

DEFERMENT AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF NUECES §

This deferment agreement (“Agreement”) is entered into between the City of Corpus Christi (“City”), a Texas home-rule municipality, and «NAME» (“Developer”), a «STATE» «TYPE OF ENTITY», in order to defer the completion of certain required public improvements prior to recording the final plat of «LEGAL DESCRIPTION» (the “Plat”). A copy of the Plat is attached and incorporated by reference into this Agreement as **Exhibit 1**. The owners of the affected real property subject to the Plat and benefitted by this Agreement, to wit: «INSERT NAMES OF PROPERTY OWNERS», seek to have the Developer, acting as agent on the owners’ behalf, enter into this Agreement with the City to defer construction of the required public improvements.

WHEREAS, the Developer is obligated under Section 8.1.10 of the Unified Development Code (“UDC”) to construct not less than seventy-five percent (75%) of the required public improvements before the final Plat is endorsed by the City’s City Engineer or Development Services Engineer, as applicable (“City Engineer”);

WHEREAS, the Developer is seeking to delay the construction of the required public improvements (“Deferred Improvements”) shown in **Exhibit 2**, which exhibit is attached and incorporated by reference into this Agreement, and to have the Plat filed immediately with the County Clerk of Nueces County, Texas;

WHEREAS, in order to have the Plat filed prior to completion of the Deferred Improvements, the Developer agrees to deposit with the City a form of pre-approved financial security authorized by Section 3.30.1 of the UDC in the amount of «Dollar Amount Written Out» (\$«Dollar Amount»), representing 110% of the estimated cost of constructing the Deferred Improvements as shown in the cost estimate, which cost estimate is attached and incorporated by reference into this Agreement as **Exhibit 3**;

WHEREAS, water and sewer service are available to serve the subdivision, and the Developer has completed all other subdivision requirements, park dedications, park deferment agreements, maintenance agreements, and all special covenants;

WHEREAS, the Assistant City Manager and City Attorney have both approved this transaction; and

WHEREAS, the Developer is entering into this Agreement pursuant to Section 8.1.10 of the UDC in order to defer construction and record the final Plat.

NOW, THEREFORE, for the consideration set forth in this Agreement, the City and Developer agree as follows:

1. The preamble to this Agreement is included as substantive content in this instrument and upon which both parties to this Agreement have relied and will continue to rely during the term of this Agreement.
2. In consideration of the Developer's request to enter into this Agreement and the posting of approved financial security, the City agrees to waive the requirement that construction of the Deferred Improvements be at least 75% completed before the final Plat is endorsed by the City Engineer and filed for record with the County Clerk of Nueces County, and City further agrees to allow the Developer to delay construction of the Deferred Improvements up to the expiration of the time period stated in paragraph 27 of this Agreement.
3. As a condition of this Agreement, the Developer agrees to deposit with the City «DOLLAR AMOUNT WRITTEN OUT» (\$«DOLLAR AMOUNT»), as a form of financial security authorized in Section 3.30.1 of the UDC, upon execution of this Agreement or before the filing of the Plat. The financial security must provide for 110% of the estimated cost of constructing the required Deferred Improvements, as those costs are shown in Exhibit 3. The Developer acknowledges and specifically agrees that, in the event the financial security required by this Agreement has not been deposited with the City before the filing of the Plat in the official public records of Nueces County, this Agreement is NULL AND VOID WITHOUT ANY NOTICE OR FURTHER ACTION REQUIRED BY EITHER PARTY.
4. If a letter of credit is utilized as financial security under this Agreement, the content of the irrevocable letter of credit must be pre-approved by the City's Director of Financial Services ("Finance Director") and City Attorney, be issued by a banking institution having a local branch office within the State of Texas (Corpus Christi location preferred), be valid for a period of twelve (12) months from the date of issuance or longer, and require, as sole documentation for payment, a statement in writing from the City's Assistant City Manager setting forth (i) the circumstances of default giving rise to the draft or (ii) the Developer's failure to furnish proof of renewal not less than thirty (30) days prior to the expiration of the then current letter of credit [see the paragraph below regarding renewal], and accompanied by a properly drawn draft not to exceed the face value of the letter of credit.
5. If the form of financial security is a letter of credit, the Developer must ensure that the letter of credit is kept valid at all times. The letter of credit must be renewed by the Developer before expiration, and proof of such renewal must be received by the City at least thirty (30) days prior to the expiration of the then current letter of credit. If timely renewal is not received by the City, or cash in lieu thereof is not deposited as financial security with the City, the City may, after ten (10) days

prior written notice to the Developer, call (redeem) the letter of credit for failure to timely renew. If the letter of credit is called for failure to timely renew, the funds will be held in an account as if cash had been posted by the Developer for this Agreement in lieu of the letter of credit. The City shall not be liable for interest on any letter of credit so called nor shall the City be liable to the Developer for the accrual or payment of interest on any type of financial security posted by the Developer pursuant to this Agreement.

6. In accordance with the provisions set out in Section 3.30.1 of the UDC, as it may be amended, the City may accept other types of financial guarantees for deferment agreements subject to the approval of the Finance Director and the City Attorney. In the event the Developer desires to use and the City agrees to accept an alternate form of financial guarantee other than a cash deposit or an irrevocable letter of credit as security for this Agreement, such other security-specific financial guarantee's terms and conditions pertaining to issuance, redemption, restrictions, limitations, and use as made be made subject to this Agreement shall be as further set out in an addendum to this Agreement, which addendum is to be attached to this Agreement and the content incorporated by reference into this Agreement as "Addendum A." The parties agree that, should there be, by the attachment and incorporation of Addendum A to this Agreement, any conflict in the terms, conditions, or requirements stated in this Agreement (including its exhibits) and Addendum A, the provisions of Addendum A take precedence over conflicting terms in the Agreement and its exhibits. All other provisions in the Agreement (and its exhibits) not in conflict with Addendum A control otherwise by agreement of the parties.
7. Unless otherwise stated in this Agreement, any notice required or permitted to be given by either party shall be in writing and must be given by personal delivery, fax, or certified mail, return receipt requested, postage prepaid, and notice is deemed sufficiently given if addressed to the appropriate party at the address shown for the party in the signature block of this Agreement or faxed to the fax phone number shown in the signature block for the party. Any party may, by notice to the other in accordance with the provisions of this paragraph, specify a different address or addressee for notice purposes.
8. Time is of the essence in the performance of this Agreement.
9. Detailed construction drawings must be provided by the Developer and approved by the City's Departments of Development Services and Engineering prior to the start of construction of the Deferred Improvements.
10. The Developer shall construct the Deferred Improvements in accordance with the City's engineering standards in effect at the time of construction and in accordance with the construction drawings approved by the City departments pursuant to the paragraph above.

11. Upon completion of the Deferred Improvements by the Developer as verified by the Assistant City Manager and Director of Development Services and within the time period stated in paragraph 27 of this Agreement, acceptance of the Deferred Improvements by the City Engineer, and compliance by the Developer with the remaining terms of the Agreement, the City Engineer shall:
 - a. Immediately release the Developer from the obligations to construct the Deferred Improvements by mailing a release letter to Developer at the address shown above Developer's signature line in this Agreement.
 - b. Return to the Developer within sixty (60) days of the completion of the construction of the Deferred Improvements and settlement of the actual construction costs, or within sixty (60) days of acceptance of the Deferred Improvements by the City, whichever is later, any balance remaining of all monies received by the City from the Developer.
12. If the Developer has not begun construction of the Deferred Improvements at least thirty (30) days prior to the date stated in paragraph 27 of this Agreement, the Developer agrees that the City, after notice in writing to the Developer, may accelerate payment or performance or require additional financial security when the City deems itself at risk as to the prospect of performance or payment based on a demonstrated reasonable basis. In addition, if the Developer defaults and fails to deposit any increased security after notice and an opportunity to cure, the City may transfer the cash funds received or call (redeem) the letter of credit and transfer the funds (if the financial security provided was in the form of a letter of credit) to the appropriate City account, and the City may begin completion of the construction of the Deferred Improvements. If City constructs all or any part of the required Deferred Improvements, the Developer shall reimburse the City for any additional costs related to completion of the Deferred Improvements within thirty (30) days after the City completes the required Deferred Improvements and invoices the Developer if the funds on account prove inadequate for the City to complete the Deferred Improvements.
13. In accordance with Section 8.1.10.B of the UDC, an increase in financial security from the Developer may be required on an annual basis if the City deems itself, in the sole discretion of the City, insecure as to the prospect of payment or performance on a demonstrated reasonable basis or it reasonably determines that the financial security does not provide for 110% coverage of the estimated construction costs.
14. The City and Developer agree that, if the Developer formally vacates the current Plat with approval of the Planning Commission prior to the deadline for completion of construction of the Deferred Improvements, any money received by the City from the Developer remaining on deposit will be released and immediately returned to the Developer.

15. If Developer defaults in any of its covenants or obligations under this Agreement [excluding failure to timely renew a letter of credit, post additional security, or as may be made applicable by Addendum A, for which the default provisions are separately addressed in this document], the City Engineer shall send written notice to the Developer [(and may send notice to the Developer's project engineer ("Project Engineer")), if such address is known by the City] by certified mail, return receipt requested, advising the Developer of the default and giving the Developer thirty (30) days from date of receipt of the notice letter to cure the default. If the Developer fails to cure the default after receipt of notice and opportunity to cure, the City Engineer may transfer any funds received to the appropriate fund of the City in order to complete the Deferred Improvements. In the event there are any funds received by the City from the Developer remaining after the City has completed construction of the Deferred Improvements, the excess funds will be refunded to the Developer within sixty (60) days of the completion of construction of the Deferred Improvements and settlement of the actual construction costs.
16. The City reserves the right not to issue certificates of occupancy for all or any portion of the real property that is the subject of the Plat until the Deferred Improvements are constructed, installed in working order, and accepted by the City Engineer in accordance with the provisions of this Agreement.
17. No party may assign this Agreement or any rights under this Agreement without the prior written approval of the other party and by amendment to this Agreement.
18. By execution of this Agreement, the Developer covenants to construct the Deferred Improvements required by this Agreement, and this covenant shall be a covenant running with the land. The City, at the Developer's expense, shall file for record this Agreement in the official public records of Nueces County.
19. With the exception of Addendum A made applicable pursuant to paragraph 6, no changes or modifications to this Agreement may be made, nor any provisions waived, unless the change or modification is made in writing and signed by persons authorized to sign agreements on behalf of each party.
20. If, for any reason, any section, paragraph, subdivision, clause, provision, phrase, or word of this Agreement or the application thereof to any person or circumstance is, to any extent, held illegal, invalid, or unenforceable under present or future law or by a final judgment of a court of competent jurisdiction, then the remainder of this Agreement, or the application of said term or provision to persons or circumstances other than those as to which it is held illegal, invalid, or unenforceable, will not be affected thereby, for it is the definite intent of the parties to this Agreement that every section, paragraph, subdivision, clause, provision, phrase, or word of this Agreement be given full force and effect for its purpose.

21. The Developer shall, in compliance with Section 2-349 of the City's Code of Ordinances, complete the City's *Disclosure of Interests* form, which is attached to this Agreement as **Exhibit 4**, the contents of which, as a completed form, are incorporated in this Agreement by reference as if fully set out here in its entirety.
22. The Developer shall comply with all federal, State, and local laws, regulations, and rules applicable to performance of this Agreement.
23. This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created pursuant to this Agreement are performable in Nueces County, Texas. Venue for all actions arising from or pursuant to this Agreement shall be brought in Nueces County, Texas.
24. Strict performance of the provisions of this Agreement by the Developer is required by the City as a condition of this Agreement. The Developer specifically acknowledges and agrees that failure by the Developer to adhere or comply with any term, condition, or requirement of this Agreement constitutes a default of this Agreement.
25. All signatories to this Agreement warrant and guarantee that they have the authority to act on behalf of the person or entity represented and make this Agreement binding and enforceable by their signature.
26. This Agreement is to be executed in duplicate, each of which constitutes an original document. This Agreement becomes effective and is binding upon and inures to the benefit of the City and Developer and their successors and assigns from and after the date the Agreement has been executed by all signatories. This Agreement terminates «**INSERT NUMBER OF MONTHS**» months from the date executed by the last party signing this Agreement.

EXECUTED IN DUPLICATE ORIGINALS this _____ day of _____, 20____.

CITY OF CORPUS CHRISTI
P. O. Box 9277
Corpus Christi, TX 78469-9277
(361) 826-3240 Office
(361) 826-4428 Fax

Signature
Printed Name: _____
Title: Assistant City Manager

UPON RECORDING, PLEASE RETURN ONE ORIGINAL DOCUMENT TO:

**City of Corpus Christi
Department of Development Services
Attn: Director
2406 Leopard Street
Corpus Christi, TX 78401**

South Navigation Boulevard

12.24 Acres out of Lot 3, Block 9 J.C. Russell Farm Blocks Vol. 28, Pgs. 58-59, Map Records, Nueces County, Texas (Owner: Driscoll Foundation)

N84°12'19"E 50.00' 10'C.P.&L. Easement (Doc. No. 2000019658, O.P.R.N.C.T.)

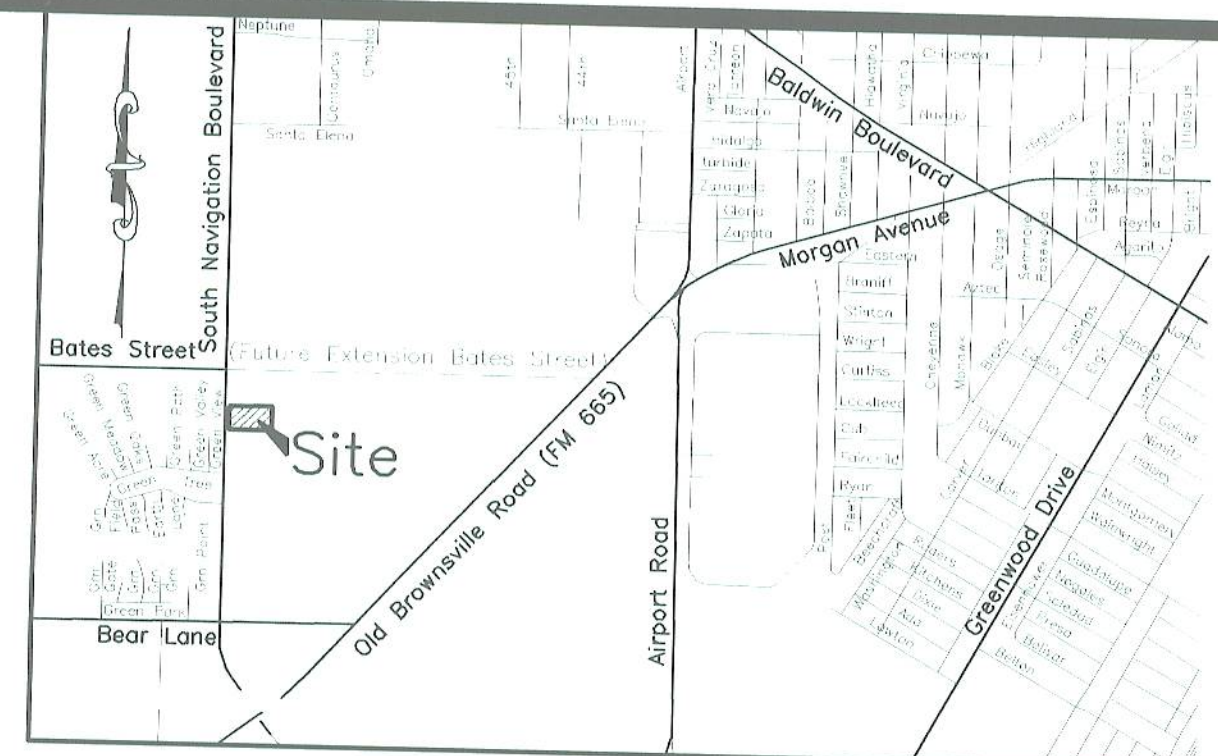
7.987 Acres out of Lot 3, Block 9 J.C. Russell Farm Blocks Vol. 28, Pgs. 58-59, Map Records, Nueces County, Texas (Owner: Sivad Management, Ltd.)

Private D.E. (Doc. No. O.P.R.N.C.T.)

Lot 2 2.500 Acres 108,897.19sf

Plat of Saxet Industrial Lot 2, Block 1

2.500 acres of land out of Lot 3, Block 9, J.C. Russell Farm Blocks, recorded in Volume 28, Pages 58-59, Map Records of Nueces County, Texas.



LOCATION MAP N.T.S.

West 438.27'

8.011 Acres out of Lot 3, Block 9 J.C. Russell Farm Blocks Vol. 28, Pgs. 58-59, Map Records, Nueces County, Texas (Owner: Thomas S. Davis)

1.715 Acres out of Lot 3, Block 9 J.C. Russell Farm Blocks Vol. 28, Pgs. 58-59, Map Records, Nueces County, Texas (Owner: K J Koch Lands, Ltd.)

14.634 Acres out of Lot 3, Block 9 J.C. Russell Farm Blocks Vol. 28, Pgs. 58-59, Map Records, Nueces County, Texas (Owner: K J Koch Lands, Ltd.)

Lot 5 Johns Industrial Subdivision Vol. 30, Pg. 1, Map Records, Nueces County, Texas

Notes:

- 1.) Total platted area contains 2.500 acres of land.
- 2.) Set 5/8 inch iron rods with red plastic cap stamped "URBAN ENGR C.C. TX" at all Lot corners, except where noted.
- 3.) The receiving water for the storm water runoff from this property is the Oso Creek. The TCEQ has not classified the aquatic life use for the Oso Creek, but it is recognized as an environmentally sensitive area. The Oso Creek flows directly into the Oso Bay. The TCEQ has classified the aquatic life use for the Oso Bay as "exceptional" and "oyster waters" and categorized the receiving water as "contact recreation" use.
- 4.) Bearings based on the east boundary of Navigation Boulevard, as shown on the recorded map of J.C. Russell Farm Blocks, a map of which is recorded in Volume 28, pages 58-59, Map Records of Nueces County, Texas.
- 5.) By graphic plotting only, this property is in Zone "C" of the Flood Insurance Rate Map, Community Panel Number 485464 0165 C, City of Corpus Christi, Texas, which bears an effective date of July 18, 1985 and is not in a Special Flood Hazard Area.
- 6.) Vehicular access across lot lines shall not be obstructed.
- 7.) If any lot is developed with residential uses, compliance with the Public Open Space regulations will be required during the building permit phase.

State of Texas
County of Nueces

I, _____, hereby certify that I am the owner of the lands embraced within the boundaries of the foregoing plat; that I have had said lands surveyed and subdivided as shown; that streets shown are dedicated to the public use forever; that easements as shown are dedicated to the public use for the installation, operation and use of public utilities; and that this map was made for the purpose of description and dedication.

This the _____ day of _____, 20____.

By: _____

State of Texas
County of Nueces

This instrument was acknowledged before me by Thomas S. Davis

This the _____ day of _____, 20____.

Notary Public in and for the State of Texas



State of Texas
County of Nueces

I, Juan J. Salazar, a Registered Professional Land Surveyor for Urban Engineering, have prepared the foregoing map from a survey made on the ground under my direction and is true and correct to the best of my knowledge, information and belief; I have been engaged under contract to set all Lot and Block corners as shown herein and to complete such operations with due and reasonable diligence consistent with sound professional practice.

This the _____ day of _____, 20____.

Juan J. Salazar, R.P.L.S.
Texas License No. 4909

State of Texas
County of Nueces

This final plat of the herein described property was approved by the Department of Development Services of the City of Corpus Christi, Texas.

This the _____ day of _____, 20____.

Development Services Engineer

State of Texas
County of Nueces

This final plat of the herein described property was approved on behalf of the City of Corpus Christi, Texas by the Planning Commission.

This the _____ day of _____, 20____.

Miguel S. Saldaña, A.I.C.P.
Secretary

Rudy Garza, Chairman

State of Texas
County of Nueces

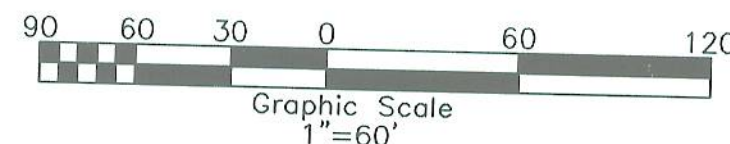
I, Diana T. Barrera, Clerk of the County Court in and for said County, do hereby certify that the foregoing instrument dated the _____ day of _____, 20____, with its certificate of authentication was filed for record in my office the _____ day of _____, 20____. At _____ O'clock _____M., and duly recorded the _____ day of _____, 20____, at _____ O'clock _____M., in said County in Volume _____, Page _____, Map Records.

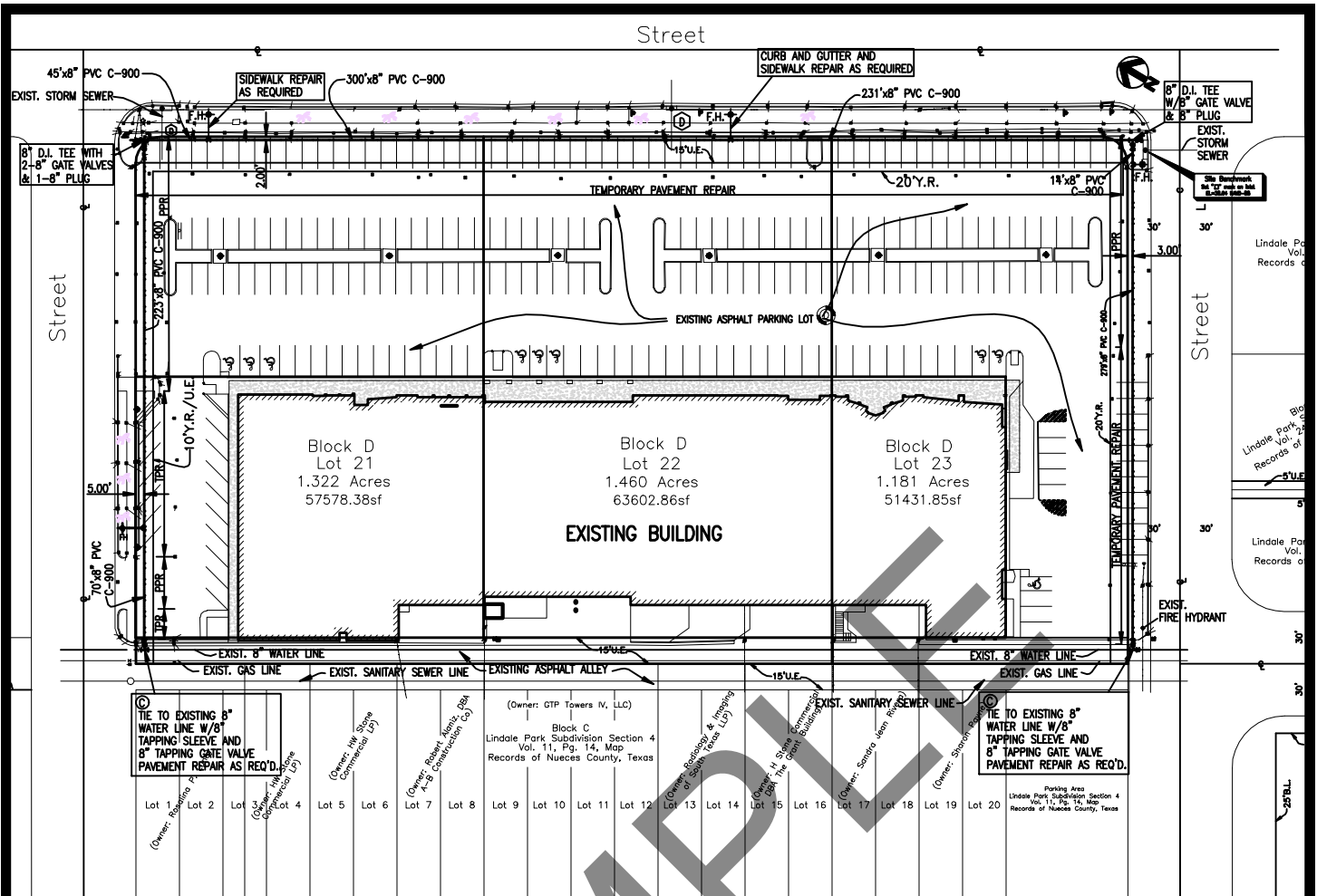
Witness my hand and seal of the County Court, in and for said County, at office in Corpus Christi, Texas, the day and year last written.

No. _____
Filed for Record
at _____ O'clock _____M.,
_____, 20____.

Diana T. Barrera, County Clerk
Nueces County, Texas

By: _____
Deputy





WATER PLAN

CORPUS CHRISTI, TEXAS

LEGEND:

---	EXISTING WATER LINE
---	EXISTING GAS LINE
---	EXISTING SANITARY SEWER LINE
---	EXISTING STORM SEWER LINE
○	EXISTING MANHOLE
⊗	EXISTING VALVE
⊕	EXISTING FIRE HYDRANT
○	EXISTING SLOT INLET
---	NEW WATER LINE
●	NEW FIRE HYDRANT
F.H.	FIRE HYDRANT CENTERLINE
PVC	POLYVINYLCHLORIDE PIPE
PPR	PERMANENT PAVEMENT REPAIR
TPR	TEMPORARY PAVEMENT REPAIR



Engineer's Cost Estimate for XXXXX

ITEM	DESCRIPTION	QUAN.	UNIT	UNIT PRICE	TOTAL COST
A. WATER IMPROVEMENTS:					
1	8" PVC C-900	1,162	LF	\$30.00	\$34,860.00
2	8" Gate Valve and Box	4	EA	\$860.00	\$3,440.00
3	8" Ductile Iron Tee	2	EA	\$350.00	\$700.00
4	Fire Hydrant Assembly Complete In-place	4	EA	\$3,200.00	\$12,800.00
5	8" Ductile Iron Pipeline Deflection	2	EA	\$1,200.00	\$2,400.00
6	Tie to Existing Waterline	2	EA	\$750.00	\$1,500.00
7	8" Tapping Sleeve & 8" Tapping Gate Valve	2	EA	\$2,250.00	\$4,500.00
8	Temporary Pavement Repair	902	LF	\$6.65	\$5,998.30
9	Permanent Pavement Repair	290	LF	\$10.00	\$2,900.00
				WATER SUB-TOTAL:	\$69,098.30
B. MISCELLANEOUS IMPROVEMENTS					
1	General Conditions, Bonds and Insurance	1	LS	\$10,000.00	\$10,000.00
2	SWP3 Items	1	LS	\$1,000.00	\$1,000.00
				MISCELLANEOUS SUB-TOTAL:	\$11,000.00
				CONSTRUCTION TOTAL:	\$80,098.30
ENGINEERING AND ADMINISTRATION					
1	Engineering @ 10% of construction				\$8,009.83
2	Topographic Survey				\$2,500.00
3	Construction Testing				\$3,000.00
4	Construction Staking @ 3% of construction				\$2,402.95
				TOTAL ADMIN:	\$15,912.78
				TOTAL COST:	\$96,011.08
	ADDITIONAL 10% FOR DEFERMENT:				\$9,601.11
				TOTAL REQUIRED DEFERMENT:	\$105,612.19



DISCLOSURE OF INTERESTS

City of Corpus Christi Ordinance 17112, as amended, requires all persons or firms seeking to do business with the City to provide the following information. Every question must be answered. If the question is not applicable, answer with "NA".

NAME: _____

STREET: _____ **CITY:** _____ **ZIP:** _____

FIRM is: Corporation Partnership Sole Owner Association Other _____

DISCLOSURE QUESTIONS

If additional space is necessary, please use the reverse side of this page or attach separate sheet.

1. State the names of each "employee" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm".

Name	Job Title and City Department (if known)
_____	_____
_____	_____

2. State the names of each "official" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm".

Name	Title
_____	_____
_____	_____

3. State the names of each "board member" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm".

Name	Board, Commission, or Committee
_____	_____
_____	_____

4. State the names of each employee or officer of a "consultant" for the City of Corpus Christi who worked on any matter related to the subject of this contract and has an "ownership interest" constituting 3% or more of the ownership in the above named "firm".

Name	Consultant
_____	_____
_____	_____

CERTIFICATE

I certify that all information provided is true and correct as of the date of this statement, that I have not knowingly withheld disclosure of any information requested; and that supplemental statements will be promptly submitted to the City of Corpus Christi, Texas as changes occur.

Certifying Person: _____ **Title:** _____
 (Print)

Signature of Certifying Person: _____ **Date:** _____

DEFINITIONS

- a. "Board Member". A member of any board, commission or committee appointed by the City Council of the City of Corpus Christi, Texas.
- b. "Employee". Any person employed by the City of Corpus Christi, Texas, either on a full or part time basis, but not as an independent contractor.
- c. "Firm". Any entity operated for economic gain, whether professional, industrial or commercial and whether established to produce or deal with a product or service, including but not limited to, entities operated in the form of sole proprietorship, as self-employed person, partnership, corporation, joint stock company, joint venture, receivership or trust and entities which, for purposes of taxation, are treated as non-profit organizations.
- d. "Official". The Mayor, members of the City Council, City Manager, Deputy City Manager, Assistant City Managers, Department and Division Heads and Municipal Court Judges of the City of Corpus Christi, Texas.
- e. "Ownership Interest". Legal or equitable interest, whether actually or constructively held, in a firm, including when such interest is held through an agent, trust, estate or holding entity. "Constructively held" refers to holding or control established through voting trusts, proxies or special terms of venture or partnership agreements.
- f. "Consultant". Any person or firm, such as engineers and architects, hired by the City of Corpus Christi for the purpose of professional consultation and recommendation.