsored purpose/product delineated herein in Section 3.

24 Electronic billing email address: AP\_Marketing\_NonPO@chick-fil-a.com. Each invoice shall be submitted in pdf format in separate emails and include either on the invoice or cover email the name Kristin Mickey.

### **3. SPONSORSHIP PURPOSE/PRODUCT DELINEATED**

3.1 City and its Parks and Recreation Department hereby designate Sponsor as a Village Building Sponsor, according to the Play for All Abilities Sponsorship Opportunities Program, and agree to have an 8' x 8' (minimum dimension) building in the Village Pod Expansion designed with restaurant features and affixed with the Sponsor's name/logo signage.

32 City agrees that Sponsor may advertise its sponsorship of the purpose/product in accordance with contractual requirements delineated herein.

33 All parties to this Agreement agree that the participating individual Chick-fil-A<sup>®</sup> franchised restaurant Operators in the Austin, Texas designated market area (the "Participating Operators") shall be third party beneficiaries of this Agreement, including without limitation with respect to the sponsorship rights and benefits granted herein.

### **4. SPONSORSHIP RIGHTS**

4.1 For the term of this Agreement, City grants to Sponsor the sponsorship rights set forth herein: the right to have one building in the "Village Pod" of the Play for All Abilities Project designed with restaurant features and affixed with Sponsor's name/logo signage.

42 City shall, if, as and when the sponsored purpose/product is publicized, acknowledge Sponsor in accordance with the following or similar recognition rights:

4.2.1 Inclusion of name/logo on specific building within pod;

4.2.2 Inclusion of name/logo in park dedication art/architectural piece;

4.2.3 Recognition in the *Round Rock Leader*;

4.2.4 Awarding of sponsorship certificate plaque; and

4.2.5 Provision of photograph of Play for All Abilities Park Grand Opening

Ceremony.

## **5. USE OF SPONSOR'S NAME AND/OR LOGO**

5.1 All advertising and promotional material produced, published, broadcast, displayed or exhibited by City in respect of the sponsored purpose/product shall acknowledge Sponsor in the manner delineated herein.

5.2 City shall immediately, upon the termination of this Agreement, cease to use or otherwise refer to Sponsor's name and/or logo except to the extent otherwise authorized by law or agreement of the parties.

5.3 Sponsor hereby grants to City a limited, non-exclusive, non-transferable license to use Sponsor's trademarks, service marks, trade names, logos, color combinations, insignia and other appropriate identifying marks and slogans related to the Sponsor (collectively, "Sponsor's Marks") within the corporate limits of the City of Round Rock, Texas in connection with the aforementioned sponsorship program. Except as expressly provided herein, no right, property, license, permission or interest of any kind in or to the Sponsor's Marks is intended to be given or transferred to or acquired by City by the execution, performance or non-performance of this Agreement. City understands, acknowledges and agrees that the Sponsor's Marks are the property of Sponsor, and City agrees that it shall in no way contest or deny the validity of the Sponsor's Marks, or the right or title of Sponsor in or to the Sponsor's Marks, and City will not encourage or assist others directly or indirectly to do so, during the term of this Agreement or hereafter. In addition, City recognizes the significant value of the goodwill associated with the Sponsor's Marks and acknowledges that the goodwill associated thereto belongs to Sponsor and that the Sponsor's Marks have secondary meaning in the minds of the public. City shall not, during the term of this Agreement or otherwise, take any action or fail to take any action that would have a materially adverse effect on the Sponsor's Marks or the rights of Sponsor in and to the Sponsor's Marks. Upon the termination or expiration of this Agreement, City shall immediately terminate all use of the Sponsor's Marks in every manner whatsoever.

5.4 Each use of the Sponsor's Marks shall be approved in writing by Sponsor in advance of use.

## **6. USE OF CITY'S NAME AND/OR LOGO**

6.1 All advertising and promotional material produced, published, broadcast, displayed or exhibited by Sponsor in respect of the sponsored purpose/product shall acknowledge City in the manner delineated herein, and shall be approved in writing by City in advance of use.

6.2 Sponsor shall immediately, upon the termination of this Agreement, cease to use or otherwise refer to City's name and/or logo except to the extent otherwise authorized by law or agreement of the parties.



## **7. COMPETITIVE ADVERTISING**

The parties expressly acknowledge that City has disclosed that it has granted and, during the term of this Agreement, will grant to persons or entities other than Sponsor the right to sponsor or advertise in the Play for All Abilities Project, unless a written amendment or written agreement otherwise has been attached hereto. City expressly acknowledges, however, that this Section 7.1 is subject to the exclusivity conferred in Section 4.1 hereof, to-wit: the right of Sponsor to have one building in the "Village Pod" of the Play for All Abilities Project designed with restaurant features and affixed with Sponsor's name signage. City acknowledges that it will have no other building in the named pod designed and named for a competitor restaurant facility.

## **8. APPLICABLE LAWS**

Sponsor expressly agrees that the rights and privileges granted by this Agreement are subject to all applicable policies, ordinances, laws, and regulations of the City of Round Rock, the State of Texas, and the United States of America, and Sponsor agrees to abide by same. Insofar as it relates to Sponsor's participation in the purpose/product delineated in this Agreement, Sponsor further agrees to observe and comply with any and all rules and regulations promulgated from time to time by City and its Parks and Recreation Department.

## **9. BREACH AND TERMINATION**

If any party breaches any of the terms and conditions of this Agreement and fails to rectify such default in accordance with a written notice from a non-defaulting party within fifteen (15) days after the date of such notice (or a longer period if all parties agree to same in writing), a non-defaulting party may terminate this Agreement at any time thereafter.

9.1 City may terminate this Agreement immediately if any of the following occur:

9.1.1 Sponsor is wound up or dissolved, becomes insolvent or enters into an agreement with its creditors, or if a receiver, manager or liquidator is appointed in respect of Sponsor;

9.1.2 Sponsor's business operations or the business or activities of any associated company are contrary to any City of Round Rock policy;

9.1.3 City determines that, for whatever reason, it should no longer use the sponsored purpose/product or be associated with Sponsor.

9.2 If this Agreement is terminated, Sponsor shall not be required to pay any unpaid installments of the sponsorship fee (if payment is by installment) and City shall return any payment made for sponsorship rights not received by Sponsor.

9.3 The expiration or termination of this Agreement shall not prevent any party from taking action to enforce a term or condition of this Agreement in respect of any breach occurring prior to such expiration or termination.

## **10. INDEMNIFICATION**

10.1 Play for All shall defend (at the option of City), indemnify, and hold City, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the fault of itself or its agents, employees or subcontractors, in the performance of their respective obligations under this Agreement, no matter how, or to whom, such loss may occur. Nothing herein shall be deemed to limit the rights of City or the other parties (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

10.2 Sponsor shall defend (at the option of City), indemnify, and hold City, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the negligence of itself or its employees or subcontractors, in the performance of their respective obligations under this Agreement, no matter how, or to whom, such loss may occur. Nothing herein shall be deemed to limit the rights of City or the other parties (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

## **11. ASSIGNMENT AND DELEGATION**

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. No party shall assign, sublet or transfer any interest in this Agreement without prior written authorization from the other parties.

## **12. NOTICES**

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows: when delivered personally to the recipient's address as stated in this Agreement; or three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

### **Notice to Sponsor:**

Chick fil-A, Inc.  
Attn: Tammy Pearson, Esq.  
5200 Buffington Road  
Atlanta, GA 30349

**Notice to Play for All, a 501(c)(3) organization:**

Play for All  
P.O. Box 690  
Round Rock, TX 78680

**Notice to City:**

City Manager and to:  
221 East Main Street  
Round Rock, TX 78664

Stephan L. Sheets, Attorney  
309 East Main Street  
Round Rock, TX 78664

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of the parties.

**13. APPLICABLE LAW; ENFORCEMENT AND VENUE**

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by any party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

**14. EXCLUSIVE AGREEMENT**

This document, and all appended documents, constitutes the entire Agreement between all parties hereto. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing.

**15. DISPUTE RESOLUTION**

If a dispute or claim arises under this Agreement, the parties agree to first try to resolve the dispute or claim by appropriate internal means, including referral to each party's senior management. City and Sponsor hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

**16. SEVERABILITY**

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision hereof void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the

stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

**17. MISCELLANEOUS PROVISIONS**

Time is of the Essence. The parties understand and agree that time is of the essence and that any failure of any party to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement.

Force Majeure. The parties shall not be deemed in violation of this Agreement if a party is prevented from performing any of its obligations hereunder by reasons for which it is not responsible as defined herein. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

Multiple Counterparts. This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated.

**City of Round Rock, Texas**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_


**Attest:**

By: \_\_\_\_\_  
Sara L. White, City Clerk

**For City, Approved as to Form:**

By: \_\_\_\_\_  
Stephan L. Sheets, City Attorney

**Chick-fil-A, Inc.**

By:  \_\_\_\_\_  
Printed Name: David Salyers  
Title: VP-Marketing  
Date Signed: 5/4/17

**Play for All, a 501(c)(3) organization  
Sponsor**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_



# City of Round Rock

## Agenda Item Summary

**Agenda Number: G.13**

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**Title:** Consider a resolution authorizing the Mayor to execute a Sponsorship Agreement with Nyle Maxwell Family of Dealerships and the Play for All Foundation for a Pit Structure Building at the Play for All Abilities Park.

**Type:** Resolution

**Governing Body:** City Council

**Agenda Date:** 6/22/2017

**Dept Director:** Rick Atkins, Parks and Recreation Director

**Cost:** \$0.00

**Indexes:**

**Attachments:** Resolution, Exhibit A

**Department:** Parks and Recreation Department

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### Text of Legislative File 2017-4536

This item will authorize the Mayor to execute a Sponsorship Agreement with Nyle Maxwell Family of Dealerships and the Play for All Foundation for a pit structure building and race track at Play for All. Nyle Maxwell Family of Dealerships has donated \$60,000 to the foundation to sponsor this pod. The Play for All Playground is located at 151 N. A.W. Grimes Blvd. and has become one of the most popular playgrounds in Round Rock with approximately 1000 visitors at the park daily. With the popularity and extreme use of the playground, it has become necessary to expand the park boundaries and offer additional play experiences. The Play for All Expansion Project includes adding additional parking, realigning the entry drive, addition of three (3) new playpods, and expanding the five (5) existing playpods. Lighting will also be added as part of the expansion.

The Play for All Expansion Project is a joint collaboration between the City and the Play for All Foundation. The Foundation has raised over \$500,000 to help fund the project and are continuing to raise funds.

**RESOLUTION NO. R-2017-4536**

**WHEREAS**, the City of Round Rock Parks and Recreation Department (“City”) wishes to enter into a three-party Sponsorship Agreement with Nyle Maxwell Family of Dealerships and Play for All, a 501(c)(3) non-profit organization, for a Pit Structure Building at the Play for All Abilities Park,  
Now Therefore

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,**

That the Mayor is hereby authorized and directed to execute on behalf of the City said Agreement, a copy of same being attached hereto as Exhibit “A” and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

**RESOLVED** this 22nd day of June, 2017.

---

CRAIG MORGAN, Mayor  
City of Round Rock, Texas

ATTEST:

---

SARA L. WHITE, City Clerk

**EXHIBIT**

**"A"**

**CITY OF ROUND ROCK  
PARKS AND RECREATION DEPARTMENT  
SPONSORSHIP AGREEMENT WITH  
NYLE MAXWELL FAMILY OF DEALERSHIPS**

This ~~three~~ party Sponsorship Agreement (referred to herein as the "Agreement") is entered into on this 3/5 day of the month of May, 2017 by and between the CITY OF ROUND ROCK, TEXAS, a Texas home-rule municipality (referred to herein as the "City"), and NYLE MAXWELL FAMILY OF DEALERSHIPS (referred to herein as the "Sponsor"), and PLAY FOR ALL, an organization with public charity status that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code.

**WITNESSETH:**

**WHEREAS**, Sponsor has evidenced a desire to become involved in a sponsorship role to enhance certain opportunities provided by the City's Parks and Recreation Department relating to the Play for All Abilities Project; and

**WHEREAS**, City believes such sponsorship would assist its Parks and Recreation Department to deliver quality, life-enriching activities to a targeted segment of the community; and

**WHEREAS**, the 501(c)(3) organization Play for All was formed March 13, 2009 to receive contributions for the Play for All Abilities Project, which contributions are deductible under Section 170 of the Internal Revenue Code; and

**WHEREAS**, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

**NOW, THEREFORE, WITNESSETH:**

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

**1. TERM**

1.1 This Agreement shall be effective on the date it has been signed by all parties hereto, and shall remain in full force and effect for ten (10) years unless and until it expires by operation of any specific term stated herein, or until terminated as provided herein. The term of the Agreement may be extended upon written agreement of both parties.

**2. SPONSORSHIP FEE**

2.1 In consideration of the grant of specified sponsorship rights under this Agreement, Sponsor shall donate to the 501(c)(3) organization Play for All, for the benefit of the Parks and



Recreation Department Play for All Abilities Project, for the entire term of this Agreement, the following sponsorship fee: the sum of Sixty Thousand and No/100 Dollars (\$60,000.00).

2.2 Payment of such sponsorship fee shall be at the following times and in the following manner: Sponsor shall pay the referenced donated funds to Play for All in five (5) equal installments of \$12,000.00 each, with the first such payment being due and payable to the City upon final execution of this Agreement, and with each payment thereafter being due and payable on the same date of each succeeding year until the total amount of \$60,000.00 is fully and finally paid.

2.3 The sponsorship fee shall be the entire amount payable to Play for All, for the benefit of the City and its Parks and Recreation Department Play for All Abilities Project, under this Agreement.

2.4 City and its Parks and Recreation Department shall only use the sponsorship fee for the sponsored purpose/product delineated herein in Section 3.

### **3. SPONSORSHIP PURPOSE/PRODUCT DELINEATED**

3.1 City and its Parks and Recreation Department hereby designate Sponsor as a Race Track Sponsor, and agree to have a 40' long (minimum dimension) Pit Structure Building with Learning Wall, Start/Finish Line signage identifying the Race Track as "Nyle Maxwell Family of Dealerships Race Track", and On-Track signage and Pod Entry Signage (as described in Exhibit "A") in the Race Track Pod designed with automotive features and affixed with Sponsor's name/logo signage in the location shown in Exhibit "B." Logo/signage shall be preapproved by Sponsor to ensure it is consistent with Sponsor's brand standards.

3.2 City agrees that Sponsor may advertise its sponsorship of the purpose/product in accordance with contractual requirements delineated herein.

3.3. City agrees to renovate the existing "Maxwell Family of Dealership Building" in the Village Pod to reflect the updated look and branding of the current Sponsor's automotive dealerships/facilities. City agrees to work with Sponsor on the final building finishes and signage of the renovation.

### **4. SPONSORSHIP RIGHTS**

4.1 For the term of this Agreement, City grants to Sponsor the sponsorship rights set forth herein: the right to have a Pit Structure Building with Learning Wall/Finish Line signage and On-Track signage and Pod entry signage (as described in Exhibit "A") in the Race Track Pod designated with automotive features and affixed with Sponsor's name/logo signage in the location shown in Exhibit "B."

4.2 City shall, if, as and when the sponsored purpose/product is publicized, acknowledge Sponsor in accordance with the following or similar recognition rights:

4.2.1 Inclusion of name/logo on specific building within pod;

- 4.2.2 Inclusion of name/logo in park dedication art/architectural piece;
- 4.2.3 Recognition in the *Round Rock Leader*;
- 4.2.4 Awarding of sponsorship certificate plaque; and
- 4.2.5 Provision of photograph of Play for All Abilities Park Grand Opening Ceremony.

## **5. USE OF SPONSOR'S NAME AND/OR LOGO**

5.1 All advertising and promotional material produced, published, broadcast, displayed or exhibited by City in respect of the sponsored purpose/product shall acknowledge Sponsor in the manner delineated herein.

5.2 City shall immediately, upon the termination of this Agreement, cease to use or otherwise refer to Sponsor's name and/or logo except to the extent otherwise authorized by law or agreement of the parties.

5.3 Sponsor hereby grants to City a limited, non-exclusive, non-transferable license to use Sponsor's trademarks, service marks, trade names, logos, color combinations, insignia and other appropriate identifying marks and slogans related to the Sponsor (collectively, "Sponsor's Marks") within the corporate limits of the City of Round Rock, Texas in connection with the aforementioned sponsorship program. Except as expressly provided herein, no right, property, license, permission or interest of any kind in or to the Sponsor's Marks is intended to be given or transferred to or acquired by City by the execution, performance or non-performance of this Agreement. City understands, acknowledges and agrees that the Sponsor's Marks are the property of Sponsor, and City agrees that it shall in no way contest or deny the validity of the Sponsor's Marks, or the right or title of Sponsor in or to the Sponsor's Marks, and City will not encourage or assist others directly or indirectly to do so, during the term of this Agreement or hereafter. In addition, City recognizes the significant value of the goodwill associated with the Sponsor's Marks and acknowledges that the goodwill associated thereto belongs to Sponsor and that the Sponsor's Marks have secondary meaning in the minds of the public. City shall not, during the term of this Agreement or otherwise, take any action or fail to take any action that would have a materially adverse effect on the Sponsor's Marks or the rights of Sponsor in and to the Sponsor's Marks. Upon the termination of this Agreement, City shall immediately terminate all use of the Sponsor's Marks in every manner whatsoever.

## **6. USE OF CITY'S NAME AND/OR LOGO**

6.1 All advertising and promotional material produced, published, broadcast, displayed or exhibited by Sponsor in respect of the sponsored purpose/product shall acknowledge City in the manner delineated herein, and shall be approved in writing by City in advance of use.

6.2 Sponsor shall immediately, upon the termination of this Agreement, cease to use or otherwise refer to City's name and/or logo except to the extent otherwise authorized by law or agreement of the parties.

## **7. COMPETITIVE ADVERTISING**

7.1 The parties expressly acknowledge that City has disclosed that it has granted and, during the term of this Agreement, will grant to persons or entities other than Sponsor the right to sponsor or advertise in the Play for All Abilities Project, unless a written amendment or written agreement otherwise has been attached hereto. City expressly acknowledges, however, that this Section 7.1 is subject to the exclusivity conferred in Section 4.1 hereof, to-wit: the right of Sponsor to have a Pit Structure Building with Learning Wall, Start/Finish Line signage and On-Track signage in the Race Track Pod designed with automotive features and affixed with Sponsor's name/logo signage. City acknowledges that it will have no other building in the named pod designed and named for a direct competitor facility.

## **8. APPLICABLE LAWS**

8.1 Sponsor expressly agrees that the rights and privileges granted by this Agreement are subject to all applicable policies, ordinances, laws, and regulations of the City of Round Rock, the State of Texas, and the United States of America, and Sponsor agrees to abide by same. Insofar as it relates to Sponsor's participation in the purpose/product delineated in this Agreement, Sponsor further agrees to observe and comply with any and all rules and regulations promulgated from time to time by City and its Parks and Recreation Department.

## **9. BREACH AND TERMINATION**

9.1 If any party breaches any of the terms and conditions of this Agreement and fails to rectify such default in accordance with a written notice from a non-defaulting party within fifteen (15) days after the date of such notice (or a longer period if all parties agree to same in writing), a non-defaulting party may terminate this Agreement at any time thereafter.

9.2 City may terminate this Agreement immediately if any of the following occur:

9.2.1 Sponsor is wound up or dissolved, becomes insolvent or enters into an agreement with its creditors, or if a receiver, manager or liquidator is appointed in respect of Sponsor;

9.2.2 Sponsor's business operations or the business or activities of any associated company are contrary to any City of Round Rock policy;

9.2.3 City determines that, for whatever reason, it should no longer use the sponsored purpose/product or be associated with Sponsor.

9.3 If this Agreement is terminated, Sponsor shall not be required to pay any unpaid installments of the sponsorship fee (if payment is by installment).

9.4 The expiration or termination of this Agreement shall not prevent any party from taking action to enforce a term or condition of this Agreement in respect of any breach occurring prior to such expiration or termination.

## **10. INDEMNIFICATION**

10.1 The parties shall defend (at the option of City), indemnify, and hold City, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the fault of either of the other parties, or either of their agents, employees or subcontractors, in the performance of their respective obligations under this Agreement, no matter how, or to whom, such loss may occur. Nothing herein shall be deemed to limit the rights of City or the other parties (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

## **11. ASSIGNMENT AND DELEGATION**

11.1 The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. No party shall assign, sublet or transfer any interest in this Agreement without prior written authorization from the other parties.

## **12. NOTICES**

12.1 All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows: when delivered personally to the recipient's address as stated in this Agreement; or three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

### **Notice to Sponsor:**

Nyle Maxwell Family of Dealerships  
13401 N. FM 620  
Austin, TX 78717

### **Notice to Play for All, a 501(c)(3) organization:**

Play for All  
P.O. Box 690  
Round Rock, TX 78680

### **Notice to City:**

City Manager and to:  
221 East Main Street  
Round Rock, TX 78664

Stephan L. Sheets, Attorney  
309 East Main Street  
Round Rock, TX 78664

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of the parties.

### **13. APPLICABLE LAW; ENFORCEMENT AND VENUE**

13.1 This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by any party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

### **14. EXCLUSIVE AGREEMENT**

14.1 This document, and all appended documents, constitutes the entire Agreement between all parties hereto. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing.

### **15. DISPUTE RESOLUTION**

15.1 If a dispute or claim arises under this Agreement, the parties agree to first try to resolve the dispute or claim by appropriate internal means, including referral to each party's senior management. If the parties cannot reach a mutually satisfactory resolution, then and in that event any such dispute or claim will be sought to be resolved with the help of a mutually selected mediator. If the parties cannot agree on a mediator, City and Sponsor shall each select a mediator and the two mediators shall agree upon a third mediator. Any costs and fees, other than attorney fees, associated with the mediation shall be shared equally by the parties. City and Sponsor hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

### **16. SEVERABILITY**

16.1 The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision hereof void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

### **17. MISCELLANEOUS PROVISIONS**

17.1 Time is of the Essence. The parties understand and agree that time is of the essence and that any failure of any party to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement.

17.2 Force Majeure. The parties shall not be deemed in violation of this Agreement if a party is prevented from performing any of its obligations hereunder by reasons for which it is not responsible as defined herein. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

17.3 Multiple Counterparts. This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates indicated.

**City of Round Rock, Texas**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

**Attest:**

By: \_\_\_\_\_  
Sara L. White, City Clerk

**For City, Approved as to Form:**

By: \_\_\_\_\_  
Stephan L. Sheets, City Attorney

**Nyle Maxwell Family of Dealerships,  
Sponsor**

By: \_\_\_\_\_  
Printed Name: Nyle Maxwell  
Title: Managing  
Date Signed: 8-31-17

**Play for All, a 501(c)(3) organization**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_



## Exhibit A: Proposed Conceptual Improvements

*All images are for conceptual purposes only and may be subject to change based on final construction detailing*



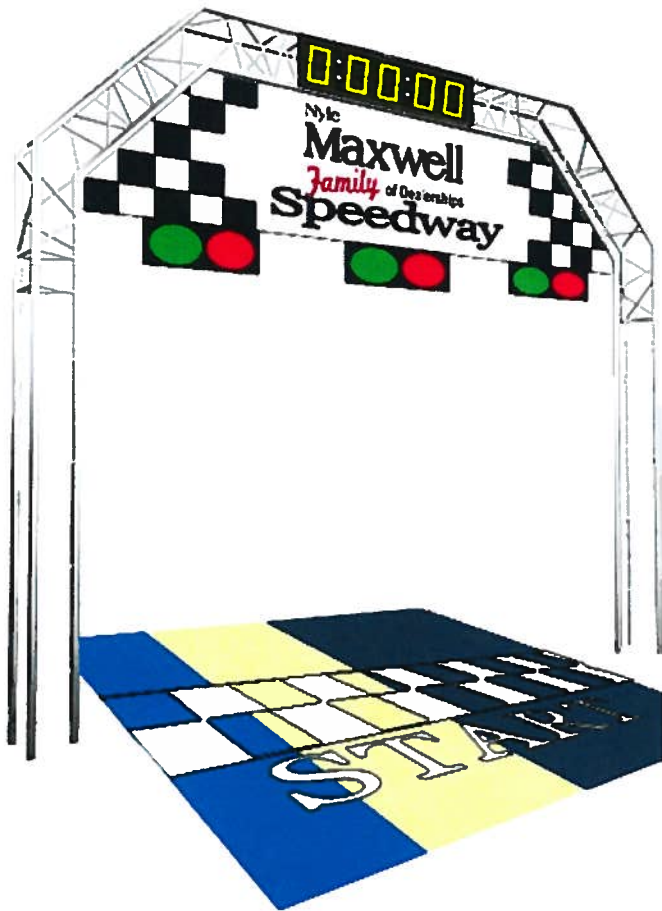
Item 1: Conceptual rendering of Pit Structure Building with Learning Wall



Item 2: Conceptual rendering of On-Track signage in Race Track Pod

## Exhibit A: Proposed Conceptual Improvements

*All images are for conceptual purposes only and may be subject to change based on final construction detailing*



Item 3: Conceptual rendering of Start/Finish Line Signage



Item 4: Conceptual rendering of Pod Entry Signage



## Exhibit B: Proposed Conceptual Improvement Locations

*All images are for conceptual purposes only and may be subject to change based on final construction detailing*



Item 1: Pit Structure Building with Learning Wall

Item 2: On-Track signage in Race Track Pod

Item 3: Start/Finish Line Signage

Item 4: Pod Entry Signage



# City of Round Rock

## Agenda Item Summary

**Agenda Number:** I.1

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**Title:** Consider Executive Session as authorized by §551.072, Government Code, related to the value and possible sale of real property located at the northwest corner of the intersection of Main Street and Mays Street.

**Type:** Executive Session

**Governing Body:** City Council

**Agenda Date:** 6/22/2017

**Dept Director:**

**Cost:**

**Indexes:**

**Attachments:**

**Department:** City Manager's Office

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**Text of Legislative File 2017-4564**



# City of Round Rock

## Agenda Item Summary

**Agenda Number: I.2**

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**Title:** Consider Executive Session as authorized by §551.072, Government Code, related to the purchase and/or value of real property located at 416 and 420 N. Mays Streets, Round Rock, Texas.

**Type:** Executive Session

**Governing Body:** City Council

**Agenda Date:** 6/22/2017

**Dept Director:**

**Cost:**

**Indexes:**

**Attachments:**

**Department:**

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**Text of Legislative File 2017-4573**