

THE STATE OF TEXAS §

COUNTY OF DENTON §

**SEWER MAIN COST PARTICIPATION AGREEMENT BETWEEN
THE CITY OF DENTON AND CRAWFORD HOSPITAL PARTNERS, LLC.**

WHEREAS, **Crawford Hospital Partners, LLC**, hereinafter referred to as "Developer", whose business address is **251 E. Southlake Blvd., Suite 100, Southlake, Texas 76092** wishes to develop and improve certain real property named "**Lots 1-8 of Ranch View Surgical Hospital**" (as shown in **Exhibit A**, attached hereto and incorporated herein by reference), located in the City of Denton, Texas or its extraterritorial jurisdiction, and is required to provide such real property with adequate collection capacity by designing, constructing and installing a sanitary sewer main of an inside diameter of **ten** inches (**10**"), hereinafter referred to as the "Required Facilities"; and

WHEREAS, the City of Denton, Texas, a Texas home rule municipal corporation with its offices located at 215 East McKinney, Denton, Texas 76201, hereafter referred to as the "City," in accordance with Section 35.21.9 of the Denton Development Code, as amended, and its ordinances, wishes to participate in the cost of the construction and installation of said sanitary sewer main to expand its utility system and insure adequate utility service to other customers;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein the Developer and the City AGREE as follows:

1. Developer shall design, install, and construct approximately **2,350** linear feet of **18** inch off-site sewer main, of which **8** inches of said sewer main shall be eligible for cost participation. The **2,350** linear feet of sewer main, together with **13** new manholes, and all necessary appurtenances thereto, hereafter referred to as the "Oversized Facilities" are as shown on **Exhibit B**, attached hereto and incorporated herein by reference.

2. As required by Section 35.21.9 of the Denton Development Code, Developer will enter into a Development Contract with the City prior to beginning of construction of the Oversized Facilities. This Development Contract is attached hereto as **Exhibit C** and is incorporated herewith by reference. This Agreement is subject to and governed by said Development Contract and any other applicable ordinances of the City of Denton, Texas.

3. Prior to beginning of construction of the Oversized Facilities, Developer shall obtain, at Developer's sole cost and expense, all necessary permits, licenses and easements. The easements, deeds, and plats therefor obtained by Developer shall be reviewed and approved as to form and substance by City prior to the beginning of construction. If Developer is unable to acquire needed easements, Developer shall provide City with any requested documentation of efforts to obtain such easements, including evidence of negotiations and reasonable offers made to the affected property owners. Any easements for the Oversized Facilities obtained by the Developer shall be assigned to City, if not taken in City's name, prior to acceptance of the Oversized Facilities, and Developer warrants clear title to such easements and will defend City against any adverse claim made against such title.

4. City's share in the cost of the Oversized Facilities is based upon the difference in the cost of installing Required Facilities, as determined by City, and the cost of the Oversized Facilities, as determined by City, shall be in an amount not to exceed **One-Hundred Fifty-Nine Thousand Six-Hundred Eighty and 00/100 (\$159,680)**. City may elect one of the following methods to determine City's share of the cost:

- a) Developer shall prepare plans and specifications and furnish them to City. City shall competitively bid the required line and the Oversized Facilities in accordance with Chapter 252 of the Texas Local Government Code. The difference in the bids shall be used to determine the City's share, subject to City's maximum participation in cost as specified in this Agreement; or
- b) Developer shall prepare plans and specifications and take bids on the required line and the Oversized Facilities. City shall pay Developer the least amount of the following:
 - (i) The difference in the bids for the required line and the Oversized Facilities; or
 - (ii) Participation by the City at a level not to exceed One Hundred percent (100%) of the total cost for any oversizing of improvements required by the City, including, but not limited to increased capacity of improvements to anticipate other future development in the area, all as provided for in §212.072(b) of the Texas Local Government Code, as amended; or
 - (iii) **\$159,680**, the maximum participation cost allowed herein.

The City shall not, in any case, be liable for any additional cost because of delays in beginning, continuing, or completing construction; changes in the price or cost of materials, supplies, or labor; unforeseen or unanticipated cost because of topography, soil, subsurface, or other site conditions; differences in the calculated and actual per linear feet of pipe or materials needed for the Oversized Facilities; Developer's decision as to the contractors or subcontractors used to perform the work; or any other reason or cause, specified or unspecified, relating to the construction of the Oversized Facilities.

5. The City will make monthly payments for its share of the Oversized Facilities. The Developer shall submit monthly pay requests on forms provided by the City. The Developer's engineer shall verify that each pay request is correct. Each pay request, along with the engineer's verification, shall be submitted to the Manager of Wastewater Utilities of the City. The City will retain 10% of the total dollar amount until the project is accepted. Payment by the City to the Developer will be made within thirty (30) days of receipt of the pay estimate and the engineer's verification.

6. To determine the actual cost of the Oversized Facilities, City shall have the right to inspect any and all records of Developer, its agents, employees, contractors or subcontractors, and shall have the right to require Developer to submit any necessary information, documents, invoices, receipts or other records to verify the actual cost of the Oversized Facilities.

7. All notices, payments or communications to be given or made pursuant to this Agreement by the parties hereto shall be sent to Developer at the business address given above and to the Manager of Wastewater Utilities for City at the address given above.

8. Developer shall indemnify and hold City harmless from any and all claims, damages, loss or liability of any kind whatsoever, by reason of injury to property or person occasioned by any act or omission, neglect or wrongdoing of Developer, its officers, agents, employees, invitees, contractors or other persons with regard to the performance of this Agreement; and Developer shall, at its own cost and expense, defend and protect City against any and all such claims and demands.

9. If Developer does not begin substantial construction of the Oversized Facilities within twelve (12) months of the effective date of execution of this Agreement, this Agreement shall automatically terminate without further action of either party.

10. This instrument embodies the entire agreement of the parties hereto and there are no promises, terms, conditions or obligations other than those contained or incorporated herein. This Agreement shall supersede all previous communications, representations or agreements, whether verbal or written, between the parties hereto with respect to the subject matter of this Agreement.

11. This Agreement shall not be assigned by Developer without the express written consent of the City.

12. This Agreement is entered into and performable in Denton County, Texas. Any and all suits for any breach of this Agreement, or any other suit pertaining to or arising out of this Agreement, shall be brought in a court of competent jurisdiction in Denton County, Texas. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Nothing in this Agreement shall be deemed to, or is intended to, waive any defense a party may have at law, including but not limited to immunity.

EXECUTED in duplicate original counterparts by the duly authorized officials and officers of the City of Denton, Texas and the Developer, on this the ____ day of _____, 201__.

CITY

CITY OF DENTON, TEXAS
A Texas Home Rule Municipal Corporation

By: _____
TODD HILEMAN, CITY MANAGER

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

By: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, INTERIM CITY ATTORNEY

By: 

“DEVELOPER”

By: CRAWFORD HOSPITAL PARTNERS, LLC
A TEXAS LIMITED LIABILITY COMPANY

By: _____

Name:

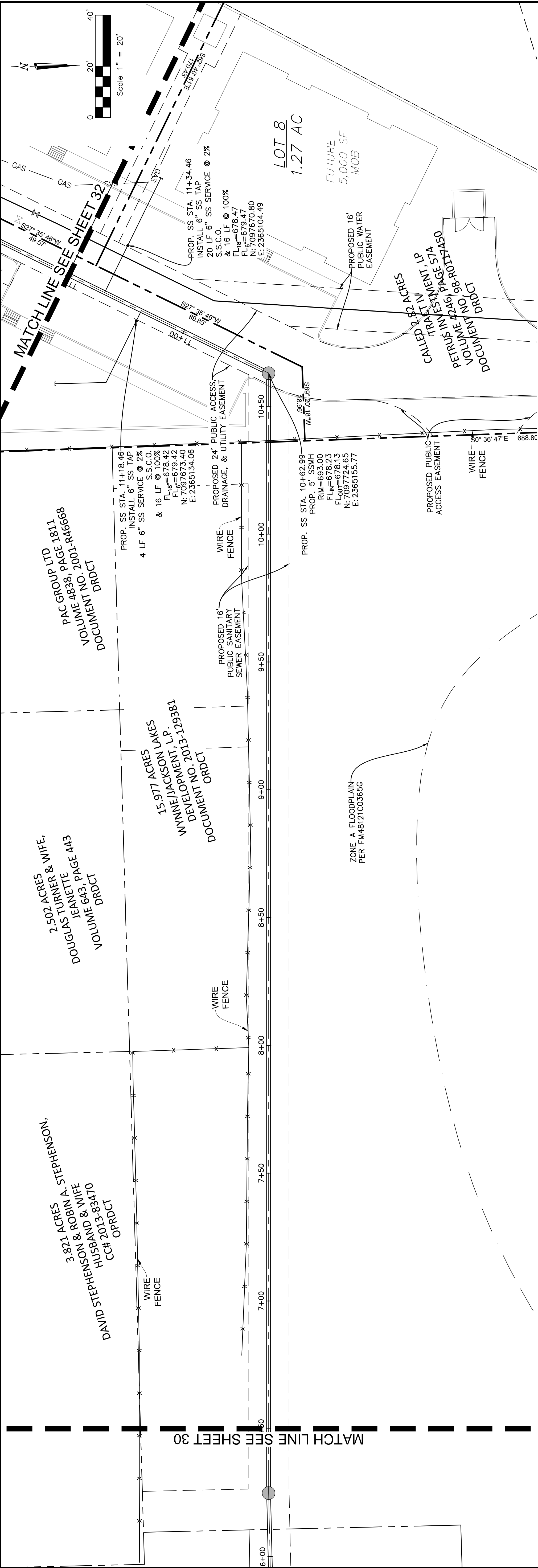
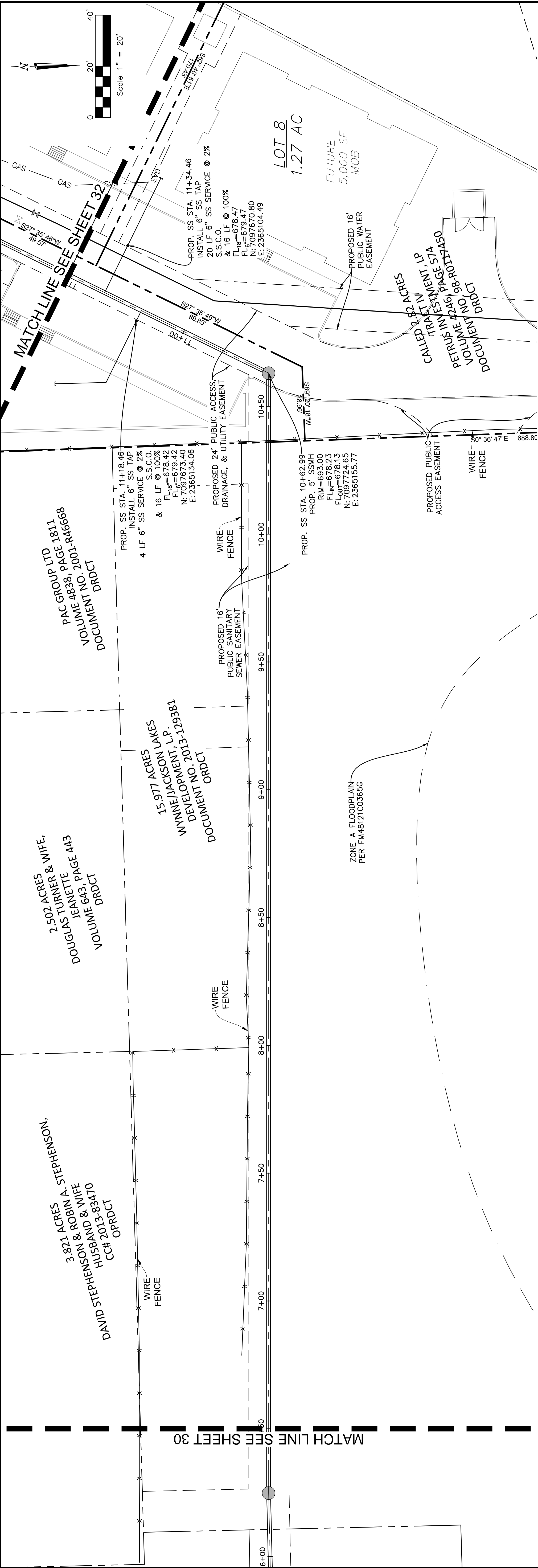
Title:

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me, the undersigned authority on this _____ day of _____, 2017, by _____, the _____ of Crawford Hospital Partners, LLC, in the capacity herein stated and as an act of the company.

[L.S.]

Notary Public in and for the State of Texas

[illegible][illegible]

LOT 8
1.27 AC

FUTURE 5,000 SF MOB

PROPOSED 16' PUBLIC WATER EASEMENT

PROPOSED 24' PUBLIC ACCESS, DRAINAGE, & UTILITY EASEMENT

PROPOSED 16' PUBLIC SANITARY SEWER EASEMENT

WIRE FENCE

PROPOSED SS STA. 11+34.46
INSTALL 6" SS TAP
20 LF 6" SS SERVICE @ 2%
S.S.C.O.
& 16 LF @ 100%
FL₁₆=678.47
FL₂₀=679.47
N: 7097670.80
E: 2365104.49

PROPOSED SS STA. 11+18.46
INSTALL 6" SS TAP
4 LF 6" SS SERVICE @ 2%
S.S.C.O.
& 16 LF @ 100%
FL₁₆=678.42
FL₄=679.42
N: 7097673.40
E: 2365134.06

PROPOSED SS STA. 10+62.99
PROP. 5' SSMH
RM=693.00
FL₅=678.23
FL₁₆=678.13
N: 7097724.65
E: 2365155.77

LOT 7
15.977 ACRES
WYNNE/JACKSON LAKES
DEVELOPMENT, L.P.
DOCUMENT NO. 2013-129381
DOCUMENT ORDDCT

LOT 9
2.502 ACRES
DOUGLAS TURNER & WIFE,
JEANETTE
VOLUME 643, PAGE 443
DOCUMENT ORDDCT

LOT 10
3.821 ACRES
DAVID STEPHENSON & ROBIN A. STEPHENSON,
HUSBAND & WIFE
HUSBAN# 383470
CC# 2013-83470
ORDDCT

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2.502 ACRES
PAC GROUP LTD
VOLUME 4838, PAGE 1811
DOCUMENT NO. 2001-149668
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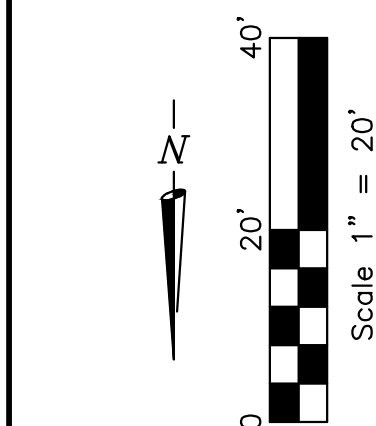
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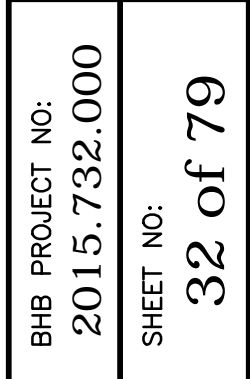
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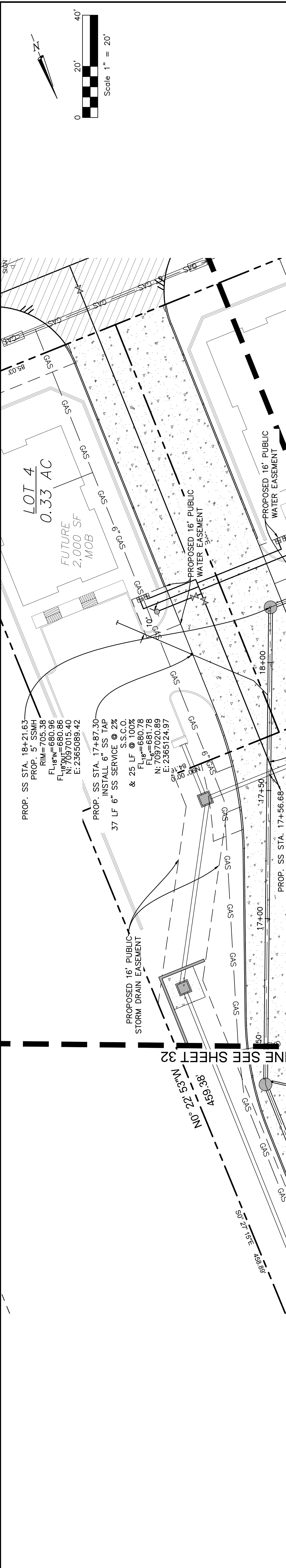
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PUBLIC SANITARY SEWER 'A' PLAN & PROFILE STA. 1+50 TO 16+50	RANCH VIEW SURGICAL HOSPITAL 11 35W & CRAWFORD ROAD DENTON, TEXAS
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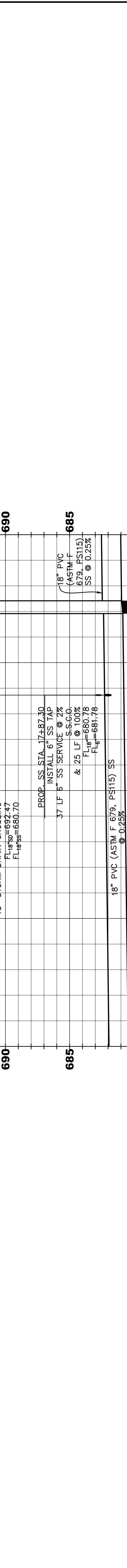




Profile view of a proposed water line crossing. The vertical axis shows elevation in feet, ranging from 695 to 710. The horizontal axis represents stationing. The profile shows an existing ground line (EX. GRADE) and a proposed water line (PROP. GRADE). The water line starts at station 17+61.23, rises to a peak at station 17+67.60 (TOP=697.60, FL=680.71), and then descends. A 12-inch water line crossing is indicated. The profile also shows a proposed structure with a top elevation of 705.00 and a bottom elevation of 695.00. The existing ground line is shown as a dashed line, and the proposed water line is shown as a solid line.

Profile view data:

Station	Prop. SS STA	Top Elevation (ft)	Bottom Elevation (ft)
17+61.23	17+61.23	705.00	695.00
17+67.60	17+67.60	697.60	680.71

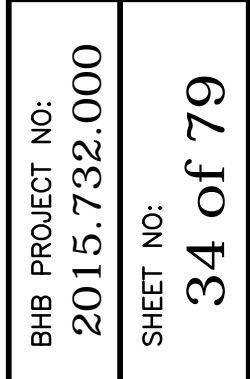


Profile view of the road showing elevations and stationing. The vertical axis represents elevation in feet, with labels 680.00, 680.50, 681.00, and 681.50. The horizontal axis represents stationing, with labels 17+00, 17+50, 18+00, and 18+50. The profile line shows the road's elevation at various points. Key data points are as follows:

Station	Elevation (ft)	Notes
17+00	680.43	$F/G = 702.16$
17+00	680.56	$F/L = 680.56$
17+00	680.65	$F/G = 702.65$
17+50	680.68	$F/L = 680.68$
17+50	680.37	$F/G = 703.37$
18+00	680.81	$F/L = 680.81$
18+00	680.67	$F/G = 704.67$
18+50	681.02	$F/L = 681.02$
18+50	680.73	$F/G = 704.73$

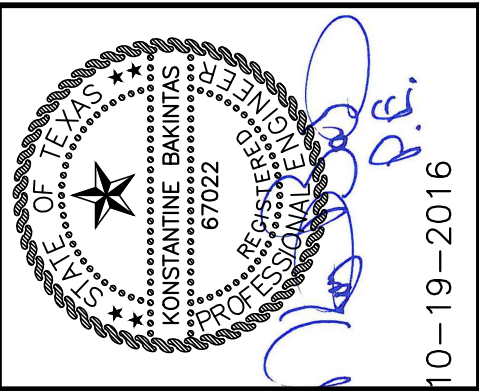
Scale: 1" = 20'
 V: 1" = 4'

PUBLIC SANITARY SEWER, 'A' PLAN & PROFILE STA. 18+50 TO 21+75	RANCH VIEW SURGICAL HOSPITAL 1135 W. & CRAWFORD ROAD DENTON, TEXAS
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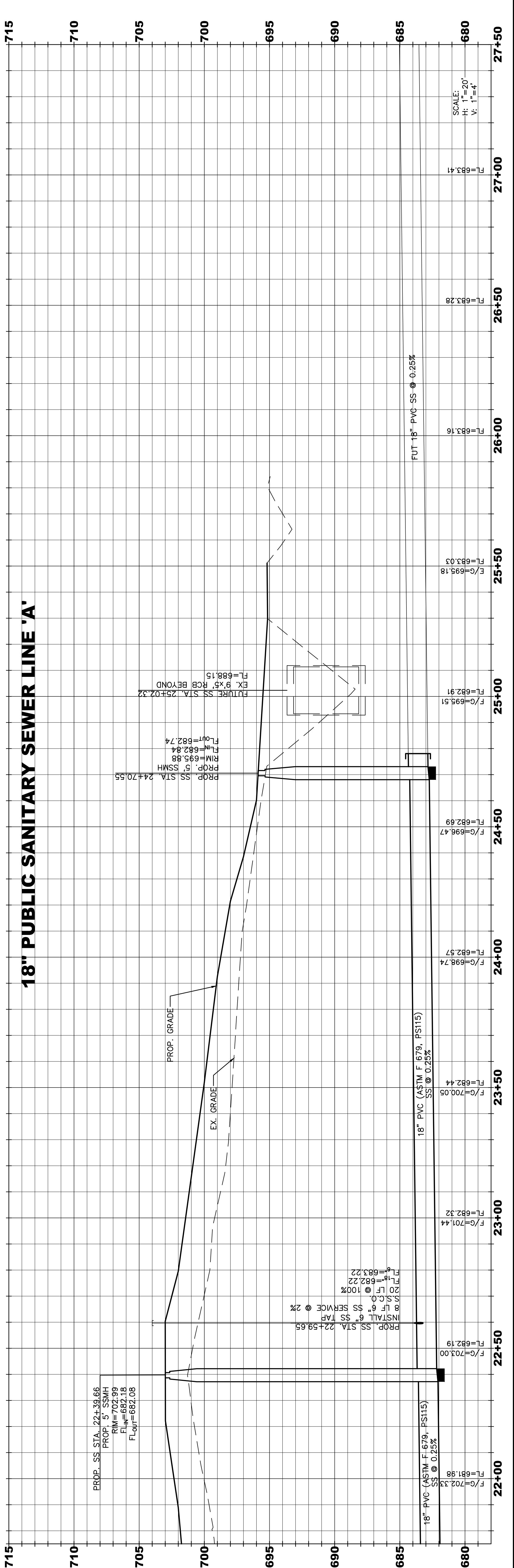
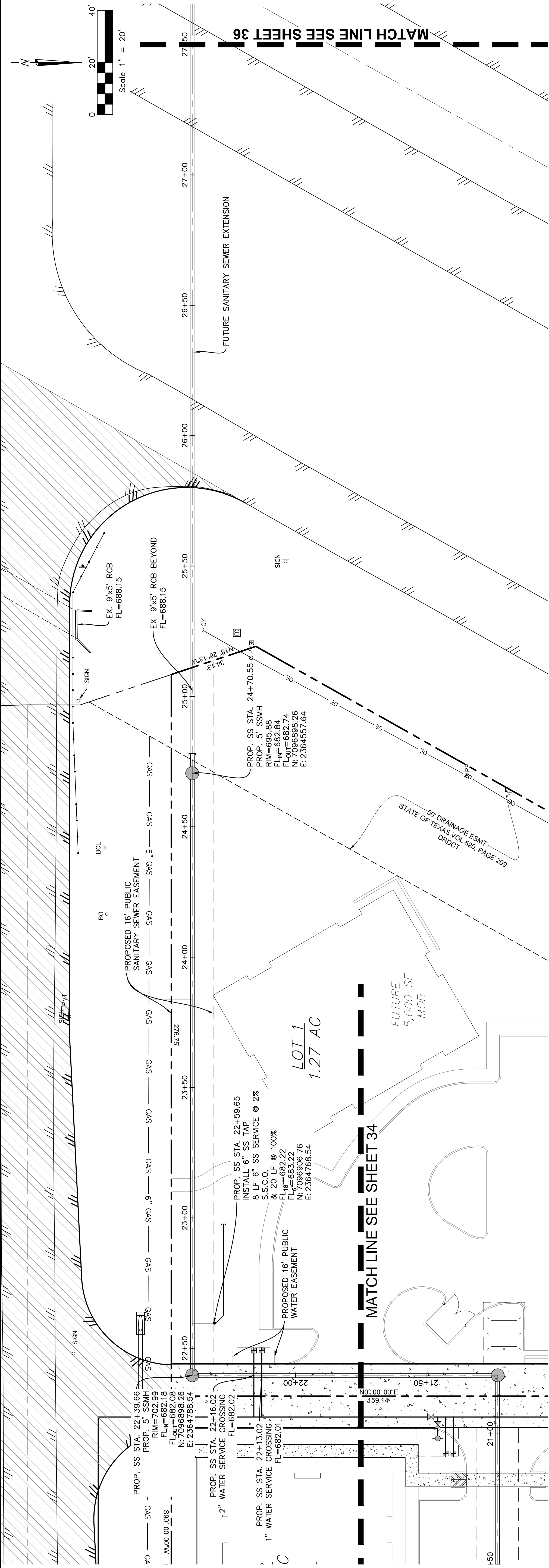


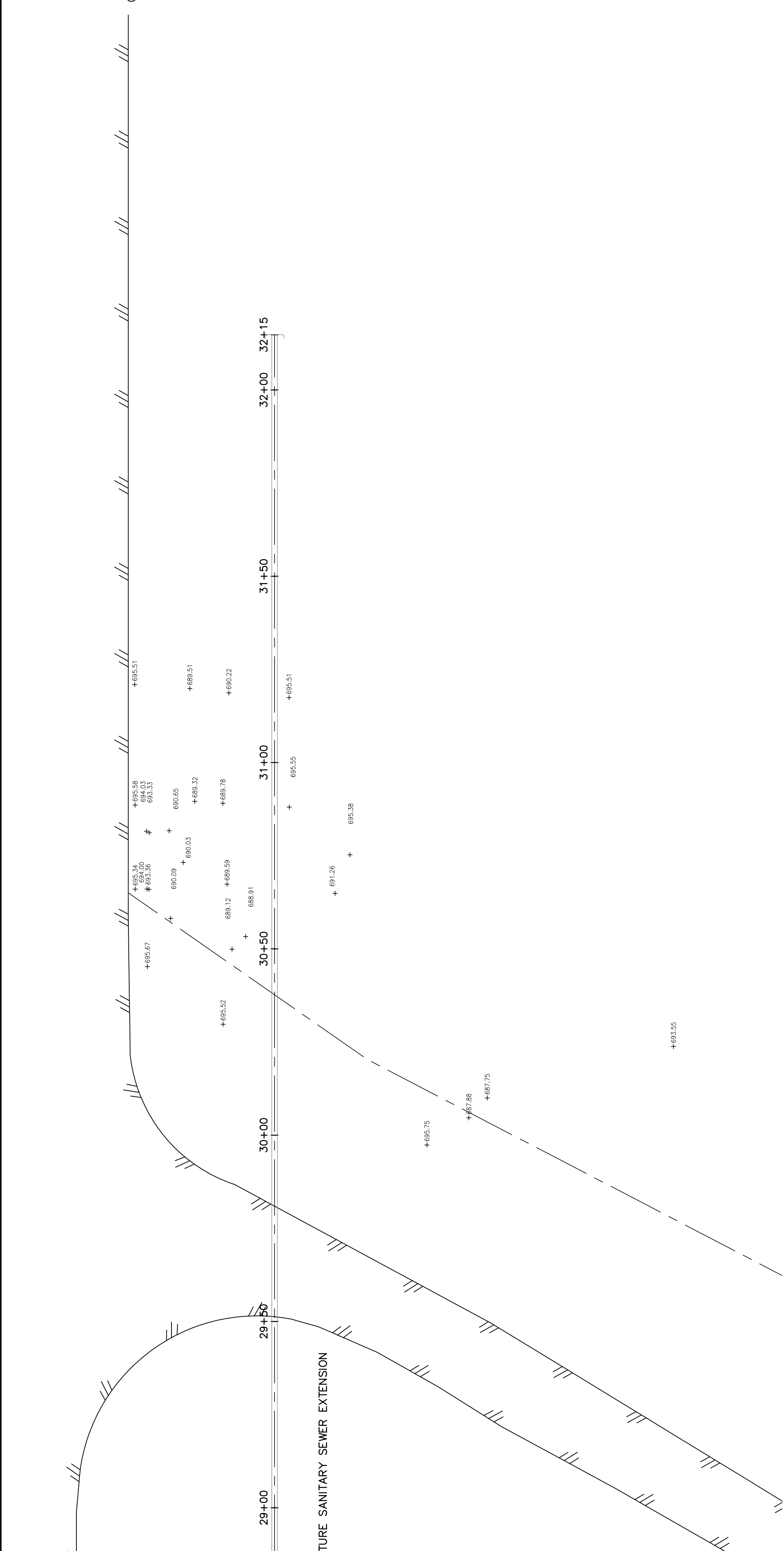
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PUBLIC SANITARY SEWER 'A'
PLAN & PROFILE STA. 21+75 TO 27+50
RANCH VIEW SURGICAL HOSPITAL
IH 35W & CRAWFORD ROAD
DENTON, TEXAS

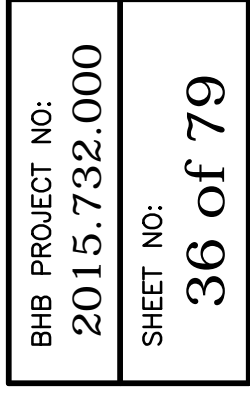


BHB PROJECT NO: 2015.732.000	SHEET NO: 35 of 79
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PUBLIC SANITARY SEWER 'A' PLAN & PROFILE STA. 27+50 TO END	RANCH VIEW SURGICAL HOSPITAL IH 35W & CRAWFORD ROAD DENTON, TEXAS
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PROJECT NO. FP16-0029CONTRACT TYPE DR, PV, SW & UT

**DEVELOPMENT CONTRACT
FOR
PUBLIC IMPROVEMENTS**

WHEREAS, CHP Holdings, LLC, (the "Developer"), whose business address is 251 E. Southlake Blvd, St 100, Southlake, Tx 76092, is the owner and developer of real property located in the corporate limits of the City of Denton being described as Ranch View Surgical Hospital, an addition to the City of Denton, Texas (the "Development"); and

WHEREAS, Developer wishes to enter into this agreement with the City of Denton, Texas (the "City) to provide for the construction of certain public improvements generally described as the Public Infrastructure (Demo, Earthwork, Utilities & Paving) as further described in Exhibit A attached hereto and made a part hereof by reference (the "Public Improvements"), which, among other things, are necessitated by and will serve the Development; and

WHEREAS, this agreement is entered into pursuant to Subchapter C of Chapter 212 of the Texas Local Government Code as a condition of plat approval and the Public Improvements are roughly proportional to the benefits received and burdens imposed by the Development; and

WHEREAS, this agreement is required to ensure that the Public Improvements are constructed in accordance with the City's standard specifications for public works projects, applicable ordinances and design criteria manuals ("Standard Specifications"), and the plans and specifications prepared by Developer's engineer, Baird, Hampton & Brown, Inc. ("Developer's Engineer") dated 10/19/16, which were approved by the City and are on file in the office of the City Engineer, which may be amended with the written approval of the City Engineer or his designee (the

DEVELOPMENT CONTRACT

"Project Specifications"), such Standard Specifications and Project Specifications being incorporated herein by reference and herein called the "Plans and Specifications"; and

WHEREAS, the Developer understands and agrees that it is responsible for and has retained at its sole expense, the Developer's Engineer to design the Public Improvements in accordance with the Standard Specifications, taking into consideration the specific site conditions that may impact the Public Improvements; and

WHEREAS, the Developer shall provide for the construction of the Public Improvements by and through North Texas Contracting, Inc., whose address is 4999 Keller-Haslet Road, Keller, Texas 76244 (the "Contractor"), a construction contractor experienced in the construction of improvements similar to the Public Improvements, and

WHEREAS, Developer and Contractor recognize that the City has an interest in ensuring that the Public Improvements, which will, upon completion and acceptance by the City, become public property, are properly constructed in accordance with the Plans and Specifications and that payment by Developer is provided therefor; NOW, THEREFORE,

The Developer, Contractor, and City (the "Parties") in consideration of their mutual promises and covenants contained herein agree as follows:

1. **Covenants of Developer and Contractor.**

- (a) **Construction.** Contractor shall construct the Public Improvements in accordance with the Plans and Specifications and complete the Public Improvements on or before September 30, 2017. Developer shall be responsible for all monies due to the Contractor for construction of the Public Improvements. In no event shall the City be responsible for payment of any of the expenses or costs to construct the Public Improvements. The City

DEVELOPMENT CONTRACT

Engineer in his discretion may require the Developer to provide security for payments to the Contractor, which may be in the form of a cash deposit with the City, a letter of credit, a dedicated construction account with a lending institution approved by the City Engineer, or other security that the City Engineer in his discretion deems adequate to ensure that the Developer does not default in its payment obligations to the Contractor.

(b) **Authority of City Engineer, Inspections, Tests and Orders, Developer and**

Contractor Warranty. All work on the Public Improvements shall be performed in a good and workmanlike manner and to the satisfaction of the City Engineer or his representative. The City Engineer shall decide all questions, which arise as to the quality and acceptability of materials furnished, work performed, and the interpretation of the Plans and Specifications and may reject any work not performed in accordance with the Plans and Specifications. The Contractor, its surety on the performance bond required herein and the Developer, warrant that the Public Improvements will be free from defects in materials and workmanship and that they will pay to remedy same for a period of two years after the completion of the Public Improvements and final acceptance by the City. This warranty shall not constitute a limitation on the duty to remedy latent defects in construction that were not known at the time of final acceptance or within said two year warranty period.

The Contractor shall furnish the City Engineer or his representative with every reasonable facility for ascertaining whether or not the work performed was in

DEVELOPMENT CONTRACT

accordance with the Plans and Specifications applicable thereto. Any work done or materials used without suitable inspection by the City may be ordered removed and replaced at Contractor's expense.

The City Engineer or his designee shall perform periodic inspections of the work and shall perform a final inspection prior to final acceptance by the City and an inspection 30 days prior to the expiration of two years from the date of final completion and acceptance of the work by the City. Upon failure of the Contractor to allow for inspection, to test materials furnished, to satisfactorily repair, remove or replace, if so directed, rejected, unauthorized or condemned work or materials, or to follow any other request or order of the City Engineer or his representative, the City Engineer shall notify the Developer of such failure and may suspend inspections of such work until such failure is remedied. If such failure is not remedied to the satisfaction of the City Engineer, the City shall have no obligation under this agreement to approve or accept the Public Improvements and the City may withhold, suspend or revoke any permits or other approvals for the Development until such matter is remedied to the satisfaction of the City Engineer.

- (c) **Insurance.** Contractor shall provide for insurance in form and in substance in accordance with the City's standard insurance requirements for public works projects, which are on file in the Office of the City Engineer and which are incorporated herein by reference.

- (d) **Means and Methods of Construction.** The means and methods of construction shall be such as Contractor may choose; subject, however, to the

DEVELOPMENT CONTRACT

City's right to reject the Public Improvements for which the means or method of construction does not, in the judgment of the City Engineer, assure that the Public Improvements are constructed in accordance with Plans and Specifications.

- (e) **Books and Records.** All of the Developer's and the Contractor's books and other records related to the construction of the Public Improvements shall be available for inspection by the City.
- (f) **Performance Bonds.** The Contractor shall execute a performance bond in the full amount of the cost to construct the Public Improvements in favor of the City ensuring completion of the Public Improvements in accordance with the Plans and Specifications and warranting against defects in materials and workmanship for a period of two years from the date of final acceptance by the City as provided in 1(b) herein. The performance bond shall be executed by a corporate surety authorized to do business in Texas in accordance with Chapter 2253 of the Texas Government Code, shall be on the City's standard form, and shall contain a local resident agent for service of process. The Developer may be a co-obligee on the performance bond with regard to the Contractor's obligations.
- (g) **Payment Bonds.** The Contractor shall execute a payment bond in the full amount of the cost to construct the Improvements in favor of the City insuring against claims from suppliers and subcontractors. The payment bond shall be executed by a corporate surety authorized to do business in Texas in accordance with Chapter 2253 of the Texas Government Code, shall be on the

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City's standard form, and shall contain a local resident agent for service of process. Owner and Developer may be co-obligees on the payment bond.

- (h) **Retainage: Final Payments.** As security for the faithful completion of the Public Improvements, Contractor and Developer agree that the Developer shall retain ten (10) percent of the total dollar amount of the contract price until after final approval or acceptance of the Public Improvements by the City. The Developer shall thereafter pay the Contractor the retainage, only after Contractor has furnished to the Developer satisfactory evidence including an affidavit that all indebtedness has been paid, that all indebtedness connected with the work and all sums of money due for labor, materials, apparatus, fixtures or machinery furnished for and used in the performance of the work have been paid or otherwise satisfied. In addition, Contractor shall provide Developer with a consent to final payment from the payment bond surety.

- (i) **Encumbrances.** Upon completion and final acceptance of the Public Improvements by the City, the Public Improvements shall become the property of the City free and clear of all liens, claims, charges or encumbrances of any kind. If, after acceptance of the Public Improvements, any claim, lien, charge or encumbrance is made, or found to exist, against the Public Improvements, or land dedicated to the City, to which they are affixed, the Developer and Contractor shall upon notice by the City promptly cause such claim lien, charge or encumbrance to be satisfied and released or promptly post a bond with the City in the amount of such claim, lien, charge or

DEVELOPMENT CONTRACT

encumbrance, in favor of the City, to ensure payment of such claim, lien, charge or encumbrance.

- (j) **INDEMNIFICATION.** THE DEVELOPER AND CONTRACTOR SHALL AND HEREBY DO INDEMNIFY, DEFEND AND SAVE HARMLESS, THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS OR CLAIMS OF ANY CHARACTER, NAME AND DESCRIPTION BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED AS SUSTAINED BY ANY PERSON, PERSONS OR PROPERTY ON ACCOUNT OF THE OPERATIONS OF THE CONTRACTOR, HIS AGENTS, EMPLOYEES OR SUBCONTRACTORS; OR ON ACCOUNT OF ANY NEGLIGENT ACT OF FAULT OF THE CONTRACTOR, HIS AGENTS, EMPLOYEES OR SUBCONTRACTORS IN CONSTRUCTION OF THE IMPROVEMENTS; AND SHALL PAY ANY JUDGMENT, WITH COSTS, WHICH MAY BE OBTAINED AGAINST THE CITY GROWING OUT OF SUCH INJURY OR DAMAGE.

- (k) **Agreement Controlling.** The provisions of this agreement shall control over any conflicting provision of any contract between the Developer and Contractor as to the construction of the Public Improvements.

2. **Covenants of City of Denton.** Upon proper completion of the Public Improvements in accordance with this agreement, the City agrees to accept the Public Improvements.

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3. **Nexus and Rough Proportionality.** The Developer acknowledges and agrees that there is a reasonable nexus between the demands created by the Development and the Public Improvements, and that the costs associated with the construction and dedication of land for the Public Improvements is roughly proportional to the benefits received and the burdens imposed by the Development. The Developer shall indemnify and hold the City harmless against any claim by it or others claiming through it, that the required Public Improvements and associated dedication of land are unlawful exactions.
4. **Venue and Governing Law.** The Parties herein agree that this agreement shall be enforceable in Denton County, Texas, and if legal action is necessary in connection therewith, exclusive venue shall lie in Denton County, Texas. The terms and provisions of this agreement shall be construed in accordance with the laws and court decisions of the State of Texas.
5. **Successor and Assigns.** This contract shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

Executed in triplicate this, 30th day of November, 2016.

DEVELOPER

Name: CHP Holdings, LLC

By: 

Name: Matthew Mackey

Title: Manager

Address 251 E. Southlake Blvd, St 100
Southlake, Texas 76092

DEVELOPMENT CONTRACT

CONTRACTOR

Name: North Texas Contracting, Inc.

By: 

Name: Zach Fusilier

Title: Vice President

Address 4999 Keller-Haslet Road
Keller, Texas 76244

CITY OF DENTON, TEXAS

BY: 
CITY MANAGER

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: 

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: 