

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into by and among the City of Boerne, a Texas home-rule municipal corporation ("City") and Buc-ee's, Ltd., a Texas limited partnership ("Developer"), on this 29th day of August, 2016 ("Effective Date"). City and Developer are sometimes individually referred to herein as a "Party" and are sometimes collectively referred to herein as the "Parties".

RECITALS:

WHEREAS, Developer is contemplating the purchase of land consisting of approximately 35 acres, including, but not limited to, two (2) tracts of land within the city of Boerne, being more specifically described by metes and bounds in **Exhibit A** attached hereto and incorporated herein ("Property") and being generally depicted on the site plan labeled **Exhibit B** attached hereto and incorporated herein ("Site Plan"); and

WHEREAS, in accordance with Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code, City may establish and provide for the administration of a program for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity within the City; and

WHEREAS, in accordance with Chapter 380, Texas Local Government Code, the City hereby establishes such a program to provide incentives and financial assistance to the Developer to encourage and promote the development of the Property thereby enhancing and stimulating business and commercial activity in the City; and

WHEREAS, as a material inducement to Developer to purchase the Property and develop the Project (hereinafter defined) on the Property, the City has agreed to offer incentives to Developer, including, but not limited to, a sales tax rebate for a period of twenty (20) years, which will enable Developer to develop the Project on the Property; and

WHEREAS, as a material inducement to Developer to purchase the Property and develop the Supplemental Project (hereinafter defined) on the Property, the City has agreed to offer incentives to Developer, including, but not limited to, a sales tax rebate for a period of twenty (20) years, which will enable Developer to develop the Supplemental Project on the Property; and

WHEREAS, as a material inducement to Developer to purchase the Property and develop the Project and the Supplemental Project on the Property, City has agreed to cause the timely construction of certain off-site utility infrastructure (as hereinafter set forth in this Agreement), at City's sole cost and expense; and

WHEREAS, Developer has agreed, in exchange for and as consideration for the funding by City, to satisfy and comply with certain terms and conditions hereinafter set forth; and

WHEREAS, City has concluded and hereby finds that this Agreement substantially advances a legitimate interest of the City by promoting economic development, attracting new consumers to the City, expanding the sales tax base of the City, increasing employment, and generating new tax revenue for jurisdictions in Kendall County, which will help stimulate the overall local economy; and

WHEREAS, the City Council of the City of Boerne voted to authorize this Agreement on the 9th day of August, 2016.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and the promises and the mutual agreements set forth herein, the receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

ARTICLE I THE PROJECT

1. Project. Developer intends to construct, or cause to be constructed, a retail development consisting of a Buc-ee's travel center being no less than 50,000 square feet and providing no less than 90 fueling positions ("Project") on a portion of the Property ("Project Tract"). During the Project Term (defined in Article II, 1a), the Project will (i) provide at least 170 full time equivalent jobs within the first 12 months of the Project Term and (ii) will not promote the servicing and/or fueling of 18 wheel or similar vehicles (excepting those 18 wheel or similar vehicles delivering merchandise, supplies and/or fuel to the Project).

2. Supplemental Project. Developer intends to subdivide that portion of the Property not utilized for the Project into one or more tracts of land (each being a "Supplemental Tract") for the purpose of developing, leasing and/or selling the Supplemental Tracts for commercial purposes. The development of each individual Supplemental Tract shall constitute a separate "Supplemental Project".

ARTICLE II ECONOMIC INCENTIVES

1. Project Economic Development Grant. City shall pay to Developer an economic development grant in the form of periodic payments made solely from the 1.5% City Sales and Use Tax Revenue Received by the City from the Project pursuant to Chapter 380 of the Texas Local Government Code ("Project Economic Development Grant"). The Project Economic Development Grant is comprised exclusively of a Project City Payment (hereinafter defined) and shall be payable to Developer during the Project Term, unless this Agreement is earlier terminated pursuant to the terms hereof. Developer understands and agrees that City is not certifying or otherwise encumbering any funds for the Project Economic Development Grant and does not have any monies for the same. Developer agrees not to make any claims against City for any monies other than those from the 1.5% City Sales and Use Tax Revenue Received by the City from the Project.

a. Project City Payment. City shall make quarterly payments to Developer from sales and use tax revenues pursuant to Chapter 380 of the Texas Local Government Code in the amount of 50% of the 1.5% City Sales and Use Tax Revenue Received by the City from the Project ("Project City Payment") for the prior quarter. The Project City Payment shall be paid to Developer in quarterly installments for Sales and Use Taxes received by the City from the Property with the quarter beginning January 1 following the year the Project opens for business to the public on the Property ("Opening Day") and shall continue for a period of twenty (20) years ("Project Term"). Such quarterly installment Project City Payments shall be made by the City to the Developer on the last business day of May, August, November and February with the first payment being made on the last day of May following the January 1 after Opening Day. If this Agreement is not terminated prior to its expiration, the final Project City Payment to Developer shall be that portion

of the City Sales and Use Tax Received by the City from the Project as of the date of the expiration of the Project Term.

b. City Sales and Use Tax Received by the City from the Project. The "City Sales and Use Tax Received by the City from the Project" is defined as an amount equal to (i) 1.50% of the taxable sales and taxable purchases generated by the Project during the Project Term, regardless of when said amount is received by City. The Project Economic Development Grant shall be paid to Developer after the City Sales and Use Tax Received by the City from the Project has been paid to City by the collecting authority net of discounts and state fees, and therefore always run in arrears; therefore, the Project Economic Development Grant shall be deemed to include City Sales and Use Tax Received by the City from the Project during the Project Term but received by the City after the expiration thereof, including, but not limited to, those monies received by City after the collection period because of delinquency or protest. Further, the City Sales and Use Tax Received by the City from the Project shall be paid to Developer by the City notwithstanding supplementation, modification and/or amendment to any City Ordinance existing upon the Effective Date of this Agreement.

c. Project Economic Development Grant Limitation. City's obligation to pay the Project Economic Development Grant to Developer shall be restricted to City Sales and Use Tax Received by the City from the Project. City shall not be obligated to pay the Project Economic Development Grant from ad valorem taxes or any other source of revenue. The payment or delivery of any Project Economic Development Grant hereunder shall not be an admission of the Developer's unqualified entitlement to same. The City retains the right to review the Developer's entitlement to and will require any corrective action as may be supported by this Agreement, including without limitation, requiring the Developer to refund any overpayment to the City within thirty (30) days of such demand or the right of the City to withhold all or part of a Project Economic Development Grant for such overpayment. The Developer's obligations under this paragraph shall survive termination of this Agreement.

2. Supplemental Project Economic Development Grant. City shall pay to Developer an economic development grant in the form of periodic payments made solely from City Sales and Use Tax Received by the City from each Supplemental Project pursuant to Chapter 380 of the Texas Local Government Code ("Supplemental Project Economic Development Grant"). The Supplemental Project Economic Development Grant is comprised exclusively of a Supplemental Project City Payment (hereinafter defined). Each Supplemental Project shall have the same commencement date and expiration date as the Project Term. Developer understands and agrees that City is not certifying or otherwise encumbering any funds for the Supplemental Project Economic Development Grant and does not have any monies for the same. Developer agrees not to make any claims against City for any monies other than those from the City Sales and Use Tax Received by the City from each Supplemental Project.

a. Supplemental Project City Payment. City shall make payments to Developer from sales and use tax revenues pursuant to Chapter 380 of the Texas Local Government Code in the amount of 50% of the 1.5% City Sales and Use Tax Received by the City from each Supplemental Project. The Supplemental Project City Payment for each Supplemental Project shall be paid to Developer in quarterly installments beginning January 1 following the year said Supplemental Project opens for business to the public on the Property and shall continue until the expiration of the Project Term (each being "Supplemental Project Term"). Such quarterly installment Supplemental Project City Payments shall be made by the City to the Developer on the last business day of May, August,

November and February. The first quarterly installment Supplemental Project City Payments shall be made by the City to the Developer on the last business day of May following the January 1 after the Supplemental Project opens for business. If this Agreement is not terminated prior to its expiration, the final Supplemental Project City Payment to the Developer for each Supplemental Project shall be that portion of the City Sales and Use Tax Received by the City from said Supplemental Project as of the date of the expiration of the Project Term.

b. City Sales and Use Tax Received by the City from each Supplemental Project. The "City Sales and Use Tax Received by the City from each Supplemental Project" is defined as an amount equal to 1.50% of the taxable sales and taxable purchases generated by each Supplemental Project during said Supplemental Project Term, including, but not limited to, those monies received after the collection period because of delinquency or protest. The Supplemental Project Economic Development Grant is calculated and paid after taxes have been paid to City, and therefore always run in arrears; therefore, the Supplemental Project Economic Development Grant shall be deemed to include City Sales and Use Tax Received by the City from each Supplemental Project during each Supplemental Project Term but received by the City after the expiration thereof.

c. Supplemental Project Economic Development Grant Limitation. City's obligation to pay the Supplemental Project Economic Development Grant to Developer shall be restricted to City Sales and Use Tax Received by the City from the Supplemental Projects. City shall not be obligated to pay the Supplemental Project Economic Development Grant from ad valorem taxes or any other source of revenue. The payment or delivery of any Supplemental Project Economic Development Grant hereunder shall not be an admission of the Developer's unqualified entitlement to same. The City retains the right to review the Developer's entitlement to and will require any corrective action as may be supported by this Agreement, including without limitation, requiring the Developer to refund any overpayment to the City within thirty (30) days of such demand or the right of the City to withhold all or part of a Project Economic Development Grant for such overpayment. The Developer's obligations under this paragraph shall survive termination of this Agreement.

3. Extension of Water, Sanitary Sewer, Electric, and Gas to the Property. On or before 90 days following the commencement of construction of the Project on the Property, City shall, at the City's sole cost and expense, for purposes of serving the full development and use of the Property for the Project and the Supplemental Project:

a. Extend (or cause to be extended) to the northwestern Property boundary line and make available for connection by Developer a sanitary sewer main being no less than twelve (12) inches in diameter, such sanitary sewer main shall be located as depicted on Exhibit B;

b. Extend (or cause to be extended) to the southwestern Property boundary line and make available for connection by Developer a water main being no less than twelve (12) inches in diameter, such water main shall be located as depicted on Exhibit B; further,

- (i) City will be wholly responsible for the installation and costs associated with any necessary off Property water main looping; and
- (ii) Developer will be wholly responsible for the installation and costs associated with any necessary on Property water main looping.

c. Provide (or cause to be provided) to the eastern Property boundary line and make available for connection, a 3-phase overhead primary electric distribution line, such electric distribution line shall be located as depicted on Exhibit B; and

d. Provide (or cause to be provided) to the eastern Property boundary line and make available for connection a 6-inch natural gas distribution main capable of providing a service flow no less than 776 cfm at 5 psi, such location of the natural gas distribution main shall be located as depicted on Exhibit B.

Collectively the above referenced sanitary sewer line, water line, electric service and natural gas service shall be referred to as "Utilities."

4. Credit Towards City Fees. City shall provide Developer with a credit towards any City-related fees and costs (i.e. impact, permit, etc.) in the amount of Two Hundred Twenty-three Thousand Two Hundred Eighty-five and No/100 Dollars (\$223,285.00). In the event the City does not receive the Grant (defined below), Developer shall not be entitled to receive this credit towards any City related fees and costs. If the City provided such credit, in whole or in part, towards any City-related fees, the Developer is obligated to reimburse the City for the payment of such City-related fee within thirty (30) days of receipt of a written statement of an unconditional denial of said Grant from the granting authority.

5. Transfer of Texas Department of Transportation Right-of-Way. The Texas Department of Transportation ("TxDot") owns in fee simple a tract of land contiguous to the Property, which TxDot tract of land is more particularly described on **Exhibit C**, attached hereto and incorporated herein and generally depicted on the Site Plan ("TxDot Tract"). Pursuant to that one certain letter from TxDot dated July 26, 2016, copy attached hereto as **Exhibit D**, TxDot has represented that, with respect to the TxDot Tract, *"Upon the completion of the I-10/BUS 87 S interchange and frontage road project, TxDot will consider the excess right of way on the south side of the intersection as highlighted in the attached layout as surplus and subject to sale in accordance with our rules and regulations concerning disposition of surplus roadway right of way."* Pursuant to §202.021, Texas Transportation Code, the Parties acknowledge that the City has a priority right to purchase the TxDot Tract if TxDot sells said property. However, the City hereby agrees that if and when any portion of the TxDot Tract other than that portion upon which Buc-ee's Way ROW is to be built, is offered to the City for sale, the City (1) will waive its priority right to purchase said tract and (2) use good faith efforts to allow Developer, as the abutting property owner, the right to purchase the TxDot Tract as allowed an abutting property owner under *Tex. Transp. Code § 202.021*. For the purposes of the program, incentives and financial assistance created in this Agreement, if an and when all or any portion of the TxDot Tract is transferred and conveyed to Developer, the description of the Property contained herein above and described on Exhibit A, attached hereto, shall be deemed modified to additionally encompass that portion of the TxDot Tract actually transferred and conveyed to Developer.

6. Extension of Buc-ee's Way ROW. The Parties acknowledge that the development of the Project is dependent upon the extension of Main Street west of Interstate 10, more particularly described by metes and bounds in **Exhibit E** attached hereto and generally depicted on the Site Plan (hereinafter "Buc-ee's Way ROW"). A portion of the land upon which the Buc-ee's Way ROW shall be located is on the TxDOT Tract ("TxDot Portion of Buc-ee's Way ROW") and the other portion is on the Property ("Developer Portion of Buc-ee's Way ROW") (collectively referred to as "Buc-ee's Way ROW Land"). Developer hereby agrees to transfer and convey to the City the Developer Portion of Buc-ee's Way ROW if and when City has sufficient authority to begin construction on the TxDot Portion of Buc-ee's Way ROW. The City hereby agrees that it will immediately enter into good faith discussions with TxDot and Developer in an attempt

to obtain authority from TxDot to begin construction of the Buc-ee's Way ROW on the TxDot Portion of Buc-ee's Way ROW as soon as possibly allowed by TxDot ("TxDot Authority"). Further, conditioned upon obtaining TxDot Authority, the City hereby agrees that within 150 days following the commencement of the construction of the Project, City will build and complete the construction of the Buc-ee's Way ROW, at its sole cost and expense. Construction of the Buc-ee's Way ROW shall be designed and constructed as a Primary Collector street per plans and specifications in accordance with the City of Boerne Subdivision Ordinance and the Master Thoroughfare Plan. If TxDot Portion of Buc-ee's Way ROW is transferred and conveyed to Developer subsequent to the date the City begins construction of the Buc-ee's Way ROW, Developer agrees to transfer and convey to the City the TxDot Portion of the Buc-ee's Way ROW.

7. Texas Capital Fund Grant. The Parties shall use their best commercial efforts to obtain a grant from the Texas Capital Fund to supplement the costs associated with the improvements required in Article II, Sections 3, 4, 5 and 6 herein ("Grant"). Developer shall pay for any fees reasonably related and necessary to the City's application for said Grant. Developer agrees that it shall use its best efforts to obtain the Grant by filing the necessary applications and committing to the State of Texas' minimum requirements to obtain said Grant.

8. Funding for Improvements. At the City's written request and if permitted by law, the Parties will use good faith efforts to enter into a separate agreement that provides for the Developer to initially pay for the extension of the Utilities and/or extension of Buc-ee's Way ROW (items for which the City is responsible for providing at City's sole expense) with the promise of reimbursement by the City in no more than five (5) annual installments.

ARTICLE III COMPANY REQUIREMENTS

1. Conveyance of Right-of-Way for Extension of Buc-ee's Way. Developer shall, at no cost to the City, convey the Buc-ee's Way Extension Right-of-Way to the public for its intended purpose. Such Buc-ee's Way Extension Right-of-Way must comply with the requirements for a City Primary Collector contained within the Subdivision Ordinance and the major Thoroughfare Plan in effect. Such Right-of-Way conveyance shall either (a) be reflected on a plat filed of record or (b) be evidenced by separate instrument from Developer (or other party as the case may be) to the public. City hereby represents and warrants to Developer that City shall not require Developer to construct or pay for any portion of the Buc-ee's Way Extension in connection with Developer's development and use of the Property. Developer hereby represents and warrants to the City that the Developer shall not require the City to pay for any portion of the land for the Right-of-Way being conveyed for the Buc-ee's Way Extension.

2. Conveyance of Utility Easements. Developer shall, at no cost to the City, convey to the City any and all easements reasonably necessary as determined by the City Manager or his designated representative, to extend Utilities to and through the Property. Such easement conveyance shall either (a) be reflected on a plat filed of record or (b) be evidenced by separate instrument from Developer (or other party as the case may be) to the public (such form easement is attached as **Exhibit F**). City hereby represents and warrants to Developer that City shall not require Developer to construct or pay for any portion of the Utility improvements required herein. Developer hereby represents and warrants to the City that the Developer shall not require the City to pay for any portion of the Utility Easements being conveyed for the Extension of the Utilities.

3. Dedication of Open Space Under separate agreement Developer shall, at no cost to the City, convey to the City an area of open space and park land no less than 5 acres restricted to open space for the benefit of the City generally depicted on the Site Plan ("Park Land") which is attached hereto as Exhibit B. Notwithstanding anything to the contrary, said Park Land shall be used in the computation of any open space, impervious cover, or drainage area requirements for the design, permitting, and completion of the Project and the Supplemental Project as required by the City of Boerne Subdivision Ordinance.

4. Reporting Requirements. No later than thirty (30) days after the close of each quarter during the Project Term, Developer will provide City with a copy of the Texas Sales and Use Tax Return that Developer submits to the Comptroller of the State of Texas relating to Developer's remission of City Sales and Use Tax Received by the City from the Project as a result of the operation of the Project and the Supplemental Project ("Report"). Upon written request of the City, Developer will promptly provide to the City the business name and/or filing name used for filing with the Texas Comptroller's Office by any owner or lessee of the Project and/or Supplemental Project[s] as is necessary to calculate any Project City Payment or Supplemental Project City Payment due under the terms of this Agreement.

5. Developer Representations. Developer makes the following covenants and warrants to City, and agrees to timely and fully perform the following obligations and duties:

- a. Developer is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Project Term and the Supplemental Project Term. As used herein, the term "good standing" means the status of Developer with the Comptroller of the State of Texas shall be "Active".
- b. No litigation or governmental proceeding is pending or, to the knowledge of Developer, threatened against or affecting Developer that may result in any material adverse change in Developer's business or operation.
- c. No bankruptcy proceedings or other similar proceedings are currently pending or contemplated and Developer has not been informed of any potential involuntary bankruptcy proceedings.
- d. Developer shall remain current and in good standing with all sales taxes, property taxes, fees and other recurring charges of the City of Boerne, the State of Texas, and Kendall County taxing jurisdictions throughout the Project Term and the Supplemental Project Term.

ARTICLE IV MISCELLANEOUS PROVISIONS

1. Default; Remedies. Any Party to this Agreement that believes that the other Party to this Agreement has defaulted in the performance of any condition, term, representation and/or obligation owed to that Party under this Agreement shall within ten (10) business days after discovery of said default, give written notice of the default to the defaulting Party, specifying in detail the provision or provisions of this Agreement that have allegedly been breached and what specific action must be taken to cure or correct the default.

- a. Developer Event of Default. Developer shall be in default under this Agreement if it fails to timely comply with any term, covenant, representation or condition of or made in this

Agreement. The foregoing is referred to herein as a "Developer Event of Default". City may terminate this Agreement in the event of a Developer Event of Default if, after giving Developer ninety (90) days prior written notice of the occurrence of a Developer Event of Default, Developer fails to either cure the default within said ninety (90) day period or such longer period as may be allowed by the City, which shall be City's sole and exclusive remedy for a Developer Event of Default. If the City terminates this Agreement due to the Developer's Event of Default, City is no longer obligated to provide the Developer with any Article II Economic Incentives.

b. City Event of Default. City shall be in default under this Agreement if City fails to timely comply with any term, covenant or condition of this Agreement. The foregoing is referred to herein as a "City Event of Default". If, after giving City ninety (90) days prior written notice of the occurrence of a City Event of Default, City fails to cure the default within said ninety (90) day period or such longer period as may be allowed by Developer, Developer shall have all rights in law or in equity.

c. Change of Applicable Law. City may terminate this Agreement without an Event of Default by Developer and effective immediately if any state or federal statute, regulation, Texas Supreme Court case law, or other law renders this Agreement illegal, including, but not limited to, binding Texas case law holding that an agreement under Chapter 380 rebating taxes, such as this Agreement, is an unconstitutional debt.

d. Damages Allowed. Notwithstanding anything contained in this Agreement to the contrary, under no circumstance shall either Party be entitled to punitive, special or consequential damages.

2. No Waiver. Nothing contained in this Agreement shall be construed in any way to limit or to waive the City's sovereign immunity except that the City and Developer hereby acknowledge and agree that this Agreement is subject to the provisions of Subchapter I of Chapter 271, Texas Local Government Code, as amended. The City agrees that its immunity from suit is waived for the limited purpose of adjudicating a claim for breach of this Agreement, which is subject to the terms and conditions of Subchapter I of Chapter 271, Texas Local Government Code.

3. Chapter 245 Waiver. Nothing in this Agreement shall be implied to vest any rights in the Parties. In addition, nothing contained in this Agreement shall constitute a "permit" as defined in Chapter 245, Texas Local Government Code. COMPANY WAIVES ANY STATUTORY CLAIM UNDER CHAPTER 245 OF THE TEXAS LOCAL GOVERNMENT. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

4. Applicability of Ordinances. Developer acknowledges and agrees that this Agreement does not alter the applicability of the ordinances of City. Further, this Agreement does not waive or limit any of the obligations of Developer to City under any other ordinance whether now existing or in the future arising. This Agreement: (i) is not in any manner to be considered a waiver by the Parties of any requirement contained in the City's ordinances and/or development requirements; (ii) will not and does not conflict with the City's ordinances and/or development requirements, and in the event of such a conflict the terms of the City's ordinances and/or development requirements control; and (iii) does not modify any of the City's ordinances and/or development requirements. Where silent in this Agreement, the terms of City's ordinances and/or development requirements shall control.

5. Separate Status. NONE OF THE TERMS OR PROVISIONS OF THIS AGREEMENT SHALL BE DEEMED TO CREATE A PARTNERSHIP BETWEEN OR AMONG THE PARTIES IN THEIR RESPECTIVE BUSINESSES OR OTHERWISE, NOR SHALL IT CAUSE THEM TO BE CONSIDERED JOINT VENTURES OR MEMBERS OF ANY JOINT ENTERPRISE. IN EXECUTING THIS AGREEMENT AND IN PERFORMING THEIR RESPECTIVE OBLIGATIONS, EACH PARTY IS ACTING INDEPENDENTLY. THE CITY ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO ANY THIRD PARTIES IN CONNECTION WITH THIS AGREEMENT, AND THE COMPANY AGREES TO INDEMNIFY, DEFEND AND HOLD THE CITY HARMLESS FROM ANY SUCH LIABILITIES RELATING TO THIS AGREEMENT TO THE EXTENT THAT SUCH LIABILITIES ARISE SOLELY AND DIRECTLY AS A RESULT OF A NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF COMPANY.

6. Construction and Interpretation.

a. Whenever required by the context of this Agreement, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa, and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter, shall not be construed to limit such statement, term or matter to specific terms, whether or not language of non-limitation, such as "without limitation" or "but not limited to" are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, term or matter.

b. The captions preceding the text of each article and section of this Agreement are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Agreement.

c. This Agreement may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Agreement may be executed and notarized on separate pages, and when attached to this Agreement shall constitute one (1) complete document.

7. Revenue Sharing Agreement. The City designates this Agreement as a revenue sharing agreement, thereby entitling the City to request Sales and Use Tax information from the State Comptroller, pursuant to Section 321.3022 of the Texas Tax Code, as amended.

8. Assignability. Developer may assign or transfer its rights (including the right to receive payments), duties and obligations under this Agreement to any person or entity only with prior written approval and consent by City, which approval shall not be unreasonably withheld, conditioned or delayed. However, City hereby consents to an assignment of the Developer of its rights, (including the right to receive payments), duties and obligations under this Agreement to an affiliate, subsidiary or related party of Developer, provided City is given thirty (30) days' advance written notice of such assignment.

9. Severability. If any provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void; but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the Parties.

10. Complete Agreement. This Agreement represents the complete agreement of the Parties with respect to the subject matter hereof and supersedes all prior written and oral matters related to this

Agreement. Any amendment to this Agreement must be in writing and signed by all Parties hereto or permitted or approved assignees.

11. Exhibits. All exhibits attached to this Agreement are incorporated herein by reference and are expressly made part of this Agreement as if copied verbatim.

12. Notice. Any notice or demand, which any party is required to or may desire to serve upon the other, must be in writing, and shall be sufficiently served if (i) personally delivered, (ii) sent by registered or certified mail, postage prepaid, or (iii) sent by commercial overnight carrier, and addressed to:

If to City:

City of Boerne
Attn: City Manager
402 E. Blanco
Boerne, TX 78006

If to Developer:

Buc-ee's, Ltd.
Attn: Arch H. Aplin III
327 FM 2004
Lake Jackson, Texas 77566

or such other address or addresses which any Party may be notified in writing by any other Party to this Agreement.

Such notice shall be deemed to have been served (a) four (4) business days after the date such notice is deposited and stamped by the U.S. Postal Service, except when lost, destroyed, improperly addressed or delayed by the U.S. Postal Service, or (b) upon receipt in the event of personal service, or (c) the first business day after the date of deposit with an overnight courier, except when lost, destroyed or improperly addressed; provided, however, that should such notice pertain to the change of address to either of the Parties hereto, such notice shall be deemed to have been served upon receipt thereof by the Party to whom such notice is given.

13. Force Majeure. In the event any Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, it is agreed that on such Party's giving notice and full particulars of such force majeure in writing to the other Party as soon as possible after the occurrence of the cause relied upon, then the obligations of the Party giving such notice, to the extent it is affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability but for no longer period. Such cause shall as far as possible be remedied with all reasonable dispatch.

The term "force majeure" as used herein, shall include, but not be limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of governments and people, explosions, breakage or damage to

machines or pipelines and any other inabilities of either party, whether similar to those enumerated or otherwise and not within the control of the parties claiming such inability, which by the exercise of due diligence and care such party could not have avoided.

14. Forum Selection. This Agreement and the relationship between the Parties shall be governed and interpreted under the laws of Texas without regard to any conflict of laws provision. Venue for any suit arising out of any relationship between the Parties shall be the appropriate court in the county in which the Property is located.

15. Appointment of Representatives. To further the commitment of the Parties to cooperate in the implementation of this Agreement, the Parties shall designate and appoint a representative to act as a liaison between the Parties. The initial representative for the City shall be the City Manager or his designee ("City Representative"), and the initial representative for Developer shall be Stan Beard ("Developer Representative"). The representatives shall be available at all reasonable times and places to discuss and review the performance of the Parties to this Agreement and the development of the Property pursuant to the Site Plan.

16. Effective Date. This Agreement shall be binding and take effect only upon all Parties signatures hereto, attachment of all required exhibits, and receipt by the Parties of a fully executed copy hereof. For the purposes of timetables provided in this Agreement, the Effective Date shall be the date first above written.

17. Representation of Authority. City represents and warrants to Developer that it is duly authorized and empowered to enter into this Agreement, subject to the terms and conditions contained therein, and has the legal authority to make a grant to Developer as provided in this Agreement. Developer represents and warrants that it is duly authorized and empowered to enter into this Agreement, subject to the terms and conditions contained herein.

18. Signature Warranty Clause. The signatories to this Agreement represent and warrant that they have the authority to execute this Agreement on behalf of the Parties, respectively.

19. Legal Contest. This Agreement is entered into in accordance with applicable law as understood by the Parties. In the event any part, provision or paragraph hereof shall become unenforceable by reason of judicial decree or determination, the Parties agree to the extent possible to ensure that all other provisions of this Agreement, including the intent of this Agreement, be honored and performed.

20. Economic Incentives Constitute a Program. This Agreement constitutes an economic development program to promote state or local economic development and to stimulate business and commercial activity in the City and the area annexed for limited purposes pursuant to Article III, Sec. 52-a, Texas Constitution and Chapter 380, Texas Local Government Code.

21. Public and Confidential Information. Information provided by or on behalf of Developer pursuant to this Agreement that Developer considers to be proprietary and/or confidential and marked as such shall be maintained by City as confidential to the extent allowed by law. If proprietary financial or trade secret information is requested under the Texas Public Information Act ("Act"), City shall follow the standards set out in the Act and under the Texas Attorney General's procedures for such requests and Developer shall be responsible for defending the confidentiality of such information.

22. Automatic Termination. In the event Developer elects not to proceed with the acquisition of the Property or the development of the Project, Developer will notify City in writing and this Agreement and the obligations of the Parties hereunder shall automatically terminate and be of no further force or effect as of the date of such notice. Should this Agreement automatically terminate per the terms of this Section, Developer will reimburse the City for all Article II Economic Incentives made to, or on behalf of, Developer under this Agreement with interest at the City's weighted average yield of its investment portfolio from the date the Article II Economic Incentives were made to, or on behalf of, the Developer to the date of repayment. Developer's obligation to reimburse the City for Article II Economic Incentives made to Developer survives termination of this Agreement.

23. Final Termination. If a term, covenant or condition of this Agreement does not have an earlier express termination date, all terms covenants and conditions of this Agreement shall automatically terminate upon the expiration of the Project Term.

24. During the Term of this Agreement, the Developer agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. § 1324a(f), the Developer shall repay the City all Payments made plus any other funds received by, or made on behalf of, the Developer from the City as of the date of such violation, such payment being due within 120 business days after the date the City is notified by the Developer of such violation, with interest at the City's weighted average yield of its investment portfolio from the date the such Article II Economic Incentive was made to, or on behalf of, Developer to the date of the repayment. In no event shall any provision hereof be deemed to have waived any defense the Developer may have to any allegation of a violation of 8 U.S.C. § 1324a(f).

25. Within thirty (30) days following a written request therefore, the Company will provide to the City a letter from Company certifying that they are in compliance with this Agreement. Such request shall be made no more than once each calendar year.

26. Incorporation of Recitals. The Recitals set forth hereinabove are declared true and correct and are hereby incorporated into and made a part of this Agreement for all purposes.

(Signature Page Follows)

8/29/2016
Date

CITY:

CITY OF BOERNE

By: Ronald C. Bowman
Ronald C. Bowman, City Manager

ATTEST:

Lori A. Carroll
LORI A. CARROLL, City Secretary

Approved as to form:

[Signature]
City Attorney's Office

DEVELOPER:

BUC-EES, LTD

By: Buc-ee's Management, LLC,
a Texas limited liability company,
its general partner

8/15/16
Date

By: Arch H. Aplin III
Arch H. Aplin III, its President

LIST OF EXHIBITS

Exhibit A	Description of Property
Exhibit B	Site Plan
Exhibit C	TxDot Tract
Exhibit D	TxDot Letter dated July 26, 2016
Exhibit E	Buc-ee's Way ROW description
Exhibit F	Form Utility Easement

EXHIBIT A

Description of Property

A Metes and Bounds description, mutually acceptable to the parties, to be attached when completed and made part of this Agreement

EXHIBIT B

SITE PLAN

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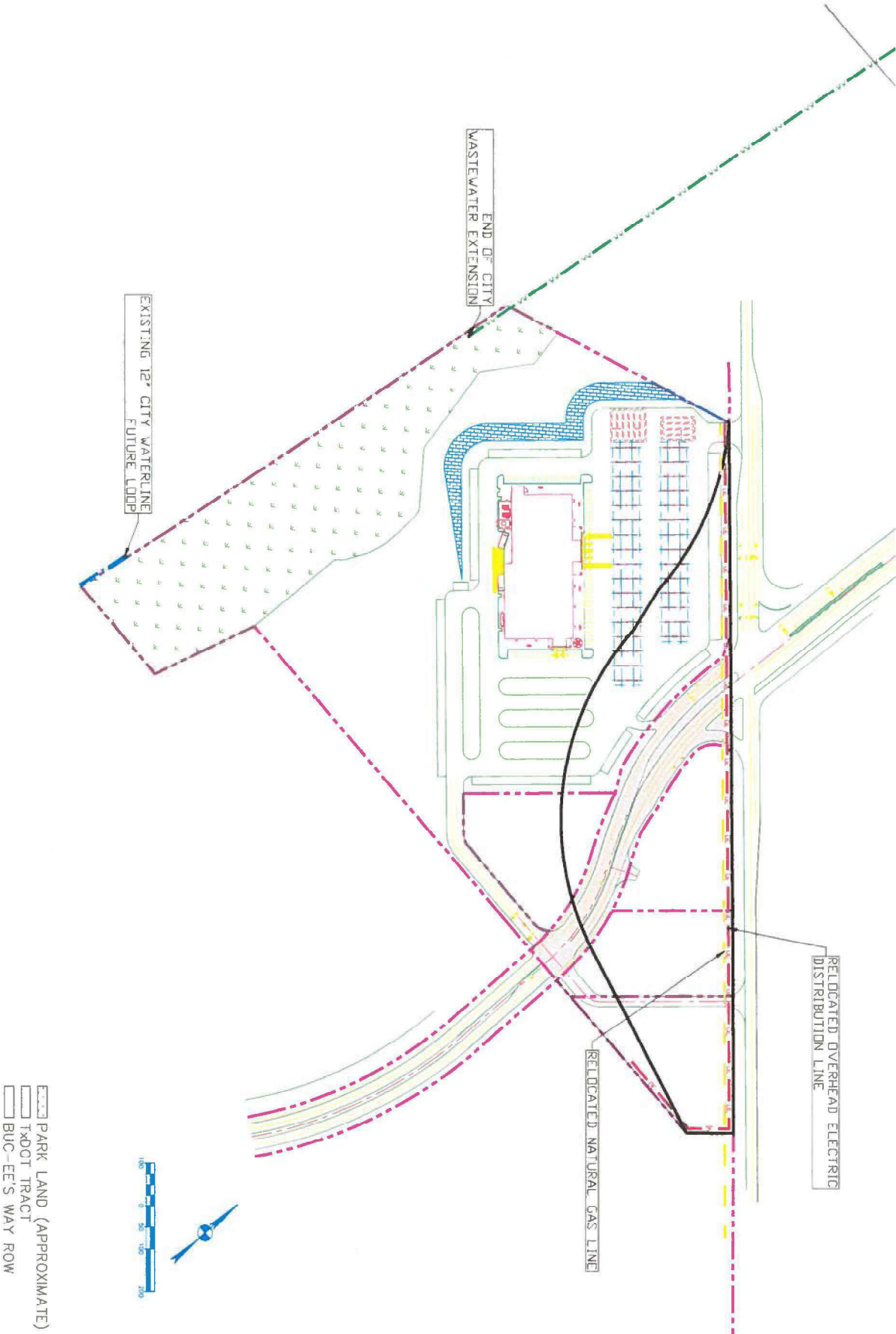


EXHIBIT B SITE PLAN BUC-EE'S - BOERNE BUSINESS 87 & INTERSTATE HIGHWAY 10 BUC-EE'S, LTD.	SHEET INFORMATION DATE: 08-12-2016 PROJECT NO: 00030-12 DESIGNED BY: JSC GROUP BY: JSC APPROVED BY: JSC FILE NAME: BUC-EE'S PLOT NAME: 1107 ISSUED FOR PERMIT REVIEW & BIDDING ONLY ISSUED FOR CONSTRUCTION		 RATCLIFF ENGINEERING SERVICES, LLC P.O. BOX 17881 DALLAS, TEXAS 75217 OFFICE (214) 855-7887 TSPS FORM #1424	REVISIONS NO. DESCRIPTION DATE 1 PRELIMINARY
	SHEET: EXH-B OF: 07			REVISIONS NO. DESCRIPTION DATE 1 PRELIMINARY

EXHIBIT C

TXDOT Tract

A Metes and Bounds description, mutually acceptable to the parties, to be attached when completed and made part of this Agreement

EXHIBIT D

TXDOT Letter



Texas Department of Transportation

4615 N.W. LOOP 410, SAN ANTONIO, TEXAS 78229-0928 | 210.615.1110 | WWW.TXDOT.GOV

July 26, 2016

Mike Schultz
Mayor, City of Boerne
402 E. Blanco Rd.
Boerne, TX 78006

Dear Mayor Schulz:

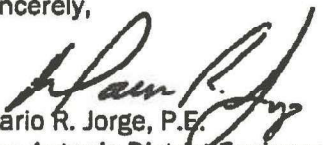
The following should address the requested consideration discussed at our coordination meeting on July 21, 2016.

Upon completion of the I-10/BUS 87 S interchange and frontage road project, TxDOT will consider the excess right of way on the south side of the intersection as highlighted in the attached layout as surplus and subject to sale in accordance with our rules and regulations concerning the disposition of surplus roadway right of way.

Once the specific area is surveyed and delineated, we will coordinate with our Real Estate Management Group who will be handling the sale process. The surplus sale process will begin when the construction of the I-10/BUS 87 S. interchange and frontage road project is finalized or at a minimum substantially complete.

Thank you for your interest in our transportation system. If you have any questions, please contact me.

Sincerely,

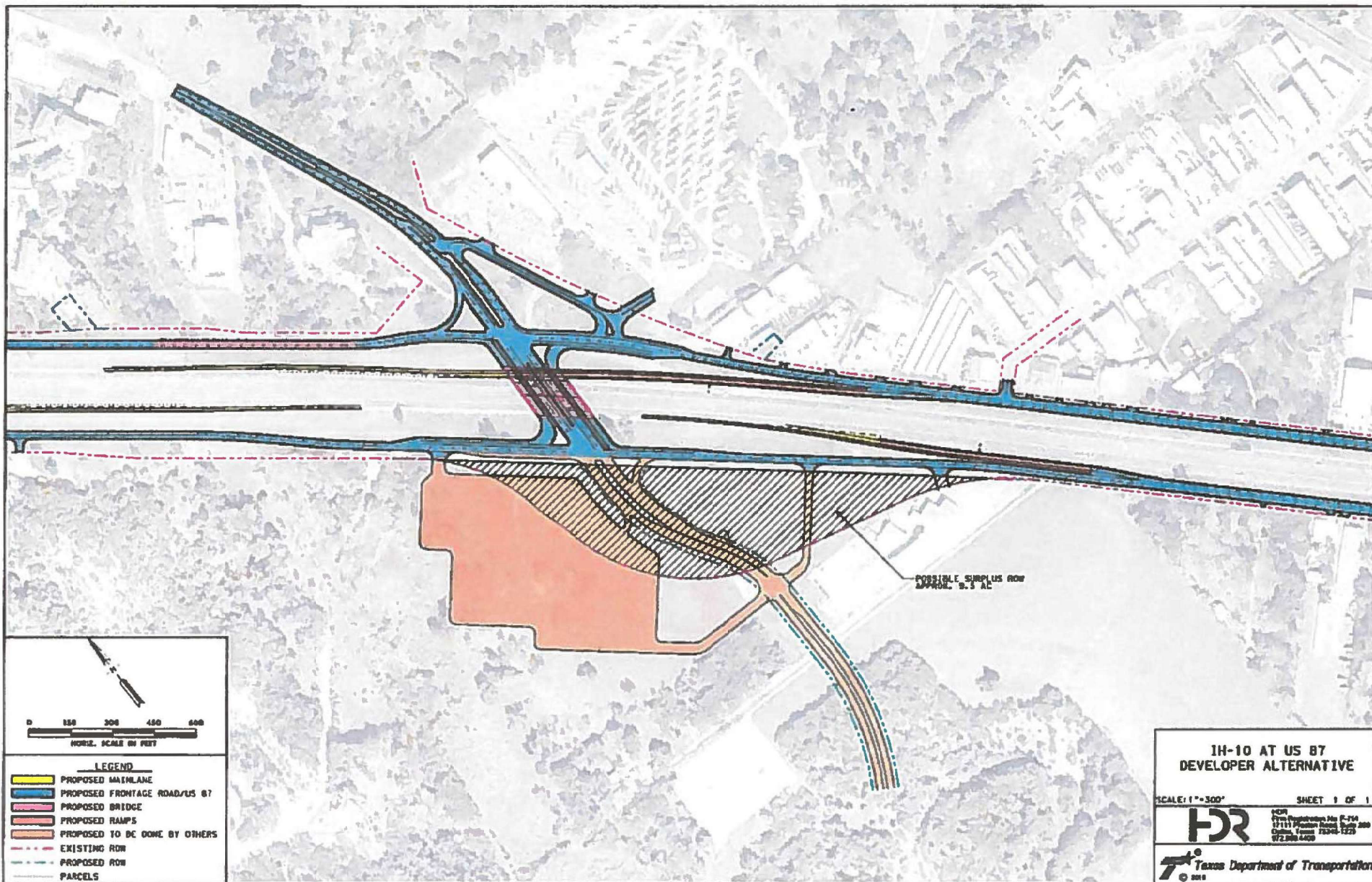


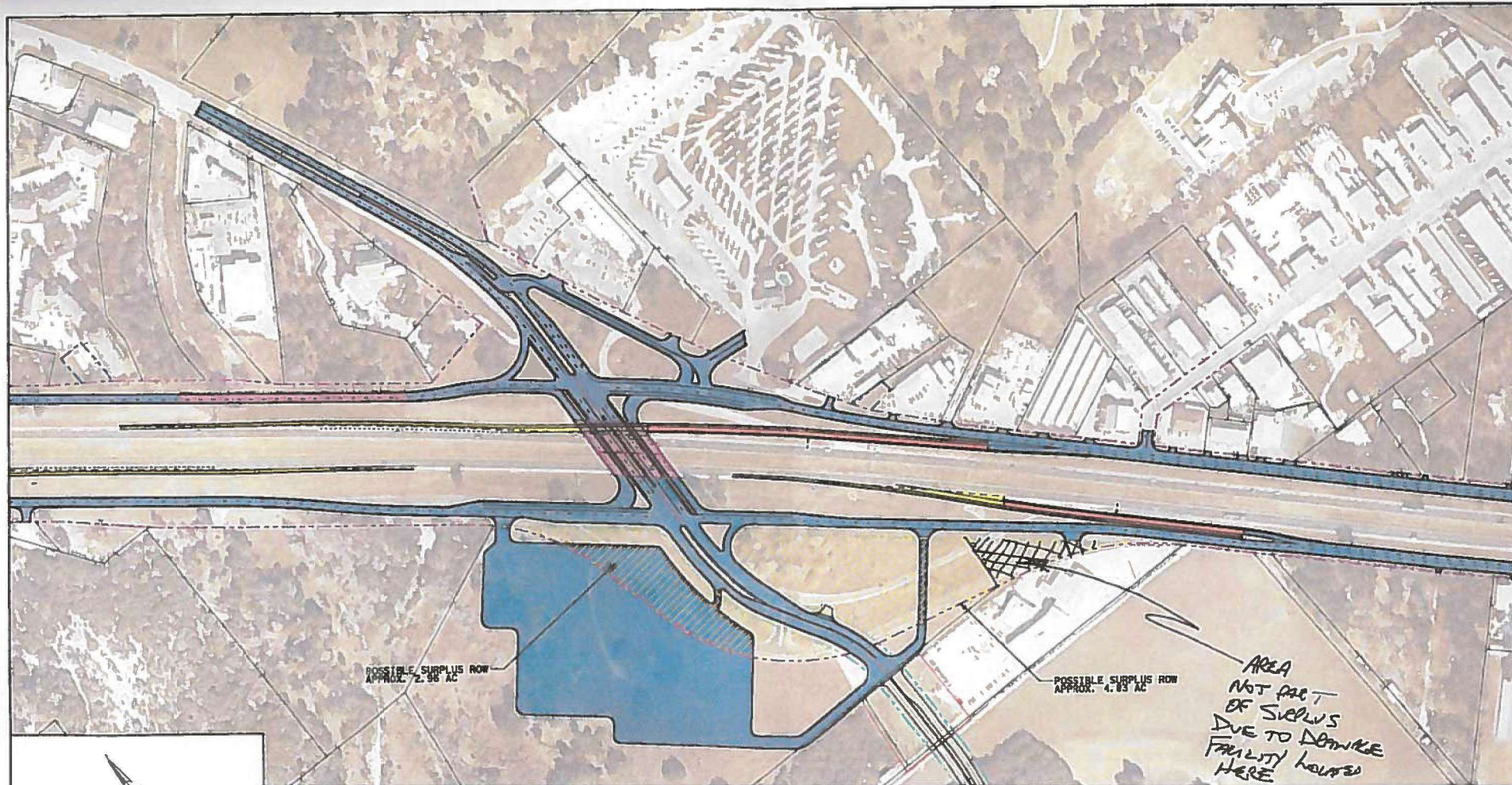
Mario R. Jorge, P.E.
San Antonio District Engineer

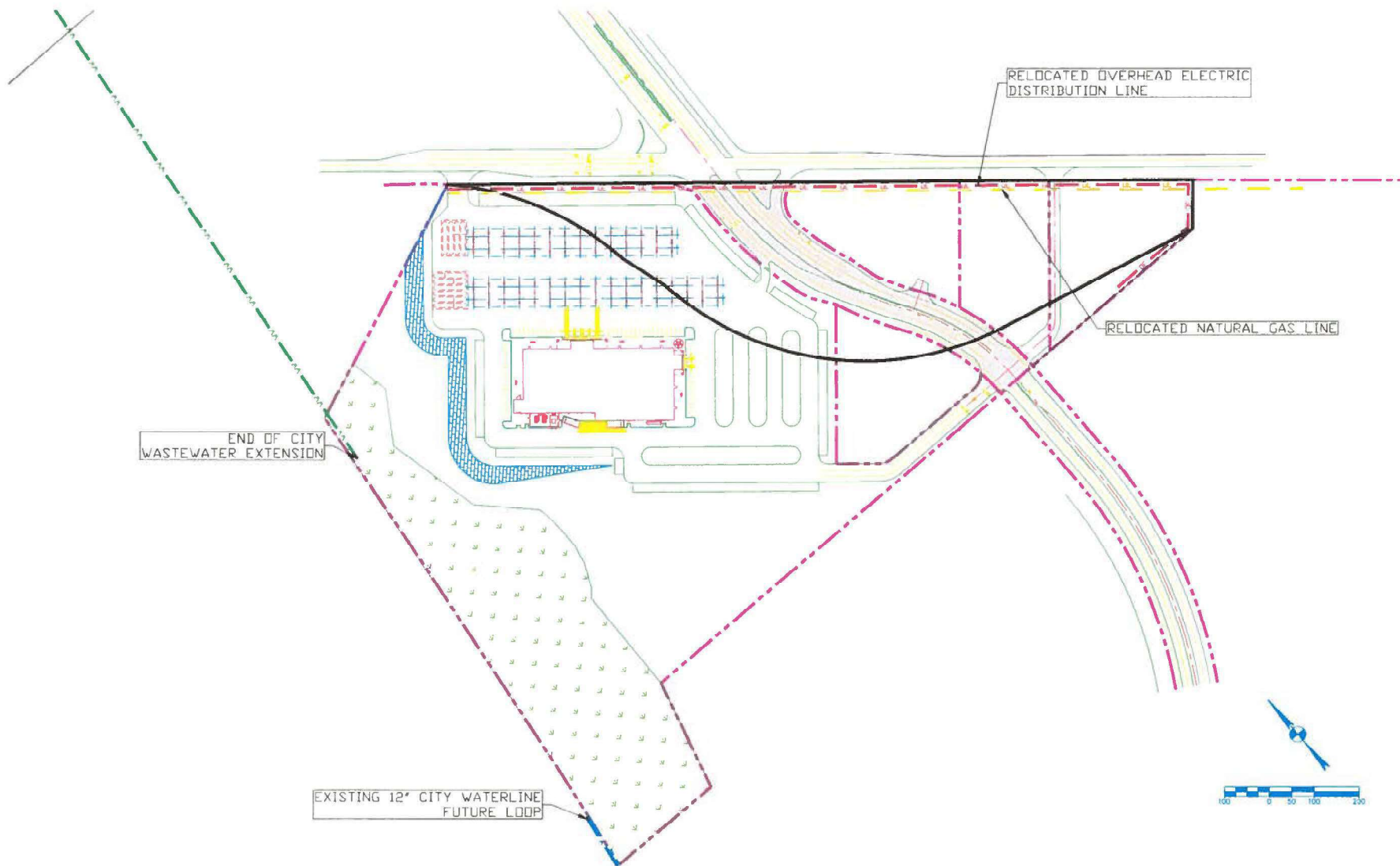
OUR VALUES: People • Accountability • Trust • Honesty

OUR MISSION: Through collaboration and leadership, we deliver a safe, reliable, and integrated transportation system that enables the movement of people and goods.

An Equal Opportunity Employer







- PARK LAND (APPROXIMATE)
- TxDOT TRACT
- BUC-EE'S WAY ROW

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REVISIONS	DATE	BY	APP'D
1. PRELIMINARY			

THIS DOCUMENT IS RELEASED FOR THE PURPOSES OF REVIEW ONLY. IT IS NOT TO BE USED FOR CONSTRUCTION, BIDDING, OR FINAL PURPOSES.

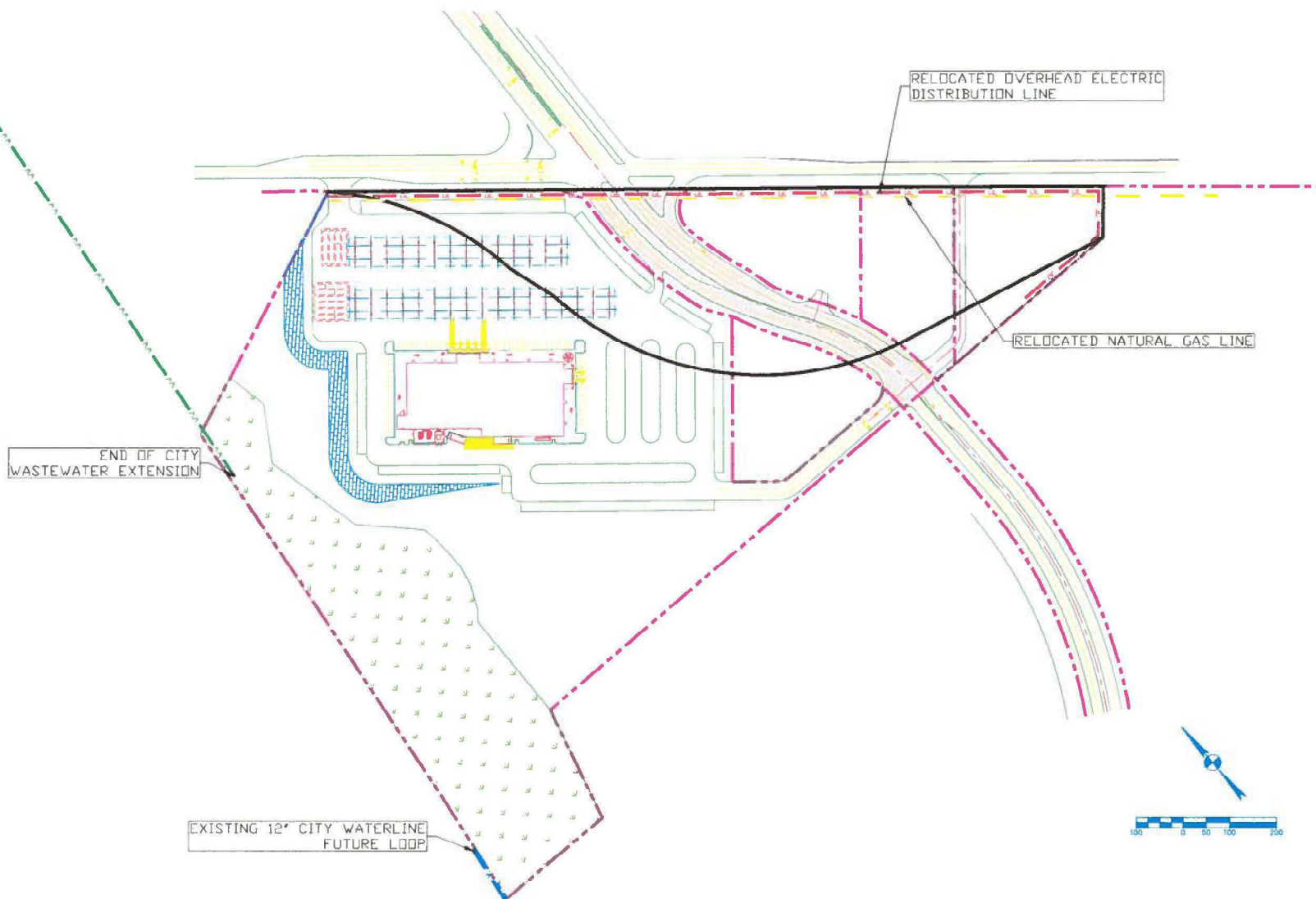
RATCLIFF ENGINEERING SERVICES, L.L.C.
 P.O. BOX 1081
 DALLAS, TEXAS 75201
 PHONE (214) 343-7300
 FAX (214) 343-7301
 WWW.RATCLIFF-ES.COM



SHEET INFORMATION	
DATE: 08-12-2016	PROJECT NO: 10000-10
DESIGNED BY: JSE	DESIGNED BY: JSE
CHECKED BY: JSE	CHECKED BY: JSE
APPROVED BY: JSE	APPROVED BY: JSE
PREPARED FOR: BUC-EE'S	PREPARED FOR: BUC-EE'S
PROJECT LOCATION: BUSINESS 87 & INTERSTATE HIGHWAY 10	PROJECT LOCATION: BUSINESS 87 & INTERSTATE HIGHWAY 10
SCALE: AS SHOWN	SCALE: AS SHOWN

EXHIBIT B
SITE PLAN
 BUC-EE'S - BOERNE
 BUSINESS 87 & INTERSTATE HIGHWAY 10
 BUC-EE'S, LTD.

DRAWING
 SHEET: EXH-B
 OF



- PARK LAND (APPROXIMATE)
- TxDOT TRACT
- BUC-EE'S WAY ROW



REVISIONS			
NO.	DESCRIPTION	DATE	BY
1	PRELIMINARY		

THIS DOCUMENT IS RELEASED FOR THE PURPOSES OF REVIEW UNDER THE AUTHORITY OF DAVID S. RATCLIFF, P.E. ON THE DATE SHOWN HEREON. IT IS NOT TO BE USED FOR CONSTRUCTION, RECORDING, OR FOR ANY PURPOSES OTHER THAN THOSE FOR WHICH IT WAS PREPARED.

RATCLIFF ENGINEERING SERVICES, LLC
P.O. BOX 1007
COLUMBIA, TEXAS 77201
OFFICE (713) 460-7897
FAX (713) 460-7897



SHEET INFORMATION			
DATE	PROJECT NO.	PROJECT NAME	SCALE
01/11/16	16-03-001	BOERNE	AS SHOWN
DESIGNED BY: ESR	DRAWN BY: ESR	CHECKED BY: ESR	APPROVED BY: ESR
CREATED FOR: BUC-EE'S	DATE: 01/11/16	PROJECT: BOERNE	SCALE: AS SHOWN
CREATED FOR: BUC-EE'S	DATE: 01/11/16	PROJECT: BOERNE	SCALE: AS SHOWN

EXHIBIT B
SITE PLAN
BUC-EE'S - BOERNE
BUSINESS 87 & INTERSTATE HIGHWAY 10
BUC-EE'S, LTD.

DRAWING
SHEET: EXH-B
OF

EXHIBIT E

Buc-ee's Way ROW Description

A Metes and Bounds description, mutually acceptable to the parties, to be attached when completed and made part of this Agreement

EXHIBIT F

Form Utility Easement

**PERMANENT EASEMENT
FOR UTILITIES**

Grantor:

Grantor's Mailing Address (including county):

Grantee: City of Boerne, A Municipal Corporation,
of Kendall County, Texas

Grantee's Mailing Address (including county):

Post Office Box 1677,
Boerne, Kendall County, Texas

Property:

All those certain tracts, pieces, or parcels of land, lying and being situated in the County of Kendall, State of Texas, described as _____ (the "Property").

Grant of Easement:

For and in consideration the sum of TEN AND NO/100 DOLLARS (\$10.00), the benefits to be derived herefrom, and other good and valuable consideration, all paid to and received by the undersigned from the Grantee, the receipt and sufficiency of which is hereby acknowledged and confessed, the undersigned Grantor GRANTS, SELLS, and CONVEYS unto the Grantee an easement and right-of-way over, and upon the Property (the "Easement") for the following purposes.

Utilities, including, without limitation, sewer, water, gas, electric, telephone and cable television, with all necessary and/or desirable lines, laterals and/or appurtenances thereto (the "Utilities").

Said Easement being a _____ foot (____') wide strip of land, described in Exhibits "A" and "B" attached hereto and made a part hereof for all purposes.

Together with the right of ingress and egress over passable areas of the Grantor's adjacent land, when the delineated entrance point that abuts public right-of-way is obstructed and/or inaccessible, either in whole or in part, in order to access or leave the Easement for the purpose of constructing, reconstructing, inspecting, patrolling, operating, maintaining, repairing, and removing the Utilities; the right to place new or additional Utilities in the Easement and to change the size of the Utilities within the Easement; the right to relocate along the same general direction of the Utilities; the right to remove from the Easement all trees and parts thereof, or other obstructions, which reasonably endanger or may reasonably interfere with the efficiency of the Utilities; and the right to place temporary structures for use in constructing or repairing the Utilities.

TO HAVE AND TO HOLD the above described Easement unto the Grantee, its successors and assigns, until the Easement shall be abandoned by the Grantee, as evidenced by a Certificate of Abandonment executed by the Mayor or his designated representative.

This Easement is MADE and ACCEPTED subject to the following:

1. The Grantor specifically reserves the right to use all or any part of the Easement for any purpose, which does not damage, destroy, injure, and/or unreasonably interfere with the Grantee's use of the Easement. However, the easement shall be kept clear of all structures, trees, large plants and other improvements.
2. The Grantee shall make commercially reasonable efforts to ensure the damage to the Property is minimized and will at all times, after doing any work in connection with the Utilities, restore the Property to the condition in which the Property was found before such work was undertaken to the extent that such restoration is reasonable in accordance with the Grantee's usual and customary practices.
3. The Grantee shall install double swing gates with a minimum clear opening of twelve (12) feet wide wherever fences cross the Easement.

Each person signing this Permanent Easement for Utilities represents and warrants that he or she is duly authorized and has the legal capacity to enter into and execute this Permanent Easement for Utilities. Grantor warrants and represents to Grantee that execution of this Permanent Easement for Utilities and the performance of such Grantor's obligations hereunder have been duly authorized and that the Permanent Easement for Utilities is valid and legally binding on such Grantor and is enforceable in accordance with its terms

IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed on this _____ day of _____, 20__ A.D.

By:

[Notary Page Follows]

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 20__ A.D., by

_____.

(Seal)

Notary Public In and For
The State of Texas
My Commission Expires: _____
Printed Name of Notary:
