

DEVELOPMENT AND CONSENT AGREEMENT

AMONG

CITY OF ELGIN, TEXAS,

TEXAS BRIDLE TRAILS, LLC

AND

BRICKSTON MUNICIPAL UTILITY DISTRICT

DEVELOPMENT AND CONSENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Development and Consent Agreement (“Agreement”) is entered into by and between the **City of Elgin, Texas**, a home-rule city located in Bastrop County, Texas, with extraterritorial jurisdiction extending into Travis County, Texas (the “City”) and **Texas Bridle Trails, LLC** (the “Developer”). The **Brickston Municipal Utility District** (“District”), which is a municipal utility district to be created, will join this Agreement as set forth below and after such joinder shall become a party to this Agreement.

INTRODUCTION

The Developer currently owns 448.3 acres of land labeled as Tract 1 in **Exhibit A**, attached hereto and made a part hereof. The Developer has an option to purchase for development an additional 193.16 acres labeled as Tract 2 on **Exhibit A**.

The Developer intends to develop the land set forth on **Exhibit A** as a master-planned, mixed-use residential community that will also include commercial uses and park and recreational facilities to serve the community. Because the Property, as hereinafter defined, constitutes a significant area that will be developed in phases under a master development plan, the Developer and the City wish to enter into this Agreement, which will provide an alternative to the City’s typical regulatory process for development, encourage innovative and comprehensive master-planning of the Property, provide certainty of regulatory requirements throughout the term of this Agreement and result in a high-quality development for the benefit of the present and future residents of the City and the Property.

The Developer and the City intend that this Agreement shall be binding upon the District from and after the date the District executes a joinder to this Agreement in substantially the same form as set forth in **Exhibit B**, attached hereto and made a part hereof. The District shall execute such joinder at the time of its organizational meeting.

Therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including the agreements set forth below, the parties’ contract as follows.

ARTICLE I DEFINITIONS

Section 1.01 Definitions. In addition to the terms defined elsewhere in this Agreement or in the City’s ordinances, the following terms and phrases used in this Agreement will have the meanings set out below:

Additional Property: Approximately 185.75 acres of undeveloped land described as Tract 2 in **Exhibit A**, being located in the City’s extraterritorial jurisdiction, as well as any other

property acquired by the Developer and made subject to this Agreement pursuant to Section 2.01 hereof.

Agreement: This Consent Agreement between the City, Developer, and, upon joinder, the District.

City: The City of Elgin, Texas, a home-rule city located in Bastrop County, Texas, with extraterritorial jurisdiction extending into Travis County, Texas.

City Manager: The City Manager of the City.

Commission or TCEQ: The Texas Commission on Environmental Quality or its successor agency.

Concept Plan: The concept plan for the Property shown in **Exhibit C**, attached hereto and made a part hereof, and which may be amended from time to time in accordance with this Agreement.

County: Travis County, Texas.

Developer: Texas Bridle Trails, LLC, or its successors and assigns under this Agreement.

District: Brickston Municipal Utility District, a political subdivision of the State of Texas, to be created over the Property with the consent of the City, provided in this Agreement.

Effective Date: The date when one or more counterparts of this Agreement, individually or taken together, bear the signature of all parties.

Interceptor Lines: That portion of the wastewater system contemplated herein that connects the WWTP to the edge of the Property, but which does not include any portion of the lines lying within the Property.

Manor Property: Approximately 11.89 acres of undeveloped land located in the extraterritorial jurisdiction of the City of Manor, Texas, and being shown as a hash-marked 4.48-acre tract and a hash-marked 7.41-acre tract each labeled “in Manor ETJ” on **Exhibit A**.

Property: Approximately 448.3 acres of undeveloped land described as Tract 1 on **Exhibit A**, being partially located in the City’s extraterritorial jurisdiction and partially located outside the municipal boundaries or extraterritorial jurisdiction of any city, as well as any Additional Property that may be purchased by the Developer.

Temporary WWTP: 100,000 gallon per day temporary wastewater treatment plant constructed solely to serve the Property.

WWTP: 1.5 million gallon per day (MGD) wastewater treatment plant.

ARTICLE II PROJECT DESCRIPTION AND JURISDICTION; DEVELOPER COMMITMENTS

Section 2.01 Project Description. The Developer proposes to construct a mixed-use, multi-phase project (the “Development”) over the Property that is projected to include approximately 1,909 single family residential units, 112 duplex units, and 476 multi-family units, for a total of 2331 living unit equivalents (“LUEs”). The Development will also include (i) over 96 acres of public parkland and/or open space, (ii) approximately 17 acres devoted to public schools and/or public safety services, and (iii) approximately 22 acres of land designated for commercial uses.

Section 2.02 Additional Property. To the extent the Developer, its successor or assign, or an affiliated entity of the Developer, acquires the Additional Property or any portion thereof, Developer shall provide notice to the City of such acquisition, accompanied by a legal description, and such Additional Property shall (i) be considered a part of the Property and subject to this Agreement, without the necessity of amending this Agreement, and (ii) be subject to and developed in accordance with the specifications of this Agreement. Upon such acquisition, Developer may cause to be recorded in Travis County records a memorandum of this Agreement, incorporating the description of the Additional Property affected.

Section 2.03 Extraterritorial Annexation.

(a) **Manor Property Annexation.** The Developer owns approximately 4.48 acres located within the extraterritorial jurisdiction of the City of Manor and has an option to purchase 7.41 acres also located in the extraterritorial jurisdiction of the City of Manor, each of which are shown with hashmarks on **Exhibit A** (the 4.48 acre tract and 7.41 acre tract being collectively referred to as the “Manor Property”). It is the intention of the Developer to petition the City of Manor for the de-annexation of the Manor Property from the Manor extraterritorial jurisdiction and to petition the City for the annexation of the Manor Property into the extraterritorial jurisdiction of the City. Upon the annexation of all or any portion of the Manor Property into the City’s extraterritorial jurisdiction, the Developer will petition the District for the inclusion of such portion of the Manor Property into the District. Upon inclusion of such portion of the Manor Property in the District, that portion shall become a part of this Agreement. However, should all or any portion of the Manor Property not be removed from Manor’s extraterritorial jurisdiction, that portion shall not be included in or made a part of this Agreement.

(b) **City Consent to Inclusion of Property.** The City hereby agrees to consent to the inclusion of the Manor Property in the District as set forth in Section 5.01 below, whether the Developer requests the City’s consent for the inclusion of the Manor Property with its original consent for the creation of the District or at a later time.

(c) **County Property Annexation.** Tract 1 of the Property includes approximately 116.25 acres that lie outside of any city’s municipal boundaries or extraterritorial jurisdiction (“County Property”). The Developer agrees to petition the City for the inclusion of the County Property into the extraterritorial jurisdiction of the City.

(d) Previous Annexation Development Agreement. It is understood that all or a portion of the Additional Property may be covered by that certain Annexation Development Agreement dated May 29, 2015 and recorded as Instrument No. 2015084294 of the Official Public Records of Travis County, Texas (“Annexation Agreement”). The Parties agree and acknowledge that the inclusion of the Additional Property in this Agreement is dependent upon the complete release of the Annexation Agreement. The City agrees to fully cooperate in securing the complete release of the Annexation Agreement, including executing any document to that effect.

Section 2.04 Wastewater Treatment Plant (WWTP).

(a) WWTP Construction. The Developer and the City agree that the construction of a Temporary WWTP and a new WWTP will be required to serve the Development and that the construction of such WWTP will occur in multiple phases to accommodate growth, as set forth below. The Developer on behalf of the District and the City will each pay a pro-rata share of all costs associated with the construction of the WWTP and all appurtenances. While such costs shall be shared on a pro-rata basis, the City shall bear the responsibility of the actual design, permitting, and construction of the WWTP, and the Developer on behalf of the District shall bear the responsibility of the actual design, permitting, and construction of the Interceptor Lines connecting the WWTP to the Property. The City, if requested by the District or Developer, shall use its powers of eminent domain to assist the Developer and/or District in acquiring the land or easement rights necessary for the Interceptor Lines.

The proposed phasing plan for the construction of the WWTP and service to the Development shall be as follows:

<u>Phase</u>	<u>Capacity</u>	<u>Description</u>	<u>City Share of Capacity</u>
Phase 1*	Up to .1 MGD	Interim On-Site	N/A
Phase 2A	0.2 MGD	At City Facility	N/A
Phase 2B	0.75 MGD	Expansion at City Facility	0.18 MGD
Phase 2C	1.5 MGD	Final Expansion	0.75 MGD

* Phase 1 shall consist of an interim temporary facility within the District, leased (or owned) and operated by the District, to allow the first phases of development to commence while the WWTP site and easements for the Interceptor Lines are obtained and the WWTP permit and design are processed through the TCEQ.

(b) WWTP Construction Costs Payment. The Developer and/or the District will be responsible for all the costs to design, construct, own and operate the Phase 1 Temporary WWTP. The permanent WWTP, also known as the Phase 2A 0.2 MGD wastewater facility, will be constructed at the location of the existing 1.5 MGD WWTP. Based on the Concept Plan and as set forth in that certain Wastewater Recommendation Memorandum regarding “City of Elgin Wastewater Treatment Plant No. 2”, dated November, 2018 from TRC Solutions (the “City Engineer”), it is estimated that the required WWTP capacity to serve the Development at full

build-out will be 0.57 MGD. The 0.57 MGD of which the Phase 2A .2 MGD is inclusive and not in addition to the .57, is the prorata share of the WWTP attributable to the Development and payable by the Developer and/or District. .

The Developer and/or the District will participate in the pro-rata costs of the WWTP site. The District and/or Developer is also responsible for all costs for the Interceptor Lines and associated easements for the Interceptor Lines. Provided, however, that the City is responsible for additional costs for capacity over 0.57 MGD as described in this paragraph below.

Further expansions will occur as the need arises per TCEQ criteria for design and construction of wastewater treatment plants; specifically, the parties agree and acknowledge that they shall not be required to commence the planning, permitting, or construction of a new phase of this Project until and unless required by 30 TAC § 305.126 or other applicable TCEQ rules. The City reserves the option to design and construct the WWTP and the Interceptor Lines with capacity to serve 1.5 MGD. All additional costs to construct the WWTP and the Interceptor Lines with capacity over 0.57 MGD shall be the sole responsibility of the City. Wastewater capacity up to 0.57 MGD in the WWTP will be reserved for and allocated to the Developer, on behalf of the District.

The Developer's portion of the costs for the permanent WWTP construction shall be paid in accordance with the schedule set forth as **Exhibit D** During such period, Developer shall provide to the City a cash deposit, letter of credit, bond, or other security in an amount reasonably determined by the City to be sufficient to guarantee (i) during Phase 2A, payment of the Developer's pro rata share of costs to complete Phase 2A, and (ii) during Phase 2B, payment of the Developer's pro rata share of costs to complete Phase 2B. Upon completion of the Phase 2A improvements and acceptance of those improvements by the City and TCEQ, any form of security granted for Phase 2A shall be completely released and returned to Developer. The City's acceptance of the 2A improvements shall not be unreasonably withheld, conditioned, or delayed. The security for Phase 2B shall be separate and apart from the security from Phase 2A and will not be posted until immediately prior to the commencement of construction on Phase 2B. Upon completion of the 2B improvements and and acceptance of those improvements by the City and TCEQ, any form of security granted for Phase 2B shall be completely released and returned to Developer. The City's acceptance of the 2B improvements shall not be unreasonably withheld, conditioned, or delayed. Payments made pursuant to the schedule set forth in **Exhibit D**, whether during Phase 2A or Phase 2B, shall entitle the Developer or the District to an automatic reduction in the amount of the deposit, letter of credit, bond or other security, which automatic reduction shall be set forth clearly in the security instruments.

(c) **WWTP Plans**. The WWTP will be designed by the City Engineer, or such other engineer as is selected by the City and approved by the Developer, such approval not to be unreasonably withheld, conditioned, or delayed. Upon completion of the preliminary plans and specifications for the WWTP (the "WWTP Plans"), the City Engineer will submit a set of the WWTP Plans to the Developer and, if fully created at the times the WWTP Plans are completed, the District, for review and approval. The Developer and, if appropriate, the District agree to review the WWTP Plans and either approve them or provide written comments specifically identifying any required changes within thirty (30) days of receipt. If Developer or, if appropriate, the District, fails to either approve the WWTP Plans or provide written comments

within this thirty (30)-day period, the WWTP Plans will be deemed approved by the party failing to respond. No changes that would adversely affect the capacity to be allocated to and reserved for Developer, on behalf of the District, may be made to the WWTP Plans unless the changes are submitted to Developer and, if appropriate, the District, which will have the same review and approval rights as provided above. The approval of the Developer or the District will not be unreasonably withheld. The Developer, or the Developer on behalf of the District, will reimburse the City for its pro-rata share of the cost of the WWTP Plans within thirty (30) days of the City's written request. The City may make such request for reimbursement from the Developer for one-half of such cost when the plans are 50% complete and for the remainder of the cost when the plans are 100% complete.

(d) Construction Schedule. The City will proceed with the design of, easement acquisition for, and construction of the WWTP in accordance with the construction schedule attached as **Exhibit E**, subject, however, to reasonable extensions of time due to force majeure or mutual agreement by the parties. It is understood and agreed that the Phase 1B 0.2 MGD plant shall not be required to be planned, permitted, or constructed until the interim Phase 1A plant has reached the capacity limits set forth in 30 TAC § 305.126. The City acknowledges that the Developer is relying on service being available to the Property in accordance with such construction schedule and agrees that wastewater service will be made available on or before the date specified in **Exhibit E**.

(e) Bidding and Contract Award. The contract for construction of the WWTP will be advertised for bid by the City in accordance with all applicable legal requirements, including Chapter 252, Texas Local Government Code and awarded by the City to any responsible person or persons that, in the City's judgment, will be most advantageous to the District and result in the best and most economical completion of the District's proposed plants, improvements, facilities, works, equipment, and appliances. The City agrees also to follow the TCEQ bidding procedures applicable to Conservation and Reclamation Districts, including Texas Water Code Chapter 49, Subchapter I, and all other applicable regulations such that the Developer's rights to reimbursement through the District remain intact.

(f) Construction. The WWTP will be constructed in a good and workmanlike manner, and all material used in such construction will be substantially free from defects and fit for its intended purpose. The Developer or the District may, at its own expense, inspect the construction at any time or phase during the construction.

(g) Status Reports. The City Engineer will provide the Developer and the City with monthly construction status reports.

(h) Ownership of Facilities. Upon completion, the WWTP and Interceptor Lines shall be owned by the City. However, 2331 LUEs of capacity in the WWTP and Interceptor Lines will be owned by Developer, on behalf of the District, and capacity sufficient to serve the Development shall be irrevocably and permanently reserved for and committed to the Developer, on behalf of the Districts. The Developer may, at any time, transfer such capacity to the District or to any subsidiary, parent company, or other affiliate of the Developer upon written notice to the City. The Developer or District may transfer such capacity to an unaffiliated third party

transferee with the consent of the City, which consent may not be unreasonably withheld, conditioned, or delayed.

(i) City Pass Through Use of Wastewater Mains. The wastewater mains within the District are currently designed for the maximum capacity needs of only the Property. The City shall have the right to request that the wastewater mains within the District be oversized to allow the City to serve its customers outside of the District, so long as such oversizing does not negatively impact the Developer's construction schedule or interfere with the capacity guaranteed to the District. In such case, the City shall be solely responsible for the costs of all oversizing, which costs shall be clearly calculated separate from the costs of sizing the lines for the District's needs, so as to not interfere with any reimbursements which may be due to the Developer for the construction of District improvements. Further, in the event of any oversizing, the City shall be responsible for metering the flows received from City customers and subtracting such flows from flows received into the downstream City system from the District. The costs of installation, maintenance, monitoring, servicing, and upgrading any meters to measure the flow of City customers shall be borne by the City. The Developer shall have the right to inspect such meters or to use its own metering equipment to verify the flow from City customers at any time.

2.05 Master Development Fee.

(a) Master Development Fee. As consideration for this Agreement, Developer agrees to pay the City a master development Fee of \$3,995,200, partially out of the proceeds of bonds issued by the District and partially in annual cash installments as provided for in Subsection 2.05(c) below. The District, however, shall not be obligated to issue bonds and shall not issue bonds until such time as the assessed value of the Property supports such issuance and the District's financial advisor advises the District that issuing bonds is economically feasible.

(b) Master Development Fee Payments. The Master Development Fee will be made in installments. After the District issues its first series of bonds, ten percent (10%) of the bond reimbursement received by the Developer shall be paid to the City within ten (10) days of receipt of same. Thereafter, the Developer shall continue to pay to the City ten percent (10%) of the bond reimbursement received by Developer for each successive bond issuance. Each installment of the Master Development Fee will be paid by Developer to the City within ten (10) days of Developer's receipt of the reimbursement. Once the City has received the entire balance of the Master Development Fee, no further payments from District bond issuances shall be due to the City. Regardless of the timing of the District's bond issuances or timing of payment by the Developer of the Master Development Fee installments, no interest shall be do or owing on the Master Development Fee amount of \$3,995,200.

(c) Advance Payments. The initial \$600,000 of the Master Development Fee shall not be paid for from bond proceeds, but shall be paid in three (3) annual cash installments of \$200,000 each. The first installment will be payable within thirty (30) days after the City approves the construction plans for the subdivision improvements required for the first subdivision plat submitted by Developer for approval. The two (2) subsequent \$200,000 payments shall be due and owing on the same day of each year thereafter. Each \$200,000 payment shall be credited against the \$3,995,200 Master Development Fee. These advance payments shall be in place of the initial \$600,000 payments that would be made out of bond

proceeds, such that the Developer shall not be required to pay the ten percent (10%) payment described in Subsection 2.05(b) on the initial \$6,000,000 of bonds issued.

ARTICLE III WATER AND WASTEWATER SERVICE

3.01 Water Utility Provider. The Property is located within the water certificate of convenience and necessity (“CCN”) held by Aqua Water Supply Corporation (“Aqua”). Retail water service to the Property shall be provided by Aqua. Notwithstanding the above, retail water service may be provided by the City if the portion of the Aqua CCN covering the Property is transferred to the City or state law permits the City the right to assume such jurisdiction.

3.02 Wastewater Service. The City shall be the retail wastewater treatment service provider to the Development. As retail service provider, the City shall operate, maintain, and repair all components of the WWTP and wastewater system. The City may contract with Aqua so that Aqua may provide wastewater billing services within the District with Aqua’s water billing services. The rates charged by the City within the Development shall be the same as the rates charged by the City to its in-city customers. The City agrees to enter into a retail wastewater treatment service agreement with the District with the following terms:

- (a) The City will provide or contract for the provision of retail wastewater utility services to the District sufficient to serve the land uses shown on the Concept Plan. The rates charged by the City shall be the same as those charged by the City to in-City customers, and such rates may be reviewed and adjusted by the City annually, based on a cost of service study performed by the City. In any event, this Agreement does not prevent District customers from appealing the wastewater rates pursuant to §13.043, Texas Water Code.
- (b) The City will receive, treat and dispose of, or shall contract for the treatment and disposal of, all sewage generated by customers within the District. The City will maintain an adequate wastewater treatment capacity at all times to serve the customers within the District at the same level these services are provided within the City. The City may limit service to the District in the same manner and to the same extent that service is limited inside the City limits.
- (c) The District will have guaranteed reservation and ownership of capacity in the City’s wastewater utility system as set forth elsewhere in this Agreement.
- (d) If necessary, the Developer will provide easements within the area of the District for all District master meters in accordance with City Ordinance requirements. Master meters shall be installed to measure District wastewater flows. In the event wastewater mains enter the District from other City service areas, master meters will be installed at both ends of the system serving the District so that the differential flows will be measured to determine flows from District customers. The Developer and/or District shall not be required to provide easements outside the area of the District.

The agreement may include other standard terms contained in City retail wastewater treatment service agreements that are not in conflict with the terms set forth above.

ARTICLE IV CONCEPT PLAN

Section 4.01 Phased Development. Developer intends to develop the Property in phases. Portions of the Land not under active development may remain in use as income-producing agricultural lands or as open space land.

Section 4.02 Concept Plan; Exceptions. The City hereby confirms (i) that it approves the Concept Plan and (ii) that the Concept Plan complies with the City's General Plan, as amended. The City approves the land uses, densities, exceptions, roadway alignments and widths and other matters shown on the Concept Plan and confirms that the Concept Plan has been approved by all required City departments, boards and commissions. The City acknowledges that the Development is a large project that will be developed over a number of years. As such, the City agrees that the Developer may implement the Development with minor changes to the Concept Plan without returning to the City for additional approval. The Developer shall provide to the City a copy of the engineering study that determines the location of the 100-year floodplain for the Property as of the date of the study.

Section 4.03 Development Review and Approval; Moratorium.

(a) City Review of Development. It is the parties' mutual intention that the City will have the sole responsibility for review and approval of all construction plans, development plans, preliminary plans, and subdivision plats within the Property.

(b) Moratorium. The parties acknowledge that the construction and funding of the utility and other improvements contemplated herein represent a significant investment by the Developer in the City's infrastructure. In exchange for this investment, the City agrees that any moratorium the City may impose on development or construction, whether it be imposed through the non-issuance of building permits or otherwise, shall not apply to the Property.

Section 4.04 Term of Approvals. Except as provided below, the approval of the Concept Plan set forth in Section 4.02 above will be effective for the term of this Agreement. Such Concept Plan approval will be deemed to have expired if no final plats of the Property or a portion thereof are recorded during such period of time.

Section 4.05 Amendments. Due to the fact that the Land comprises a significant land area and its development will occur in phases over a number of years, modifications to the Concept Plan may become desirable due to changes in market conditions or other factors. Variations of a preliminary plat or final plat from the Concept Plan that do not increase the overall density of development of the Land will not require an amendment to the Concept Plan. Minor changes to the Concept Plan, including minor modifications of street alignments, minor changes in lot lines, the designation of land for public or governmental uses, changes in lot sizes that do not result in an increase in the overall density of development of the Land (including any increase in lot sizes resulting in a decrease in the total number of lots) or any change to a public use, including, but not limited to school use, will not require an amendment to the Concept Plan

or City approval. Major changes to the Concept Plan must be consistent with the terms of this Agreement and will be subject to review and approval by the City, which will not be unreasonably withheld. Notwithstanding anything herein to the contrary, an increase of the unit count by up to five percent (5%) of the currently-planned count shall not require an amendment to the Concept Plan or additional City approval, regardless of the resulting increase in density of development. Such an increase of up to five percent (5%) of the currently-planned unit count shall result in an increase of the Master Development Fee provided for in Section 2.04 hereof of \$1,600 per unit, payable as provided for in Section 2.04.

ARTICLE V CREATION OF DISTRICT

Section 5.01 Consent to Creation of District. The City acknowledges receipt of Developer's request, in accordance with Section 54.016 of the Texas Water Code and Section 42.042 of the Texas Local Government Code, for creation of the District, including powers from Article III, Section 52 of the Texas Constitution. On the Effective Date, the City has approved the resolution substantially similar to the form attached as **Exhibit F** consenting to the inclusion of all of the Property within the proposed District and the creation of the District.

Section 5.02 Annexation. The City agrees that it will not annex the District until: (i) Developer has been reimbursed by the District for the water, wastewater, roadway and drainage facilities and all related costs in accordance with the rules of the Commission or other laws of the State of Texas or (ii) the City has expressly assumed the obligation to reimburse Developer for all costs of the water, wastewater, roadway and drainage facilities and all related costs.

ARTICLE VI DEVELOPMENT MATTERS

Section 6.01 Generally. Developer will have the right to select the providers of CATV, gas, electric, telephone, telecommunications and all other utilities and services, including solid waste collection and recycling services, or to provide "bundled" utilities within the Land.

Section 6.02 Fire Protection Services. The City and the Developer understand and acknowledge that an emergency services district ("ESD") exists which includes all of the Land. The District and the Developer agree to cooperate with the ESD to provide fire protection services to the Land.

Section 6.03 Permitted Variances to City Development Requirements. In order to facilitate the development of the Property, the City agrees to provide variances to certain development requirements set forth by City ordinance. No other action will be required on the part of the Developer to obtain such variances or initiate subdivision plat approvals that vary from the City's development requirements, to the extent any variance is in conformity with **Exhibit G**, attached hereto and made a part hereof.

**ARTICLE VII
PARK AND RECREATIONAL AMENITIES**

Section 7.01 Parkland. The Developer agrees that the public park and public open space land shown on the Concept Plan will be dedicated to the District or another governmental agency. The City agrees that Developer will receive a 100% credit for such dedication against the City's parkland dedication requirements, to the extent such requirements apply to the Property now or in the future, and the City further agrees that no additional parkland dedication or park fees will be required.

**ARTICLE VIII
AUTHORITY AND VESTING OF RIGHTS**

Section 8.01 Authority. This Agreement is entered into, in part, under the statutory authority of Section 402.104, Texas Local Government Code and Section 212.172 of the *Texas Local Government Code*, which authorizes the City to make written contracts with the owners of land establishing lawful terms and considerations that the parties agree to be reasonable, appropriate, and not unduly restrictive of business activities. The parties intend this Agreement to guarantee the continuation of the extraterritorial status of portions of the Land as provided in this Agreement; authorize certain land uses and development on the Land; provide for the uniform review and approval of plats and development plans for the Land; provide exceptions to certain ordinances; and provide other terms and consideration, including the continuation of land uses and zoning after annexation of the Land. A memorandum of this Agreement may be filed by the Developer in the real property records of Travis County covering (i) Tract 1, on the signing of this Agreement, and (ii) Tract 2, upon the acquisition of such tract by the Developer.

Section 8.02 Vesting of Rights. The Concept Plan submitted by Developer as an exhibit to this Agreement constitutes an application by Developer for the subdivision and development of the Property, and initiates the subdivision and development permit process for the Property. The City acknowledges that Developer has vested authority to develop the Property in accordance with this Agreement subject to any limitations contained in Chapter 245, Texas Local Government Code.

**ARTICLE IX
TERM, ASSIGNMENT AND REMEDIES**

Section 9.01 Term. The term of this Agreement will commence on the Effective Date and continue for twenty (20) years thereafter, unless terminated on an earlier date under other provisions of this Agreement or by written agreement of the City and Developer. Upon the expiration of twenty (20) years, this Agreement shall automatically renew for a term of fifteen (15) additional years, then again for a term of ten (10) additional years, so long as neither party to this Agreement is in material default under this Agreement and unless, prior to the expiration of the then-current term, Developer gives City written notice of its intent not to extend this Agreement.

Section 9.02 Termination and Amendment by Agreement. This Agreement may be terminated or amended as to all of the Property at any time by mutual written consent of the City

and Developer and, following creation of the District, the District, and may be terminated or amended only as to a portion of the Land by the mutual written consent of the City and the owners of the portion of the Land affected by the amendment or termination and, following creation of the District, the District containing such portion of the Land. If the District is not created within five (5) years after the Effective Date of this Agreement, then the City shall have the option of terminating this Agreement and retaining any payments previously received by the City.

Section 9.03 Assignment.

(a) This Agreement, and the rights of Developer hereunder, may be assigned by Developer, with the City's consent, to a subsequent developer of all or a portion of the Property. Any assignment will be in writing, specifically set forth the assigned rights and obligations and be executed by the proposed assignee. The City's consent to any proposed assignment will not be unreasonably conditioned, withheld or delayed. No consent, however, shall be required for an assignment to any subsidiary, parent company, or other affiliate of Developer.

(b) If Developer assigns its rights and obligations hereunder as to all or a portion of the Property, then the rights and obligations of any assignee and Developer will be severable, and Developer will not be liable for the nonperformance of the assignee and vice versa. In the case of nonperformance by one developer, the City may pursue all remedies against that nonperforming developer, but will not impede development activities of any performing developer as a result of that nonperformance.

(c) This Agreement is not intended to be binding upon, or create any encumbrance to title as to, any ultimate consumer who purchases a fully developed and improved lot within the Land.

Section 9.04 Remedies.

(a) If the City defaults under this Agreement, Developer may enforce this Agreement by seeking damages and/or a writ of mandamus from any court of appropriate jurisdiction, or may give notice setting forth the event of default ("Notice") to the City. If the City fails to cure any default that can be cured by the payment of money ("Monetary Default") within 45 days from the date the City receives the Notice, or fails to commence the cure of any default specified in the Notice that is not a Monetary Default within 45 days of the date of the Notice, and thereafter to diligently pursue such cure to completion, Developer may terminate this Agreement as to all of the Property owned by Developer, or as to the portion of the Property affected by the default; however, any such remedy will not revoke the City's consent to the creation of the District.

(b) If Developer defaults under this Agreement, the City may enforce this Agreement by seeking specific performance from any court of appropriate jurisdiction, or the City may give Notice to Developer. If Developer fails to cure any Monetary Default within 45 days from the date it receives the Notice, or fails to commence the cure of any default specified in the Notice that is not a Monetary Default within 45 days of the date of the Notice, and thereafter to diligently pursue such cure to completion, the City may terminate this Agreement as to all of the

Property owned by Developer, or as to the portion of the Property affected by the default; however, any such remedy will not revoke the City's consent to the creation of the District.

(c) If either party defaults, the prevailing party in the dispute will be entitled to recover its reasonable attorney's fees, expenses and court costs from the non-prevailing party.

Section 9.05 Cooperation.

(a) The City and Developer each agree to execute such further documents or instruments as may be necessary to evidence their agreements hereunder.

(b) The City agrees to cooperate with Developer in connection with any waivers or approvals Developer may desire from Travis County in order to avoid the duplication of facilities or services in connection with the development of the Property.

(c) In the event of any third-party lawsuit or other claim relating to the validity of this Agreement or any actions taken hereunder, Developer and the City agree to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution in their respective rights and obligations under this Agreement.

**ARTICLE X
LIMITED PURPOSE ANNEXATION**

Section 10.01. Developer and/or the District agree to enter into a Strategic Partnership Agreement with the City pursuant to Section 43.0751 of the Texas Local Government Code, which will allow the City to annex for limited purposes any commercial property within the District.

**ARTICLE XI
MISCELLANEOUS PROVISIONS**

Section 11.01 Notice. Any notice given under this Agreement must be in writing and may be given: (i) by depositing it in the United States mail, certified, with return receipt requested, addressed to the party to be notified and with all charges prepaid; or (ii) by depositing it with Federal Express or another service guaranteeing "next day delivery", addressed to the party to be notified and with all charges prepaid; (iii) by personally delivering it to the party, or any agent of the party listed in this Agreement, or (iv) by confirmed facsimile with a confirming copy sent by one of the other described methods of notice set forth. Notice by United States mail will be effective on the earlier of the date of receipt or 3 days after the date of mailing. Notice given in any other manner will be effective only when received. For purposed of notice, the addresses of the parties will, until changed as provided below, be as follows:

CITY: City of Elgin
PO Box 591
Elgin, Texas 78621
Attn: City Manager

With Required Copy to: Charlie Crossfield

Sheets & Crossfield
309 E. Main Street
Elgin, Texas 78664-5264

DEVELOPER: Texas Bridle Trails LLC
Garrett Rajkovich
6475 Camden Ave #202
San Jose, California 95120

With Required Copy to: Ranch Road Development
Scott Miller
3951 Hwy 71 Bldg. A
Bastrop, Texas 78602

With Required Copy to: Winstead PC
Attn: Ross Martin
2728 N. Harwood St., Ste. 500
Dallas, Texas 75201

The parties may change their respective addresses to any other address within the United States of America by giving at least five (5) days' written notice to the other party. Developer may, by giving at least five (5) days' written notice to the City, designate additional parties to receive copies of notices under this Agreement.

Section 11.02 Severability; Waiver. If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid or enforceable provision as is possible.

Any failure by a party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver thereof or of any other provision, and such party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

Section 11.03 Applicable Law and Venue. The interpretation, performance, enforcement and validity of this Agreement are governed by the laws of the State of Texas. Venue will be in a court of appropriate jurisdiction in Bastrop County, Texas.

Section 11.04 Entire Agreement. This Agreement contains the entire agreement of the parties. There are no other agreements or promises, oral or written, between the parties regarding the subject matter of this Agreement. This Agreement can be amended only by written agreement signed by the parties. This Agreement supersedes all other agreements between the parties concerning the subject matter.

Section 11.05 Exhibits, Headings, Construction and Counterparts. All schedules and exhibits referred to in or attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice-versa. The parties acknowledge that each of them has been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting party will not be employed in interpreting this Agreement or any exhibits hereto. If there is any conflict or inconsistency between the provisions of this Agreement and otherwise applicable City ordinances, the terms of this Agreement will control. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts, individually or taken together, bear the signatures of all of the parties.

Section 11.06 Time. Time is of the essence of this Agreement. In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday or legal holiday.

Section 11.07 Authority for Execution. The City certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with its City Charter and City ordinances. Developer hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the articles of incorporation and bylaws or partnership agreement of each entity executing on behalf of Developer.

Section 11.08 Force Majeure. If, by reason of force majeure, either party is rendered unable, in whole or in part, to carry out its obligations under this Agreement, the party whose performance is so affected must give notice and the full particulars of such force majeure to the other party within a reasonable time after the occurrence of the event or cause relied upon, and the obligation of the party giving such notice, will, to the extent it is affected by such force majeure, be suspended during the continuance of the inability but for no longer period. The party claiming force majeure must endeavor to remove or overcome such inability with all reasonable dispatch.

The term “force majeure” means Acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas, or of any court or agency of competent jurisdiction or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, vandalism, explosions, breakage or accidents to machinery, pipelines or canals, or inability on the part of a party to perform due to any other causes not reasonably within the control of the party claiming such inability.

Section 11.09 Exhibits. The following exhibits are attached to this Agreement, and made a part hereof for all purposes:

- Exhibit A - Depiction of the Property
- Exhibit B - Form of District Joinder
- Exhibit C - Concept Plan including Boundary Roads and Arterials
- Exhibit D - Payment Schedule
- Exhibit E - Construction Schedule
- Exhibit F - Form of Consent Resolution of the City
- Exhibit G - Permitted Variances to City Development Requirements

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the dates indicated below.

(signatures on the following page)

CITY OF ELGIN, TEXAS

By: _____
Name: _____
Title: _____
Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF BASTROP §

 This instrument was acknowledged before me on _____, 2018, by
_____, _____ of the City of Elgin, Texas, a home-rule city on behalf
of said City.

Notary Public Signature

(Seal)

TEXAS BRIDLE TRAILS, LLC

By: _____

Name: _____

Title: _____

Date: _____

THE STATE OF TEXAS §

§

COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2018, by _____ on behalf of Texas Bridle Trails, LLC.

Notary Public Signature

(Seal)

EXHIBIT "A"
THE PROPERTY

**EXHIBIT “B”
FORM OF DISTRICT JOINDER**

JOINDER AGREEMENT

THIS JOINDER AGREEMENT (the “Joinder Agreement”), dated as of _____, 201_, is executed by BRICKSTON MUNICIPAL UTILITY DISTRICT (“District”), in connection with that certain Consent Agreement (the “Consent Agreement”) entered into by and between the CITY OF ELGIN, TEXAS, a home rule city located in Travis County, Texas (the “City”) and TEXAS BRIDLE TRAILS, LLC, a Texas limited liability company, dated effective as of _____, 2018. Capitalized terms used herein but not otherwise defined herein shall have the definitions provided in the Development Agreement.

In accordance with the third introductory paragraph of the Consent Agreement, a copy of which is attached hereto as Exhibit “A” and incorporated herein for all purposes, the District executes this Joinder Agreement in order to become a Party to the Consent Agreement. Accordingly, the District hereby agrees as follows with City and Owner:

1. The District acknowledges and confirms that it has received a copy of the Consent Agreement and the schedules and exhibits thereto.

2. The District hereby acknowledges, agrees, and confirms that, by its execution of this Joinder Agreement, the District shall automatically be deemed to be a Party to the Consent Agreement, and shall have all of the rights and obligations of the District with regard to property within the District thereunder as if it had originally executed the Consent Agreement. The District hereby ratifies, as of the date hereof, and agrees to be bound by all of the terms, provisions and conditions contained in the Consent Agreement applicable to it to the same effect as if it were an original Party thereto.

3. This Joinder Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Texas, and exclusive venue shall lie in Bastrop County, Texas.

IN WITNESS WHEREOF, the District has caused this Joinder Agreement to be duly executed by its authorized officer as of the day and year first above written.

BRICKSTON MUNICIPAL UTILITY DISTRICT

By: _____

Name Printed: _____

Title: _____

EXHIBIT "C"
CONCEPT PLAN

EXHIBIT "D"
PAYMENT SCHEDULE FOR WWTP

Upon contract award:	25%
Upon 25% completion:	25%
Upon 75% completion:	25%
Upon substantial completion:	25%
Upon acceptance of WWTP by the City	Any remaining amount still due the City

EXHIBIT "E"
CONSTRUCTION SCHEDULE

**EXHIBIT “F”
FORM OF CONSENT RESOLUTION OF THE CITY**

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELGIN, TEXAS,
CONSENTING TO THE CREATION OF A MUNICIPAL UTILITY DISTRICT TO BE
KNOWN AS BRICKSTON MUNICIPAL UTILITY DISTRICT**

WHEREAS, the City of Elgin has received a Petition for Consent to Include Land In A Municipal Utility District, dated _____, a copy of which is attached hereto as Exhibit “A”; and

WHEREAS, the City wishes to evidence its support for the creation of the Brickston Municipal Utility District (“District”) within its extraterritorial jurisdiction by special act of the 86th Texas Legislature.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ELGIN, TEXAS:

SECTION 1. That the City Council of the City of Elgin (“City”) hereby grants its consent to and permission for the creation of the District by special act of the 86th Texas Legislature or through other means within its extraterritorial jurisdiction which is described more fully as Tract 1 in the field notes attached to Exhibit “A”, and the Mayor and City Secretary are hereby authorized to execute any documents necessary to effectuate this Resolution.

SECTION 2. That the City Council of the City of Elgin acknowledges that Tract 2 of Exhibit “A” will be added to the District at a later date. As such, the City Council of the City of Elgin further consents to the annexation of Tract 2 of Exhibit “A” to the District. No further consent from the City of Elgin will be required to annex Tract 2 of Exhibit “A”.

SECTION 3. That the City Council of the City of Elgin further states that it has not relinquished any rights, duties or powers relating to the inclusion of the District within its extraterritorial jurisdiction and that while the City consents to the creation of the District, it does not release the area within the District from its extraterritorial jurisdiction.

SECTION 4. That this resolution take effect immediately from and after its passage.

DULY RESOLVED by the City Council of the City of Elgin, Texas, on the __the day of _____, 201__.

Mayor-at-Large Chris Cannon

ATTEST:

APPROVED:

Amelia Sanchez
City Secretary

City Attorney

[Petition for Consent to be attached as exhibit to final Consent Resolution]

EXHIBIT "G"
PERMITTED VARIANCES TO CITY DEVELOPMENT REQUIREMENTS