



City of Cibolo, Texas
City Council Workshop
February 27, 2024

SUBJECT: Discussion/Action concerning the preferred design for the Tolle Road Improvements.

PRIOR CITY COUNCIL ACTION: City Council authorized the issuance of debt in 2019 following approval by voters to improve pavement and drainage along Tolle Road (see Attachment 1). City Council approved a Public Improvement Agreement with DR Horton that provides additional funding for this project as described below. City Council approved the FY24 budget and 5-Year Capital Improvement Program (CIP); the CIP shows the Tolle Road right-of-way acquisition in FY27 (cost to be determined) and construction in FY28 (\$7,000,000). In 2023, the Mayor and City Council members (along with staff members) participated in two Town Hall meetings (August and October) with residents living along Tolle Road to collect their input on the design of the road improvements to provide additional information on decision-making. On January 23, 2024, the City Council held a special meeting to discuss Option 1 and Option 5 of the Tolle Road proposed improvements.

OVERVIEW: City staff is seeking direction from City Council on the preferred design of the Tolle Road improvements. Attachment 2 provides the Lockwood, Andrews, & Newman, Inc., (LAN) opinion of probable construction costs (OPCC) for Tolle Road for both the 20 Year pavement and 5 Year pavement designs with some options that was provided at the January 23rd special meeting.

As shown on Attachment 2, LAN developed five (5) different project scopes. These ranged from a project with a 20 Year pavement design that includes full-depth reconstruction and slight widening of the road, installing new drainage structures, moving water mains, and the installation of a new sanitary sewer main (approximately \$7.0 million) to a project that provides for a mill and overlay of existing Tolle Road with a 5 Year pavement design (approximately \$2.1 million). The prices for both Option 1 and Option 5 have been updated by LAN to reflect current OPCC. The first project is referred to as the original design; the estimated \$8.54 million construction cost excludes additional design cost, surveying, appraisals, land acquisition costs, and utility relocations costs.

At the January 23, 2024 City Council special meeting, Council asked to table the matter to further consider the two options presented. It was suggested at a later date that we consider adding drainage upgrades to Option 5 as an alternative to the two options presented. It should be noted that adding drainage upgrades to Option 5, that is a basic mill and overlay, would require additional engineering to provide another option to consider, because certain sections of Tolle Road only have about three (3) inches of material over existing culverts.

If additional and/or larger culverts were required to provide adequate drainage for a five (5) year flooding event as would occur with Option 1 as compared to the current Tolle Road drainage conditions, the road

surface would need to be raised to install upgraded culverts. The addition of new and larger culverts would essentially preclude a basic mill and overlay as provided in Option 5.

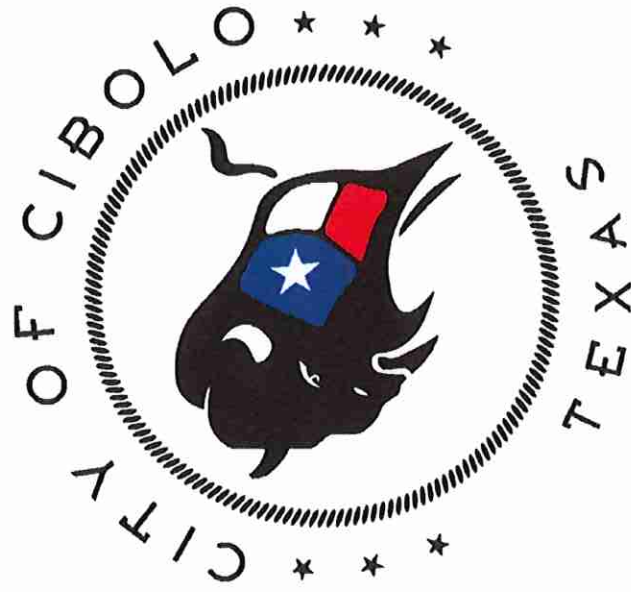
FINANCIAL IMPACT: Option 1 has an estimated opinion of probable construction cost of \$7.7 million, plus additional engineering, surveying, appraisals, and some land acquisition. Option 5 estimated opinion of probable construction cost is \$3.4 million. The City has adequate funds on hand for either design option.

DIRECTION/ACTION: Direction to Staff to proceed with final plan designs for either Option 1, Option 5 or additional engineering and design of Option 5 with Upgraded Drainage of the Tolle Road rehabilitation project and wastewater line installation.

SUBMITTED BY: Bryan Hugghins, Executive Director

ATTACHMENTS:

1. PowerPoint Presentation

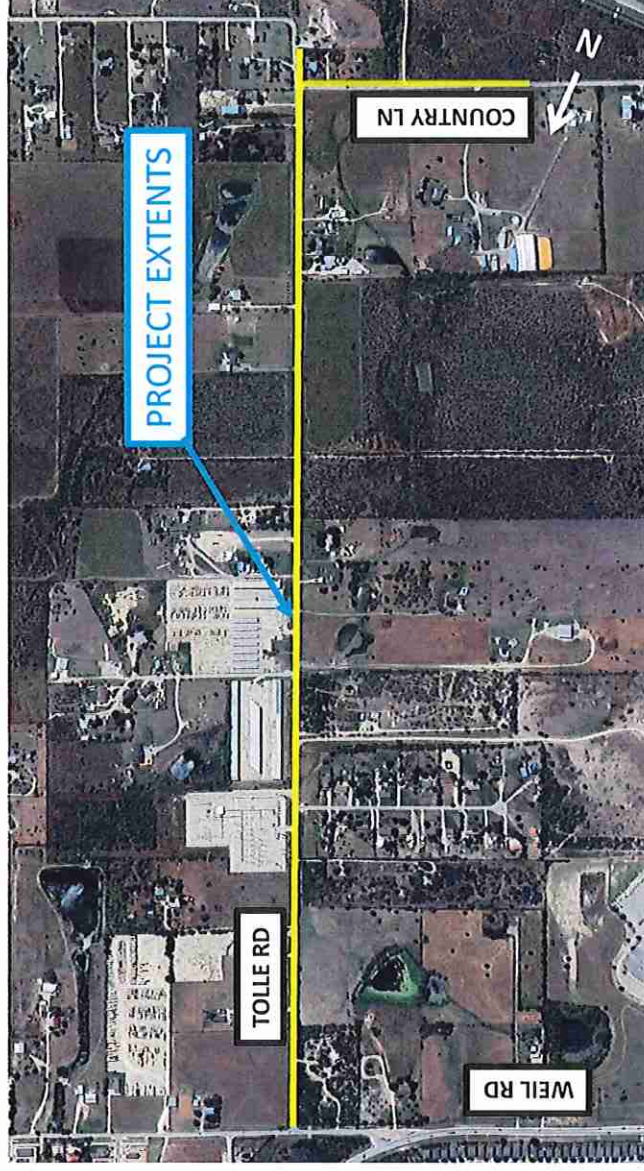


Cibolo Tolle Road Roadway and Drainage Improvements

**City Council Meeting
February 13, 2024**

Council Feedback and Action

- Confirm council preference of project scope based on Option 5 (Mill & Overlay), Option 1 (Full-Depth Reconstruction), or design of Option 5 with upgraded drainage of the Tolle Road rehabilitation project and wastewater line installation.



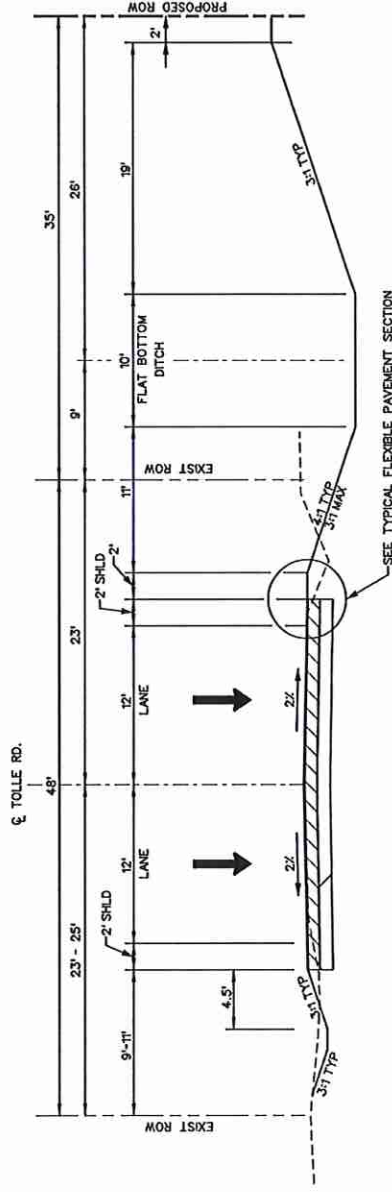
Opinion of Probable Construction Cost

Option No.	Service life	Base Bid / Project	Project Total
1	20 years pavement	BASE BID 1 - TOLLE ROAD STREET, DRAINAGE, AND UTILITY IMPROVEMENTS	\$7.7 M
2	N/A	BASE BID 2 - TOLLE ROAD WASTEWATER IMPROVEMENTS	\$1.88 M
3	20 years pavement	BASE BID 3 - TOLLE ROAD STREET IMPROVEMENTS	\$5.37 M
4	5 years pavement	MILL & OVERLAY OPTION	\$2.18 M
5	5 years pavement	MILL & OVERLAY W/ WW OPTION	\$3.4 M

NOTES:

- Construction costs were updated in January 2024 based on recent City of Cibolo Bid tabulations
- Additional soft costs, including engineering, surveying, appraisals and right-of-way acquisitions, are required for Option 1.
- Adding drainage improvements to Option 5 would require additional design and engineering, as there locations on Tolle Road that only have about three (3) inches of material on top of culverts

Option 1 – Full-Depth Reconstruction



TYPICAL PROPOSED ROADWAY SECTION (TOLLE ROAD)

Existing Culverts to be replaced

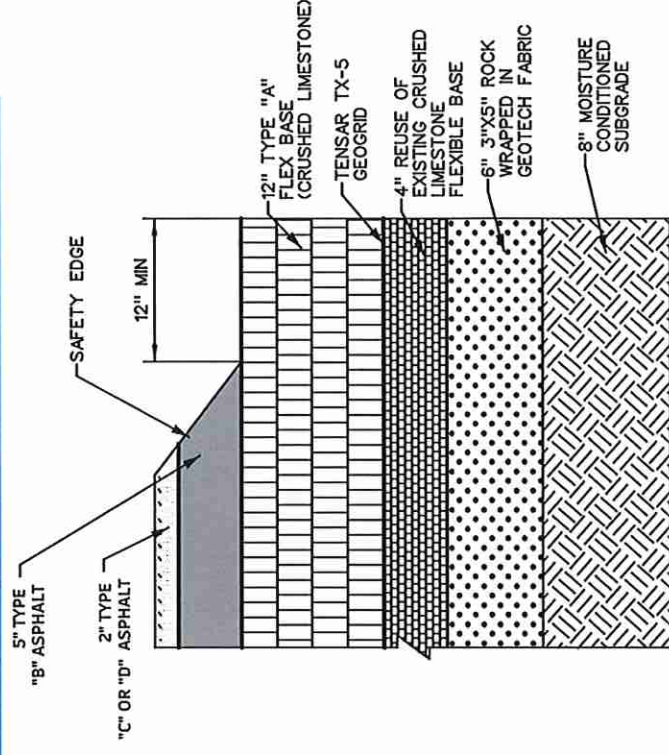
Proposed open channel/culverts:

1647.1 LF of Drainage Channel, 10'-15' Bottom Width

1 – 6'X3' MBC (Tolle Rd)

16 – 8'X3' MBC (Tolle Rd)

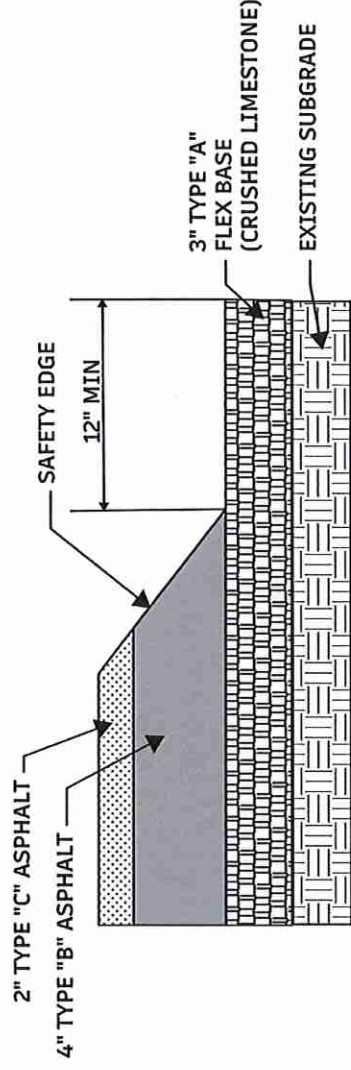
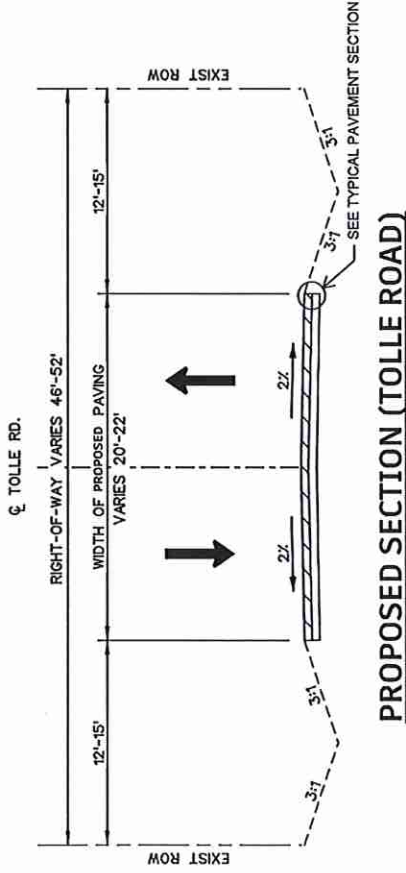
9 – 9'X4' MBC (Tolle Rd)



Proposed Pavement Typical Section

Pavement Service Life: 20 years

Option 5 – Mill & Overlay



Existing culverts to remain:

- 4 – 24" CMP (Weil Rd)
- 1 – 15" CMP (Tolle Rd)
- 2 – 15" CMP (Tolle Rd)
- 1 – 18" RCP (Country Ln)
- 2 – 18" CMP (Country Ln)

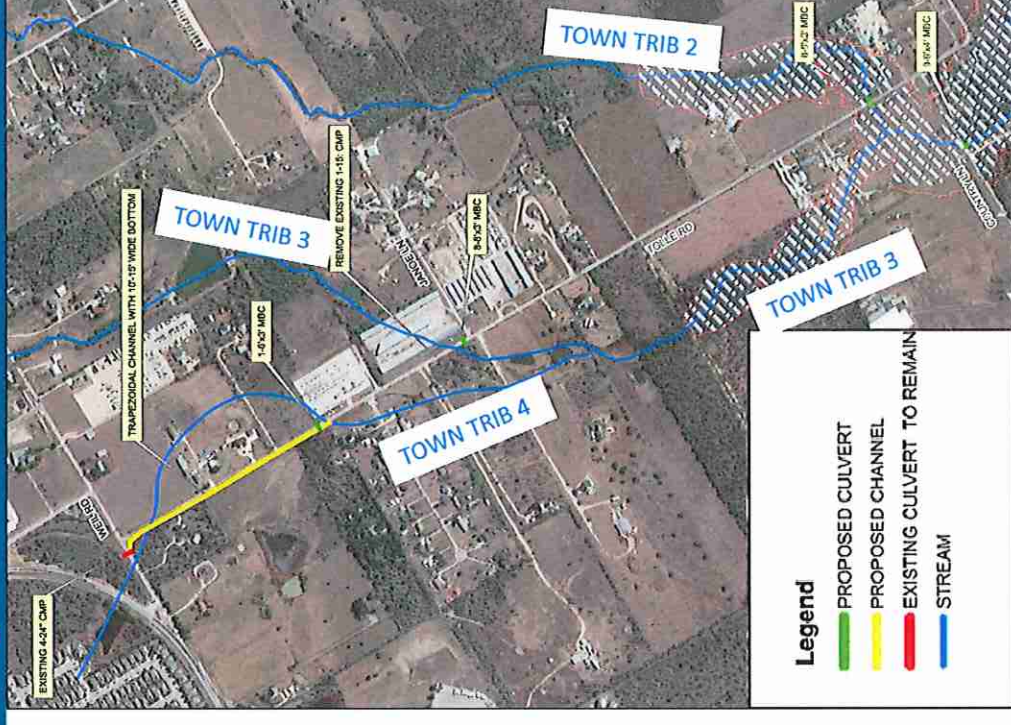
Existing culverts provide very little capacity (passing less than 1-yr storm event)

Pavement Service Life: 3-5 years

Option 1 – Drainage Improvements

Extensive flooding and sheet flow occurs on Tolle Rd at the electric substation, development along Janoe Ln, and other residential structures.

- Tolle Rd near Weil Rd: Existing culverts at Weil Rd do not have the capacity to carry the 5-year storm event.
 - Proposed 30-foot open Channel
- Tolle Rd North of Electric Substation: Currently, no drainage structures exist North of the electric substation, an existing 20" steel sleeve south end of the substation.
 - Proposed 6'x3' box culvert
- Tolle Rd North of Janoe Ln: Existing culverts do not have the capacity to carry the 5-year design flow.
 - Proposed 8-8'x3' multi box culvert
- Tolle Rd at Town Creek Tributary 2:
 - Proposed 8-8'x3' multi box culvert
- Country Ln:
 - Proposed 9-9'x4' multi box culvert



Existing/Proposed Culverts



Figure 1: Existing 15" CMP on Tolle Rd



Figure 2: Proposed 8'X3' Culvert on Tolle Rd



Figure 3: Existing 2-18" CMP & 1-18" RCP on Country Ln



Figure 4: Proposed 9'X4' Culvert on Country Ln

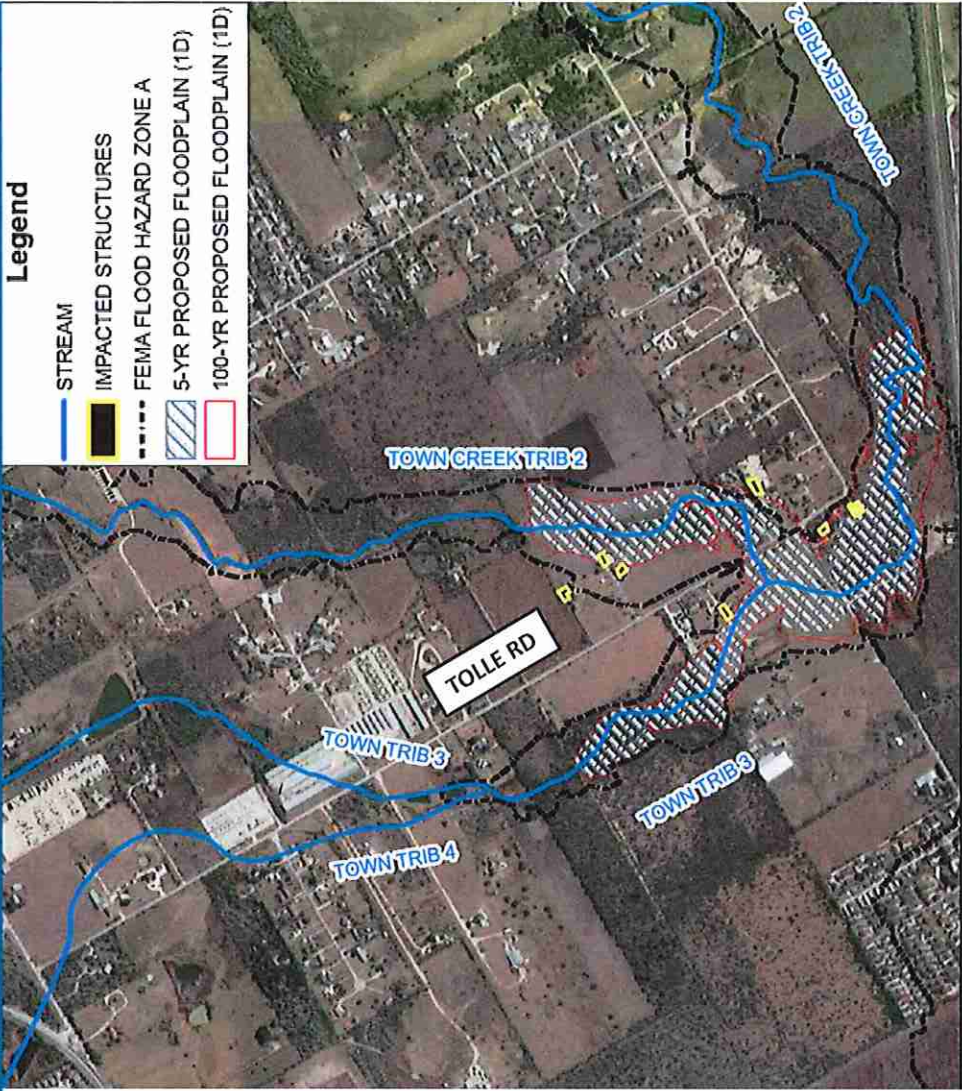
Tolle Road – Drainage Improvements

Benefits:

1. Seven (7) structures will be removed or have significantly reduced flood potential from 100-yr floodplain.

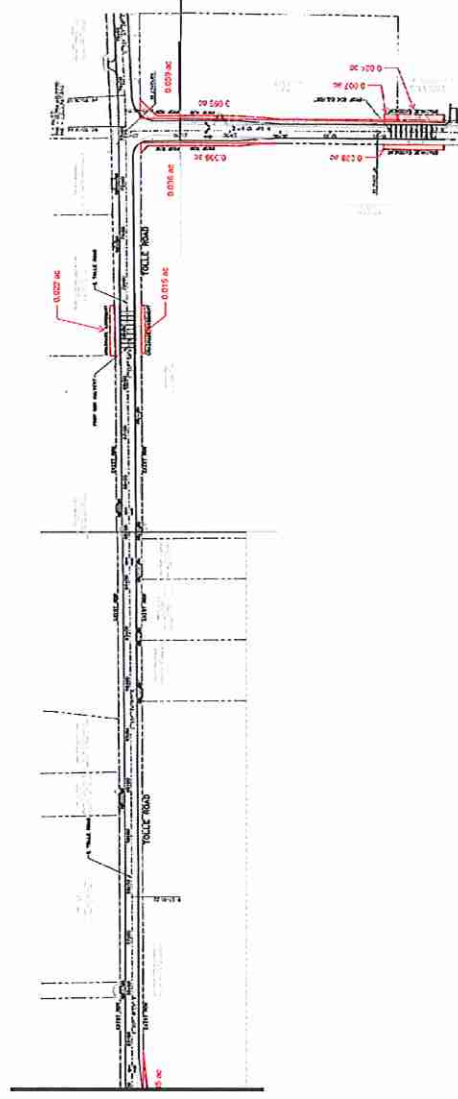
2. 5-yr water surface elevation reductions:

Location	5-yr water surface elev. Reductions (Ft)
South of Weil Rd	-1.81
Adjacent to Elec. Substation	-0.36
NW of Janoe Ln.	-0.19
Tolle Rd @ Town Creek Trib. 2	-0.05



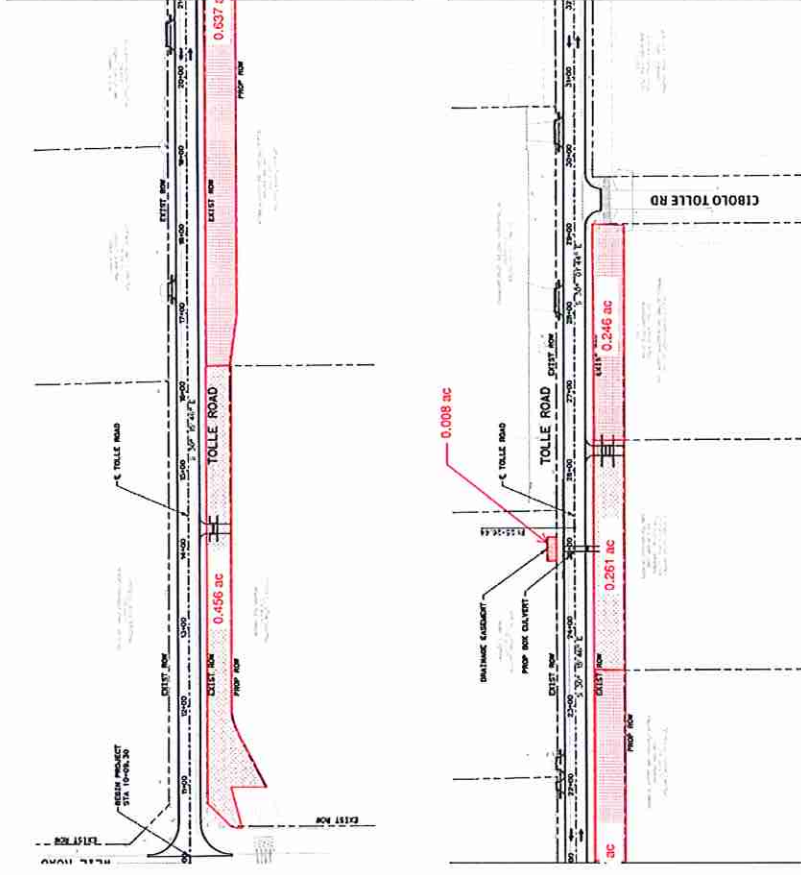
This is a detailed technical drawing of a road cross-section. The drawing shows a multi-lane highway with a central median and multiple travel lanes on both sides. Key features include:

- Lanes:** Multiple travel lanes are shown with dashed centerlines and solid edge lines.
- Shoulders:** Wide shoulders are depicted on both sides of the road.
- Utility Structures:** Several utility structures are indicated, including manholes, catch basins, and storm drains, some labeled with dimensions like "6' DIA."
- Elevations:** Numerous elevation points are marked along the profile, such as "10.00", "9.80", and "9.60".
- Dimensions:** Various horizontal and vertical dimensions are provided, such as "10'-0\"/>



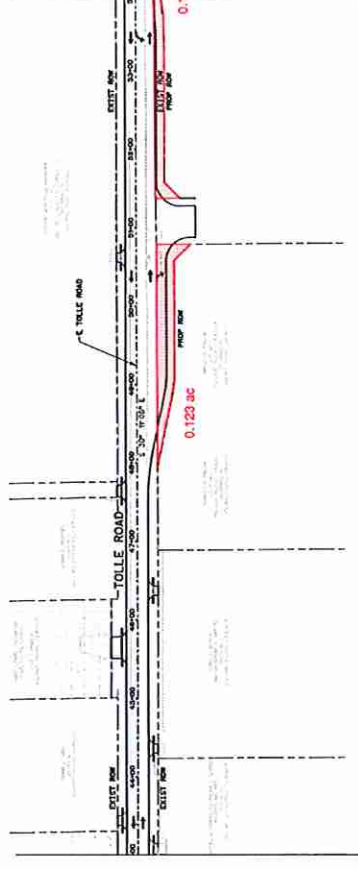
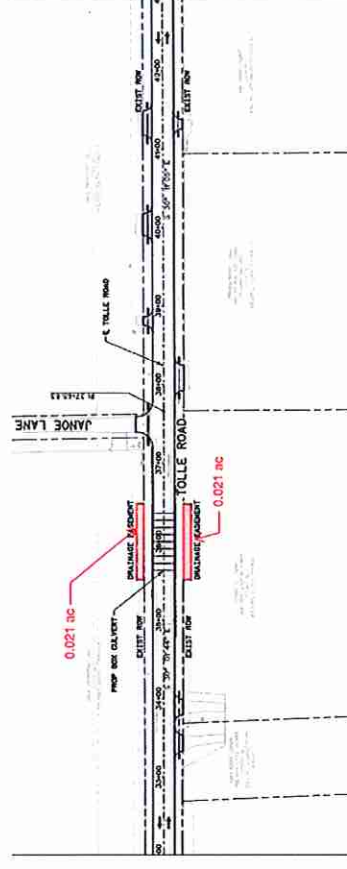
ROW Impacts (Tolle Rd)

STATION RANGE	ACREAGE NEEDED	PROPERTY INFORMATION
STA 10+50 TO STA 16+25	0.456	ID: 66367 775 Tolle Rd
STA 16+25 TO STA 23+50	0.637	ID: 66309 1540 FM 1103
STA 23+50 TO STA 26+40	0.261	ID: 66385 Tolle Rd
STA 26+40 TO STA 29+15	0.246	ID: 18725 101 Cibolo Tolle Dr
STA 25+00	0.008	ID: 66521 672 Tolle Rd



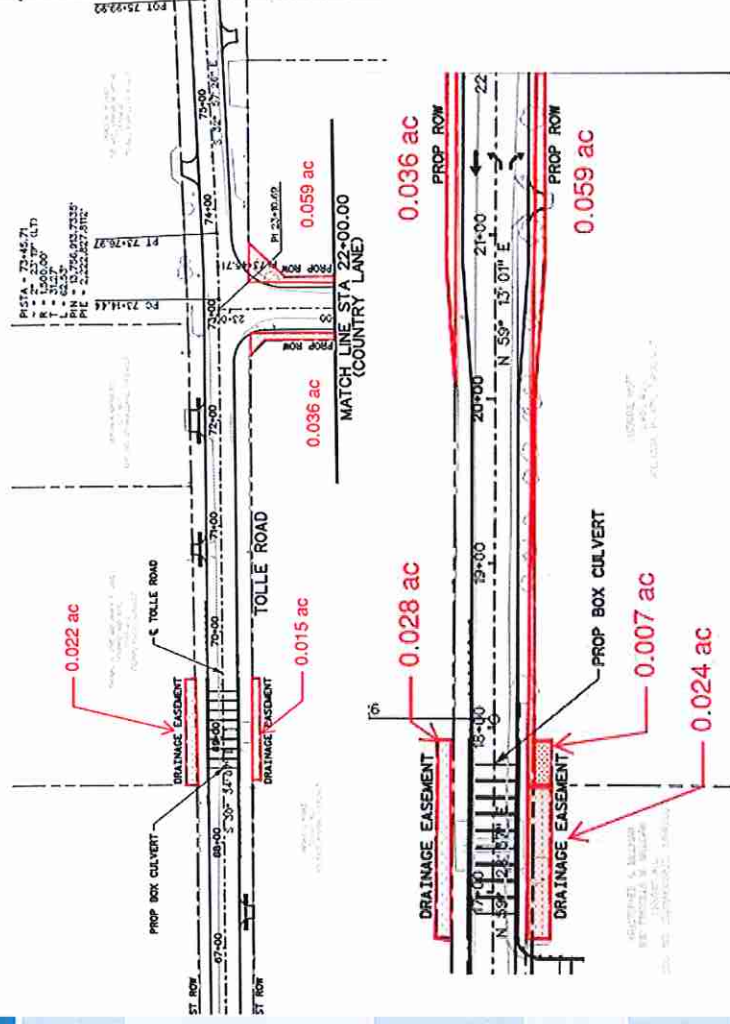
ROW Impacts (Tolle Rd)

STATION RANGE	ACREAGE NEEDED	PROPERTY INFORMATION
STA 36+00	0.021	ID: 130021 100 Janoe Ln
STA 36+00	0.021	ID: 168375 549 Tolle Rd
STA 48+00 TO STA 50+80	0.123	ID: 66433 Tolle Rd
STA 50+80 TO STA 54+75	0.145	ID: 66384 Tolle Rd



ROW Impacts (Tolle Rd & Country Ln)

STATION RANGE	ACREAGE NEEDED	PROPERTY INFORMATION
STA 69+00	0.022	ID: 66277 134 Tolle Rd
STA 69+00	0.015 (Drainage) 0.028 (Drainage) 0.036 (ROW)	ID: 66512 181 Tolle Rd
STA 17+70-17+90	0.007 (Drainage) 0.059 (ROW)	ID: 66501 591 Country Ln
STA 16+80-17+70	0.024	ID: 110713
TOTALS:	2.109	16 Acquisitions (4 ROW, 12 Drainage)



Option Timeline

	Option 1 (Full-Depth Reconstruction)	Option 5 (Mill & Overlay)
Additional Project Costs		
Engineering/Surveying/Appraisals	~\$300K	\$0
Land Acquisition (16 total)	TBD	\$0
Schedule (Months)		
Finalize Design Documents	2-3	1-2
Permitting	12	2-3
TCEQ Approval	2-3	2-3
Utility Relocations (GVEC, GVSUD)	6	0
Land Acquisitions (16 total)	12	0
Bidding Phase	5-6	3
Construction	12	4
TOTAL (MONTHS)	31-33	10-12

- Bolded items are critical path activities.
- Determination of land acquisitions costs is subject to completing property appraisals.

Project Timeline

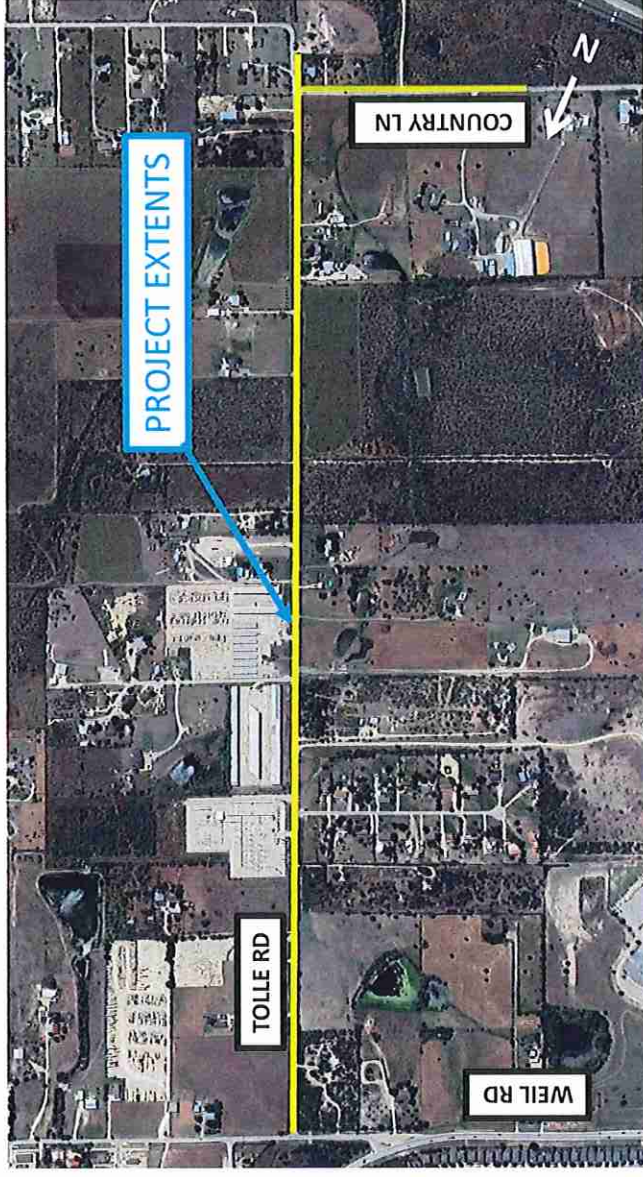
CIP Sub-committee meeting – Council members reach consensus to recommend wider road with wider shoulder. Council gave directions to continue investigations.	March 2023
CIP Sub-committee meeting – council members were reluctant to move forward with the project due to ROW acquisitions and other acquisitions.	June 2023
Council Budget Workshop #1 – Tolle Road placed on 5-Year CIP for FY26 by Group A	June 2023
Council to work on consolidated 5-Year CIP at July 11 th Council Meeting, which will finalize CM proposed budget on August 8 th	July 2023
Public Open House	August 2023
Public Open House	October 2023
Council Discussion on project scope. Motion to table and receive additional information.	December 2023
 City Council Workshop – Tolle Rd Project	January 2024

Next Steps

- Complete and Finalize 100% Deliverables
- Submit Project for TCEQ permit (New WW Line)

Council Feedback and Action

- Confirm council preference of project scope based on Option 5 (Mill & Overlay), Option 1 (Full-Depth Reconstruction), or design of Option 5 with upgraded drainage of the Tolle Road rehabilitation project and wastewater line installation.





RESOLUTION NO. _____

RESOLUTION BY THE CITY OF CIBOLO, TEXAS APPROVING AMENDMENT NO. 1 OF A CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF CIBOLO, TEXAS, THE CIBOLO ECONOMIC DEVELOPMENT CORPORATION AND H-E-B, LP, EFFECTIVE MARCH 17, 2022; AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT NO. 1 APPROVED AS TO FORM BY THE CITY ATTORNEY'S OFFICE; PROVIDING FOR REPEAL AND SEVERABILITY; DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION WAS PASSED WAS CONDUCTED IN COMPLIANCE WITH THE TEXAS OPEN MEETINGS ACT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council finds the City of Cibolo ("City") is a Texas Home Rule Municipality, as defined by applicable law; and

WHEREAS, the City Council finds H-E-B, LP, owns certain property within the City; and

WHEREAS, the City Council finds H-E-B, LP, developed an H-E-B branded grocery store of approximately 110,000 square feet, along with an obligation to construct an approximately 55,000 square foot Economic Fulfillment Center, supporting H-E-B's Curbside and Delivery Business.

WHEREAS, the City Council finds the City and EDC agreed to certain economic incentives in exchange for certain development and capital improvement within the City of Cibolo, Texas;

WHEREAS, the City Council finds it necessary to make its first amendment to the March 17, 2022, Chapter 380 Economic Development Agreement ("Agreement") due to changes in circumstances, which is attached hereto as if recited verbatim herein as Attachment 1; and

WHEREAS, the City Council finds H-E-B, LP, also finds it necessary to make its first amendment to the Agreement due to changes in circumstances; and

WHEREAS, the City Council finds that it anticipates the Cibolo Economic Development Corporation will also find it necessary to make its first amendment to the Agreement due to changes in circumstances.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CIBOLO, TEXAS:

1. The statements set forth in and by reference in the recitals of this Resolution are true and correct, and the City Council hereby incorporates such recitals as a part of this Resolution.
2. Amendment No. 1 to the Agreement is approved.
3. The City Manager is hereby authorized to execute Amendment No. 1 (attached to this Resolution as Attachment 1 and incorporated into this Resolution as if restated verbatim herein).
4. This Resolution shall be and is hereby cumulative of all other resolutions of the Corporation and this Resolution shall not operate to repeal or affect any such other resolutions except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this Resolution, in which event such conflicting provisions, if any, in such other resolution or resolutions are hereby repealed.
5. If any section, subsection, sentence, clause, or phrase of this Resolution shall for any reason be held to be invalid, such decision shall not affect the validity of the remaining portions of this resolution.
6. The meeting at which this Ordinance passed was conducted in compliance with the Texas Open Meetings Act.
8. This Resolution shall become effective and be in full force and effect from and after the date of passage and adoption by the City Council of the City of Cibolo, Texas.

PASSED AND ADOPTED BY THE CITY COUNCIL ON THE 27th DAY OF FEBRUARY 2024.

MARK ALLEN
Mayor

ATTEST:

APPROVED AS TO FORM:

PEGGY CIMICS, TRMC
City Secretary

Hyde Kelley LLP
City Attorney

Attachment 1, Amendment No. 1 to H-E-B, LP's
March 17, 2022 Chapter 380 Economic Development Agreement



City of Cibolo, Texas
City Council Regular Meeting
February 27, 2024

SUBJECT:

Approve/Disapprove a Resolution by the City of Cibolo, Texas approving Amendment No. 1 of a Chapter 380 Economic Development Agreement between the City of Cibolo, Texas, the Cibolo Economic Development Corporation and H-E-B, LP, effective March 17, 2022; authorizing the city manager to execute Amendment No. 1 approved as to form by the city attorney's office; providing for repeal and severability; determining that the meeting at which this resolution was passed was conducted in compliance with the Texas Open Meetings Act; and providing an effective date.

ITEM SUMMARY:

The City of Cibolo and Cibolo Economic Development Corporation entered into a Chapter 380 Economic Development Agreement, effective March 17, 2022, which promotes economic development within the City of Cibolo. This Chapter 380 Agreement requires that H-E-B must (1.) develop approximately 45 acres, located on the northeast corner of FM 1103 and Main Street, and (2.) construct both an H-E-B-branded grocery store and Economic Fulfillment Center (EFC) on the subject site. In doing so, it was determined that these actions would thereby contribute to the promotion of local economic development, would assist in diversifying the local economy, and would enhance commercial activity within the City of Cibolo. The City agreed to incentivize the development of the EFC by (a.) providing a 10-year rebate of the Maintenance & Operations (M&O) portion of the ad valorem taxes due to the City, in an amount not to exceed a maximum rebate of \$1,000,000 throughout the term of the Agreement, and (b.) offering impact fee offsets.

Article 2 of the Chapter 380 Agreement requires certain performance measures be met, related to the opening of the facility and the public improvements resulting from the Project. These include:

- (a) Store Opening. H-E-B shall open the Store for business to the public on or before June 30, 2023 (the "Store Opening").
 - Status: Complete
- (b) Curbside Facility. H-E-B will construct the Curbside Facility on the same timeline as the Store; provided, however, that with the City's approval, H-E-B may commence operations at the Curbside Facility up to eighteen (18) months after the Store Opening.
 - Status: Complete
- (c) EFC Facility. H-E-B will construct and open the EFC Facility on the same timeline as the Store; provided, however, that with the City's approval, H-E-B may commence operations at the EFC Facility up to eighteen (18) months after Store Opening.
 - Status: In-Progress
- (d) Main Street Widening. H-E-B will complete construction required to widen Main Street no later than the Store Opening.
 - Status: Complete
- (e) Traffic Signal along FM 1103. H-E-B will complete construction and installation of the traffic signal at FM 1103 by the Store Opening.
 - Status: Complete
- (f) Regional Trail. H-E-B will construct a 10' wide concrete trail. Upon completion, H-E-B will grant a public access (trail) easement to the City.

- Status: In-Progress
- (g) Trailhead Parking Lot. H-E-B will rough grade an area for the City to construct a Trailhead Parking Lot.
- Status: Complete
- (h) Submittal of Building Permits. H-E-B will submit its initial Building Permit plans to the City by no later than November 4, 2022.
- Status: Complete
- (i) Truck Route. H-E-B agrees that its Class 8 and Class 9 delivery vehicles shall NOT utilize Main Street south of the Property for access to or from the Property.
- Status: Complete

In this original Agreement, the intent was that H-E-B would pay the City of Cibolo all required assessed impact fees due, and then the Cibolo EDC would reimburse H-E-B directly for these fees, up to \$450,000. During a review of the planning and building process, however, it was uncovered that impact fees were never collected by the City. This First Amendment, therefore, seeks to alter the original Agreement to reflect that, rather than making a payment directly to H-E-B, the Cibolo EDC will render \$450,000 in funds directly to the City to account for impact fees associated with the EFC.

Further, this First Amendment establishes that the Cibolo EDC will not be obligated to pay the \$450,000 until H-E-B opens its Economic Fulfillment Center, which is currently anticipated during FY 24. The Cibolo EDC Board of Directors has approved this First Amendment during their June 15, 2023, Regular Board Meeting. This item has been delayed in coming before City Council for formal Action in anticipation of the City being ready to also vote to accept all infrastructure improvements for the Project and for conveyance of the trail land.

FINANCIAL IMPACT:

According to the terms of the Agreement, the first assessed tax year is anticipated to be calendar year 2024, which will be paid out in FY 25. The City's primary financial incentive is a step-down tax rebate that begins at 100% of M&O in years 1-5, then 75% in years 6-8, and finally 50% in years 9-10. The Cibolo EDC has agreed to contribute \$450,000 toward impact fee offsets.

SUBMITTED BY:

Kelsee Jordan Lee – Planning & Economic Development Director
Alora Wachholz – Economic Development Manager

ATTACHMENTS:

- Resolution
- Proposed Amendment No. 1 to the Chapter 380 Agreement between the City of Cibolo, Cibolo Economic Development Corporation, and HEB Grocery Company, LP
- Original Chapter 380 Agreement between the City of Cibolo, Cibolo Economic Development Corporation, and HEB Grocery Company, LP

**CITY OF CIBOLO TEXAS,
CIBOLO ECONOMIC DEVELOPMENT CORPORATION,
AND
H-E-B GROCERY COMPANY, LP**

**CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT
AMENDMENT NO. 1**

This First Amendment to Chapter 380 Economic Development Agreement (*the "Amendment"*) is made and entered into as of February ____, 2024 (the "*Amendment Effective Date*") by and between the **City of Cibolo, Texas**, a Texas home-rule municipality (*the "City"*), the **Cibolo Economic Development Corporation**, a Texas development corporation (*the "CEDC"*), and **H-E-B, LP**, a Texas limited partnership ("*H-E-B*"), (the City, the CEDC, and H-E-B each referred to herein individually as a "*Party*" and collectively as the "*Parties*").

RECITALS

WHEREAS, the City of Cibolo, the CEDC, and H-E-B entered into a Chapter 380 Economic Development Agreement (hereinafter referred to as the "*Agreement*"), approved by City Council and the EDC and effective as of March 17, 2022, to provide for economic incentives should H-E-B develop an H-E-B branded grocery store of approximately 110,000 square feet on the Property (as such term is defined in the Agreement) (the "*Store*") along with an approximately 55,000 square foot Economic Fulfillment Center (the "*EFC Facility*"), supporting H-E-B's Curbside and Delivery Business (the "*Curbside Facility*") (the Store, EFC Facility, and Curbside Facility are together referred to herein as the "*Project*"); and

WHEREAS, the City and EDC agreed to provide economic incentives including: a ten (10)-year ad valorem tax rebate of the Maintenance & Operation's (M&O) portion of the property tax received by the City for improvements caused by Project for a maximum rebate not to exceed One Million Dollars (\$1,000,000), the provision of Impact Fee Offsets, and other economic development incentives as further described in the Agreement; and

WHEREAS, under the terms of the Agreement, if H-E-B fulfilled the conditions as set forth therein, the CEDC would pay to H-E-B an amount of Four Hundred Fifty Thousand Dollars (\$450,000) for the cost of Impact Fees (as such term is defined in the Agreement) that were paid by H-E-B to the City for the Project; and

WHEREAS, construction of the Project, including the EFC, has been completed but the City agreed not to collect Impact Fees from H-E-B directly, the CEDC will pay the \$450,000 for Impact Fees to the City instead of H-E-B, since H-E-B did not pay these fees to the City;

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, the CEDC, and H-E-B agree as follows:

SECTION 1. Amendment to Article 4 of the Agreement. Notwithstanding anything in the Agreement to the contrary, the CEDC shall pay to the City the aforementioned sum of Four Hundred Fifty Thousand Dollars (\$450,000) for Impact Fees and H-E-B shall have no further obligation to pay Impact Fees related to the Project to the City.

SECTION 2. Other Terms. All other terms, conditions and provisions of the Agreement are hereby ratified and confirmed and will remain in full force and effect as of the date thereof, except as expressly modified hereby.

SECTION 3. Recitals. The foregoing recitals are hereby incorporated by reference for all purposes hereunder.

SECTION 4. Counterparts. This Amendment may be executed by facsimile transmission in two or more counterparts, each of which will be deemed to be an original, but all of which taken together will constitute but one and the same instrument.

SECTION 5. Electronic Signatures. The Parties agree that this Amendment to be delivered in connection herewith may be electronically signed, and that any electronic signatures, with the exception of italic font, appearing on this Amendment are the same as handwritten signatures, which shall be considered as original signatures for the purposes of validity, enforceability and admissibility. Without limitation, "electronic signature" shall include DocuSign, faxed versions of an original signature, or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

SECTION 6. Binding Effect. This Amendment will be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

SECTION 7. Defined Terms. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of the Amendment Effective Date.

ATTEST:

Peggy Cimics
City Secretary

CITY:

CITY OF CIBOLO TEXAS,
a Texas Home-Rule Municipality

By: _____
Date: _____

CEDC:

**CIBOLO ECONOMIC DEVELOPMENT
CORPORATION,**
a Texas Development Corporation

By: _____
Date: _____

H-E-B, LP,
a Texas limited partnership

By: _____
Name: Benjamin R. Scott
Title: Group Vice President of Real Estate
and Shopping Center Development
Date: _____

**CITY OF CIBOLO TEXAS,
CIBOLO ECONOMIC DEVELOPMENT CORPORATION,
AND
HEB GROCERY COMPANY, LP**

**CHAPTER 380 ECONOMIC DEVELOPMENT
AGREEMENT**

This CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT ("*Agreement*") is entered into by and between the **City of Cibolo, Texas**, a Texas home-rule municipality (*the "City"*), the **Cibolo Economic Development Corporation**, a Texas development corporation (*the "CEDC"*), and **H-E-B, LP**, a Texas limited partnership ("*HEB*") (the City, the CEDC and HEB each referred to herein sometimes individually as a "*Party*" and collectively as the "*Parties*").

RECITALS

(a) HEB is the owner of approximately 45.184 acres known as the FM 1103 and Main Street Commercial Subdivision located at the southeast corner of the intersection of FM 1103 and Main Street within the City of Cibolo (the "*Property*").

(b) The Property is depicted on the attached Exhibit A.

(c) HEB intends to build an H-E-B branded grocery store (a.k.a. discount super store/supermarket) with approximately 110,000 square feet on the Property (the "*Store*") along with an approximately 55,000 square foot facility Economic Fulfillment Center (the "*EFC Facility*") supporting HEB's Curbside and Delivery Business (the "*Curbside Facility*") (the Store, EFC Facility and Curbside Facility are together referred to herein as the "*Project*").

(d) The City seeks to incentivize the Project by providing a ten (10)-year ad valorem tax rebate of the Maintenance & Operation (M&O) portion of the ad valorem for a maximum rebate of One Million Dollars (\$1,000,000) and providing impact fee offsets and other economic development incentives as further described in this Agreement.

(e) The City possesses the legal and statutory authority under Chapter 380 of the Texas Local Government Code to create programs to promote local economic development and to stimulate business and commercial activity within the City.

(f) The City has determined that the City's economic development program and incentives set forth in this Agreement will serve the public purpose of promoting local economic development and stimulating business and commercial activity including creation and retention of jobs within the City.

(g) The City has concluded and hereby finds that the specific initiatives set forth in the Agreement promote economic development in the City, and, as such, meet the requisites under Chapter 380 of the Texas Local Government Code, and further, that this Agreement is in the best interests of the City.

(h) The City has concluded and hereby finds that this Agreement promotes economic development in the City, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution, by assisting in the development and diversification of the economy of the State, by eliminating unemployment or underemployment in the State, and by the development or expansion of commerce within the State.

(i) Section 380.001, Texas Local Government Code, authorizes the City Council of the City to establish and provide for the administration of one or more programs in order to stimulate business and commercial activity in the City including, but not limited to, programs for making loans and grants of public money to promote local economic development, (ii) accepting contributions, gifts and other resources to develop and administer a program.

(j) The City has established an economic development program for the purposes of creation and retention of jobs for the citizens of the City and region, to promote economic expansion, and to add to the tax base of the City and now the City desires to enter into this Agreement, under the authority granted by Chapter 380 of the Texas Local Government Code;

(k) The CEDC, pursuant to state law, was established by the City Council for the purposes of promoting the general economic welfare of the City of Cibola and its residents and businesses by developing new or expanded business enterprises that create or retain primary jobs.

(l) The CEDC has concluded and hereby finds that the Project will result in new economic development in the City including creating new jobs; and therefore desires to enter into this Agreement under the authority granted by Chapters 501 and 505 of the Texas Local Government Code.

(m) HEB's proposed Project will result in new economic development in the City, including creating new jobs, increasing sales and use tax revenues for the City and increasing property values and ad valorem taxes within the City.

(n) HEB's proposed Project will have a direct positive and measurable economic benefit to the City and HEB therefore desires to enter into this Agreement.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, the CEDC and HEB agree as follows:

ARTICLE 1. TERM

This Agreement shall be effective as of the Effective Date and shall continue until the payment of all Tax Rebates (as defined below), Impact Fee Offsets (as defined below) and other economic development incentives specified in Articles 2 and 3 due to HEB hereunder or earlier termination as provided hereunder.

ARTICLE 2. HEB PERFORMANCE CONDITIONS

The City and the CEDC acknowledge and agree that HEB is not obligated to construct the Project. However, HEB also acknowledges and agrees that it will only be eligible to receive the Tax Rebates and the Impact Fee Offsets provided in Article 2 and other economic development incentives provided for in Articles 2 and 3 under this Agreement if it fulfills the following terms and conditions:

(a) Store Opening. HEB shall open the Store for business to the public on or before June 30, 2023 (the "***Store Opening***").

(b) Curbside Facility. HEB will construct and open the Curbside Facility on the same timeline as the Store; provided, however, that, with the City's approval, HEB may commence operations at the Curbside Facility up to eighteen (18) months after the Store Opening.

(c) EFC Facility. HEB will construct and open the EFC Facility on the same timeline as the Store; provided, however, that with the City's approval, HEB may commence operations at the EFC Facility up to eighteen (18) months after the Store Opening.

(d) Main Street Widening. HEB will complete the construction required to widen Main Street in accordance with the plans referenced on the attached Exhibit B, no later than the Store Opening.

(e) Traffic Signal along FM 1103. HEB will complete the construction and installation of the traffic signal meeting the specifications described on the attached Exhibit B, will make commercially reasonable efforts to complete by the Store Opening subject to TxDOT approval.

(f) Regional Trail. HEB will construct a 10' wide concrete trail per specifications in Exhibit C in the general location shown on Exhibit B. Upon completion, HEB will grant a public access (trail) easement to the City.

(g) Trailhead Parking Lot. HEB will rough grade an area for the city to construct a Trailhead Parking lot as shown on the site plan (see Exhibit B).

(h) Submittal of Building Permit. HEB will submit its initial Building Permit plans to the City by no later than 11/4/2021. The City will expedite its review and issue of comments to HEB's Building Permit plans within thirty (30) calendar days (and each subsequent round) to progress toward issuance of a building permit. Should the City not provide comments within thirty (30) days, the City will provide HEB with an update as to when comments will be provided.

(i) Truck Route. HEB agrees that its class 8 or class 9 delivery vehicles ("***HEB Delivery Vehicles***") shall NOT utilize Main Street south of the Property for access to or from the Property. Exhibit D shows the primary path for HEB Delivery Vehicles. The HEB Delivery Vehicles shall not utilize Main Street between the Store's south most entrance and FM 78. Notice and coordination with HEB of any change in routes due to future construction, shall come from the City Manager or designee at least thirty (30) days prior to the change taking effect.

HEB will also inform its vendors of the approved Truck Route and on the prohibition of class 8 and 9 vehicles using Main Street south of the Property for access to or from the Property.

ARTICLE 3. ECONOMIC DEVELOPMENT GRANTS

(a) Property Tax Rebate. In the manner described below, the City shall do a ten (10) year ad valorem tax rebate to pay HEB amounts (such amounts, the "*Tax Rebates*") equal to 100% rebate of the Maintenance & Operation (M&O) portion of the ad valorem for the first five (5) years, reduced to seventy five percent (75%) for years six through eight and then reduced to fifty percent (50%) for final two years of the ad valorem property taxes paid by HEB and levied against the Property by the City or any special district formed by the City (unless HEB expressly petitions the City for the formation of such special district) and attributable to the ten-year period commencing on January 1st of the first calendar year commencing after the date that the Store opens for business to the public (the "*Tax Rebate Period*"); provided, however, that such Tax Rebates shall be capped at an aggregate total of One Million Dollars (\$1,000,000) based on actual taxes received during the ten (10) year ad valorem tax rebate. The City shall pay to HEB such Tax Rebates in annual payments due on or before June 1st of each year of the Tax Rebate Period. The Tax Rebates shall only be made to the extent HEB is not delinquent on the payment of its ad valorem taxes. In the event HEB is disputing the ad valorem tax in accordance with state law, HEB shall not be deemed delinquent; however, the City shall not pay the Tax Rebate until the dispute is resolved.

(b) Credits Toward Impact Fees. Reference is hereby made to any current or future ordinance adopted by the City that imposes water, wastewater, drainage, or transportation impact fees against the Project (any such fees, the "*Impact Fees*"). The City agrees to offset (the "*Impact Fee Offsets*") against any Impact Fees payable in connection with the Project the amount of up to Four Hundred Fifty Thousand Dollars (\$450,000) in consideration of the benefits of HEB's undertakings pursuant to this agreement, such Impact Fee Offsets to be in addition to any that HEB may qualify for under the City's impact fee ordinances in connection with HEB's construction of qualifying public infrastructure.

(c) Transportation and Drainage Impact Fee Credit. HEB will receive from the City Transportation and Drainage Impact Fee Credits for construction of Main Street Widening and construction of a hike and bike trail from the south end of their Property to FM 1103 on the north end of the Property. Transportation Fee Credits shall be in the amount of Five Hundred Sixty Thousand Dollars (\$560,000) and Drainage Fee Credits shall be in the amount of One Hundred Ninety Thousand Dollars (\$190,000).

(d) Reimbursement for Enhanced Trail Width. The City will reimburse HEB an amount of Fifteen Thousand Five Hundred Dollars (\$15,500) for expanding the 8-foot wide hike and bike trail to a 10-foot wide hike and bike trail from the south end of their Property to FM 1103 as depicted in Exhibit B pursuant to the specifications in Exhibit C. Payment by the City shall be made within thirty (30) days of the City receiving the executed trail easement from HEB.

ARTICLE 4. CEDC OBLIGATIONS

(a) If HEB fulfills the terms and conditions under Article 2 of this Agreement including constructing the EFC, acceptance of the EFC by the City and the opening of the EFC in accordance with the terms and conditions under Article 2 of this Agreement, the CEDC shall pay to HEB the amount of Four Hundred Fifty Thousand Dollars (\$450,000) for the EFC that together with the rest of the HEB Project will result in new economic development in the City including creating new jobs. If HEB fails to fulfill its obligations involving the EFC under Article 2 of this Agreement, the CEDC shall have no obligation to pay HEB the sum of \$450,000.

ARTICLE 5. DEFAULT AND REMEDIES

(a) Before any failure of any Party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement such that another Party's remedies are available, the Party claiming such failure shall notify, in writing, the Party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if such breach has been cured within sixty (60) days following the receipt of such notice; provided, however, if such breach is not reasonably curable within such 60-day period, and HEB has commenced and is pursuing such remedies as shall be reasonably necessary to cure such breach, then HEB shall have an additional ninety (90) days to cure such breach (the "*Cure Period*").

(b) In the event of a breach of this Agreement by HEB beyond the applicable Cure Period, the City may seek to exercise its rights to (i) recapture any Tax Rebates provided to HEB (if any) (ii) recapture any Impact Fee Offsets provided to HEB that HEB would not have been entitled to pursuant to the City's ordinances but for this Agreement; (iii) recapture any other economic development incentives provided to HEB; (iv) recover from HEB any legal expenses incurred by the City to enforce recapture provisions or any other provision under this Agreement; and/or (v) terminate this Agreement by the delivery of written notice to HEB.

(c) In the event of a breach of this Agreement by the City beyond the Cure Period, HEB may (i) seek to exercise its rights to enforce City's obligations hereunder in order to receive Tax Rebates or Impact Fee Offsets due to HEB; (ii) seek to recover from City any legal expenses incurred by HEB to enforce City's payment of monetary obligations under this Agreement; and/or (iii) terminate this Agreement by the delivery of written notice to the City.

(d) In the event of a breach by HEB as to the CEDC, the CEDC may seek to exercise its rights to (i) enforce HEB's obligations under this Agreement; (ii) recover the \$450,000 paid to HEB; and/or (iii) recover from HEB any legal expenses incurred by the CEDC to enforce HEB's obligations to the CEDC under this Agreement.

ARTICLE 6. MISCELLANEOUS PROVISIONS

The following miscellaneous provisions are a part of this Agreement:

(a) Amendments. This Agreement constitutes the entire understanding and agreement of the Parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the Party or Parties sought to be charged or bound by the alteration or amendment.

(b) Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Guadalupe County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Guadalupe County, Texas.

(c) Assignment. This Agreement may not be assigned by HEB without the express written consent of the City and the CEDC, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, HEB may assign this Agreement to an affiliate of HEB without the City's and the CEDC's consent but shall provide notice of such assignment promptly to the City and the CEDC.

(d) Binding Obligation. This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. The CEDC warrants and represents that the individual executing this Agreement on behalf of the CEDC has full authority to execute this Agreement and bind the CEDC to the same. HEB warrants and represents that the individual executing this Agreement on HEB's behalf has full authority to execute this Agreement and bind HEB to the same.

(e) Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.

(f) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

(g) Entire Agreement. This written agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties. There are no unwritten oral agreements between the Parties.

(h) Force Majeure. It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, court injunction, delays in issuing permits of approvals, the unavailability of materials, pandemic or other public health conditions, or other cause outside the control of the Party who is to perform, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such Party was delayed.

(i) Notice. All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the Party to whom the notice is to be given at the addresses shown below. Any Party may change its address for notices under the Agreement by giving formal written notice to the other Parties, specifying that the purpose of the notice is to change the Party's address. For notice purposes, each Party agrees to keep the other informed at all times of its current address. The addresses of the Parties are:

If to the City: City of Cibolo
200 South Main Street
Cibolo, TX 78108
Attn: City Manager

If to the CEDC: Cibolo Economic Development Corporation
200 South Main Street
Cibolo, TX 78108
Attn: President of the Board

If to HEB: H-E-B, LP
646 South Flores
San Antonio, TX 78204
Attn: Benjamin Scott

(j) Severability. The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation that have the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.

(k) Employment of Undocumented Workers. During the term of this Agreement, HEB agrees not to knowingly employ any undocumented workers at the Project, and if convicted of a violation under 8 U.S.C. Section 1324a (f), HEB shall repay the amount of the Tax Rebates, Impact Fee Offsets and any other economic development incentives received by HEB as of the date of such violation within 120 days after the date HEB is notified by the City of such violation, plus interest at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the City) as its prime or base commercial lending rate, from the date of such notice until paid.

(l) Incorporation of Recitals. Any recitals in this Agreement are represented by the Parties to be accurate and constitute a part of the Agreement.

(m) Payment of Expenses. Except as otherwise expressly provided in this Agreement, (i) each of the Parties shall pay its own costs and expenses relating to this Agreement, including, but not limited to, its costs and expenses of the negotiations leading up to this Agreement, and of its performance and compliance with this Agreement, and (ii) in the event of a dispute between the Parties in connection with this Agreement, the prevailing Party in the resolution of any such dispute, whether by litigation or otherwise, shall be entitled to full recovery of all legal expenses including reasonable and necessary attorneys' fees (including a reasonable hourly fee for in-house legal counsel), costs and expenses incurred in connection therewith, including costs of court, from the non-prevailing Party to the extent allowed by law.

(n) Limitations on Liability. The City and/or the CEDC shall not be liable for consequential damages, specifically lost profits, and any damages claimed against the City and/or

the CEDC shall be limited to amounts recoverable under §271.153 of the Texas Local Government Code. The parties agree that this Agreement shall not be interpreted as or otherwise claimed to be a waiver of sovereignty on the part of the City and/or the CEDC.

(o) Effective Date. The words "Effective Date" mean the date this Agreement has been executed by the City, the CEDC and HEB.

(p) Exhibits. The following exhibits are attached to this Agreement and incorporated hereto for all purposes:

- A. Legal Description and Survey
- B. Site Plan illustrating street, signal, and trail improvements
- C. Trail Specifications
- D. Truck Route

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IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

ATTEST:

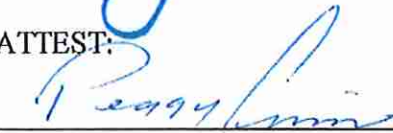


APPROVED AS TO FORM:



Frank J. Garza

ATTEST:



APPROVED AS TO FORM:



Ruben Barrera

CITY:

CITY OF CIBOLO TEXAS,
a Texas Home-Rule Municipality

By: 
Date: 3-7-2022

CEDC:

**CIBOLO ECONOMIC DEVELOPMENT
CORPORATION,**
a Texas Development Corporation

By: 
Date: 3-17-2022

H-E-B, LP,
a Texas limited partnership

By: 
Name: Benjamin R. Scott
Title: Vice President of Real Estate
Date: March 3, 2022

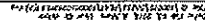
EXHIBIT A

OF A 45.184 ACRE TRACT LOCATED IN THE CITY OF CIBOLO, GUADALUPE COUNTY, TEXAS, BEING OUT OF THE DAVID MILLER SURVEY NO. 87, ABSTRACT 226, BEING THE FOLLOWING TRACTS OF LAND: THAT CERTAIN 40.93 ACRE TRACT CONVEYED TO STANLEY W. SHIPMAN BY DEED OF RECORD IN VOLUME 1319, PAGE 780, OF THE DEED RECORDS OF GUADALUPE COUNTY, TEXAS; THAT CERTAIN 2.00 ACRE TRACT CONVEYED TO GLORIA HEUBAUM SHOAF AND CHARLES J. SHOAF BY DEED OF RECORD IN VOLUME 622, PAGE 109 OF SAID DEED RECORDS; AND THAT CERTAIN 2.00 ACRE TRACT CONVEYED TO STANLEY W. SHIPMAN AND WIFE, KAREN K. SHIPMAN BY DEED OF RECORD IN VOLUME 595, PAGE 708 OF SAID DEED RECORDS.

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EXHIBIT B

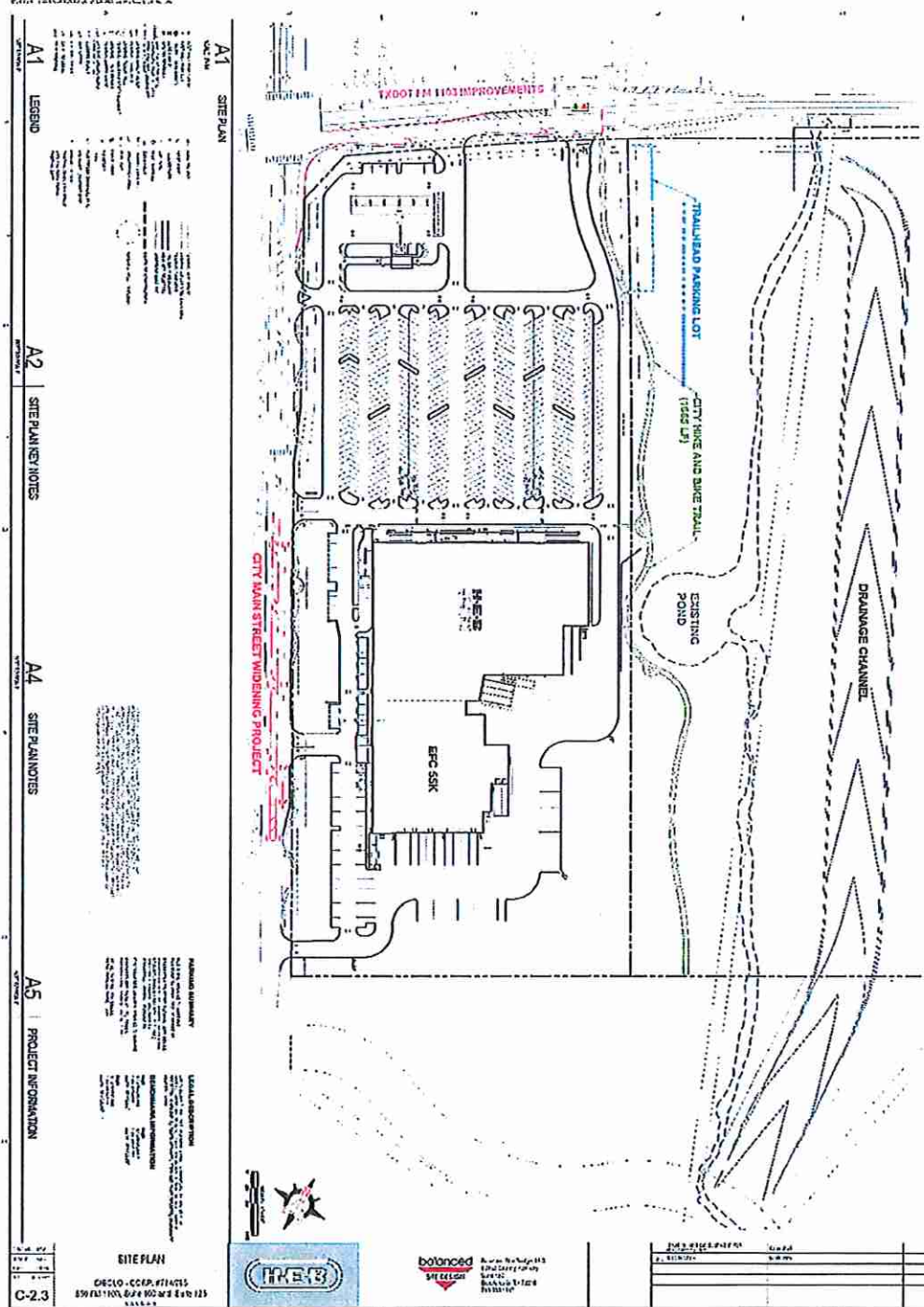
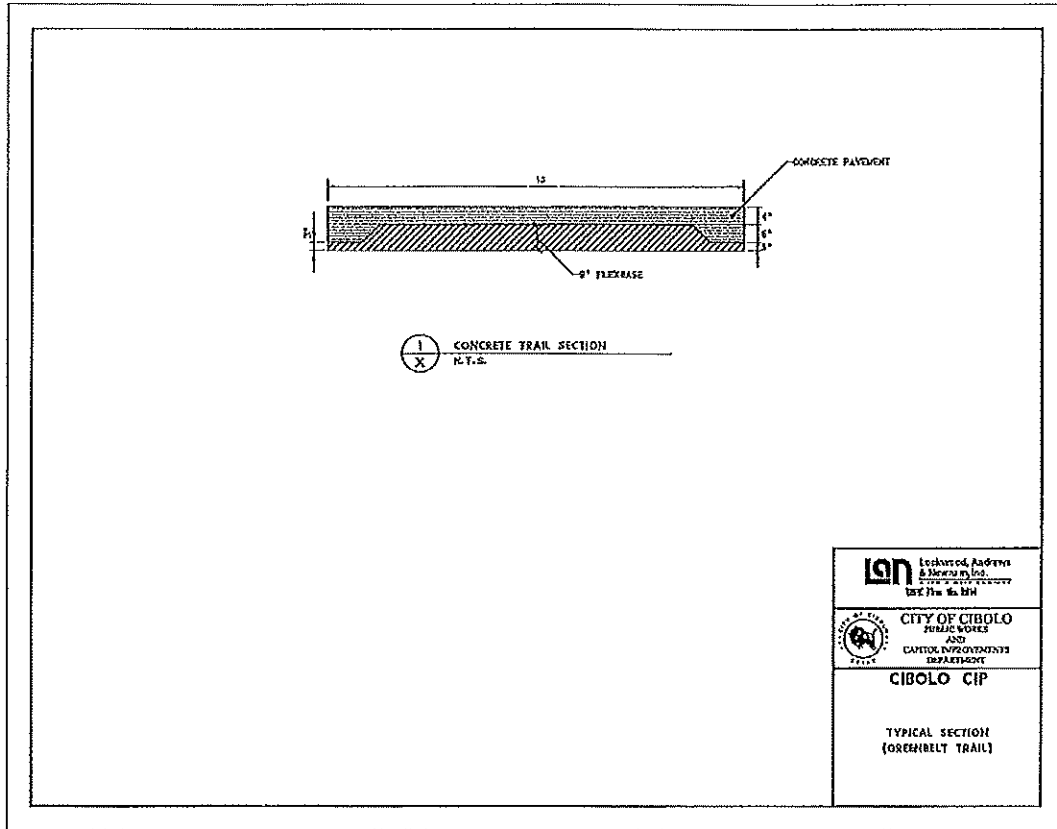


EXHIBIT C



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