



City of Hutto

Agenda

River Creek Development Corporation Meeting Monday, June 29, 2020 at 5:15 PM City Council Chambers

In accordance with the Texas Open Meetings Act this meeting agenda is posted for public information, continuously, for at least 72 hours prior to the scheduled time of the meeting on the bulletin board located on the exterior wall of the City Hall building at 500 West Live Oak, Hutto, Texas. This meeting agenda is also accessible via the Internet at www.huttotx.gov

- | | Page |
|--|---------|
| 1. CALL SESSION TO ORDER | |
| 2. ROLL CALL | |
| 3. AGENDA ITEMS | |
| 3.1. Consideration and possible action regarding the minutes from December 5, 2019 River Creek Board of Directors meeting. | |
| 3.2. Consideration and possible action regarding the minutes from June 11, 2020 River Creek Board of Directors meeting.
River Creek Development Corporation - 11 Jun 2020 | 3 - 5 |
| 3.3. Consideration and possible action regarding a resolution approving an Interlocal Agreement between the City of Hutto and River Creek Development Corporation.
Agenda Item Report - AIR-20-291 - Pdf
Hutto Interlocal Administrative Services Agreement Rivercreek and Hutto Revised | 6 - 16 |
| 3.4. Consideration and possible action approving a resolution authorizing and approving amendments to the Construction Contract between the River Creek Development Corporation and 420 U 79, Ltd dated December 6, 2018.
Hutto River Creek Construction Contract Amendment Co Op 6 29 20 w exh | 17 - 21 |
| 4. PUBLIC COMMENT | |
| 4.1. Any citizen wishing to speak during public comment may do so after completing the required registration form. The purpose of this item is to allow the residents of Hutto and other interested persons an opportunity to address the River Creek Development Corporation on agenda issues and on non-agenda issues (i.e., City policy or legislative issues). Non-agenda issues regarding daily operational or administrative matters should be first dealt with at the administrative level by calling City Hall at (512) 759-4839 during business hours. Each person providing public comment will be limited to 3 minutes. | |

[Note: The Texas Open Meetings Act, Texas Government Code, Chapter 551, prohibits advisory boards, commissions and committees created by local

governmental bodies from fully discussing, debating, or considering subjects for which public notice has not been given on the agenda. Issues that cannot be referred to the City Staff for action may be placed on the agenda of a future meeting.]

5. EXECUTIVE SESSION

The Board of directors for the City of Hutto River Creek Development Corporation 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 the Texas Government Code Sections 551.071 [Litigation/Consultation with Attorney], 551.072 [Deliberations regarding real property], 551.073 [Deliberations regarding gifts and donations], 551.074 [Deliberations regarding personnel matters] or 551.076 [Deliberations regarding deployment/implementation of security personnel or devices] and 551.087 [Deliberations regarding Economic Development negotiations].


5.1. Receive legal advice pursuant to Tex. Gov.t Code Sec. 551.071 related to the River Creek Development Corporation and underlying improvement districts.

6. ADJOURNMENT

7. CERTIFICATION

I certify that this notice of the **June 29, 2020** River Creek Development Corporation meeting was posted on the City of Hutto website and the City Hall bulletin board of the City of Hutto on **June 26, 2020** at **3:00 P.M.**




Holly Nagy, City Secretary

The City of Hutto is committed to comply with the Americans Disability Act. The Hutto City Council Chamber is wheelchair accessible. Request for reasonable special accommodations must be made 48 hours prior to the meeting. Please email the City Secretary's office at City.Secretary@huttox.gov or call (512) 759-4033 for assistance.



MINUTES

River Creek Development Corporation Meeting

5:00 PM - Thursday, June 11, 2020
City Council Chambers

The River Creek Development Corporation of the City of Hutto was called to order on Thursday, June 11, 2020, at 5:00 PM, in the City Council Chambers, with the following members present:

PRESENT:

EXCUSED:

1. CALL SESSION TO ORDER

2. ROLL CALL

3. PUBLIC COMMENT:

Any citizen wishing to speak during public comment may do so after completing the required registration form. The purpose of this item is to allow the residents of Hutto and other interested persons an opportunity to address the River Creek Development Corporation on agenda issues and on non-agenda issues (i.e., City policy or legislative issues). Non-agenda issues regarding daily operational or administrative matters should be first dealt with at the administrative level by calling City Hall at (512) 759-4839 during business hours. Each person providing public comment will be limited to 3 minutes.

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4. AGENDA ITEMS

- 4.1.** Consideration and possible action regarding the minutes from December 5, 2019 River Creek Board of Directors meeting.

Tabled

- 4.2.** Consideration and possible action on an agreement with the Bojorquez Law Firm, P.C. to serve as General Counsel for the River Creek Development Corporation and authorize the Chairman to execute the agreement and authorize the Chairman to notify McGinnis Lochridge, Austin, Texas of the termination of legal services provided by McGinnis Lochridge, and consent to Bojorquez Law Firm, P.C. also representing River Creek Development Corporation.

MOTION: Board Member Martinez made the motion to approve an agreement with the Bojorquez Law Firm, P.C. to serve as General Counsel for the River Creek Development Corporation and to authorize the Chairman to execute the agreement and to authorize the Chairman to notify McGinnis Lochridge, Austin, Texas of the termination of legal services provided by McGinnis Lochridge.

ACTION: Motion Passes 3-0.

- 4.3. Consideration and possible action regarding Resolution No. R-2020-032 approving an Interlocal Agreement between the City of Hutto and River Creek Development Corporation.

MOTION: Board Member Martinez made a motion approving an Interlocal Agreement between the City of Hutto and River Creek Development Corporation. Vice Chair Thornton seconded the motion.

ACTION: Motion Passes 3-0.

- 4.4. Consideration and possible action on Resolution No. R-2020-033 approving an agreement related to the River Creek Development Corporation and underlying public improvement districts and the engagement of Norton Rose Fulbright as bond counsel.

MOTION: Board Member Martinez made a motion to approve an agreement related to the River Creek Development Corporation and underlying public improvements and the engagement of Norton Rose Fulbright as bond counsel. Vice Chair Thornton seconded the motion.

ACTION: Motion Passes 3-0.

5. EXECUTIVE SESSION:

The Board of Directors for the City of Hutto River Creek Development Corporation 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 the Texas Government Code Sections 551.071 [Litigation/Consultation with Attorney], 551.072 [Deliberations regarding real property], 551.073 [Deliberations regarding gifts and donations], 551.074 [Deliberations regarding personnel matters] or 551.076 [Deliberations regarding deployment/implementation of security personnel or devices] and 551.087 [Deliberations regarding Economic Development negotiations].

- 5.1. Receive legal advice pursuant to Tex. Gov.t Code Sec. 551.071 related to the River Creek Development Corporation and underlying public improvement districts and the engagement of Norton Rose Fulbright as bond counsel.

**The Board went into Executive Session at 5:03 PM and reconvened at 5:19 PM.
No Action Was Taken.**

6. RECONVENE TO OPEN SESSION

Open Session Reconvened at 5:19 PM.

7. ADJOURNMENT

Meeting adjourned at 5.27 PM.

8. CERTIFICATION

I, Holly Nagy certify that this notice of the **June 11, 2020** River Creek Development Corporation meeting was posted on the City of Hutto website and the City Hall bulletin board of the City of Hutto on **June 8, 2020** at **4 P.M.**



Holly Nagy, *City Secretary*

The City of Hutto is committed to comply with the Americans Disability Act. The Hutto City Council Chamber is wheelchair accessible. Request for reasonable special accommodations must be made 48 hours prior to the meeting. Please email the City Secretary's office at City.Secretary@huttox.gov or call (512) 759-4033 for assistance.

River Creek Development Corporation

AGENDA ITEM REPORT



To: River Creek Development Corporation

Subject: Consideration and possible action regarding a resolution approving an Interlocal Agreement between the City of Hutto and River Creek Development Corporation.

Meeting: River Creek Development Corporation - 29 Jun 2020

Department: Finance

Staff Contact: Michel Sorrell

ATTACHMENTS:

[Hutto Interlocal Administrative Services Agreement Rivercreek and Hutto Revised](#)

**INTERLOCAL AGREEMENT BETWEEN THE
RIVER CREEK DEVELOPMENT CORPORATION AND
CITY OF HUTTO, TEXAS, FOR
ADMINISTRATIVE AND PROFESSIONAL SERVICES**

WHEREAS, Subchapter D, Chapter 431, Texas Transportation Code, authorizes the creation of local government corporations to aid and act on behalf of local governments; and

WHEREAS, the City of Hutto, Texas (hereinafter referred to as the “City”) created the River Creek Development Corporation (hereinafter referred to as the “Corporation”) under the provisions of Subchapter D, Chapter 431, Texas Transportation Code, and the Texas Nonprofit Corporation Law, Chapter 22, Business Organizations Code; and

WHEREAS, Section 791.003(4)(B), Texas Government Code, provides that a “local government corporation created under Subchapter D, Chapter 431, Transportation Code,” such as the Corporation, is a “local government” for purposes of the Interlocal Cooperation Act, which Act has been codified as Chapter 791, Texas Government Code; and

WHEREAS, Section 791.003(4)(A), Texas Government Code, provides that a municipality such as the City is a “local government” for purposes of the Interlocal Cooperation Act; and

WHEREAS, Section 791.011(a), Texas Government Code, provides that “[a] local government may contract or agree with another local government to perform governmental functions and services” in accordance with Interlocal Cooperation Act; and

WHEREAS, due to the joint and mutual interests held by the City and the Corporation, the Corporation desires to utilize certain administrative services and professional governmental legal services of the City in furtherance of its work and the projects it undertakes; and

WHEREAS, each of the services identified in the Scope of Services attached hereto as Exhibit A is a governmental function and/or a governmental service; and

WHEREAS, the City has evaluated the request and finds that it serves a public purpose, saves the public tax dollars, and furthers cooperation and collaboration to aid and support the Corporation by providing the requested assistance; and

WHEREAS, the City has determined that it would be a direct benefit to the citizens of Hutto for the City to provide such services in support of the Corporation.

NOW THEREFORE, the City and the Corporation, in consideration of the mutual covenants and agreements contained herein, do hereby agree as follows:

1. The City will furnish and perform those services for fulfillment of the Agreement as identified in the Scope of Services attached hereto as Exhibit A.

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2. The City and Corporation acknowledge that from time to time conflicts between a city employee's or contractor's primary responsibilities to the City and requests for services from the Corporation may arise. The City and the Corporation encourage employees and contractors other than attorneys to bring conflicts to the attention of the City Manager or Interim City Manager, who shall consult with the Corporation Chairman as necessary to prioritize demands and resolve any conflicts. Attorneys for the City who perceive any potential or actual conflict between their primary duties to the City and any duties to the Corporation will abide by the Texas Disciplinary Rules of Professional Conflict as to any such conflicts.
3. Consideration. After having reasonably estimated the amount of time City employees and contractors are anticipated to spend performing services for and on behalf of the Corporation during the term of this Agreement, the parties have agreed that the City will pay the Corporation for all Administrative Services listed in Exhibit A, except any item specifically listed as being a separate expense. The City shall pay for the administrative services and legal services, including special counsel legal services for the Corporation from budgeted funds within the City's General Fund. In addition, the City shall pay the Corporation for all items that incur a separate expense.
4. Payment Procedures. The Corporation shall reimburse the City for administrative and legal services, special counsel services, as shown on Exhibit "A", Scope of Services as funds become available to the Corporation. The City shall submit to the Corporation quarterly reports detailing the services provided and itemized charges for each service, for review and approval by the Corporation in a semi-annual report. To any extent that the Corporation disagrees with any itemized charge, the Corporation will specify its objections in the semi-annual report next issued after the Corporation receives the relevant itemized charge. Any objections not so stated are irrevocably waived.
5. Term. The term of this Agreement shall commence on June 18, 2020, or the date as approved by the City, subject to the terms of this Agreement, the Bylaws of the Corporation and state law and shall continue until the Corporation is dissolved or notice of termination is given as provided, herein. Either party may terminate this Agreement by giving thirty (30) days advance written notice thereof to the other. All payment obligations within this agreement survive termination if not paid in full prior to the termination date.
6. Right to Hire Third Parties. Corporation specifically reserves the right to hire third parties to perform any or all of the services described herein, provided funds are available and budgeted.
7. Notice. All notices and communications regarding the term of this Agreement to any party shall be in writing. If mailed, any notice or communication shall be deemed to have been received three (3) days after the date of its deposit into the United States mail, first class, postage prepaid. Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

City of Hutto
Attention: City Manager or
Interim City Manager
500 W. Live Oak St.
Hutto, TX 78634

River Creek Development Corporation
Attention: Doug Gaul, Chair
500 W. Live Oak St
Hutto, TX 78634

Either party may designate a different address by giving the other parties at least ten (10) days written notice in the manner prescribed above.

8. Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the City and the Corporation and shall not be construed to confer any benefit or right upon any other individuals or entities. There are no third-party beneficiaries of this Agreement other than the indemnitees described in paragraph 11 below.
9. Severability. In the event any clause, phrase, provision, sentence, or part of this Agreement shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Agreement as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional.
10. Entire Agreement. This Agreement contains the entire agreement between the parties and supersedes all other negotiations and agreements with respect to the matters addressed herein, whether written or oral.
11. **INDEMNIFICATION AND HOLD HARMLESS. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND SUBJECT TO THE AVAILABILITY OF FUNDS CORPORATION SHALL INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS THE CITY, ITS PAST, PRESENT AND FUTURE COUNCIL MEMBERS, OFFICERS AND EACH OF ITS RESPECTIVE AGENTS AND EMPLOYEES, FROM AND AGAINST ALL LIABILITIES, CLAIMS, DAMAGES, FINES, PENALTIES, LOSSES, LIENS, CAUSES OF ACTION, COSTS, AND EXPENSES (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY, DIRECTLY OR INDIRECTLY ARISING OUT OF, CAUSED BY, OR RESULTING FROM (IN WHOLE OR IN PART), (1) THE PERFORMANCE, FAILURE TO PERFORM, OR IMPROPER PERFORMANCE OF ANY SERVICES OR WORK WITHIN THE SCOPE OF THIS AGREEMENT, (2) THIS AGREEMENT, OR (3) ANY ACT OR OMISSION OF THE CITY AND EACH OF ITS RESPECTIVE AGENTS INCLUDING COUNCIL MEMBERS, OFFICERS, ATTORNEYS, AND EMPLOYEES, AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY CITY.. CITY SHALL PROMPTLY ADVISE THE CORPORATION IN WRITING OF ANY ACTION, ADMINISTRATIVE OR LEGAL PROCEEDING OR INVESTIGATION AS TO WHICH THIS INDEMNIFICATION MAY APPLY, AND THE CORPORATION, AT ITS EXPENSE, SHALL REIMBURSE CITY ON DEMAND ANY AND ALL COSTS AS DESCRIBED HEREIN EXPENDED IN CONNECTION WITH SUCH**

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MATTER. THIS INDEMNIFICATION SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEES' BENEFIT ACTS.

12. Miscellaneous Provisions.

- (a) This Agreement has been duly and properly approved by each party's governing body and constitutes a binding obligation of each party.
- (b) This Agreement embodies the entire agreement between the parties and may only be modified in a writing executed by both parties.
- (c) This Agreement shall be construed in accordance with the laws of the State of Texas and exclusive venue for all litigation and other purposes hereunder shall be in Williamson County, Texas.

APPROVED BY THE RIVER CREEK DEVELOPMENT CORPORATION, in its meeting held on the 11th day of June 2020 and executed by its authorized representative.

RIVER CREEK DEVELOPMENT CORPORATION

Doug Gaul, Chair

ATTEST

Patti Martinez, Secretary

APPROVED BY THE CITY COUNCIL OF THE CITY OF HUTTO, TEXAS, in its meeting held on the 18th day of June 2020 and executed by its authorized representative

CITY OF HUTTO, TEXAS

Charles W. Daniels, Interim City Manager

ATTEST

Holly Nagy, City Secretary

City of Hutto
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EXHIBIT A
Scope of Services*

Staff – City staff will serve as employees of the Corporation. The cost of the staff including wages, vacation pay, sick pay, overtime, workers compensation, social security, retirement, all taxes, health and dental benefits, and unemployment insurance will be a separate expense to Corporation.

Legal - The City Attorney shall be the legal counsel for Corporation. The cost associated with the City Attorney and other legal staff shall be included. Any use of outside legal counsel for specialized needs, including bond counsel, is a separate expense to Corporation.

Financial - City will administer Corporation’s accounts, expenditures, deposits, investment of funds and accounts, and provide other financial services for Corporation, including annual preparation of budget and forecast, and issuance and payment of debt. The cost associated with the above financial services will be included. Financial advisory services associated with bond sales and other financing vehicles, arbitrage fees and consulting services for the calculation of any amounts due, as required by the IRS, are a separate expense to Corporation.

Audit – Corporation’s books, records, accounts and financial statements and all other financial activities for the previous fiscal year shall be audited at least once each financial year by an outside, independent, certified public accounting firm selected by the City Council. Such auditor may be the same auditor who conducts or who has conducted the City’s annual financial audit, and the audit report may at the City’s discretion, be consolidated with the City’s annual audit. Report. The expense of audits will be included. The cost of any compliance audits for grant or incentive agreement, and any other audits including forensic examinations and forensic audits will be a separate expense to Corporation.

Information Technology - City will maintain and provide support to Corporation’s network, hardware, software, wired and wireless networks, as well as the telephone system. New and replacement computers, software and other IT requirements are a separate expense to Corporation.

City Secretary - The City Secretary will post meeting notices and other public notices for the Corporation and for City Council meetings that pertain to Corporation, retain records, process public information requests and review disposition of records. These services will be included in the quarterly transfer.

City Manager - The City Manager or Interim City Manager will provide review and oversight of City staff utilized by Corporation. This service will be included in the quarterly transfer.

* ANY ADDITIONAL SERVICE NOT ITEMIZED IN EXHIBIT "A" SHALL BE AT THE DIRECT AND SOLE EXPENSE OF THE CORPORATION.

**INTERLOCAL AGREEMENT BETWEEN THE
RIVER CREEK DEVELOPMENT CORPORATION AND
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City of Hutto
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- (c) This Agreement shall be construed in accordance with the laws of the State of Texas and exclusive venue for all litigation and other purposes hereunder shall be in Williamson County, Texas.

APPROVED BY THE RIVER CREEK DEVELOPMENT CORPORATION, in its meeting held on the 11th day of June 2020 and executed by its authorized representative.

RIVER CREEK DEVELOPMENT CORPORATION

Doug Gaul, Chair

ATTEST

Patti Martinez, Secretary

APPROVED BY THE CITY COUNCIL OF THE CITY OF HUTTO, TEXAS, in its meeting held on the 18th day of June 2020 and executed by its authorized representative

CITY OF HUTTO, TEXAS

Charles W. Daniels, Interim City Manager

ATTEST

Holly Nagy, City Secretary

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EXHIBIT A
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Financial - City will administer Corporation’s accounts, expenditures, deposits, investment of funds and accounts, and provide other financial services for Corporation, including annual preparation of budget and forecast, and issuance and payment of debt. The cost associated with the above financial services will be included. Financial advisory services associated with bond sales and other financing vehicles, arbitrage fees and consulting services for the calculation of any amounts due, as required by the IRS, are a separate expense to Corporation.

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City Manager - The City Manager or Interim City Manager will provide review and oversight of City staff utilized by Corporation. This service will be included in the quarterly transfer.

* ANY ADDITIONAL SERVICE NOT ITEMIZED IN EXHIBIT "A" SHALL BE AT THE DIRECT AND SOLE EXPENSE OF THE CORPORATION.

RESOLUTION NO. R-_____

A RESOLUTION APPROVING AN AMENDMENT TO THE CONSTRUCTION CONTRACT BETWEEN THE RIVER CREEK DEVELOPMENT CORPORATION AND 79 HCD DEVELOPMENT, LLC.

WHEREAS, events of force majeure have occurred due to significant rain delay and the COVID-19 pandemic; and

WHEREAS, River Creek Development Corporation and 79 HCD Development, LLC (“Developer”) have entered into a construction contract dated December 6, 2018 and developer has requested an amendment to the construction contract to allow for the occurrence of the force majeure events; and

WHEREAS, River Creek and the Developer mutually agree to amend the construction contract.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HUTTO, TEXAS, River Creek Development Corporation hereby approves and authorizes the Interim City Manager to execute the First Amendment to Construction Contract, attached as Exhibit "A", a copy of same being attached hereto and incorporated herein for all purposes.

The River Creek Development Corporation hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this ___ day of _____, 2020.

RIVER CREEK DEVELOPMENT CORPORATION

Doug Gaul, Chairman

ATTEST:

Holly Nagy, City Secretary

FIRST AMENDMENT TO CONSTRUCTION CONTRACT

THIS FIRST AMENDMENT TO CONSTRUCTION CONTRACT (this "**Amendment**") is made by and between River Creek Development Corporation (the "**Corporation**") and 79 HCD Development, LLC, a Texas limited liability company (the "**Construction Manager**"), EFFECTIVE on **June 29, 2020**.

RECITALS:

A. Corporation and Construction Manager are parties to that certain Construction Contract dated December 6, 2018, (as amended, the "**Construction Contract**") pursuant to which the Construction Manager agreed to construct certain Public Improvements for the Corporation and the Corporation agreed to pay the costs of the construction of such Public Improvements.

B. The Construction Contract provided that the Public Improvements were to be completed by December 31, 2019, subject to certain Force Majeure provisions contained in the Construction Contract.

C. From the beginning of construction of the Public Improvements by the Construction Manager to the date of this Amendment, there have been ___ days of weather conditions that prevented Construction Manager from being able to construct the Public Improvements on such days ("**Rain Days**") which likewise has prevented the Construction Manager from timely completing the Public Improvements as required in the Construction Contract.

D. On March 18, 2020, Williamson County, Texas, ordered a restriction on gatherings of individuals in groups of more than 10 due to the onset of the COVID-19 coronavirus pandemic, and such restriction further affected and prevented the Construction Manager's ability to timely complete the Public Improvements.

E. The Parties agree that the occurrence of the Rain Days constitute Force Majeure events as contemplated by the Construction Contract thereby extending the original date to complete the Public Improvements to June 30, 2020 as provided in the Construction Contract.

F. The Parties further agree that the COVID 19 coronavirus pandemic constitutes a Force Majeure event beyond the scope of potential Force Majeure events contemplated by the Parties at the time of the execution of the Construction Contract.

G. The Parties desire to complete the construction of the Public Improvements, and, due to the factors described above and for other practical reasons, the Corporation and Construction Manager therefore desire to amend the Construction Contract to extend the completion deadline for the construction of the Public Improvements to December 6, 2020 as set forth herein.

H. All capitalized terms used in this Amendment shall have the meanings given to them in the Construction Contract, unless otherwise defined herein.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereby amend the Construction Contract pursuant to the terms of this Amendment effective as of the date hereof:

1. The recitals set forth above are incorporated herein and shall have the same force and effect as if set forth in this section.

2. Section 8.01(a) of the Construction Contract is deleted in its entirety and replaced with the following:

“Subject to Force Majeure not in existence at the time of the Amendment, or a material escalation of the COVID 19 coronavirus pandemic subsequent to the effective date of the Amendment which materially affects the Construction Manager’s ability to timely complete the construction of the Public Improvements, a failure by the Construction Manager to complete the Public Improvements by December 6, 2020. The Construction Manager will submit a construction schedule to the Corporation and the City Manager.”

The definition of “Force Majeure” contained in Exhibit A to the Construction Contract is deleted in its entirety and replaced with the following: “**Force Majeure**” means an act of God, strike, act of a public enemy, war, mines or other items of ordinance, blockage, public rioting, lightning, fire, storm, rain days, hurricane, flood, explosions, acts or restraints of any governmental authority other than the City of Hutto, epidemics, pandemics, landslides, lightning storms, earthquakes, washouts, arrests, civil disturbances, acts of terrorism, or inability to procure labor or materials, but only to the extent such events are not reasonably within the control of the a Party asserting force majeure and which by the exercise of due diligence could not reasonably be prevented or overcome. Events reasonably within the control of the Party having the difficulty shall not constitute “force majeure” and shall be remedied with the exercise of due diligence.

3. Except as modified by this Amendment, the Construction Contract shall remain unchanged and shall continue in full force and effect. This Amendment may be executed in multiple counterparts, and electronic signatures (including fax, copy, or any other means of electronic reproduction) shall be deemed originals.

[Signature Pages Follow]

Exhibit A

IN WITNESS WHEREOF, the Corporation and the Construction Manager have executed and delivered this Amendment as of the date and year first above written.

CORPORATION:

River Creek Development Corporation

By: _____
Chair

STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on the ____ day of June, 2020 by, _____ of the River Creed Development Corporation, on behalf of said corporation.

(SEAL)

Notary Public, State of Texas

Name printed or typed
Commission Expires: _____

[Signatures Continue on Next Page]

CONSTRUCTION MANAGER:

79 HCD Development, LLC,
a Texas limited liability company

By: _____
Wyatt Henderson, its manager

STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on the ____ day of June, 2020 by,
_____, _____ of 79 HCD Development, LLC, a limited liability
company, on behalf of 79 HCD Development, LLC.

(SEAL)

Notary Public, State of Texas

Name printed or typed
Commission Expires: _____

