



RITA G. JONSE, MAYOR
GENE KRUPPA, MAYOR PRO TEM, PLACE 1
MARIA AMEZCUA, PLACE 2
ANNE WEIR, PLACE 3
ZINDIA PIERSON, PLACE 4
DEJA HILL, PLACE 5
TODD SHANER, PLACE 6

**CITY COUNCIL
CALLED SPECIAL SESSION
AGENDA**

MONDAY, NOVEMBER 20, 2017

7:00 P.M.

CITY COUNCIL CHAMBERS, 105 E. EGGLESTON ST.

CALL TO ORDER AND ANNOUNCE A QUORUM IS PRESENT

PLEDGE OF ALLEGIANCE

REGULAR AGENDA

1. Consideration, discussion and possible action of items relating to the November 7, 2017, City of Manor General Election:
 - Canvass of the Election Returns for the City Council General Election
 - Consideration of an Ordinance declaring the results of the City Council Election
 - Presentation of Certificates of Election by Mayor Rita G. Jonse to Re-Elected Council Member, Place 1 – Gene Kruppa; Council Member, Place 3 – Anne R. Weir; and Newly Elected Council Member, Place 5 – Deja Hill; Presentation of Certificate of Election by Mayor Pro Tem Kruppa to Re-Elected Mayor Rita G. Jonse
 - Oath-of-Office to Re-Elected Mayor Rita G. Jonse; Council Member, Place 1 – Gene Kruppa; Council Member, Place 3 – Anne R. Weir; and Newly Elected Council Member, Place 5 – Deja Hill by Municipal Judge Mathison
2. Consideration, discussion, and possible action on a development agreement with U-Pull-It Auto Parts.

Lluvia Tijerina,
City Secretary

Scott Dunlop,
Planning Coordinator

ADJOURNMENT

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

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

POSTING CERTIFICATION

I, the undersigned authority do hereby certify that this Notice of Meeting was posted on the bulletin board, at the City Hall of the City of Manor, Texas, a place convenient and readily accessible to the general public at all times and said Notice was posted on the following date and time: Friday, November 17, 2017, by 5:00 p.m. and remained so posted continuously for at least 72 hours preceding the scheduled time of said meeting.

Lluvia Tijerina
City Secretary for the City of Manor, Texas

NOTICE OF ASSISTANCE AT PUBLIC MEETINGS:

The City of Manor is committed to compliance with the Americans with Disabilities Act. Manor City Hall and the Council Chambers are wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary at 512.272.5555 or e-mail ltijerina@cityofmanor.org.



AGENDA ITEM SUMMARY FORM

PROPOSED MEETING DATE: November 20, 2017

PREPARED BY: Lluvia Tijerina, City Secretary

DEPARTMENT: Administration

AGENDA ITEM DESCRIPTION:

Consideration, discussion and possible action of items relating to the November 7, 2017, City of Manor General Election:

BACKGROUND/SUMMARY:

- Canvass of the Election Returns for the City Council General Election
- Consideration of an Ordinance declaring the results of the City Council Election
- Presentation of Certificates of Election by Mayor Rita G. Jonse to Re-Elected Council Member, Place 1 – Gene Kruppa; Council Member, Place 3 – Anne R. Weir; and Newly Elected Council Member, Place 5 – Deja Hill; Presentation of Certificate of Election by Mayor Pro Tem Kruppa to Re-Elected Mayor Rita G. Jonse
- Oath-of-Office to Re-Elected Mayor Rita G. Jonse; Council Member, Place 1 – Gene Kruppa; Council Member, Place 3 – Anne R. Weir; and Newly Elected Council Member, Place 5 – Deja Hill by Municipal Judge Mathison

PRESENTATION: YES NO

ATTACHMENTS: YES (IF YES, LIST IN ORDER TO BE PRESENTED) NO

Canvass Report
Ordinance

STAFF RECOMMENDATION:

It is City staff's recommendation that the City Council approve and conduct all items relating to the November 7, 2017, City of Manor General Election.

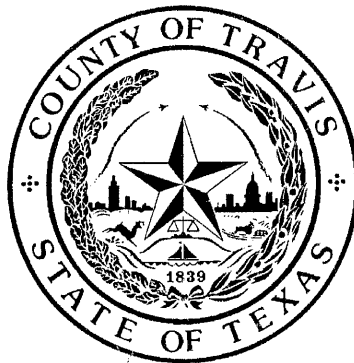
PLANNING & ZONING COMMISSION: RECOMMENDED APPROVAL DISAPPROVAL NONE

TRAVIS COUNTY CLERK
ELECTIONS DIVISION

Certified Final Canvass Report

City of Manor

**Joint General and Special Elections
November 7, 2017**



Dana DeBeauvoir

Dana DeBeauvoir
County Clerk

Official Results
City of Manor Cumulative Report

Total Registered Voters	4,118	
Total Precincts Completed	3 of 3	100.00%

	<u>Early Voting</u>	<u>Election Day</u>	<u>Total Vote</u>
Total Ballots Cast	86	129	215
% of Total Registered Voters	2.09%	3.13%	5.22%

	<u>Early Voting</u>	<u>Election Day</u>	<u>Total Vote</u>
MAYOR, CITY OF MANOR			
3 of 3 Precincts Reporting			
Rita G. Jonse	71 100.00%	99 100.00%	170 100.00%
Total Votes Counted in this Race:	<u>71</u>	<u>99</u>	<u>170</u>

PLACE 1, CITY COUNCIL, CITY OF MANOR			
3 of 3 Precincts Reporting			
Gene Kruppa	70 100.00%	96 100.00%	166 100.00%
Total Votes Counted in this Race:	<u>70</u>	<u>96</u>	<u>166</u>

PLACE 3, CITY COUNCIL, CITY OF MANOR			
3 of 3 Precincts Reporting			
Anne Weir	70 100.00%	97 100.00%	167 100.00%
Total Votes Counted in this Race:	<u>70</u>	<u>97</u>	<u>167</u>

PLACE 5, CITY COUNCIL, CITY OF MANOR			
3 of 3 Precincts Reporting			
Deja Hill	56 72.73%	75 65.79%	131 68.59%
Shannon C. Mugrage	21 27.27%	39 34.21%	60 31.41%
Total Votes Counted in this Race:	<u>77</u>	<u>114</u>	<u>191</u>

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANOR, TEXAS, CANVASSING THE ELECTION RETURNS AND DECLARING THE RESULTS OF THE GENERAL ELECTION OF THE CITY OF MANOR HELD ON TUESDAY, NOVEMBER 7, 2017, FOR THE CITY OF MANOR'S MAYOR; COUNCIL MEMBER PLACE NO. 1; COUNCIL MEMBER PLACE NO. 3; AND COUNCIL MEMBER PLACE NO. 5; AND DECLARING THE EFFECTIVE DATE OF THIS ORDINANCE.

Whereas, pursuant to the Texas Election Code, the City Council of the City of Manor, Texas, convened on this the 20th day of November 2017 at 7:00 p.m. for canvassing the vote in the General Election held on November 7, 2017.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MANOR, TEXAS, THAT:

Section One. Canvass of Vote. There came to be considered the returns of the general election held on the 7th day of November 2017, for electing one Mayor and three council members, and it is appearing from said returns, duly and legally made, that there were cast at said election 215 votes (*total votes*); and that each of the candidates in said election received the following votes:

GENERAL ELECTION

MAYOR:	<u>VOTES CAST:</u>
Rita G. Jonse	170
COUNCIL MEMBER, PLACE 1	<u>VOTES CAST:</u>
Gene Kruppa	166
COUNCIL MEMBER, PLACE 3	<u>VOTES CAST:</u>
Anne Weir	167
COUNCIL MEMBER, PLACE 5	<u>VOTES CAST:</u>
Deja Hill	131
Shannon C. Mugrage	60

Section Two. Finding and Declarations. It is found, determined and declared by the City Council that said election was duly called; that notice of said election was given in accordance with law, and that said election was held in accordance with law; and that Rita G. Jonse was duly elected to Mayor; Gene Kruppa was duly elected to the City Council, Place 1; Anne Weir was duly elected to the City Council, Place 3; and, Deja Hill was duly elected to the City Council, Place 5. Said above named parties are hereby declared duly elected to said respective offices, subject to taking of their oaths of office as provided by the laws of the State of Texas.

Section Three. Open Meetings. It is further found and determined that in accordance with this Ordinance of this governing body that the City Secretary posted written notice of the date, place and subject of this meeting in the bulletin board of the City Hall, a place convenient to the public, and said notice having been so posted continuously for at least 72 hours preceding the date of this meeting. A copy of the return of aid posting shall be attached to the minutes of the meeting and shall be made a part thereof for all intents and purposes.

PASSED AND APPROVED on this 20th day of November 2017.

THE CITY OF MANOR, TEXAS

Rita G. Jonse, Mayor

ATTEST:

Lluvia Tijerina, City Secretary



AGENDA ITEM SUMMARY FORM

PROPOSED MEETING DATE: November 20, 2017

PREPARED BY: Scott Dunlop, Planning Coordinator

DEPARTMENT: Development Services

AGENDA ITEM DESCRIPTION:

Consideration, discussion, and possible action on a development agreement with U-Pull-It Auto Parts.

BACKGROUND/SUMMARY:

The owner of the property is proposing an auto sales/auto salvage business. This property is proposed to be annexed on November 30th. Under State statute there are certain vested rights claims that could be made. Understanding those claims, the City and the Owner have entered consideration of a development agreement that outlines what development regulations will apply to the property. The DA proposes to develop the property under Light Industrial standards. It is proposed to be zoned C-2 (upon application for a rezoning). If the property never develops and the vested rights claim expire, the property would be held to the development standards of C-2.

PRESENTATION: YES NO

ATTACHMENTS: YES (IF YES, LIST IN ORDER TO BE PRESENTED) NO

Development Agreement

STAFF RECOMMENDATION:

It is City staff's recommendation that the City Council approve the terms of a development agreement with U-Pull-It Auto Parts.

PLANNING & ZONING COMMISSION: RECOMMENDED APPROVAL DISAPPROVAL NONE

Subject: RE: Development.Agreement.11.17.17.PHS

1. Where does the loading occur?
 - a. The loading will occur on the private drive next to the processing yard within an opaque fenced area. If the city objects to that, then the loading will occur within the processing yard. Gary prefers the former.
2. What type of lighting is proposed?
 - a. It is anticipated that site lighting will only be on the cars for sale and the customer parking area. The business operation doesn't occur after dusk, so lighting the vehicle storage area is not required. The lighting will likely be LED, dark-sky compliant pole mounted fixtures.
3. What is planned for fire suppression?
 - a. There are 2 avenues that will be explored for providing water for fire demand to the site. 1. On-site tank that is filled by Mansville water. 2. A water line extension that can supply enough water that the tank is unnecessary. Costs will dictate the best option. Fire suppression within the buildings is an architect question, and previous discussion has indicated that the buildings may need to be sprinkled. That's all I know.

Best Regards,

Travis Robinson, PE, MBA
Optimized Engineering

DEVELOPMENT AGREEMENT FOR U-PULL IT AUTO PARTS AND ITS AFFILIATES

This Development Agreement for U-Pull It Auto Parts and its Affiliates (the “**Agreement**”) is made, entered into, and effective, as of the ___ day of November, 2017 (the “**Effective Date**”) by and between the City of Manor, a Texas home-rule municipal corporation (the “**City**”), and MB&MS Enterprise, Inc., a Texas corporation, its authorized and approved successors and assigns (the “**Owner**”), Johnson Trust Investments, LLC, an Arkansas limited liability company, (the “**Developer**”), Austin U-Pull-It Auto Parts, Inc., a Texas corporation (the “**Developer’s Affiliate 1**”), and Developer on behalf of an affiliate of Developer that has not yet been created (the “**Developer’s Affiliate 2**”). The Owner, Developer’s Affiliate 1, and the Developer on behalf of itself and Developer’s Affiliate are sometimes referred to herein as the “**Developer Party**”. The City, Owner, Developer’s Affiliate 1, and Developer, on behalf of itself and Developer’s Affiliate 2, are sometimes referred to herein as the “**Parties**.” The Parties hereby contract, covenant and agree as follows.

Purposes, Consideration, Term and Termination

1.01. Purpose. Owner has entered into a contract to sell approximately 17.67 acres of land, more or less, located at 14719 US Highway 290 E, Manor, Texas 78653 (the “Purchase Contract”), and being shown as outlined and including Tract 1 and Tract 2 as shown on Exhibit “A” attached hereto and incorporated herein for all purposes (the “**Property**”), to Developer. The Developer, through a related affiliate, Developer’s Affiliate 1, intends, after closing, to develop a portion of the Property of approximately 10.4 acres, more or less (such portion generally shown on Exhibit “A” attached hereto and incorporated herein for all purposes, (the “**Tract 1**”), for an automobile recycling operations (outdoor), automobile salvage and wrecking yard business with stored open and/or outdoor storage, and car ~~crushing~~-pressing facility and open display used motor vehicle sales with minor automotive repairs related thereto in accordance with this Agreement and the development plan (the “**Development Plan 1**”) attached hereto as Exhibit “A” (the “**Tract 1 Project**”).

An affiliate of Developer, Developer’s Affiliate 2, intends, after closing, to develop a portion of the Property of approximately 7.31 acres, more or less (such portion generally shown on Exhibit “A” attached hereto and incorporated herein for all purposes, (the “**Tract 2**”), for a commercial office/retail warehouse storage with outdoor merchandise and/or outdoor storage business in accordance with this Agreement and the development plan (the “**Development Plan 2**”) attached hereto as Exhibit “A” (the “**Tract 2 Project**”).

The Property is located within the extraterritorial jurisdiction (“ETJ”) of the City. The City is in the process of annexing the Property. The Parties desire to establish development standards for the Development Plan 1 and Development Plan 2, respectively, to provide certainty and assurance of the development regulations applicable to the development of Development Plan 1 and Development Plan 2.

1.02. General Benefits; Acknowledgement of Consideration.

(a) Owner will benefit from the certainty and assurance of the development regulations applicable to the development of the Property as such are necessary for the Developer to close on the acquisition of the Property. Owner, Developer’s Affiliate 1, and Developer, on behalf of itself and Developer’s Affiliate 2 have each voluntarily elected to enter into and accept the

benefits of this Agreement and will benefit from: (1) the certainty and assurance of the development and use of the Property in accordance with this Agreement; and (2) the establishment of regulations applicable to the development of the Property. The City will benefit from this Agreement by virtue of its control over the development standards for the Property as herein provided.

(b) The benefits to the Parties set forth above, plus the mutual promises expressed herein, are good and valuable consideration for this Agreement, the sufficiency of which is hereby acknowledged by the Parties.

1.03. Term of Agreement; Termination. The term of this Agreement shall be forty-five (45) years from the Effective Date (the “Term”), and upon the expiration of this Agreement any and all rights pursuant to this Agreement shall expire; provided that: (a) this Agreement will automatically terminate on April 30, 2018 if the Developer has not acquired the Property and provided the City with written notice of such acquisition; or (b) this Agreement will automatically terminate and expire if the Owner sells the Property to an individual or entity other than the Developer; or (c) this Agreement will terminate and expire earlier if Owner notifies the City in writing that the Developer failed to close on the acquisition of the Property, and that the Purchase Contract has been terminated. If the Developer acquires the Property and Developer’s Affiliate 1: (i) fails to obtain a certificate of occupancy and/or certificate of completion for the Development Plan 1 by October 31, 2019; or (ii) ceases to operate the Tract 1 Land Uses on Tract 1 after obtaining the certificate of occupancy, the City may terminate this Agreement as it pertains to Tract 1, which termination will be effective on the thirtieth (30th) day following the date of delivery of written notice of termination by the City to the Developer and Developer’s Affiliate 1. If the Developer acquires the Property and Developer’s Affiliate 2: (y) fails to obtain a certificate of occupancy and/or certificate of completion for all or a portion of the Development Plan 2 by April 30, 2021 and thereafter fails to obtain a certificate of occupancy and/or certificate of completion for all phases of the Tract 2 Project by 2025; or (z) ceases to operate the Tract 2 Land Uses on Tract 2 after obtaining the certificate of occupancy; or if the Property is fully developed and built-out by the Developer or the Developer’s Affiliate, as appropriate, the City may terminate this Agreement as it pertains to Tract 2, which termination will be effective on the thirtieth (30th) day following the date of delivery of written notice of termination by the City to the Developer, on behalf of itself and Developer’s Affiliate 2. “Ceases to operate” means for the purposes of this Agreement that ceases to use a particular piece of property for the particular Land Use(s) described in this Agreement for an entire six (6) months, except for reasons of force majeure or major construction renovations.

Zoning and Annexation; Sequence of Events

2.01. Zoning.

(a) After annexation of the Property and within 60 days following the closing on the Property by Developer, the Developer will submit an application for zoning of the Property to District C-2, with the additional uses and development standards set forth in Sections 3.01 and 3.02, Exhibit “C” and Exhibit “D” (the “**Zoning Application**”). The Parties agree that the City may provide in the zoning ordinance for the Property that: (1) with respect to Tract 1, the Tract 1 Land Uses and Tract 1 Development Standards (except those land uses and development standards authorized in the C-2 Zoning District) will expire and terminate if the Development Agreement expires or terminates prior to the end of the Term as to Tract 1; and (2) with respect to Tract 2, the Tract 2 Land Uses and Tract 2 Development Standards (except those land uses and development standards authorized in the C-2 Zoning District) will expire and terminate if the Development Agreement expires or terminates prior to the end of the Term as to Tract 2. If the Developer fails to submit the Zoning Application within 60 days following the closing on the Property, the City may withhold development approvals for the Property until such time that the

Zoning Application is submitted, or the City may initiate zoning of the Property. It is the intent of the City to zone the Property in the manner described in this Section. The zoning of the Property shall be subject to the process, notices, hearings and procedures applicable to all other properties within the City.

(b) Unless Developer or Developer's Affiliate 1: (a) substantially amends Development Plan 1 and this Agreement; (b) abandons the Tract 1 Project; (c) defaults under this Agreement and fails to cure such default within the applicable Cure Period; or (d) permits its Chapter 245 rights to expire; Developer and Developer's Affiliate 1 and its respective successors and assigns and Tract 1 shall be and remain entitled to the rights and benefits provided in this Agreement notwithstanding denial by the City of the Zoning Application. Unless Developer or Developer's Affiliate 2: (a) substantially amends Development Plan 2 and this Agreement; (b) abandons the Tract 2 Project; (c) defaults under this Agreement and fails to cure such default within the applicable Cure Period; or (d) permits its Chapter 245 rights to expire; Developer and Developer's Affiliate 2 and its respective successors and assigns and Tract 2 shall be and remain entitled to the rights and benefits provided in this Agreement notwithstanding denial by the City the Zoning Application.

2.02. Annexation. Subject to the terms of this Agreement, Owner, Developer's Affiliate 1, and Developer, on behalf of itself and Developer's Affiliate 2, consents to and requests that the City approve annexation of the Property and agrees that this Agreement constitutes a request to be voluntarily annexed into the city limits. Owner accepts the municipal services plan for the Property attached as Exhibit "B" as good, sufficient and acceptable.

2.03. Contemplated Sequence of Events. The sequence of events contemplated by this Agreement if Developer closes on the Property with Owner, is as follows:

- (a) Approval of this Agreement by the City, Owner, Developer's Affiliate 1, and Developer, on behalf of itself and Developer's Affiliate 2;
- (b) Acquisition of the Property by the Developer and acknowledgement of the vesting of the assignment of this Agreement to the Developer, Developer's Affiliate 1, and/or Developer's Affiliate 2, as applicable;
- (c) Submission of the zoning application by the Developer or Developer's Affiliate 1 within 60 days following the closing on the Property by Developer;
- (d) Adoption of an ordinance zoning the Property.
- (e) Submittal and approval of site development, and building permit applications for the development and construction of Development Plan 1 (herein defined).

Development of the Property

3.01. Development. Tract 1 will be developed for automobile recycling operations, (outdoor) automobile salvage, and wrecking yard business with stored open and/or outdoor storage and car ~~crushing~~ pressing facility and open display used motor vehicle sales with minor automotive repairs substantially in accordance with the Development Plan 1, as which may be amended with the consent of the City, this Agreement and the Applicable Regulations (the "**Tract 1 Land Uses**"), and Tract 2 will be developed for a commercial office/retail warehouse storage with outdoor merchandise and/or outdoor storage business, substantially in accordance with the Development Plan 2, as which may be amended with the consent of the City, this Agreement and

the Applicable Regulations (the “**Tract 2 Land Uses**”). The Tract 1 Land Uses and the Tract 2 Land Uses are collectively referred to as the “**Land Uses**”.

3.02. Applicable Regulations; Development Standards. Developer and/or Developer’s Affiliate 1 shall plan, plat, build-out and complete development and infrastructure on Tract 1 in compliance with good engineering practices, the applicable federal and state laws, rules and regulations, the Development Plan 1, the Tract 1 Land Uses, the City’s Rules as modified by this Agreement, the development standards for the Light Industrial – District IN-1 zoning district which will be applicable to the Tract 1 Land Uses, except as modified in Exhibit “C”, and environmental regulations otherwise applicable to Tract 1 (the “**Tract 1 Development Standards**”). Developer and/or Developer’s Affiliate 2 shall plan, plat, build-out and complete development and infrastructure on Tract 2 in compliance with good engineering practices, the applicable federal and state laws, rules and regulations, the Development Plan 2, the Tract 2 Land Uses, the City’s Rules as modified by this Agreement, the development standards for the District C-2 zoning district, except as modified in Exhibit “D”, this Agreement, and the environmental regulations otherwise applicable to the Property (the “**Tract 2 Development Standards**”). The Tract 1 Development Standards and the Tract 2 Development Standards are collectively referred to as the “**Applicable Regulations**”. The “**City Rules**” shall mean the City’s ordinances and duly adopted regulations adopted from time to time; provided that the City shall consider the approval, disapproval or conditional approval of an application for a permit for the development of Tract 1 Project and the Tract 2 Project in accordance with the City Rules governing development of Property in effect on the Effective Date of this Agreement, as modified by this Agreement and the Development Standards, subject to Section 4.01. For the convenience of the Parties, the majority of the development standards for the Light Industrial – District IN-1 zoning district and its modifications are attached hereto as Exhibit “C”. Exhibit “D” sets forth the exceptions to the C-2 District development regulations. In the event of a conflict between the City Rules and this Agreement, this Agreement shall control.

3.03. Design and Construction. Developer, Developer’s Affiliate 1, and/or Developer’s Affiliate 2 shall finance, design, construct and install all water facilities, wastewater facilities, streets, drainage facilities and other amenities and improvements within the Property, or outside the boundaries of the Property, required by the Applicable Regulations to serve the Property at its or their sole cost and expense (collectively the “**Site Improvements**”). Any Site Improvements constructed shall be done so in compliance with the Applicable Regulations and plans and specifications approved by the City. The City does not object to the installation of a water well on the Property to serve the Tract 1 Project and the Tract 2 Project, provided that the Developer Party complies with any requirements of Manville Water Supply Corporation and applicable state and federal law. Further, the Developer Party may install a septic system to serve the Tract 1 Project and the Tract 2 Project, at its/their discretion on the Property, subject to compliance with Applicable Regulations. The Developer Party agrees to connect to the City’s wastewater system when wastewater service becomes available to the Property. “Available to the Property” means for the purposes of this paragraph that the City has brought the wastewater service system within fifty (50) feet from the Property.

3.04. Additional Agreements. Developer, Developer’s Affiliate 1, and Developer’s Affiliate 2, each hereby agrees:

- (a) the fees and charges currently provided for in the Applicable Regulations may be amended by the City from time to time, and Owner, Developer, Developer’s Affiliate 1, and Developer’s Affiliate 2 and each if its respective successors and assigns, shall pay as applicable to the City such fees and charges, as amended, for or with respect to the development of the Property, including, but not limited to, zoning and subdivision application fees, building permit fees, water and

wastewater impact, tap and use fees, and the reasonable costs and expenses incurred by the City for legal services with respect to this Agreement;

- (b) to timely perform and complete each respective task, duty and responsibility of Owner, Developer, Developer's Affiliate 1, and Developer's Affiliate 2 as set forth in this Agreement; and
- (c) this Agreement is conditioned upon, and the rights and obligations set forth herein are subject to, Developer closing on the acquisition of the Property.

Vested Rights

Section 4.01. Vested Rights. The Parties agree that all permits and approvals required or authorized by the City for the development of the Property (except for zoning approval), including but not limited to preliminary plats, final plats, engineering design plans, infrastructure construction permits, and site development plans or permits, shall be approved if they are in accordance with this Agreement, the Applicable Regulations and this Agreement. Subject to the terms and conditions of this Agreement, the City confirms, acknowledges and agrees that the Developer Party has vested authority to develop the Property in accordance with this Agreement and the City Rules notwithstanding subsequently adopted ordinances, rules or regulations, or changes or modifications to the City Rules, which will only be applicable to the extent allowed by Chapter 245, *Texas Local Government Code* (the "**Vested Rights**"), provided that the Vested Rights shall terminate and expire if a state law or court order mandates otherwise; or: (1) With respect to Tract 1 if (a) Developer and Developer's Affiliate 1 or each of its authorized respective successors or assigns, as applicable agree in writing to such modification or revocation with respect to Tract 1; (b) Developer's Affiliate 1 fails to obtain a certificate of occupancy and/or certificate of completion for the Development Plan 1 by October 31, 2019, or thereafter abandons development of the Tract 1; (c) an application for a major change to the Development Plan 1 is submitted by the Developer or the Developer's Affiliate 1, which substantially changes the Tract 1 Land Uses approved by this Agreement; or (2) With respect to Tract 2 if (a) Developer and Developer's Affiliate 2 or each of its authorized respective successors or assigns, as applicable agree in writing to such modification or revocation with respect to Tract 2; (b) Developer or Developer's Affiliate 2 fails to obtain a certificate of occupancy and/or certificate of completion for the Development Plan 2 by April 30, 2021 for all or a portion of Tract 2 and thereafter fails to obtain a certificate of occupancy and/or certificate of completion for all phases of the Tract 2 Project by 2025, or thereafter abandons development of the Tract 2; (c) an application for a major change to the Development Plan 2 is submitted by Developer and/or Developer's Affiliate 2 which substantially changes the Tract 2 Land Uses approved by this Agreement. If there is any conflict between the City Rules and the terms of this Agreement, the terms of this Agreement will control. As used in this Agreement, "abandons" means that a respective party commences the development of all or a portion of Tract 1 or Tract 2, respectively for which all required permits have been issued, but fails to complete such development within five years thereafter.

Assignment of Commitments and Obligations

5.01. Owner Assignment of Agreement Vested. The assignment of the Owner's rights and obligations under this Agreement shall be vested in Developer, Developer's Affiliate 1, and

Developer's Affiliate 2 immediately upon the legal conveyance of the Property to Developer by Owner. Upon vesting of such assignment, it is hereby acknowledged and affirmed by Developer's Affiliate 1 and Developer, on behalf of itself and Developer's Affiliate 2 that they are each hereby agreeing to be bound by the terms and conditions of this Agreement as evidenced in writing, and such assignment shall not be effective until the City receives written notice of the vesting of such assignment, [which notice will be accompanied by a survey of the Property](#). It is further acknowledged and affirmed by the City, Developer's Affiliate 1 and Developer, on behalf of itself and Developer's Affiliate 2, that upon vesting of such assignment, Owner shall have no further obligation or duty under this Agreement.

5.02 Binding Obligations; Assignment. (a) This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns that are approved in accordance with this Section. This Agreement shall be recorded in the Official Public Records of Travis County, Texas within sixty days after the Effective Date.

(b) The Developer, Developer Affiliate 1, and Developer Affiliate 2 may not assign this Agreement without the prior written consent of the City, which will not be unreasonably withheld, delayed, or conditioned; provided that the assignee must demonstrate the financial and managerial capability of operating the Tract 1 Project and/or the Tract 2 Project in accordance with the terms of this Agreement and operational standards substantially similar to those of the Developer Affiliate 1 and/or Developer Affiliate 2, respectively.

Default; Reservation of Rights; Attorneys Fees; Waiver

6.01.Default. Notwithstanding anything herein to the contrary, no party shall be deemed to be in default hereunder until the passage of fourteen (14) business days after receipt by such party of notice of default from the other party. Upon the passage of fourteen (14) business days without cure of the default, such party shall be deemed to have defaulted for purposes of this Agreement; provided that if the nature of the default is that it cannot reasonably be cured within the fourteen (14) business day period, the defaulting party shall have a longer period of time as may be reasonably necessary to cure the default in question; but in no event more than sixty (60) days. The time periods described in this paragraph are (the "**Cure Period**") In the event of default, the non-defaulting party to this Agreement may pursue the remedy of specific performance or other equitable legal remedy not inconsistent with this Agreement. All remedies will be cumulative and the pursuit of one authorized remedy will not constitute an election of remedies or a waiver of the right to pursue any other authorized remedy. The City may terminate this Agreement as to Tract 1 if the Developer or the Developer Affiliate 1 defaults in the performance of this Agreement and the default is not timely cured during the Cure Period. The City may terminate this Agreement as to Tract 2 if the Developer or the Developer's Affiliate 2 defaults in the performance of this Agreement and the default is not timely cured during the Cure Period.

6.02. Reservation of Rights. To the extent not inconsistent with this Agreement, each party reserves all rights, privileges, and immunities under applicable laws, and neither party waives any legal right or defense available under law or in equity.

6.03. Attorneys Fees. A party shall not be liable to the other party for attorney fees or costs incurred in connection with any litigation between the City and a party, in which a party seeks to obtain a remedy from the other party, including appeals and post judgment awards. As between a legal proceeding involving a party other than City, a prevailing party in any legal proceeding brought under or with relation to this contract or this transaction, such party is entitled to recover from the non-prevailing parties (exclusive of the City) all costs of such proceeding and reasonable attorney's fees.

6.04. Waiver. Any failure by a party to insist upon strict performance by the other party of any provision of this Agreement will not, regardless of length of time during which that failure continues, be deemed a waiver of that party's right to insist upon strict compliance with all terms of this Agreement. In order to be effective as to a party, any waiver of default under this Agreement must be in writing, and a written waiver will only be effective as to the specific default and as to the specific period of time set forth in the written waiver. A written waiver will not constitute a waiver of any subsequent default, or of the right to require performance of the same or any other provision of this Agreement in the future.

Force Majeure

7.01. Definition. The term "force majeure" as employed herein shall mean and refer to acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies, orders of any kind of the government of the United States, the State of Texas or any civil or military authority; insurrections; riots; epidemic; landslides; lightning, earthquakes; fires, hurricanes; storms, floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines, or canals; or other causes not reasonably within the control of the party claiming such inability.

7.02. Notice of Default. If, by reason of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the full particulars of such force majeure to the other party within ten (10) days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by the force majeure, shall be suspended during the continuance of the inability claimed, except as hereinafter provided, but for no longer period, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch.

7.03. Settlements and Strikes. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require that the settlement be unfavorable in the judgment of the party having the difficulty.

Notices

8.01. Method of Notice. Any notice to be given hereunder by a party to another party shall be in writing and may be effected by personal delivery or by sending said notices by registered or certified mail, return receipt requested, to the addresses set forth below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed.

Any notice mailed to the City shall be addressed:

City of Manor
Attn: City Manager
105 East Eggleston Street
Manor, Texas 78653

with copy to:

The Knight Law Firm, LLP
Attorneys at Law
223 West Anderson Lane, #A105
Austin, Texas 77852

Any notice mailed to Owner shall be addressed:

MB&MS Enterprise, Inc.
P.O. Box 82653
Austin, Texas 78708

with copy to:

Douglass D. Hearne, Jr.
Law Office of Douglass D. Hearne, Jr.
901 S. Mopac
Building V, Suite 200
Barton Oaks Plaza
Austin, Texas 78746

Any notice mailed to Developer, Developer's Affiliate 1, and/or Developer's Affiliate 2 shall be addressed:

Johnson Trust Investments, LLC
1700 Poco Bueno Ct.
Spicewood, Texas 78669

with copy to:

Monica G. Bradshaw
Law Office of Monica G. Bradshaw, P.C.
P.O. Box 271664
Flower Mound, Texas 75027

Any party may change the address for notice to it by giving notice of such change in accordance with the provisions of this section.

Reserved

9.01. Reserved.

Formatted: None

Entire Agreement

10.01. Agreement and Amendment. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties on this subject matter and may not be amended except by a writing approved by the City Council of the City that is signed by all Parties and dated subsequent to the date hereof if such amendment occurs prior to the closing on Property by Developer. If the amendment occurs after the closing on the Property by Developer, then such written approval of such amendment will only require the written approval and signature of all Parties, exclusive of Owner. This Agreement is not intended to alter, amend, or otherwise modify the Purchase Contract between Owner and Developer.

No Joint Venture; No Third Party Beneficiary

11.01. No Joint Venture. The terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, present

and future officers, elected officials, employees and agents, do not assume any responsibilities or liabilities to any third party in connection with the development of the Property. The City enters into this Agreement in the exercise of its public duties and authority to provide for development of property within the City and its ETJ pursuant to its police powers and for the benefit and protection of the public health, safety, and welfare.

11.02. No Third Party Beneficiary. This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a party, unless expressly provided otherwise herein, or in a written instrument executed by both the City and the third party. Absent a written agreement between the City and third party providing otherwise, if a default occurs with respect to an obligation of the City under this Agreement, any notice of default or action seeking a remedy for such default must be made by the Owner, Developer, Developer's Affiliate 1 and/or Developer's Affiliate 2.

Effective Date

12.01. Effective Dates. The Effective Date of this Agreement is the defined date set forth in the first paragraph.

Texas Law Governs

13.01. Texas Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to its conflicts of laws provisions, and shall be performable in Travis County, Texas. Venue shall lie exclusively in the State District Courts of Travis County, Texas.

Time of the Essence

14.01. Timely Performance. It is acknowledged and agreed by the Parties that time is of the essence in the performance of this Agreement.

EXECUTED in multiple originals, and in full force and effect as of the Effective Date.

CITY:

City of Manor, Texas
a Texas home-rule municipal corporation

Attest:

By: _____
Name: Lluvia Tijerina
Title: City Secretary

By: _____
Name: Rita Jonse
Title: Mayor

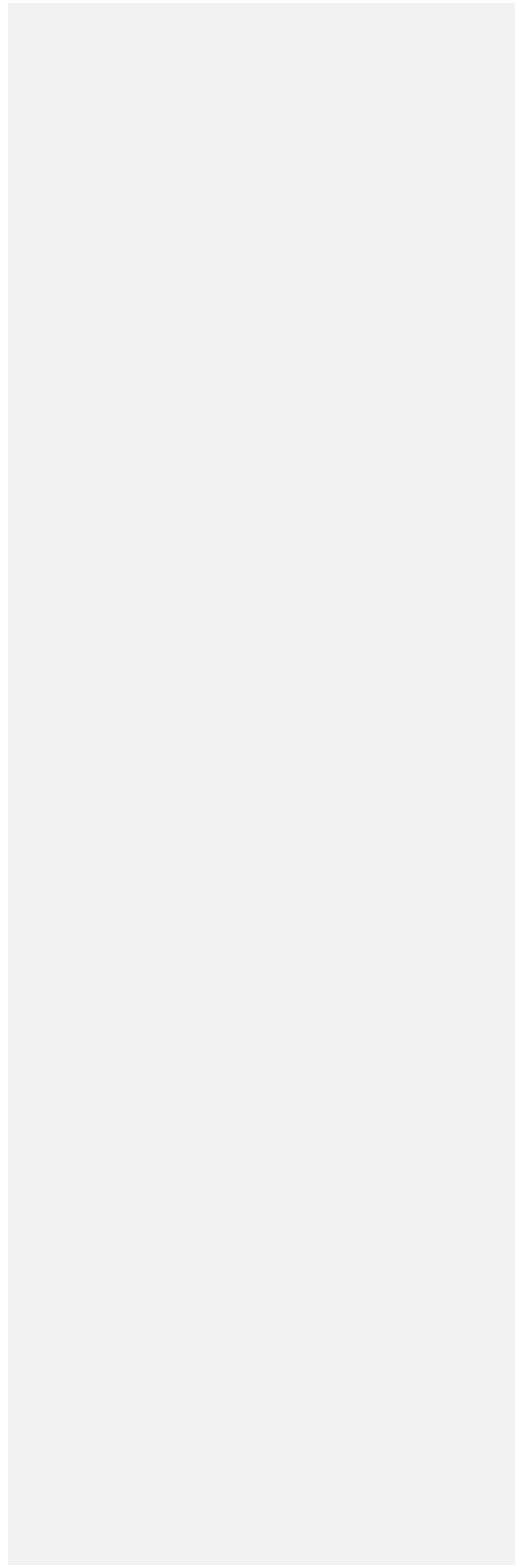
THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this ____ day of November, 2017, by Rita Jonse, Mayor of the City of Manor, Texas, a Texas home-rule municipal corporation, on behalf of said corporation.

(SEAL)

Notary Public, State of Texas



OWNER:

MB&MS Enterprise, Inc.

By: _____

Name:

Title: _____

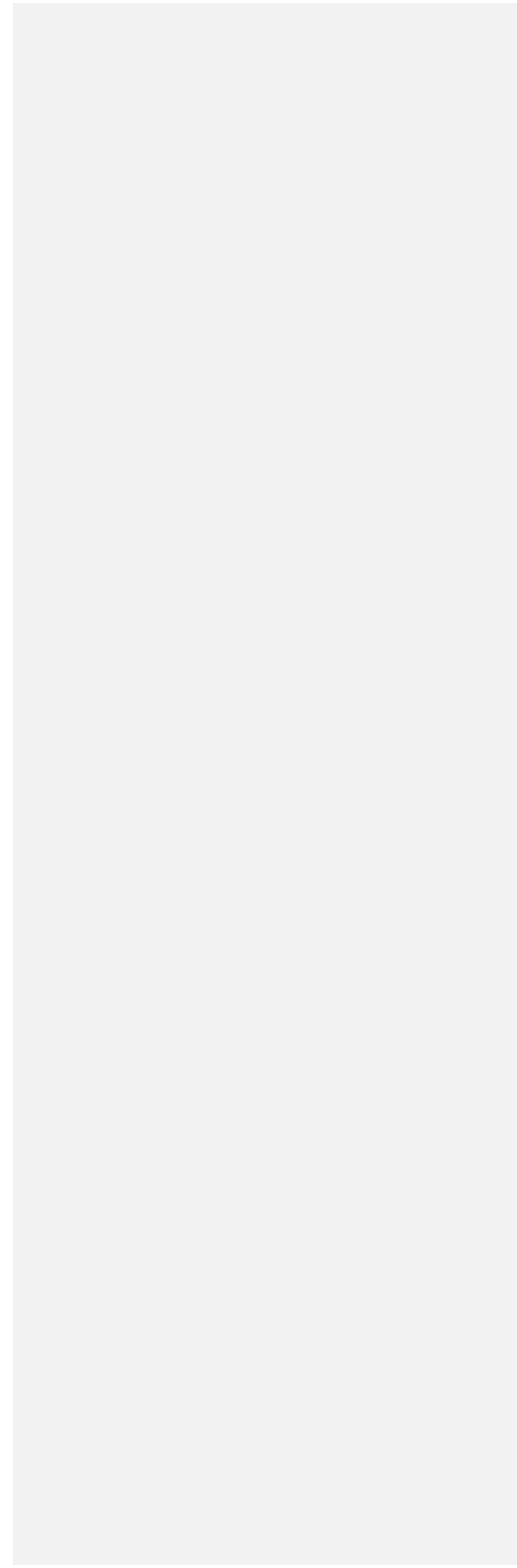
THE STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of November, 2017, by _____, _____ of **MB&MS Enterprise, Inc.**, a Texas corporation, on behalf of said corporation.

(SEAL)

Notary Public, State of Texas



DEVELOPER:

Johnson Trust Investments, LLC,
on behalf of itself and on behalf of
Developer's Affiliate 2

By: _____
Name: Gary Johnson
Title: President

THE STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of November, 2017, by Gary Johnson, President of **Johnson Trust Investments, LLC**, an Arkansas limited liability company, on behalf of said limited liability company.

(SEAL)

Notary Public, State of Texas

DEVELOPER's AFFILIATE 2:

Austin U-Pull-It Auto Parts, Inc.

By: _____
Name: Gary Johnson
Title: President

THE STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of November, 2017, by Gary Johnson, President of **Austin U-Pull-It Auto Parts, Inc.**, a Texas corporation, on behalf of said corporation.

(SEAL)

Notary Public, State of Texas

EXHIBIT A
The Property and the Development Plans

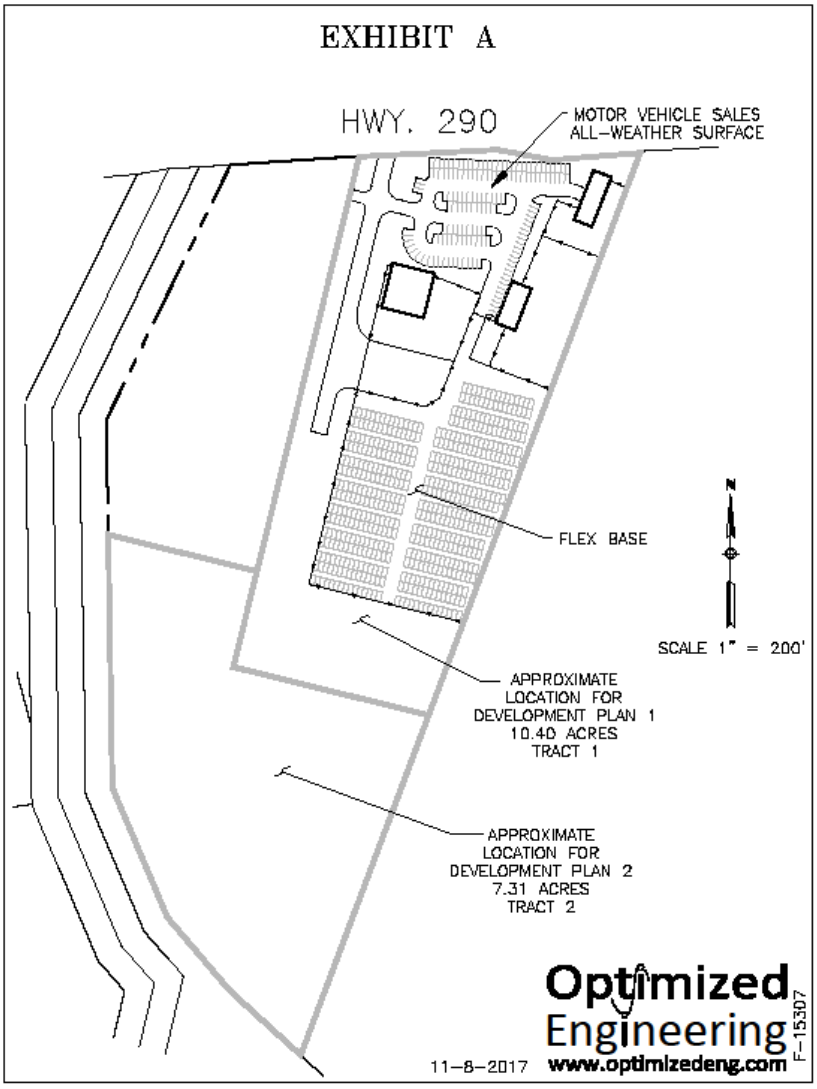


EXHIBIT B

**MUNICIPAL SERVICES PLAN
FOR PROPERTY TO BE
ANNEXED INTO THE CITY OF MANOR**

WHEREAS, the City of Manor, Texas (the “City”) intends to institute annexation proceedings for tracts of land described more fully hereinafter (referred to herein as the “subject property”);

WHEREAS, *Section 43.056, Loc. Gov't. Code*, requires a service plan be adopted with the annexation ordinance;

WHEREAS, the subject property is not included in the municipal annexation plan and is exempt from the requirements thereof;

WHEREAS, infrastructure provided for herein and that existing are sufficient to service the subject property on the same terms and conditions as other similarly situated properties currently within the City limits and no capital improvements are required to offer municipal services on the same terms and conditions as other similarly situated properties within the City;

WHEREAS, the owner(s) of the subject property agree they will benefit from the City’s development restrictions and zoning requirements, as well as other municipal services provided by the City, which are good and valuable consideration for this service plan; and

WHEREAS, it is found that all statutory requirements have been satisfied and the City is authorized by *Chapt. 43, Loc. Gov't. Code*, to annex the subject property into the City;

NOW, THEREFORE, the following services will be provided for the subject property on the effective date of annexation:

(1) **General Municipal Services.** Pursuant to the requests of the owner and this Plan, the following services shall be provided immediately from the effective date of the annexation:

A. Police protection as follows:

Routine patrols of areas, radio response to calls for police service and all other police services now being offered to the citizens of the City.

B. Fire protection and Emergency Medical Services as follows:

Fire protection by agreement between the City and the ESD’s present personnel and equipment of the ESD fire fighting force and the volunteer fire fighting force with the limitations of water available. Radio response for Emergency Medical Services with the present contract personnel and equipment of the ESD.

C. Solid waste collection services as follows:

Solid waste collection and services as now being offered to the citizens of the City.

D. Animal control as follows:

Service by present personnel, equipment and facilities or by contract with a third party, as provided within the City.

E. Maintenance of parks and playgrounds within the City.

F. Inspection services in conjunction with building permits and routine City code enforcement services by present personnel, equipment and facilities.

G. Maintenance of other City facilities, buildings and service.

H. Land use regulation as follows:

On the effective date of annexation, the regulatory and zoning jurisdiction of the City shall be extended to include the annexed area, and the use of all property therein shall be grandfathered; and shall be temporarily zoned "A" with the intent to rezone the subject property upon request of the landowner or staff. The Planning & Zoning Commission and the City Council will consider rezoning the subject property at future times in response to requests submitted by the landowner(s) or authorized city staff.

(2) **Scheduled Municipal Services.** Due to the size and vacancy of the subject property, the plans and schedule for the development of the subject property, the following municipal services will be provided on a schedule and at increasing levels of service as provided in this Plan:

A. Water service and maintenance of water facilities as follows:

(i) Inspection of water distribution lines as provided by statutes of the State of Texas.

(ii) In accordance with the applicable rules and regulations for the provision of water service, water service will be provided to the subject property, or applicable portions thereof, by the utility holding a water certificate of convenience and necessity ("CCN") for the subject property or portions thereof (the "CCN holder") and, as applicable, the utility providing wholesale or retail water service to said CCN holder. Absent a water CCN, by the utility in whose jurisdiction the subject property, or portions thereof as applicable, is located, in accordance with all the ordinances, regulations, and policies of the City in effect from time to time for the extension of water service. If connected to the City's water utility system, the subject property owner shall construct the internal water lines and pay the costs of line extension and construction of such facilities necessary to provide water service to the subject property as required in City ordinances. Upon acceptance of the water lines within the subject property and any off-site improvements, water service will be provided by the City utility department on the same terms, conditions and requirements as are applied to all similarly situated areas and customers of the City; subject to all the ordinances, regulations

and policies of the City in effect from time to time. The system will be accepted and maintained by the City in accordance with its usual acceptance and maintenance policies. New water line extensions will be installed and extended upon request under the same costs and terms as with other similarly situated customers of the City. The ordinances of the City in effect at the time a request for service is submitted shall govern the costs and request for service. The continued use of a water well that is in use on the effective date of the annexation and is in compliance with applicable rules and regulations shall be permitted and such use may continue until the subject property owner requests and is able to connect to the City's water utility system.

B. Wastewater service and maintenance of wastewater service as follows:

(i) Inspection of sewer lines as provided by statutes of the State of Texas.

(ii) (a) In accordance with the applicable rules and regulations for the provision of wastewater service, wastewater service will be provided to the subject property, or applicable portions thereof, by the utility holding a wastewater CCN for the subject property, or portions thereof as applicable, or absent a wastewater CCN, by the utility in whose jurisdiction the subject property, or portions thereof as applicable, is located, in accordance with all the ordinances, regulations, and policies of the City in effect from time to time for the extension of wastewater service. If connected to the City's wastewater utility system, the subject property owner shall construct the internal wastewater lines and pay the costs of line extension and construction of facilities necessary to provide wastewater service to the subject property as required by City ordinances. Upon acceptance of the wastewater lines within the subject property and any off-site improvements, wastewater service will be provided by the City utility department on the same terms, conditions and requirements as are applied to all similarly situated areas and customers of the City, subject to all the ordinances, regulations and policies of the City in effect from time to time. The wastewater system will be accepted and maintained by the City in accordance with its usual policies. Requests for new wastewater line extensions will be installed and extended upon request under the same costs and terms as with other similarly situated customers of the City. The ordinances in effect at the time a request for service is submitted shall govern the costs and request for service. The continued use of a septic system that is in use on the effective date of the annexation and is in compliance with all applicable rules and regulations shall be permitted and such use may continue until the subject property owner requests and is able to connect to the City's wastewater utility system.

C. Maintenance of streets and rights-of-way as appropriate as follows:

(i) Provide maintenance services on existing public streets within the subject property and other streets that are hereafter constructed and finally accepted by the City. The maintenance of the streets and roads will be limited as follows:

(A) Emergency maintenance of streets, repair of hazardous potholes, measures necessary for traffic flow, etc.; and

(B) Routine maintenance as presently performed by the City.

(ii) The City will maintain existing public streets within the subject property, and following installation and acceptance of new roadways by the City as provided by city ordinance, including any required traffic signals, traffic signs, street markings, other traffic control devices and street lighting, the City will maintain such newly constructed public streets, roadways and rights-of-way within the boundaries of the subject property, as follows:

(A) As provided in C(i)(A)&(B) above;

(B) Reconstruction and resurfacing of streets, installation of drainage facilities, construction of curbs, gutters and other such major improvements as the need therefore is determined by the governing body under City policies;

(C) Installation and maintenance of traffic signals, traffic signs, street markings and other traffic control devices as the need therefore is established by appropriate study and traffic standards; and

(D) Installation and maintenance of street lighting in accordance with established policies of the City;

(iii) The outer boundaries of the subject property abut existing roadways. The property owner agrees that no improvements are required on such roadways to service the property.

(3) **Capital Improvements.** Construction of the following capital improvements shall be initiated after the effective date of the annexation: None. Upon development of the subject property or redevelopment, the landowner will be responsible for the development costs the same as a developer in a similarly situated area under the ordinances in effect at the time of development or redevelopment. No additional capital improvements are necessary at this time to service the subject property the same as similarly situated properties.

(4) **Term.** If not previously expired, this service plan expires at the end of ten (10) years.

(5) **Property Description.** The legal description of the subject property is as set forth in the Annexation Ordinance and exhibits attached to the Annexation Ordinance to which this Service Plan is attached.

EXHIBIT C
District IN-1 Zoning District and Its Modifications

The following regulations govern development of the Tract 1 Land Uses:

(a) Site Development Regulations.

- (i) Paved sidewalks, driveways, and parking areas are required.
- (ii) Screening of storage facilities, and dumpster enclosures is required.
- (iii) Height and placement requirements: No building shall be erected or maintained within the required building setbacks set forth herein, or which exceeds the height limits specified in the following:

- (A) Front Yard Setback: 25 feet
- (B) Side yard to Residential: 50 feet
- (C) Rear Yard to Residential: 50 feet
- (D) Street Side Yard Setback: 25 feet
- (E) Side yard to all C, I, and IN: 20 feet
- (F) Rear Yard to all C, I and IN: 20 feet
- (G) Min. Lot Sq. Ft. Area: 1 acre (43,560 square feet)
- (H) Min. Lot Width: 50 feet
- (I) Max Height Limit: 60 feet

(iv) The maximum percentage of lot area which may hereafter be covered by the main building(s) and all accessory buildings all not exceed 50% for main buildings, and 60% for main buildings and accessory buildings combined.

(v) No building or structure may be erected, added to or altered to exceed the maximum floor area ratio standards of 1.5.

(vi) Development of the Project shall further comply with the requirements of Exhibit B to the City's zoning regulations (Chapter 14, Manor Code of Ordinances) applicable to the IN-1 District.

(vii) Development of the Project shall further comply with the site development standards, outdoor lighting, landscaping, and signage standards for the IN-1 District; provided that the Developer and/or its affiliate may install fencing and/or screening up to 9 feet tall fence on Tract 1.

(viii) The area of Tract 1 with the used motor vehicle sales shown on Exhibit "A" shall be improved with an all-weather surface that complies with the Applicable Regulations. Only operable motor vehicles shall be stored and/or displayed in the area of Tract 1 with the used motor vehicle sales shown on Exhibit "A." The areas marked on Exhibit "A" to this Agreement may be improved with a surface of flex-based material, and Developer's Affiliate 1 will dispose of all automotive fluids in a manner that is compliant with applicable local, state, and federal regulations and that minimizes environmental impact. Flex-based material shall consist of compacted limestone. SB-2 gravel may be used as needed to comply with regulations related to dust control. All automobiles shall be

drained of all automotive fluids before being placed on the portion of Tract 1 where the salvage vehicles are stored or displayed, and draining of such fluids shall be conducted inside of a building or otherwise screened from view with a 9-foot tall opaque fence. Salvage vehicles shall be stored in neat, orderly rows.

(ixviii) Salvage vehicles stored or processed on Tract 1 shall be screened with nine foot (9') tall opaque fencing.

(ix) Vehicles may not be stored by stacking them.

(b) Performance Standards. The Tract 1 Land Uses shall conform in operation, location and construction to the minimum performance standards herein specified for noise, odorous matter, toxic and noxious matter, glare, smoke, particulate matter and other air contaminants, fire, explosive and hazardous matter, and vibration.

(i) At no point at the bounding property line of any Tract 1 Land Use may the sound pressure level of any operation or plant exceed the decibel limits specified in the octave band groups designated in the following table.

(A) Maximum permissible daytime* Octave Band - Decibel Limits at the bounding property line** in an IN-1 District:

Octave Band (CPS)	37 75	75 150	150 300	300 600	600 1200	1200 2400	2400 4800	4800 9600	A Scale
Decibel Band Limit (DB re 0.0002 Microbar)	82	76	68	60	56	53	50	48	62

Note: A scale level is provided for monitoring purposes only and is not applicable to detailed sound analysis.

*Daytime shall refer to the hours between sunrise and sunset on any given day.

**The Building Official will interpret the bounding property line for noise enforcement as being at the nearest right-of-way or property line of any street, alley, stream or other permanently dedicated open space from the noise source when such open space exists between the property line of the noise source and adjacent property. When no such open space exists, the common line between two parcels of property shall be the bounding property line.

(B) The following corrections will be made to the table of Octave Band Decibel limits in determining compliance with the noise level standards.

When noise is present at night (any time other than daytime) subtract 7 decibels. When noise contains strong, pure tone components or is impulsive, that is when meter changes at 10 decibels or more per second, subtract 7 decibels. Add ten (10) decibels when noise is present for not more than:

1/2 minute in any 1/2 hour period;

1 minute in any 1 hour period;

10 minutes in any 2 hour period; or

20 minutes in any 3 hour period.

(C) Measurement of noise is made with a sound level meter or Octave Band analyzer meeting the standards prescribed by the American Standards Association.

(D) Notwithstanding the foregoing, ~~crushing or~~ pressing of motor vehicles will only take place on Tract 1 between the hours of 9 a.m. to 5 p.m., Monday through Friday.

(ii) Smoke and Particulate Matter. No operation or use shall cause, create or allow the emission of air contaminants which violate State or Federal environmental laws, as referenced herein: Texas Health and Safety Code Ann Chaps. 381 & 382, Air Pollution Prevention and Control, 42 U.S.C.A. 67401, et seq. Open storage and open processing operations, including on-site transportation movements which are a source of wind or airborne dust or other particulate matter, are subject to the standards and regulations specified herein.

(iii) Odorous Matter. No use may be located or operated on the Property which involves the emission of odorous matter from a source of operation where the odorous matter exceeds the odor threshold at the bounding property line or any point beyond the tract on which such use or operation is located. The odor threshold as herein set forth is determined by observation by the Building Official. In any case where uncertainty may arise or where the operator or owner of an odor-emitting use may disagree with the enforcing officer or where specific measurement of odor concentration is required, the method and procedures as specified by American Society for Testing Materials, A.S.T.M.D. 1391-57, Entitled "STANDARD METHOD FOR MEASUREMENT OF ODOR IN ATMOSPHERES," will be used and a copy of A.S.T.M.D. 1391-57 is hereby incorporated by reference.

(iv) Flammable and Explosive Materials. No use involving the manufacture or storage of compounds or products which decompose by detonation is permitted except that chlorates, nitrates, perchlorates, phosphorus and similar substances and compounds in small quantities for use by industry, school laboratories, druggists or wholesalers may be permitted when approved by the Fire Marshal of the City as not presenting a fire or explosion hazard. The storage and use of all flammable liquids and materials such as pyroxylin plastics, nitrocellulose films, solvents and petroleum products is permitted only when such storage or use conforms to the standards and regulations established by City ordinance.

(v) Toxic and Noxious Matter. No operation or use may emit a concentration across the bounding property line of the tract on which such operation or use is located of toxic or noxious matter which exceeds the concentration (exposure) considered as the threshold limit for an industrial worker as such standards are set

forth by the Texas State Department of Health in Threshold Limit Values Occupational Health Regulation No. 3, as such regulations exist or may later be amended.

(vi) Vibrations. No operation or use may at any time create earthborne vibration which, when measured at the bounding property line of the source of operation, exceed[s] the limit of displacement set forth in the following table in the frequency ranges specified.

FREQUENCY CYCLES PER SECOND	DISPLACEMENT IN INCHES
0 to 10	.0010
10 to 20	.0008
20 to 30	.0005
30 to 40	.0004
40 to 50	.0003

(vii) Glare. No use or operation may be located or conducted so as to produce intense glare or direct illumination across the bounding property line from a visible source of illumination nor may any such light be of such intensity as to create a nuisance or detract from the use and enjoyment of adjacent property.

(c) Development of Tract 1 shall further comply with the regulations and requirements for the IN-1 Zoning District set forth in the City Rules, except as modified by the Agreement.

EXHIBIT D
District C-2 Zoning District Development Standard Modifications

Tract 2 shall be developed in accordance with the requirements and regulations applicable to the C-2 Zoning District, except as follows:

A. Additional Authorized Uses: Commercial office/retail warehouse storage with outdoor merchandise and/or outdoor storage business

B. Site Development:

1. The Developer and/or its affiliates may install fencing and/or screening up to 9 feet tall fence on Tract 2.
2. Paved sidewalks, driveways and parking in such area of Development Plan 2 shall be improved with an all-weather surface that complies with the Applicable Regulations. The areas indicated on Exhibit "A" as Development Plan 2 may be improved with a surface of flex-based material with SB-2 gravel as may be needed to comply with regulations to related to dust control. Flex-based material shall consist of compacted limestone.
3. Screening of loading, storage facilities, and dumpster enclosures is required.