

**THE CITY OF MCKINNEY, TEXAS
AND
VCIM PARTNERS, L.P.
CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT**

WHEREAS, *VCIM PARTNERS, L.P.* a Texas limited partnership (hereinafter “VCIM”), is entering into this Chapter 380 Economic Development Agreement (this “Agreement”) pursuant to a program initiated by the ***CITY OF MCKINNEY, TEXAS*** (hereinafter “CITY”) pursuant to Chapter 380 of the Texas Local Government Code, for the primary purpose of developing and improving the private and public infrastructure as well as constructing corporate office buildings to enable businesses to expand and relocate their operations within the McKinney Corporate Center at Craig Ranch (the “Project”) located wholly within the City of McKinney, Texas; and

WHEREAS, the CITY has agreed to a conditional economic development grant to VCIM based on the timely completion of the Project, including but not limited to the construction of certain building improvements and infrastructure to be funded, in part, by the CITY to VCIM and which building improvements and infrastructure are necessary to provide relocate and expand businesses in McKinney, Texas; and

WHEREAS, VCIM acknowledges that the grants described herein shall constitute the City’s sole, economic stimulus package to VCIM pursuant to the City’s/MEDC’s Request for Proposals solicited in 2010; and

WHEREAS, the CITY will consider future, end-user projects on their individual merit and based on VCIM’s commitment to develop the Project as a corporate park through its full build-out; and

WHEREAS, the CITY has the authority under Chapter 380 of the Texas Local Government Code to make loans or grants of CITY funds for the purposes of promoting local economic development and stimulating business and commercial activity within the CITY; and

WHEREAS, the CITY has established the Project as an eligible project as required by law and determines that a conditional grant to VCIM of its funds will serve the public purpose of promoting local economic development and enhancing business and commercial activity in the City of McKinney, Texas; and

WHEREAS, the CITY has concluded and hereby finds that this Agreement clearly promotes economic development in the CITY and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interests of the CITY and VCIM; and

WHEREAS, the City Council has considered and approved this Agreement.

NOW, THEREFORE, for and in consideration of the agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, VCIM and CITY agree as follows:

SECTION 1. TERM

This Agreement shall be effective from the Effective Date until March 1, 2026, unless terminated sooner under the provisions herein.

SECTION 2. DEFINITIONS

The following words shall have the following meanings when used in this Agreement.

- a. Additional Grant. The words “Additional Grant” mean a payment to VCIM under Section 3 of this Agreement for the Additional Infrastructure in the amount not to exceed \$886,654.00.
- b. Additional Infrastructure. The words “Additional Infrastructure” mean one-half of Myer Way from Henneman Way to Van Tuyl Parkway together with all sidewalks, landscaping, irrigation, street lighting and associated utilities (publicly-owned) and all appurtenances (privately-owned) in the location as depicted on Exhibit C.
- c. Agreement. The word “Agreement” means this Chapter 380 Economic Development Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- d. CITY. The word “CITY” means the City of McKinney, Texas. For purposes of this Agreement, CITY’s address is 222 N. Tennessee, McKinney, Texas 75069.
- e. Grant Submittal Package. The words “Grant Submittal Package” mean the documentation required to be supplied to CITY as a condition of receipt of the Primary Grant or the Additional Grant. For publicly-owned Primary Infrastructure and the Additional Infrastructure, the Grant Submittal Package shall contain. The Grant Submittal Package shall consist of (i) partial or final lien releases or affidavits of All Bills Paid, as applicable, for all privately-owned Primary Infrastructure (ii) paid vendor receipts for Project “soft cost” expenses; (iii) all required city inspections and acceptance documents for publicly-owned Primary and Additional Infrastructure; and (iv) any other cost and payment documentation reasonably requested by CITY for the Project. The CITY, or its designee, shall verify that the expenditures were made in such amounts prior to any Primary Grant or Additional Grant disbursement.
- f. Office Building. The words “Office Building” mean a newly-constructed, office building containing not less than 120,000 gross square feet situated within the Project.
- g. Office Building Grant. The words “Office Building Grant” mean payments to VCIM, or its assignee, based on the satisfaction of leasing conditions placed on the Office Building.
- h. Primary Grant. The words “Primary Grant” mean aggregate payments to VCIM under Section 3 of this Agreement for the Primary Infrastructure in the amount not to exceed \$4,155,380.00.
- i. Primary Infrastructure. The words “Primary Infrastructure” mean (a) the Corporate Center Entrance Road together with all appurtenances, sidewalks, landscaping, irrigation and street lighting (publicly-owned) and all appurtenances (privately-owned) from the Sam Rayburn Tollway frontage road to Henneman Way, (b) the Corporate Center Monument Features/Signage and Enhanced Landscaping (privately-owned and maintained by the owner/commercial owners’ association, and (c) the Retention/Detention Lake Amenity (privately-owned and maintained by the owner/commercial owners’ association), in the locations as depicted on Exhibit B.
- j. Project. The word “Project” means the McKinney Corporate Center at Craig Ranch, including but not limited to a new office building and certain defined infrastructure within and adjacent to an approximately 125 acre site in McKinney, Texas, in the Craig Ranch Development, more specifically depicted on Exhibit A, attached hereto and made a part hereof.

- k. VCIM. The letters "VCIM" mean VCIM Partners, Ltd., a Texas limited partnership, including its successors.

SECTION 3. GRANT FUNDING OBLIGATION OF CITY

So long as VCIM is not in Default and as construction expenses are incurred by VCIM, CITY shall fund the Primary Grant in the amount not to exceed Four Million One Hundred Fifty-Five Thousand Three Hundred Eighty and No/100 Dollars (\$4,155,380.00) under the express provisions and conditions contained in Section 4(a) below. In addition, VCIM shall be eligible for the Additional Grant in the amount not to exceed Eight Hundred Eighty-Six Thousand Six Hundred Fifty-Four and No/100 Dollars (\$886,654.00), under the express provisions and conditions contained in Section 4(b) below, payable no earlier than the third (3rd) anniversary of the Effective Date. The Primary Grant and Additional Grant shall be made only in the form of reimbursements pursuant to Section 4 below. Subject to VCIM's continuous satisfaction of Section 4 below, the CITY agrees to process applications for the Primary Grant and Additional Grant within thirty (30) days after receipt of VCIM's Grant Submittal Package(s). The Office Building Grant shall be payable annually beginning February 1, 2016 if VCIM satisfies the conditions for such payments.

SECTION 4. OBLIGATIONS OF VCIM

While this Agreement is in effect, VCIM shall comply with the following terms and conditions to be eligible for the Primary Grant and the Additional Grant:

- a. Primary Infrastructure. VCIM shall submit to the City for its approval all plans and specifications and a proposed budget for the Primary Infrastructure, which approval shall not be unreasonably withheld (the plans and specifications when approved by the City shall be the "Approved Plans" and the budget shall be the "Approved Budget"). VCIM shall be entitled to spend up to fifteen percent (15%) of the Primary Infrastructure Grant on "soft costs", including, but not limited to, architectural, engineering, surveying and legal expenses directly related to the design and construction of the Primary Infrastructure. After approval of the plans and specifications and the budget for the Primary Infrastructure, VCIM shall obtain bids for the construction of the same and shall present to the City for its approval, which shall not be unreasonably withheld, one or more contracts for the construction of the Primary Infrastructure in accordance with the Approved Plans and the Approved Budget (such approved contract(s) being hereinafter referred to as the "Approved Contract", whether one or more). The scope of work contained in the Approved Contract for the Primary Infrastructure shall be fully-completed and CITY acceptance obtained by October 1, 2014, subject to force majeure. Failure to timely complete the Primary Infrastructure shall constitute Default and entitle CITY to invoke the remedies described in Section 6. VCIM shall be entitled to reimbursements for the soft costs and work performed under the Approved Contract based upon the submittal of verified construction draws/expenditures or vendor payments made by VCIM, or its affiliates, for the Primary Infrastructure as contained in one or more Grant Submittal Packages. The Grant Submittal Package(s) shall indicate the percentage of completion and the value of the work remaining under the Approved Contract; and the City shall have the right to retain such amounts of the Primary Grant equal to the value of the work remaining together with the amount of all retainage under the Approved Contract as indicated by the Grant Submittal Package(s).
- b. The Additional Grant shall be payable upon completion and acceptance of the Additional Infrastructure, but in no event earlier than three (3) years after the Effective Date.

- c. Office Building. The Primary Grant and Additional Grant shall be expressly conditioned upon VCIM's or an assignee's construction of the Office Building on or before October 1, 2014, subject to force majeure. The Office Building shall be not less than 120,000 gross square feet and shall be accompanied with an Engineer's Affidavit of construction value of not less than \$10,000,000.00 at completion. VCIM, or its assignee, shall apply for a building permit(s) for the Office Building and commence construction on or before June 30, 2013 and the Office Building shall be substantially complete on or before October 1, 2014, subject to force majeure.
- d. Office Building Grant. If the Office Building is timely completed, CITY shall pay VCIM, or its assignee, the Office Building Grant. The Office Building Grant shall be assignable and shall be in an amount equal to fifty percent (50%) of the City of McKinney's portion of ad valorem taxes assessed on the Office Building improvements (not including business personal ad valorem taxes or land), beginning with Tax Year 2015 and payable to VCIM on February 1, 2016, and thereafter on February 1 of the five (5) subsequent years. If at any time prior to the fifth (5th) anniversary of its receipt of a certificate of occupancy fifty percent (50%) of the net lease space in the Office Building is leased with leases having primary terms of greater than four (4) years, the Office Building Grant shall be extended for five (5) additional years. Notwithstanding anything herein to the contrary, the maximum number of annual payments under the Office Building Grant shall be ten (10) payments. Notwithstanding the payment dates for the Office Building Grant, no payments shall be due until all ad valorem taxes are paid in full on the Office Building, including the land and business personal property taxes, for any applicable Tax Year.
- e. VCIM shall record a restrictive covenant, substantially conforming to Exhibit D attached hereto and approved in advance by CITY, covering the Project. The restrictive covenant shall provide that the Project shall be limited to corporate office park and related uses only, unless the CITY otherwise grants its written consent.
- f. The CITY agrees to streamline the development process by use of a project-specific development liaison offered to VCIM to assist VCIM through the City-related development regulations and processes.
- g. VCIM shall comply with all applicable City of McKinney codes, state and federal laws, and local ordinances applicable to the construction of the Primary Infrastructure, the Additional Infrastructure and the Office Building.

SECTION 5. EVENTS OF DEFAULT.

Each of the following shall constitute an event of default under this Agreement:

- a. CITY's failure to process any Primary Grant, Additional Grant or Office Building Grant payment to VCIM in accordance with Section 3 of this Agreement.
- b. VCIM's violation or failure to perform any of the covenants contained in Section 4 hereinabove.

SECTION 6. EFFECT OF AN EVENT OF DEFAULT

In the event of default under Section 5, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default unless such default cannot be cured due to the passage of time. Should said default remain uncured and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement.

As long as it shall not be in default, VCIM shall have the power to obtain a judgment for damages and/or enforce specific performance to collect amounts owing upon CITY's default without terminating this Agreement. No action shall lie for punitive damages, and no special or consequential damages shall be recovered by either party. So long as VCIM is not in Default, VCIM shall be entitled to receive from CITY the Primary Grant, the Additional Grant and the Office Building Grant due VCIM, or its assigns, through the term of this Agreement. In the event VCIM, or its assignee, defaults in the timely construction of the Office Building after its receipt of any Primary or Additional Grant payments hereunder, and such default is not otherwise cured, or by the passage of time, cannot be cured, VCIM's receipted reimbursement under the Primary Grant and the Additional Grant shall be immediately unearned, due and payable to the CITY and no further payments shall be due during any period of Default. In the event VCIM, or its assignee, default in the timely construction of the Primary Infrastructure after the Office Building has been completed in accordance with the terms of this Agreement, and such default is not otherwise cured, or by the passage of time, cannot be cured, VCIM's receipted reimbursement under the Primary Grant shall be immediately unearned, due and payable to the CITY and no further payments under the Primary Grant shall be due during any period of Default. In any such event, CITY may use all legal means, including suit for breach of this Agreement, to collect receipted reimbursements from VCIM.

SECTION 7. MISCELLANEOUS PROVISIONS

The following miscellaneous provisions are a part of this Agreement:

- a. **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by all of the parties hereto.
- b. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Collin County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Collin County, Texas.
- c. **Binding Obligation Only on Effective Date.** This Agreement shall become a binding obligation on the parties on the Effective Date. CITY warrants and represents that the individual executing this Agreement on behalf of CITY has full authority to execute this Agreement and bind CITY to the same. VCIM warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- d. **Limited Waiver of Sovereign Immunity.** The City expressly waives its right of immunity to suit for enforcement and collection under this Agreement, but otherwise does not waive any statutory or common law right to sovereign immunity by virtue of its execution hereof.
- e. **Execution of Agreement.** The CITY has authorized its City Manager to execute this Agreement on behalf of the CITY.
- f. **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

- g. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown above. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.
- h. **Effective Date.** The effective date (the "Effective Date") of this Agreement shall be November 6, 2012.
- i. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- j. **Force Majeure.** Notwithstanding anything contained herein regarding a time of commencement or completion of the Primary Infrastructure, the Additional Infrastructure or the Office Building, VCIM, or its assignee, shall such additional time as may be required in the event of "force majeure" so long as VCIM, or its assignee, is diligently and faithfully pursuing commencement or completion of the same. For purposes of this Agreement, the term "force majeure" shall mean any contingency or cause beyond the reasonable control of VCIM, or its assignee, as the case may be, including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or de facto governmental action, fires, explosions, floods, strikes or shortages of essential materials.

SIGNATURE PAGE TO FOLLOW

VCIM PARTNERS, LTD.,
a Texas limited partnership

By: VCIM, L.L.C., Inc. its general partner

Name: DAVID CRAIG

Title: MANAGER

Date Signed: _____

Name: Robert J. Holcomb

Title: Manager

Date Signed: _____

CITY OF MCKINNEY, TEXAS

By: _____

Name: JASON GRAY

Title: CITY MANAGER

Date Signed: _____

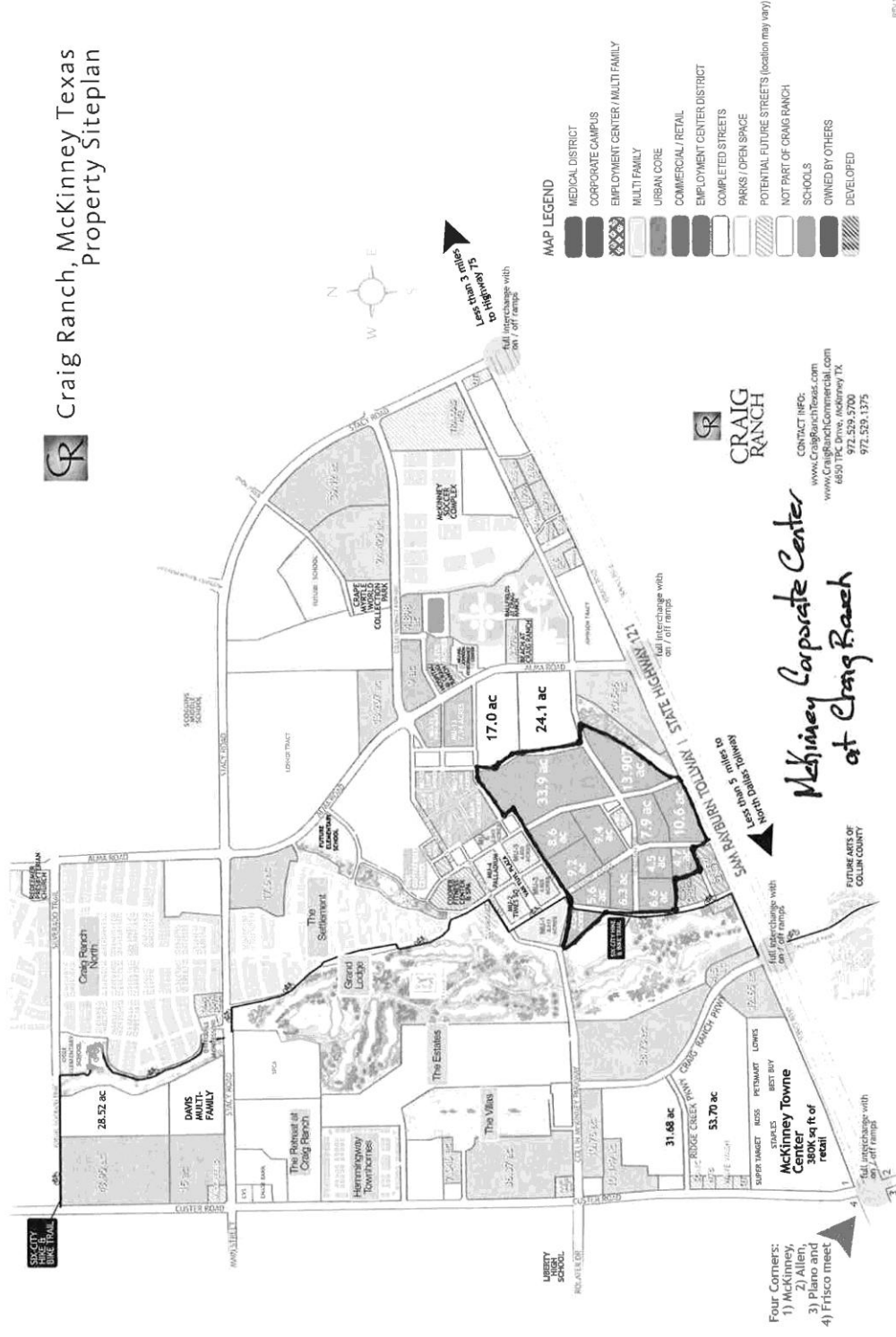
ATTEST:

SANDY HART, TRMC, MMC
City Secretary

PREPARED IN THE OFFICES OF:
BROWN & HOFMEISTER, L.L.P.
740 E. Campbell Road, Suite 800
Richardson, Texas 75081
214/747-6100
214/747-6111 Fax

EXHIBIT A The Project

CR Craig Ranch, McKinney Texas
Property Siteplan



REV: 1.18.2022

EXHIBIT B Primary Infrastructure

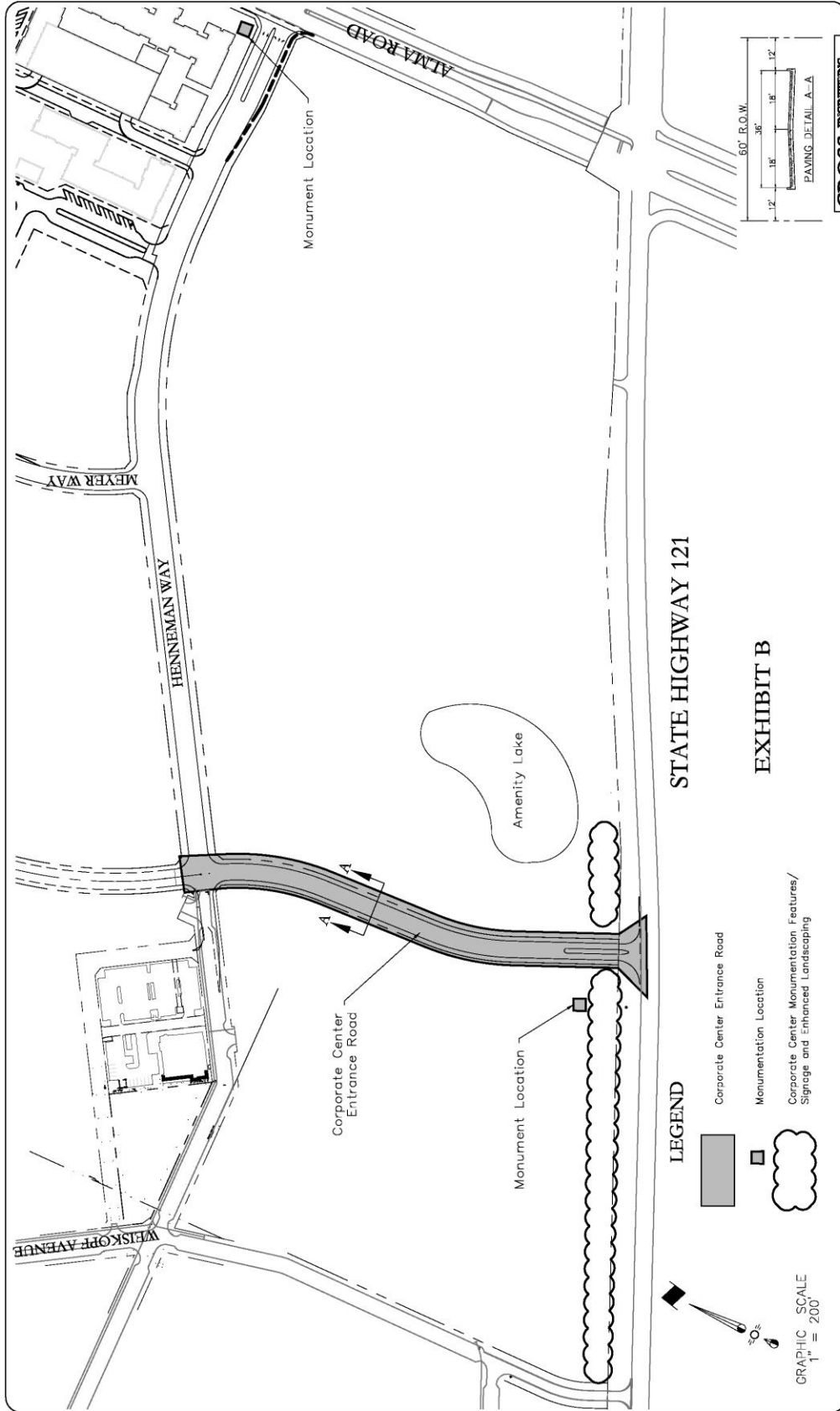
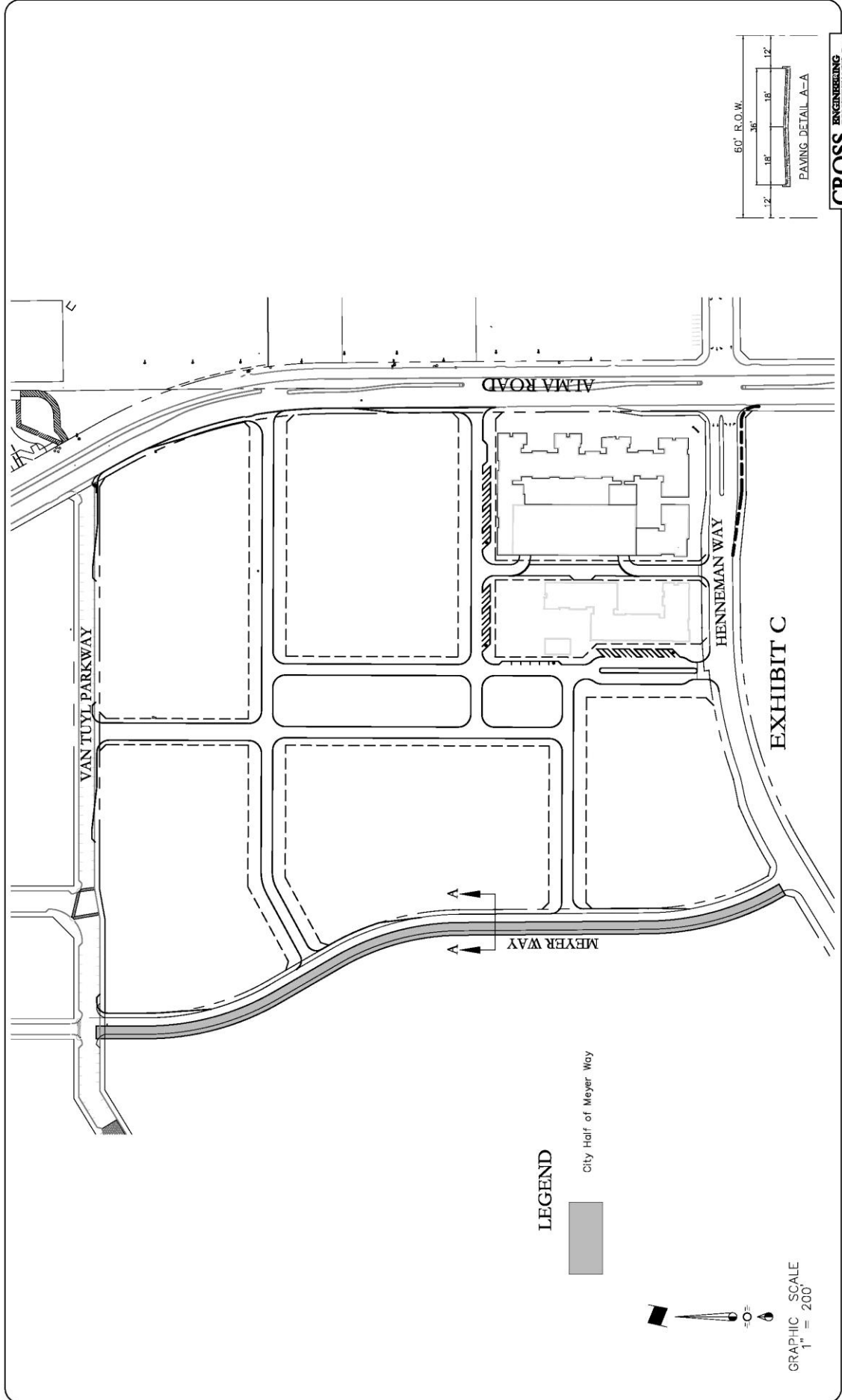


EXHIBIT C
Additional Infrastructure



CROSS ENGINEERING CONSULTANTS, Inc.

EXHIBIT D
Restrictive Covenant