

**AGREEMENT FOR THE PROVISION OF NONSTANDARD
RETAIL WATER SERVICE
(MIRASOL)**

This Agreement for the Provision of Nonstandard Retail Water Service (the “Agreement”) is entered into by and between the West Travis County Public Utility Agency (the “WTCPUA”) a public utility agency operating pursuant to Chapter 572, Texas Local Government Code, and Mirasol Capital, LLC, a Texas limited liability company (“Developer”). Unless otherwise specified, the term “Parties” shall mean the WTCPUA and Developer, collectively.

WHEREAS, Developer currently owns and plans to develop approximately 1,848 acres of land within the WTCPUA’s water service area as shown on the attached **Exhibit A** (the “Proposed Development”);

WHEREAS, Developer desires to obtain retail water service to the Proposed Development; and

WHEREAS, Developer and the WTCPUA desire to enter into this Agreement to set forth the terms and conditions upon which the WTCPUA will provide retail water service to the Proposed Development.

NOW, THEREFORE, in consideration of the terms, conditions, and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree to the following:

ARTICLE I
DEFINITIONS, HEADINGS AND INTERPRETATION

Section 1.1 **Definition of Terms**: In addition to the terms defined in the Recitals above, the words and phrases as used in this Agreement shall have the meanings set forth below:

- (a) “Agreement” shall mean this Agreement, its attachments, exhibits, and matters included by reference, and any amendment or supplement thereto.
- (b) “Assignee” shall mean any person or entity who receives an express assignment of the rights of either Party and expressly assumes such Party’s duties and responsibilities with respect to this Agreement as provided in Section 6.2 herein.
- (c) “Developer” shall mean Mirasol Capital, LLC (“or its Assignees”).
- (d) “Developer Deposit” shall mean the payment made by Developer as specified in Section 3.2 herein.
- (e) “Developer Facilities” shall mean those facilities to be constructed by Developer pursuant to this Agreement that are required to extend water service from the WTCPUA System to the Proposed Development as described on the attached **Exhibit B**.

- (f) “Effective Date” shall mean the date of the last signature to this Agreement.
- (g) “Impact Fees” shall mean those impact fees for water service collected by the WTCPUA and used to fund and reserve capacity in the WTCPUA’s central water facilities that are identified in the WTCPUA’s ten-year capital improvements plans as adopted and amended by the WTCPUA Board of Directors from time to time.
- (h) “LUE” or “Living Unit Equivalent” shall mean the measurement used in the WTCPUA Rules and Policies to determine the amount of water service usage per connection for its Retail Customers.
- (i) “Reservation Fee” shall mean an annual fee imposed pursuant to the WTCPUA’s Rules and Policies, as amended from time to time, to reserve water capacity in the WTCPUA System.
- (j) “Reservation Period” shall mean a four (4) year period commencing on the date of the Written Service Commitment.
- (k) “Retail Customer” shall mean a person or entity applying for an individual retail water service connection located in the Proposed Development.
- (l) “Written Service Commitment” shall mean the service availability letter issued to Developer approving the service extension request for the Proposed Development.
- (m) “WTCPUA” shall mean the West Travis County Public Utility Agency or its Assignees.
- (n) “WTCPUA Rules and Policies” shall mean the WTCPUA’s rules and policies adopted by its Board of Directors governing the provision of retail water and wastewater service to Retail Customers and related matters, including the WTCPUA Rate Tariff and Service and Development Policies as amended from time to time.
- (o) “WTCPUA System” shall mean the WTCPUA’s existing water treatment and distribution facilities and wastewater collection, treatment and disposal facilities used by the WTCPUA to provide retail potable water service within its service area, including, but not limited to its raw water intake, water treatment plant, water storage tank and pumping facilities, wastewater collection lines, lift stations, treatment and disposal facilities, and related facilities.

Section 1.2 Article and Section Headings. The headings and titles of the several articles and sections of this Agreement are solely for convenience and reference and shall not affect the meaning, construction or effect of the provisions hereof.

Section 1.3 Interpretation. The singular form of any word used herein shall include the plural, and vice-versa, unless the context requires otherwise. The use of a word of any gender herein shall

include all other genders, unless the context requires otherwise. This Agreement and all of the terms and provisions hereof shall be construed so as to effectuate the purposes contemplated hereby and to sustain the validity hereof.

ARTICLE II **SERVICE COMMITMENT**

Section 2.1 WTCPUA to Provide Service. For and in consideration of Developer's obligations, covenants and conditions set forth in this Agreement, including specifically its commitments in Section 2.2 below, WTCPUA agrees to provide up to 347 LUEs of domestic water service, which includes 276 LUEs in Phase I and 71 LUEs in Phase II, of domestic water service for Retail Customers located within the Proposed Development pursuant to the terms of this Agreement and the WTCPUA's Rules and Policies. **Water service is contingent on additional facilities being built that are required to serve this development and service will not be available until such facilities are constructed.** In no event shall WTCPUA be obligated to provide retail water service to Retail Customers located within the Proposed Development that collectively exceed 347 LUEs of domestic water service. Of the 347 LUEs to be used in the Proposed Development, WTCPUA shall identify the amount to be used for irrigation of an organic farm in Phase I and to be used for livestock watering and other related agricultural purposes in Phase II as discussed in Section 2.2 below.

Section 2.2 Developer Commitments on Water Conservation and Water Quality Protection. As consideration for the WTCPUA's extension of retail water service to the Proposed Development, Developer agrees to the following water conservation and water quality protection measures:

- a) Potable water from the WTCPUA must be the exclusive water used for each Phase of the Proposed Development, and Developer agrees to not use groundwater or surface water from the Pedernales River as a water source;
- b) Developer agrees not to drill new groundwater wells and shall include a plat note in all subdivision plats for the Proposed Development prohibiting the installation of new groundwater wells;
- c) The existing groundwater well planned for use in Phase I for irrigation of the organic farm shall be abandoned and WTCPUA shall provide service for farm irrigation at a capacity/meter size approved by WTCPUA;
- d) The existing groundwater wells planned for use in Phase II shall be abandoned and WTCPUA shall provide service for agricultural, and livestock use at a capacity/meter size approved by WTCPUA at the time Phase II is developed;
- e) Developer agrees to request TCEQ include limits in the TLAP permit for the Proposed Development of 1 ppm Total Nitrogen and 1 ppm Total Phosphorus and to install and operate wastewater treatment facilities so that such effluent quality is achieved; and
- f) WTCPUA may inspect the Development at any time, and if it determines a violation of these water conservation and water quality protection measures is occurring, WTCPUA will provide 60-day notice and opportunity to cure and, if such violation continues, may suspend water service until the violation is corrected.

- g) Developer shall transfer its LCRA raw water contract to WTCPUA and WTCPUA shall seek to transfer the intake location to Lake Austin.

Section 2.3 Other Water Service Provisions. Developer will also comply with the following provisions regarding water service to the Proposed Development:

- a) Delivery of water will be metered and restricted to 108 gpm which represents average day use.
- b) Developer must provide on-site storage to meet peak day demands as a part of the Developer Facilities.
- c) WTCPUA will be the retail supplier of water to customers in the Proposed Development and will operate the Developer Facilities after their acceptance by WTCPUA in accordance with this Agreement. The Developer Facilities will either be conveyed outright to WTCPUA upon completion and acceptance by WTCPUA or, if required by the Texas Attorney General, leased to the WTCPUA under terms acceptable to the WTCPUA to allow for reimbursement by Mirasol Springs Municipal Utility District to Developer and conveyed to WTCPUA once reimbursement is complete.
- d) Developer, at its sole cost and expense, shall be responsible for constructing a water line extending from a mutually agreed upon location along the WTCPUA water system to the Proposed Development and providing a 15' wide permanent exclusive water line easement and 20' wide temporary construction easement for the length of the water line or an approved site plan from Travis County for placement of the water line in the right-of-way

Section 2.4 No Implied Waivers or Credits. Nothing in this Agreement shall be interpreted to waive service conditions for Retail Customers in the Proposed Development or otherwise grant credit to Developer or the Proposed Development or any portion thereof for any fee, charge, or payment, otherwise applicable under this Agreement or WTCPUA's Rules and Policies, except as provided in Section 4.2.

Section 2.5 USFWS Compliance. The Developer shall adopt one of the alternative water quality measures required for the Proposed Development as specified in that certain "Memorandum of Understanding" between the LCRA and the United States Fish and Wildlife Service (USFWS), dated May 24, 2000 (MOU) and the "Settlement Agreement and Stipulation of Dismissal" from the lawsuit, Hays County Water Planning Partnership, et. al. vs. Lt. General Robert B. Flowers, U.S. Army Corps of Engineers, Thomas E. White, Secretary of the Army, Gale Norton, Secretary of the Department of the Interior, and the Lower Colorado River authority, W.D. Tex. 2002 (No. AOOCA 826SS) (Settlement Agreement) including:

- (a) Measures approved by the USFWS through separate Section 7 consultation, or other independent consultation;
- (b) TCEQ optional enhanced measures, Appendix A and Appendix B to RG-348; or

(c) U.S. Fish and Wildlife Service Recommendations for Protection of Water Quality of the Edwards Aquifer dated September 1, 2000.

ARTICLE III
FACILITIES FOR THE PROPOSED DEVELOPMENT

Section 3.1 Construction of Facilities. Developer shall construct, at Developer’s sole cost and expense, the Developer Facilities, in compliance with the WTCPUA Rules and Policies. The WTCPUA Required Facilities are described in **Exhibit B** and shall be constructed by WTCPUA or other third parties. Along with the Developer Facilities, construction and completion of the Required Facilities is necessary for the commencement of service by WTCPUA to the Proposed Development. Developer shall submit all Plans and Specifications for the Developer Facilities, including any phase or portion thereof, to the WTCPUA for review and approval prior to commencement of construction. Construction of all facilities relating to the Proposed Development, including the Developer Facilities, shall be subject to all WTCPUA Rules and Policies. Further, the Developer, at its sole cost and expense, shall grant the WTCPUA all on-site and off-site easements necessary for the WTCPUA to own and operate the facilities. Developer shall reserve for and convey fee simple title to the WTCPUA to own and operate the facilities. Developer shall reserve for and convey fee simple title to the WTCPUA a subdivision utility lot at a location and size acceptable to the WTCPUA for WTCPUA’s construction, ownership and operation of the WTCPUA Required Facilities.

Section 3.2 Developer Deposit. As of the Effective Date, Developer has deposited with the WTCPUA the sum of \$5,000.00 (“Developer Deposit”), which shall be used to pay the WTCPUA’s charges and fees as provided in Sections 5.14 through 5.17 of the WTCPUA Rules and Policies with respect to the extension of service to the Proposed Development. To the extent such charges and fees incurred for the Proposed Development exceed or are projected to exceed the amount of the Developer Deposit as specified above, the WTCPUA shall invoice Developer for such additional amounts and payment by Developer shall be due upon its receipt of such invoice. Delay by Developer in paying an invoice when due shall delay WTCPUA review and acceptance of any facility relating to the Proposed Development, including the Developer Facilities and the commencement of service to the Proposed Development. Any funds remaining in the Developer Deposit not used by the WTCPUA shall be reimbursed to Developer upon the commencement of service in accordance with Article IV.

ARTICLE IV
COMMENCEMENT OF SERVICE BY WTCPUA

Section 4.1 Conditions Precedent to Commencement of Facilities Construction or Service. Except as provided in Section 4.2, Developer and WTCPUA agree that the WTCPUA is not required to approve commencement of facilities construction or commence retail water service to a Retail Customer in the Proposed Development until Developer and/or a Retail Customer has complied with WTCPUA Rules and Policies including:

Prior to release of plans for construction, the Developer shall pay all required engineering review fees, outside engineering and legal fees, inspection fees, and reservation fees, and Impact Fees, relating to all tasks required by the WTCPUA to provide service to the Proposed Development.

Prior to release of water meters for the Proposed Development, the Developer shall submit close out documents including a final plat and executed easements in a form and manner acceptable for WTCPUA recording per the WTCPUA close out check list, an executed Conveyance Agreement in a form and manner acceptable to the WTCPUA and pay all applicable fees due including but not limited to, any outstanding engineering review fees, outside engineering and legal fees and deposit replenishment billings, tap fees, meter-drop in fees and all other associated meter fees. All close out documents shall be submitted and approved by the PUA within 45 calendar days of substantial completion of the PUA approved project; otherwise, the project shall be considered expired and shall be subject to a new SER application and review process.

The Developer will be required to secure a Legal Lot Determinations from Travis County, Texas and Hays County, Texas or secure approved subdivision plats in Travis County, Texas and Hays County, Texas for the Property within four (4) years from the date of this letter.

Each customer within the Proposed Development is encouraged to install and maintain a customer service pressure reducing valve located on the water service line located outside the respective customer's meter box.

Developer agrees and understands that the WTCPUA's commitment of 347 LUEs of water service runs with and is assigned to the Proposed Development.

Section 4.2 **Impact Fees.** Developer agrees to pay such Impact Fees (current Impact Fee rates in effect at the time of payment) for 347 LUEs to the WTCPUA. Impact fees shall be paid prior to construction plan approval; however, Developer may choose to pay impact fees at any earlier time to avoid the assessment of annual reservations fees in accordance with Section 4.3 if the Impact Fee payment date is earlier than the annual due date of the reservation fees. Paid reservation fees will not offset or be credited against Impact Fee assessments.

Section 4.3 **Reservation Fees.** Fees shall be calculated by multiplying the current Reservation Fee as contained in the WTCPUA Rules and Policies at the time of each anniversary of the date of the Written Service Commitment times the number of unused LUEs reserved for the Developer pursuant to this Agreement. Developer shall calculate and pay annual Reservation Fees for reserved water LUEs on each annual anniversary of the commencement of the Reservation Period ("Due Date"). If Developer pays the Reservation Fees prior to or on the Due Date, the LUEs for which Reservation Fees have been paid will be considered to be in "reserved status" for the next contract year in the Reservation Period. Reservation Fees are non-refundable and non-reimbursable and paid reservation fees will not offset or be credited against Impact Fee assessments. If Reservation Fees are not paid on the Due Date, such nonpayment shall be an event of default. **If Developer fails to pay Reservation Fees on the Due Date, the WTCPUA may terminate this Agreement, with immediate effect, by giving notice to the Developer.** Any

remaining LUEs for which Reservation Fees are not paid will no longer be considered in “reserved status” and such nonpayment will be considered a breach of contract and Developer may be subject to any and all penalties and remedies applicable to a breach of this Agreement.

Should Developer transfer or assign this Agreement, neither the reservation of nor right to reserve LUEs shall be automatically assigned to any future successor in interest of the Developer as a component of any assignment of this Agreement without express written consent of the WTCPUA.

Reservation Fees for the initial year of the Reservation Period must be paid not later than six (6) months from the date of the Written Service Commitment by the WTCPUA Board of Directors if a water meter or meters having up to 347 LUEs of water has not been installed in accordance with WTCPUA Rules and Policies. Any LUEs in reserved status, but which are connected and for which impact fees are paid during the six (6) month grace period, will be deducted from the number of LUEs for which the initial years’ Reservation Fees are due.

Furthermore, the Developer agrees and understands that the WTCPUA’s commitment of 347 LUEs of water service runs with and is assigned to the Proposed Development.

Section 4.4 **Right of Access.** Developer agrees to provide the WTCPUA with immediate access to the Developer Facilities, or any other portion of the Developer Facilities, when required for the WTCPUA to construct, install, operate, repair, maintain, replace, inspect, or upgrade the Developer Facilities.

ARTICLE V **TERM; DEFAULT**

Section 5.1 **Term; Termination.** This Agreement shall become effective upon the latest date of execution by either the Developer or the WTCPUA (the “Effective Date”). WTCPUA may terminate this agreement upon written notice to Developer for any of the 347 LUEs water of which a Retail Customer has not requested service in accordance with the WTCPUA Rules and Policies by the fourth anniversary of the Effective Date. The Parties may extend the termination deadlines in this Section upon written amendment of this Agreement. Unless otherwise earlier terminated, this Agreement shall extend from the Effective Date for as long as the WTCPUA provides service to Retail Customers located in the Proposed Development.

Section 5.2 **Default.**

- (a) In the event that Developer defaults on or materially breaches any one or more of the provisions of this Agreement, other than the payment of Reservation Fees, the WTCPUA shall give Developer thirty (30) days to cure such default or material breach after the WTCPUA has made written demand to cure the same. A breach is material if Developer fails to meet or otherwise violates its obligations and responsibilities as set forth in this Agreement. If Developer fails to cure a breach or default involving the payment of money to WTCPUA within such thirty days or fails to cure or take reasonable steps to effectuate such a cure within thirty days if the breach or default does not involve the payment of

Bee Cave TX 78738

Email: jriechers@wtcpua.org

Copy to:

Lauren Kalisek
Lloyd Gosselink Rochelle & Townsend, PC
816 Congress Avenue Suite 1900
Austin, Texas 78701

Email: lkalisek@lglawfirm.com

Developer:

Mirasol Capital, LLC
c/o Steven Winn
4143 Maple Ave., Ste. 400
Dallas, Texas 75219

Email: steve.winn@mirasolcapital.com

Section 6.4 Invalid Provision. Any clause, sentence, provision, paragraph or article of this Agreement held by a Court of competent jurisdiction to be invalid, illegal or ineffective shall not impair, invalidate or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph or article so held to be invalid, illegal, or ineffective.

Section 6.5 Applicable Law. This Agreement shall be construed under the laws of the State of Texas and all obligations of the Parties hereunder are performable in Travis County, Texas. Venue for any action arising under this Agreement shall be in Travis County, Texas.

Section 6.6 Time is of the Essence. Time shall be of the essence in this Agreement.

Section 6.7 Third Party Beneficiaries. Except as otherwise expressly provided herein, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto and their heirs, personal representatives, successors and assigns, any benefits, rights or remedies under or by reason of this Agreement.

Section 6.8 Saturday, Sunday, or Legal Holiday. If any date set forth in this Agreement for the performance of any obligation or for the delivery of any instrument or notice should be on a Saturday, Sunday, or legal holiday, the compliance with such obligation or delivery shall be acceptable if performed on the next business day following such Saturday, Sunday or legal holiday. For purposes of this subparagraph, “legal holiday” shall mean any state or federal holiday for which financial institutions or post offices are generally closed in Travis County, Texas, for observance thereof.

Section 6.9 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument.

Section 6.10 Exhibits. All recitals and all schedules and exhibits referred to in this Agreement are incorporated herein by reference and shall be deemed part of this Agreement for all purposes as if set forth at length herein.

Section 6.11 No Joint Venture, Partnership, Agency, Etc. This Agreement shall not be construed as in any way establishing a partnership or joint venture, express or implied agency, or employer-employee relationship between the Parties hereto.

[Signature pages to follow]

IN WITNESS WHEREOF, this instrument is executed on the Effective Date.

WEST TRAVIS COUNTY PUBLIC UTILITY AGENCY, a Texas public utility agency

By: _____
Jennifer Riechers
General Manager

Date: _____

ATTEST:

MIRASOL CAPITAL, LLC, a Texas limited liability company

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

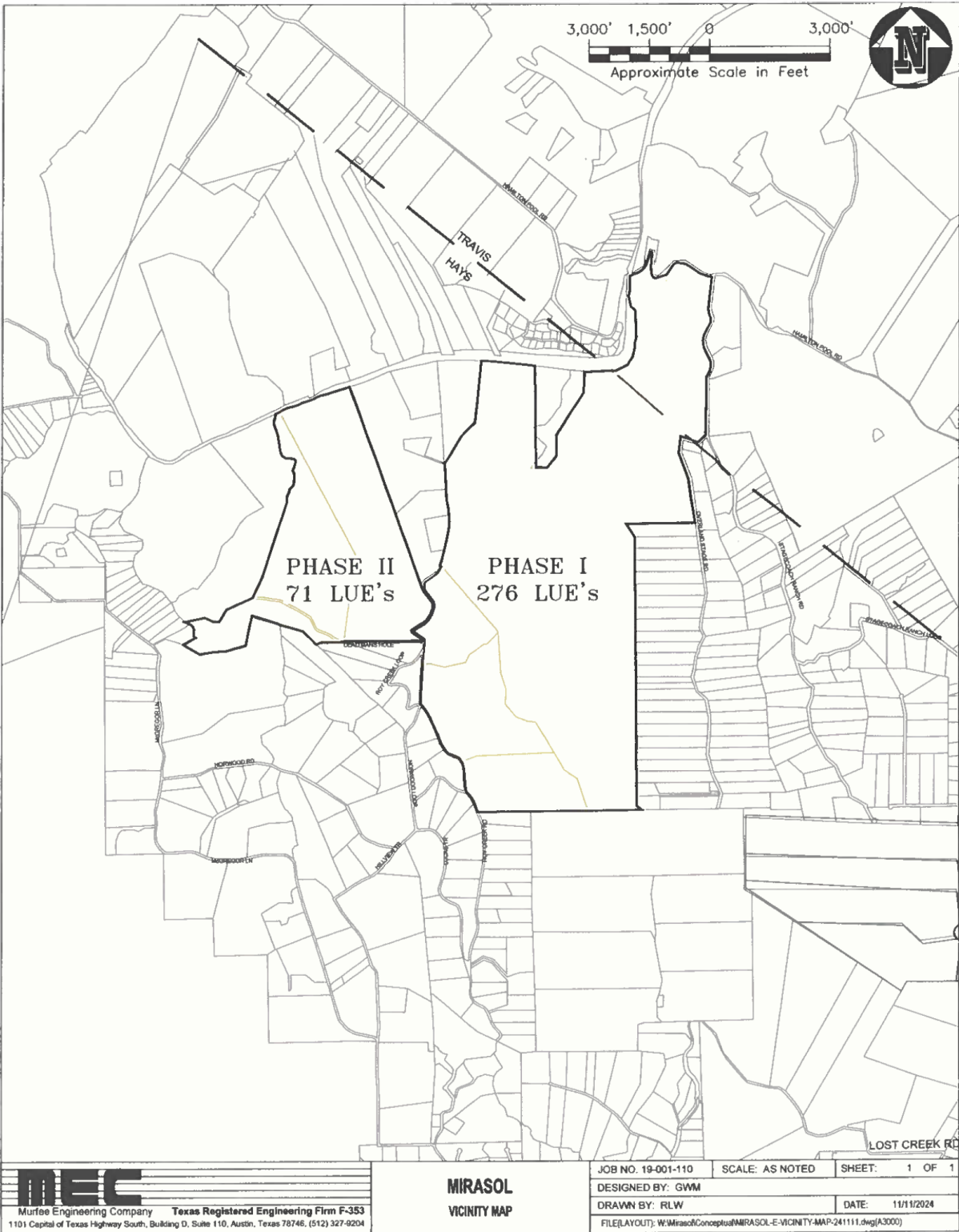


EXHIBIT B
DEVELOPER FACILITIES AND WTCPUA REQUIRED FACILITIES

Developer Facilities: All internal water service lines and storage facilities. An offsite water line extension extending from a mutually agreed upon location upon along the WTCPUA Water System to the Proposed Development and providing a fifteen-inch (15') wide permanent exclusive water line easement and a twenty-inch (20') wide temporary construction easement for the length of the water line extension or an approved site plan from Travis County, Texas for placement of the water line extension in the right-of-way.

WTCPUA Required Facilities:

WTP Expansion

West Bee Cave Pump Station upgrade

Hamilton Pool Road Parallel Line Oversize

1420 Elevated Storage Tank at Hamilton Pool Road Pump Station

Peacock Storage Tank and Pump Station (not WTCPUA projects)