

**380 GRANT AGREEMENT
FOR CONSTRUCTION OF RANKIN ROAD IMPROVEMENTS**

1. THIS AGREEMENT, is between the CITY OF HUMBLE, TEXAS, a home-rule municipal corporation, 114 West Higgins, Humble, Texas 77338 (the "CITY") and JACKSON-SHAW/TPRF V PARC 59, LLC, 4890 Alpha Road, Suite 100 Dallas, TX 75244 (the "DEVELOPER"):

2. WHEREAS, the Developer owns 18.7921 acres of land commonly known as 7159 Rankin Road (the "Land") adjacent to portions of the Rankin Road right-of-way ("Rankin Road"); and

3. WHEREAS, the Developer has agreed to construct certain Rankin Road improvements as consideration for the City agreeing to grant to the Developer one-half of the design and construction costs for such improvements as hereinafter set forth; and

4. WHEREAS, City desires to assure that the proposed public improvements will be done in good workmanlike manner and in accordance with the laws now in force and effect in the City of Humble, Texas, the terms and conditions of which are incorporated herein by reference and,

5. WHEREAS, Developer declares that it is familiar with the regulations contained in the City's Code of Ordinances and agrees to comply therewith, and

6. WHEREAS, the Developer filed a development plat of the Land prepared in accordance with the City's ordinances and the City approved the development plat on May 9, 2019 which plat was recorded in the Harris County Map Records on July 12, 2019, at File Number RP-2019-300592 (Volume 689, Page 211); and

7. WHEREAS, the City has agreed to make an economic development grant (the "Grant") pursuant to the City's economic development program and in compliance with Texas Local Government Code Chapter 380 in an amount equal to one-half of the cost to design and construct those portions of the Rankin Road public improvements described on Exhibit A attached hereto (the "Rankin Road Improvements") which amount will not exceed three hundred fifty-two thousand six hundred sixty-seven dollars (\$352,667.00) plus an amount equal to all City fees associated with the construction of the Rankin Road Improvements; and

8. WHEREAS, the City acknowledges that the construction of the Rankin Road Improvements by the Developer is exempt from the public bid process; and

9. NOW, THEREFORE, in consideration of the approval and acceptance by the City of the Rankin Road Improvements, the parties hereto mutually covenant and agree as follows:

10. Developer Agrees to Construct Public Improvements. Developer shall provide all engineering required for the permitting and construction of the Rankin Road Improvements, obtain all necessary permits for construction of the public improvements, and supply all materials and construct the Rankin Road Improvements set forth in the attached Exhibit "A" to the satisfaction

of the City Engineer of the City. The estimated construction costs of the Rankin Road Improvements is currently \$641,214.00.

11. Bonds Required. The Developer will provide payment and performance bonds in accordance with the requirements of the City's Subdivision Regulations. Developer shall submit original duplicates of these bonds on forms approved by the City's Attorney, to the City Engineer prior to providing a notice to proceed with construction of the Rankin Road Improvements.

12. City Agrees to Grant One-Half of Costs. The City will make a Grant, in parts, to the Developer in an amount equal to one-half of the design and construction costs of the Rankin Road Improvements. Within five business days after approval of this agreement by the City Council of the City which approval appropriates from the City's current budget funds necessary to pay the Grant, the City will segregate in a separate account an amount equal to three hundred twenty thousand six hundred seven dollars (\$320,607.00) for the Rankin Road Improvements (the "Grant Amount"). The Grant Amount will be paid to the Developer in parts. The City will pay to the Developer one-half of the design costs for the Rankin Road Improvements within five business days after the City Engineer approves the design and confirms the Developer has paid one-half of the design costs. The City will pay the Developer one-half of the costs to prepare the construction drawings for the Rankin Road Improvements within five business days after the City Engineer approves those construction drawings and authorizes the Developer or his contractor to proceed with construction of the Rankin Road Improvements and confirms the Developer has paid one-half of the plan preparation costs. The balance of the Grant Amount will be paid to the Developer, on a percentage of completion basis, as the City Engineer inspects the construction of the Rankin Road Improvements, certifies the percentage of completion and confirms the Developer has paid one-half of the allocable costs. If the Grant Amount is insufficient to pay one-half of the design and construction costs incurred by the Developer to complete the Rankin Road Improvements, the City shall increase the Grant Amount for one-half of the excess costs up to a maximum amount not to exceed ten percent (10%) of the original Grant Amount or thirty-two thousand sixty dollars of \$32,060.00 (the "Excess Costs"). In such instance, the Developer shall deliver to the City a written notice together with copies of invoices or other documentation reasonably establishing said excess expenditures or payment for any work on the Rankin Road Improvements (a "Notice of Excess Costs"). The City shall increase the Grant Amount in order to reimburse the Developer for the Excess Costs within fifteen (15) days after receipt of the Notice of Excess Costs. The City acknowledges that the purpose of the Grant is to promote state and local economic development and to stimulate business and commercial activity in the City. The Developer's design and construction of the Rankin Road Improvements in compliance with this agreement shall be the sole performance standard required of the Developer as a condition to receiving the Grant.

13. Monumentation. Developer shall replace, or have replaced, or repair, or have repaired, as the case may be, all property corners and monuments shown on the construction plans that have been destroyed or damaged, and Developer shall replace or have replaced, repair, or have repaired, as the case may be, or pay to the owner, the entire cost of replacement or repairs, of any and all property damaged or destroyed by reason of any work done hereunder, whether such property be owned by the City or by any person whomsoever. Any such repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.

14. Permits; Compliance with Law. Developer shall obtain all necessary permits and licenses for the construction of the Rankin Road Improvements, give all necessary notices and pay all fees and taxes required by law, except for City fees which shall be paid or granted by the City as part of the Grant.

15. Superintendence by Developer. Developer shall give personal superintendence to the work of the improvements, or have a competent foreman or superintendent, satisfactory to the City Engineer, on the work at all times during progress, with authority to act for Developer.

16. Inspection by City. Developer shall at all times maintain proper facilities and provide safe access for inspection by City to all parts of the work on the Rankin Road Improvements.

17. Repair or Reconstruction of Defective Work. If, within a period of one year after final acceptance of the Rankin Road Improvements any of the work done under this agreement, fails to fulfill any of the requirements of this agreement, or the specifications referred to herein, Developer shall without delay and without any cost to the City, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure.

18. Definition and Ownership of Improvements. The term "improvements" means: grading, paving, curbs and gutters, pathway, storm and sanitary sewers, utilities, drainage facilities, traffic control, landscaping, and street lights, that shall be shown in detail upon plans, profiles and specifications that have been prepared by engineers acting for Developer subject to approval by the City Engineer of City. No work on these improvements shall be commenced until plans and profiles therefor have been agreed upon by the DEVELOPER and CITY and submitted to and approved by the City Engineer. The cost of plan checking and inspection shall be paid by the City as part of the Grant. All public improvements constructed or installed pursuant to this agreement expressly including water and sewer lines, but not limited thereto, shall become the sole exclusive property of the City of Humble, without payment therefor other than payment of the Grant, upon acceptance of the improvements by the City.

19. Time of Completion. All of the Rankin Road Improvements shall be completed within six (6) months from the date the City issues a permit to construct the Rankin Road Improvements. In the event that Developer fails to complete the public improvements within the six months' period, the City may complete the work and shall be entitled to recover half the cost and expenses thereof from Developer, or his surety. The time for completion may be extended by the City Engineer, in writing, for good cause shown by the Developer.

20. Effective Date of Contract. This agreement shall become effective when approved by the City Council of City.

21. Liability for Nonperformance. Neither the City nor any of its officers or agents shall be liable to Developer or its contractors for any error or omission arising out of or in connection with any work to be performed under this contract.

22. Liability for Personal Injuries. The City shall not be liable to the Developer or to any other person, firm, or corporation whatsoever, for any injury or damage that may result to any person or property by or from any cause whatsoever in, on, or about the development of the land covered by this Agreement, or any part thereof.

23. Release and Indemnification. **THE DEVELOPER HEREBY RELEASES AND AGREES TO INDEMNIFY AND SAVE THE CITY HARMLESS FROM AND AGAINST ANY AND ALL INJURIES TO AND DEATHS OF PERSONS AND INJURIES TO PROPERTY, AND ALL CLAIMS, DEMANDS, COSTS, LOSS, DAMAGE AND LIABILITY, HOWSOEVER THE SAME MAY BE CAUSED AND WHENSOEVER THE SAME MAY APPEAR, RESULTING DIRECTLY OR INDIRECTLY FROM THE CONSTRUCTION OF THE RANKIN ROAD IMPROVEMENTS PURSUANT TO THIS AGREEMENT, AND ALSO FROM ANY AND ALL INJURIES TO AND DEATHS OF PERSONS AND INJURIES TO PROPERTY OR THEIR INTERESTS AND ALL CLAIMS, DEMANDS, COSTS LOSS, DAMAGE, AND LIABILITY, HOWSOEVER MAY BE CAUSED AND WHENSOEVER THE SAME MAY APPEAR, EITHER DIRECTLY OR INDIRECTLY MADE OR SUFFERED BY THE DEVELOPER, THE DEVELOPER'S AGENTS, EMPLOYEES, AND SUBCONTRACTORS, WHILE ENGAGED IN THE CONSTRUCTION OF THE RANKIN ROAD IMPROVEMENTS. THIS RELEASE AND INDEMNIFICATION DOES NOT WAIVE THE CITY'S IMMUNITY FROM SUIT OR IMMUNITY FROM LIABILITY FOR SUCH CLAIMS.**

24. Liability of Developer. The Developer agrees that the use for any purpose and by any person of any and all of the streets and improvements herein before specified, shall be at the sole and exclusive risk of the Developer at all times prior to final acceptance by the City of the completed Rankin Road Improvements; provided, that acceptance by the City shall in no way eliminate or lessen any of Developer's obligations or undertakings contained in this Agreement.

25. Liability Insurance. Before any work pursuant to this contract, Developer's contractors shall furnish to City satisfactory evidence of an insurance policy written upon a form and by a company which meets with the approval of City insuring City, its officers, agents, and employees against loss or liability which may arise during the work or which may result from any of the work herein required to be done, including all costs of defending any claim arising as a result thereof. Minimum liability and property damage insurance shall be not less than \$500,000 for all damages arising out of bodily injury or to death of one person and not less than \$1,000,000 for all damages arising out of bodily injuries to or death of more than one person in any one occurrence; and not less than \$100,000 for all damages and/or destruction of property in any one occurrence and not less than \$500,000 for all damages and/or destruction of property during the policy period.

26. Contractor's Insurance. Developer shall require its construction contractor(s) to maintain the following coverages and limits of liability:

Workers Compensation---Statutory for Worker's Compensation; Employer's Liability: Bodily Injury by accident \$500,000 (each accident), Bodily Injury by Disease \$500,000 (policy limit), Bodily Injury by Disease \$500,000 (each employee); Commercial General Liability, including

Broad Form Coverage, Contractual Liability, Bodily & Personal Injury, and Completed Operations, combined limits of \$1,000,000 each occurrence and \$2,000,000 Aggregate

Automobile Liability Insurance (for automobiles used in the course of the performance of this Agreement, including Employer's Non-Ownership and Hired Auto Coverage), \$1,000,000 combined single limit per Occurrence.

Defense costs are excluded from the face amount of the policy.

Aggregate Limits are per 12-month policy period unless otherwise indicated.

27. Issuers of Policies; Form of Policies. The issuer of any policy required by this Agreement (i) shall have a Certificate of Authority to transact insurance business in Texas or (ii) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Each policy, except those for Workers Compensation, Employer's Liability, and Professional Liability, must name the City (and its officers, agents, and employees) as Additional Insured parties on the original policy and all renewals or replacements. Developer shall require its construction contractor(s) to be responsible for and pay any claims or losses to the extent of any deductible amounts and to waive any claim it may have for the same against the City, its officers, agents, or employees. Each policy must state that it may not be canceled, materially modified, or non-renewed unless the insurance company gives the Director 30 days' advance written notice. Developer shall give written notice to the Director within five days of the date on which total claims by any party against Developer reduce the aggregate amount of coverage below the amounts required by this Agreement. In the alternative, the policy may contain an endorsement establishing a policy aggregate for the particular project or location subject to this Agreement. Developer shall require its construction contractor(s) to pay all insurance premiums, and the City shall not be obligated to pay any premiums.

28. Subcontractors' Insurance. Developer shall require its construction contractor(s) to require all subcontractors to carry insurance naming the City as an additional insured and meeting all of the above requirements except amount. The amount must be commensurate with the amount of the subcontract, but in no case less than \$500,000 per occurrence.

29. Proof of Insurance. The Developer shall furnish the City Engineer with Certificates of Insurance, along with an Affidavit from construction contractor(s) confirming that the Certificates accurately reflect the insurance coverage maintained. If requested in writing by the Director, Developer shall furnish the City with certified copies of construction contractor's actual insurance policies. The Developer shall require its construction contractor(s) to continuously and without interruption, maintain in force the required insurance coverages specified in this Agreement. If Developer does not comply with this requirement, the City Engineer, at his or her sole discretion, may immediately suspend Developer from any further performance under this Agreement and begin procedures to terminate for default, or purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Developer under this Agreement.

30. No City Waiver. The City shall never waive or be estopped to assert its right to terminate

this Agreement because of its acts or omissions regarding its review of insurance documents.

31. Risk of Loss To Project. Risk of loss or damage to the Rankin Road Improvements shall pass from the Developer to the City upon City final acceptance of the Rankin Road Improvements.

32. Approval by City Engineer. Developer shall keep the City Engineer reasonably informed regarding the progress of the Rankin Road Improvements as required by the City Engineer. Developer shall notify and provide reasonable documentation for the City Engineer for the following events: (1) advertisement for bids, (2) award of construction contract (including copies of bonds and insurance), (3) Notice to Proceed, (4) default of the contractor (if it occurs), and (5) completion of the Rankin Road Improvements such that it is ready for inspection by the City. The Rankin Road Improvements shall not be considered complete until the City Engineer issues a certificate of final completion.

It is mutually agreed by the parties hereto that the City Engineer shall have the right to reject any or all of the work to be performed under this contract if such work does not conform with the plans and specifications mentioned herein or the ordinances of the City of Humble. Any damage to the sewer system, utilities, concrete work, or street paving that occurs after installation shall be made good to the satisfaction of the City Engineer by the Developer before release of bond or final acceptance of completed work.

33. Obligations of Developer. Notwithstanding the fact that Developer's plans and specifications, completion of the work, and other acts are subject to approval of the City, it is understood and agreed that any approval by the City thereof shall in no way relieve Developer of satisfactorily performing the work or his obligations hereunder. The construction shall be done strictly in accordance with the plans and specifications prepared by Developer or its engineer, with the City of Humble's standards and with the provisions of the Humble city code. Developer warrants that its plans and specifications conform as a minimum to the ordinances and that they are adequate to accomplish the work in good workmanlike manner and in accordance with sound construction practices.

34. Independent Contractor; Relationship of Contractors. Developer is engaged as an independent contractor, and Developer shall accomplish all of the services provided for herein in such capacity. The City of HUMBLE shall have no control or supervisory powers as to the detailed manner or method of the Developer's performance of the subject matter of this Participation Contract. All personnel supplied or used by Developer shall be deemed employees or subcontractors of Developer and shall not be considered employees, agents or subcontractors of the City of HUMBLE for any purpose whatsoever. Developer shall be solely responsible for the compensation of all such personnel, for the withholding of income, social security and other payroll taxes and for the coverage of all workers' compensation benefits.

35. Notice and Certification of Completion. Developer shall file a Notice of Completion with the City Engineer of the improvements herein specified. Upon the satisfactory completion of the improvements by the Developer, the City Engineer shall certify that the work of these improvements has been satisfactorily completed.

36. Filing of Improvement Plans. Upon completion of construction of the Rankin Road Improvements and subsequent to the acceptance of the Rankin Road Improvements by the City, the Developer shall supply the City with one mylar (4 mils) set of "as built" along with an electronic CAD and PDF file and shall reflect the job as actually constructed, with all changes incorporated therein.

37. Assignment. This contract shall not be assignable by Developer without written consent of City unless assigned to an affiliate of Developer.

38. Severability. In the event any term, covenant or condition herein contained shall be held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition herein contained, provided that such invalidity does not materially prejudice either the Developer or the City in their respective rights and obligations contained in the valid terms, covenants or conditions hereof.

39. Venue. This agreement is performable in Harris County, Texas, and venue for any cause of action arising out of this agreement shall be exclusively in the state and federal courts of Harris County, Texas.

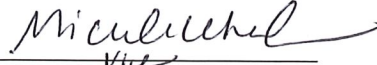
40. Entire Agreement. This Agreement merges the prior negotiations and understandings of the parties hereto and embodies the entire agreement of the parties, and there are not other agreements, assurances, conditions, covenants (expressed or implied) or other terms with respect to the construction of the Rankin Road Improvements, whether written or verbal, antecedent or contemporaneous with the execution hereof.

Executed on July Aug 8, 2019, at HUMBLE, Texas [council consideration July 11 or July 25]

CITY OF HUMBLE

BY: 
Its City Manager

JACKSON-SHAW/TPRF V PARC 59, LLC

BY: 
Its President

APPROVED:

BY: _____
City Attorney

APPROVED AS TO CONTENT:

BY: _____
City Engineer

EXHIBIT "A"

Rankin Road Exhibit – SV#81709

Cadence McShane Construction Company LLC
10370 Richmond Avenue,
Suite 1200
Houston, Texas 77042

Project: 03-9233 - Parc 59
US 59 North @ Rankin Rd
Humble, Texas
United States

Rankin Road Expansion
Budget 7.17.2019

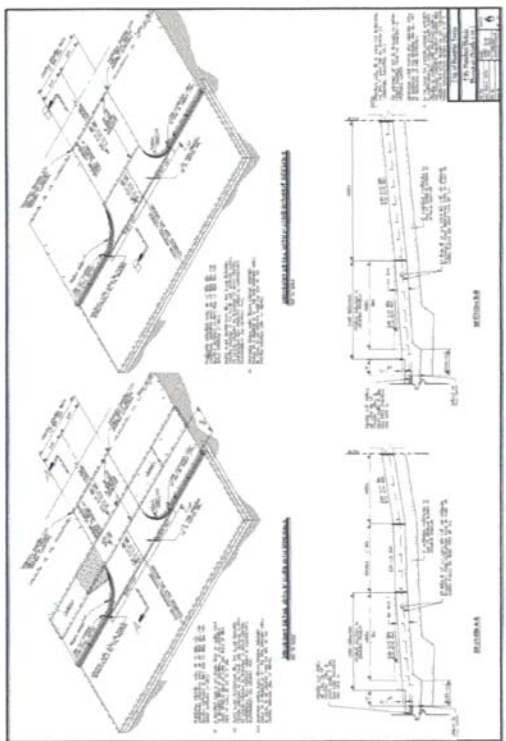
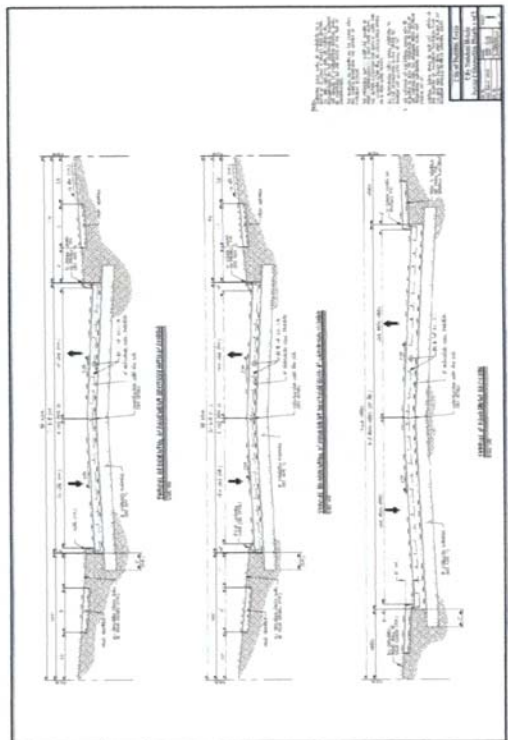
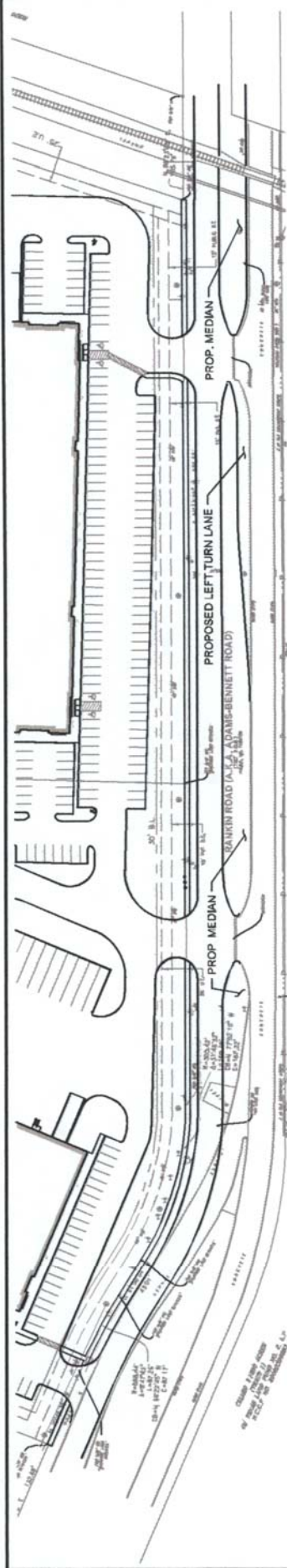
Item Description	Quantity	Unit	Estimate	Comments
Earthwork	53,991	SF	\$107,982	Includes scrape, lime, and blue top.
Demolition	1	LSUM	w/ EARTHWORK	Includes demolition of approximately 9,000sf of existing asphalt
Utilities	2	EACH	\$3,000	Include allowance for (2) additional storm inlets
Pavement Markings	1	LSUM	\$3,000	Includes striping only, no signage
Concrete Paving	53,991	SF	\$351,269	Includes Concrete paving and curbs per City of Humble Specifications
Geotech	1	LSUM	\$3,149	
Construction Materials Testing	1	LSUM	\$5,000	
Civil Engineering	1	LSUM	\$52,000	
General Conditions	1	LSUM	\$30,000	
Design Contingency	1	LSUM	\$46,525	10% Contingency
Maintenance Bond	1	LSUM	\$4,000	
Insurances & Contractor Fee	1	LSUM	\$35,289	Builders Risk & GL Insurance
TOTAL :			\$641,214	

Excludes : sidewalks, colored or stamped paving, asphalt, select fill, import/haul off, utilities not mentioned above, electrical work, landscaping, signage, traffic signals, paint, Payment & Performance Bonds, Building Permit

RANKIN ROAD BOULEVARD EXHIBIT



WGA
 CONSULTING ENGINEERS
 WARD OETZ & ASSOCIATES, PLLC
 TEXAS REGISTERED PROFESSIONAL ENGINEERS
 NUMBER: 77983
 1712 FULBRIGHT





City of
Humble

114 WEST HIGGINS, HUMBLE, TEXAS 77338, (281) 446-3061
NORMAN FUNDERBURK
MAYOR

COUNCIL MEMBERS

CHARLES CUNNINGHAM, JR.
CHARLES "ANDY" CURRY
BRUCE DAVIDSON
DAVID PIERCE
PAULA SETTLE

CITY MANAGER
JASON STUEBE

CITY SECRETARY
JENNY PAGE

September 8, 2021

JACKSON- SHAW / TPRF V PARC 59, LLC
2700 Post Oak Blvd., 21st Floor
Houston, Texas 77056
Attention: Grant Pearson

Re: 380 Grant Agreement for Construction of Rankin Road Improvements executed August 8, 2019 (the "Agreement"), between Jackson-Shaw / TPRF V PARC 59, LLC ("Developer"), and the City of Humble, Texas (the "City"), regarding that certain 18.7921 acres of land commonly known as 7159 Rankin Road (the "Land") adjacent to portions of the Rankin Road right-of-way ("Rankin Road")

Capitalized terms used but not defined herein shall have the same meaning as set forth in the Agreement. Developer has provided all engineering required for the permitting and construction of the Rankin Road Improvements, obtained all necessary permits for construction of the public improvements, and supplied all materials and constructed the Rankin Road Improvements as set forth in Exhibit "A" of the Agreement to the satisfaction of the City Engineer of the City.

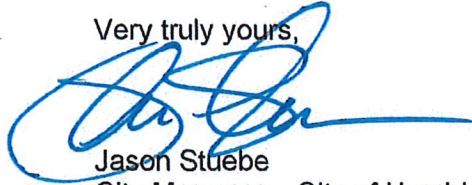
City acknowledges that the Rankin Road Improvements do not include work necessary to perform the City's requested change to the existing transition and connection to the existing Texas Department of Transportation right of way (the "TXDot/City Transition Work"). Notwithstanding anything to the contrary contained in the Agreement or this letter, the City hereby assumes full responsibility of all duties and obligations related to the TXDot/City Transition Work and the City agrees to perform the TXDot/City Transition Work. In consideration of the foregoing, Developer releases its rights in and grants to the City any and all rights of Developer in the \$35,266 of retainage held by the City under the Agreement. The City hereby releases and discharges Developer from any and all claims and demands, whether arising or accruing prior to or after the date of this letter, by the Texas Department of Transportation related to, necessitated by, or arising from the TXDot/City Transition Work. Further, the City waives any rights the City may have against Developer related to the requirement to obtain (or any requirement to have obtained) any and all necessary permits, licenses and/or approvals for the construction of the TXDot/City Transition Work arising under the Agreement or the payment of all fees, taxes or charges which may be payable to the Texas Department of Transportation related to, necessitated by, or arising from the TXDot/City Transition Work, including any rights under Sections 17, 23 and 33 of the Agreement or any defenses under Section 21 of the Agreement which is contrary to the terms of this paragraph.

Let this letter evidence the City's final acceptance of the Rankin Road Improvements and that the obligations of Developer under the Agreement have been performed to the satisfaction of the City Engineer of the City, and this letter shall be deemed to be the City Engineer's issuance

of a certificate of final completion, satisfying the requirements under Sections 32 and 35 of the Agreement.

If you have any questions or need further assistance, please do not hesitate to contact me.

Very truly yours,



Jason Stuebe
City Manager – City of Humble

Developer hereby acknowledges that pursuant to this letter, Developer releases its rights in and grants to the City any and all rights of Developer in the \$35,266 of retainage held by the City under the Agreement.

JACKSON-SHAW / TPRF V PARC 59, LLC,
a Delaware limited liability company

By: JSC Parc 59, LLC,
a Texas limited liability company,
its manager

By: John Stone
Name: John Stone
Title: Vice President