

RESOLUTION NO. 2020-10-808

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANNA, TEXAS  
APPROVING A SUBDIVISION IMPROVEMENT AND ECONOMIC  
DEVELOPMENT INCENTIVE AGREEMENT WITH ANNA MOB PARTNERS, LLC  
AND ANNA INVESTMENTS, LLC.**

**WHEREAS**, Anna MOB Partners, LLC and Anna Investments, LLC desire to develop a medical office building and additional property for medical and commercial purposes, and

**WHEREAS**, said medical and commercial projects will create a significant number of jobs and tax revenue for the City of Anna, and

**WHEREAS**, the City Council of the City of Anna, Texas has determined that it would be beneficial for the City to provide economic development incentives including a waiver of impact fees for the medical office building, and

**WHEREAS**, the City is authorized to grant such incentives under Chapter 380 of the Texas Local Government Code.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ANNA, TEXAS, THAT:**

**SECTION 1. Recitals Incorporated**

The recitals set forth above are incorporated herein for all purposes as set forth in full.

**SECTION 2. Approval of Project and Agreement**

The City Council of the City of Anna, Texas hereby approves the Subdivision Improvement and Economic Development Incentive Agreement with Anna MOB Partners, LLC and Anna Investments, LLC attached hereto, incorporated herein for all purposes, and authorizes the City Manager to execute same on its behalf, with said Agreement to be effective upon its approval by the City Council of the City of Anna, Texas as set forth in the Agreement.

**SECTION 3. Administration**

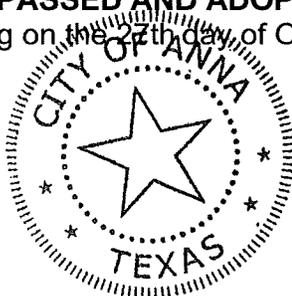
The City hereby authorizes the City Manager or his designee to administer the Agreement.

**CONSIDERED, PASSED AND ADOPTED** by the City Council of the City of Anna at a regular meeting on the 27th day of October 2020.

APPROVED:

  
\_\_\_\_\_  
Nate Pike, Mayor

ATTEST:



*Carrie L. Land*  
Carrie L. Land, City Secretary

## **SUBDIVISION IMPROVEMENT AND ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

This Subdivision Improvement and Economic Development Incentive Agreement (this "Agreement") is entered into between the City of Anna, Texas, a Texas home rule municipality (the "City") and, jointly and severally, Anna Investments, LLC, a Texas limited liability company, and Anna MOB Partners LLC, a Texas limited liability company (said limited liability companies referenced collectively herein as "Owner").

**WHEREAS**, Owner and the City are sometimes collectively referenced in this Agreement as the "Parties," or, each individually, as "Party"; and

**WHEREAS**, unless the context clearly indicates to the contrary, certain capitalized terms used in this Agreement have the meanings provided in these recitals, in Section 2 of this Agreement, or as otherwise expressly set forth in this Agreement; and

**WHEREAS**, Owner is the sole owner of and desires to develop a parcel of real property (the "Medical Office Property" as further defined herein) in Collin County, Texas, which said property is composed of approximately 2.87 acres of land located entirely within the corporate limits of the City of Anna and is more particularly described in the attached Exhibit A; and

**WHEREAS**, the Medical Office Property is currently undeveloped and the Owner plans to develop and use said property as the site for medical office facilities for health providers and their staff and related office use (the "Medical Office Project") in a building or complex of buildings totaling at least 30,000 square feet of medical office space; and

**WHEREAS**, the Owner additionally plans to develop other real property that is contiguous to the Medical Office Property for other commercial and retail facilities as may be permitted on said contiguous real property under applicable City Regulations ("Additional Uses"); and

**WHEREAS**, a proposed development plan of the Medical Office Property is attached hereto as Exhibit B, which sets forth the proposed layout of parking lots, traffic areas, fire lanes, buildings, and other development aspects proposed for development of the Medical Office Project; and

**WHEREAS**, the City currently lacks an establishment similar to the Medical Office Project to provide for office needs of professional health care providers and staff working in the City and nearby areas; and

**WHEREAS**, it is projected that the location and operation of the Medical Office Project in the City will directly and indirectly create a significant number of new jobs in the City; and

**WHEREAS**, the City recognizes the positive economic impact that the Medical Office Project will bring to the City through development and diversification of the economy, reduction of unemployment and underemployment through the production of new jobs, the attraction of new businesses, and the additional tax revenue; and

**WHEREAS**, as an incentive to develop the Medical Office Project, the Owner has requested that the City forgo collection of certain Impact Fees assessed on the new development on the Medical Office Property and the City is willing to do so to the extent set forth in this Agreement for the purpose of promoting economic development within the City; and

**WHEREAS**, the City is authorized to forgo collection of said impact fees under Chapter 380 of the Texas Local Gov't Code, Chapter 395 of the Texas Local Gov't Code, and Sec. 9.08.010 of the Anna City Code of Ordinances (the "City Code"); and

**WHEREAS**, the Owner is willing to guarantee that at least 30 new jobs will be created for individuals to be employed and working in the medical office space within the Medical Office Project as further set forth in this Agreement; and

**WHEREAS**, to develop the Medical Office Project, the Owner will make a capital investment of at least \$8,000,000.00 to fund development and construction on the Medical Office Property; and

**WHEREAS**, as an additional incentive for the above-reference job creation and to develop the Medical Office Project, the Owner has requested that the City provide a direct grant to Owner under Chapter 380 of the Texas Local Gov't Code in the form of annual payments up to a maximum combined amount of \$1,000,000.00; and

**WHEREAS**, it is the Parties' mutual intent that this Agreement shall govern only the subject matter specifically set forth herein and shall supersede any previous agreement between the Parties and City Regulations only to the extent that any such agreements or City Regulations directly conflict with the terms of this Agreement; and

**WHEREAS**, Owner acknowledges that the obligations undertaken under this Agreement are primarily for the benefit of the Medical Office Property; and

**WHEREAS**, Owner understands and acknowledges that acceptance or enforcement of this Agreement is not an exaction demanded by the City but rather is an undertaking of Owner's desire and voluntary design to ensure consistency, quality, and adequate infrastructure that will benefit Owner's development of the Medical Office Property;

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the Parties agree as follows:

## **SECTION 1. RECITALS INCORPORATED**

The recitals set forth above are incorporated herein as if set forth in full to further describe the Parties' intent under this Agreement and said recitals constitute representations by Owner and the City.

## SECTION 2. DEFINITIONS

Additional Development Property means the 19.83-acre tract of real property described and/or depicted in Exhibit C.

Anna Surgical Center Property means the 2.63-acre tract of real property described and/or depicted in Exhibit D.

Business Personal Property Tax Amount means a dollar amount calculated to be 50% of the total dollar amount—annually and beginning with the tax year during which the Medical Office Project Commencement Date of Operations occurs—actually paid by the Owner that includes the business personal property taxes imposed on the Medical Office Property and the Additional Development Property (for example, if the business personal property tax imposed on the Medical Office Property and the Additional Development Property totals \$100,000.00 in any given year then the Business Personal Property Tax Amount would be \$50,000.00 for that year).

Capital Investment means the \$8,000,000.00 investment that Owner must incur, expend, and prove under Section 4 of this Agreement.

City Code means the Anna City Code of Ordinances.

City Manager means the current or acting City Manager of the City of Anna or a person designated to act on behalf of the City Manager if the designation is in writing and signed by the current or acting City Manager.

City Engineer means an engineer or engineering firm as designated by the City in its sole discretion.

City Regulations mean City Code provisions, ordinances, design standards, uniform codes, zoning classifications and regulations, and other applicable regulations and policies duly adopted by the City.

Commencement Date of Operations, with respect to the Medical Office Project, means the date that the City has issued one or more certificates of occupancy for a substantially complete and safely habitable building or complex of buildings (totaling at least 30,000 square feet of medical office space) allowing the opening and operations of the Medical Office Project for its intended purposes.

Commencement Date of Public Improvement Construction, with respect to the Medical Office Property, means the date that the Owner has secured all required approvals to begin construction of the Public Improvements necessary to serve the Medical Office Property and Medical Office Project and such construction has actually begun.

Commencement Date of Vertical Construction, with respect to the Medical Office Project, means the date that the City has issued the first building permit for any Vertical Construction on the Medical Office Property and such Vertical Construction has actually begun.

Development means the new development on the Medical Office Property and Medical Office Project, the Anna Surgical Center, and Additional Development Property that is the subject of this Agreement.

Development Standards means the minimum development standards as defined in Section 9 of this Agreement.

Effective Date means the date described in Section 10 of this Agreement.

Grant Payment means an annual payment made by the City to the Owner in accordance with this Agreement in a dollar amount equal to the sum of the M&O Tax Amount and the Business Personal Property Tax Amount actually paid by Owner in that same tax year.

Impact Fees means the water, wastewater and roadway impact fees adopted by the City under Chapter 395 of the Texas Local Government Code to the extent applicable to and assessed on the Medical Office Property.

Job Creation Requirement means that a minimum of 30 full-time jobs have been filled with individuals who are scheduled to work at least 30 hours per week (excluding normal time off for vacation, holidays and sick time) at the site of the Medical Office Project, said jobs being in the field of professional health-care services, and including at least 10 licensed physicians.

M&O Tax Amount means a dollar amount calculated to be 50% of the total dollar amount—annually and beginning with the tax year during which the Medical Office Project Commencement Date of Operations occurs—actually paid by the Owner that includes the maintenance and operation portion of ad valorem taxes imposed on the Medical Office Property and the Additional Development Property (for example, if the maintenance and operation portion of ad valorem taxes imposed on the Medical Office Property and the Additional Development Property totals \$100,000.00 in any given year then the M&O Tax Amount would be \$50,000.00).

Medical Office Project means an office building or complex of office buildings totaling at least 30,000 square feet of medical office space (and all Public Improvements necessary to serve the Medical Office Property) to be utilized by professional health care providers and their staff and for related office purposes that Owner is obligated to construct and operate on the Medical Office Property in accordance with this Agreement and the proposed development plan set forth in **Exhibit B**.

Medical Office Property means the 2.87-acre tract of real property described and/or depicted in **Exhibit A**.

Public Improvements mean, collectively, the following categories of improvements that Owner shall construct and dedicate to the City: Sanitary Sewer Facilities, Stormwater/Drainage Facilities, Water Facilities, and any and all other public improvements necessary to serve the Medical Office Property.

Sanitary Sewer Facilities mean the 10” sanitary sewer main and the associated appurtenances described and depicted in further detail in **Exhibit E**, said facilities to be constructed by the Owner in accordance with design/construction plans as approved by the City.

Stormwater/Drainage Facilities mean the public storm sewer main, the detention pond, and the associated appurtenances described and depicted in further detail in **Exhibit F**, said facilities to be constructed by the Owner in accordance with design/construction plans as approved by the City.

Tangible Personal Property has the meaning as defined under Texas Tax Code § 1.04(5) as amended.

Vertical Construction means construction of a building that surpasses and extends above the construction of the slab level of a building and occurs only after a building permit has been issued in accordance with City Code Sec. 9.02.209(a)(1) as amended.

Water Facilities mean the 12” water main, the 8” water main, and the associated appurtenances described and depicted in further detail in **Exhibit G**, said facilities to be constructed by the Owner in accordance with design/construction plans as approved by the City.

### **SECTION 3. TERM AND TERMINATION**

- (a) Term. The term of this Agreement shall commence on the Effective Date and it shall continue in effect until the earlier of 20 years after the Effective Date or such time as the parties have fulfilled their obligations hereunder, unless terminated earlier under the provisions of this Agreement.
- (b) Termination. This Agreement and all obligations of the Parties hereto shall terminate upon full performance of the Parties’ respective obligations under this Agreement. Notwithstanding the foregoing, if Owner defaults by failing to timely meet any of its obligations under Section 4 of this Agreement, or otherwise breaches its obligations or warranties under this Agreement and, after notice thereof from City, Owner fails cure such failure or breach within the Cure Period provided in Section 13 of this Agreement, the City may terminate this Agreement by written notice to Owner as provided under Section 13. The effective date of such termination shall be deemed to be the date that the City provides written notice of termination. If this Agreement is terminated by the City, the obligation to make any Grant Payment not already due and owing at the time of such termination shall be deemed to have expired and the City shall not thereafter be obligated to pay any further Grant Payment. Notwithstanding the foregoing or any other provision of this Agreement, Owner’s duty to indemnify, hold harmless, and defend the City as set forth in this Agreement shall survive the termination of this Agreement.

### **SECTION 4. CAPITAL INVESTMENT, CONSTRUCTION, OPERATIONS AND JOB CREATION CONDITIONS**

- (a) Capital Investment. Owner must incur and expend at least \$8,000,000.00 to fund the construction of the Public Improvements and the Medical Office Project. Promptly after

Owner has made the Capital Investment, Owner shall submit proof satisfactory to the City Manager of having made all expenditures constituting the Capital Investment. The City may withhold certificates of occupancy for any building(s) on the Medical Office Project until such proof is submitted.

- (b) Public Improvements. The Commencement Date of Public Improvement Construction shall have occurred on or before 12 months after the Effective Date. Substantial completion of the Public Improvements in a good and workmanlike manner and all approvals and requisites to the recording of a final plat for the Medical Office Property shall have occurred on or before 20 months after the Effective Date.
- (c) Commencement of Vertical Construction. The Commencement Date of Vertical Construction shall have occurred on or before 20 months after the Effective Date.
- (d) Commencement of Operations. The Commencement Date of Operations shall have occurred on or before 36 months after the Effective Date. Once commenced, operations of the Medical Office Project shall be continuous during the term of this Agreement with the buildings constituting the project open to its occupants and visiting persons at least five days a week except for closures due to recognized holidays or due to Force Majeure as hereinafter defined.
- (e) Job Creation. The Job Creation Requirement shall have shall have occurred on or before 24 months after the medical office building receives its certificate of occupancy. The Job Creation Requirement shall thereafter be maintained for a period of at least 5 years. During said 5-year period that the Job Creation Requirement must be maintained, Owner shall supply the City with copies of all quarterly, annual or other reports that Owner or other occupants of the Medical Office Project file with the Texas Workforce Commission and any other documentation deemed necessary by the City to prove to the City's reasonable satisfaction that the Job Creation Requirement has been met and is being maintained as required. Owner shall promptly provide the City with written notice at any time during the above-reference 5-year term of any noncompliance with the Job Creation Requirement.

## **SECTION 5. GRANT PAYMENT**

- (a) Eligibility for Grant Payment. To be eligible to receive any Grant Payment under this Agreement: (1) this Agreement shall not have been terminated by the City; (2) Owner must not be in default of any of its obligations under this Agreement including without limitation Owner's obligations set forth in Section 4; and (3) Owner shall be the sole owner of the Medical Office Property and the Medical Office Project.
- (b) Submission of Request for Grant Payment. Provided that the City has not terminated this Agreement before the Commencement Date of Operations, then, beginning with the tax year after the tax year during which the Commencement Date of Operations occurs, the Owner may annually submit a written request to the City for a Grant Payment, which must include: a certificate issued by the Collin County Tax Assessor-Collector verifying that Owner has paid all ad valorem taxes and business personal property taxes pertaining to the Medical Office Property and the Additional Development Property for the previous tax year.

- (c) Time for Grant Payment. Any Grant Payment shall not be considered due and owing unless Owner is eligible to receive such Grant Payment and Owner has submitted to the City the request and required materials set forth in subsection (b), above. Provided that the City receives the Owner's said request for payment and required materials on or before January 31 of any calendar year (the "Grant Payment Request Deadline") and the City determines that Owner is eligible to receive the requested Grant Payment, the City shall make the Grant Payment to the Owner on or before the first business day in March of said calendar year (the "Grant Payment Deadline"). If the Owner submits the request for payment and required materials after the Grant Payment Request Deadline, the Grant Payment Deadline shall be extended by the number of days after the Grant Payment Request Deadline that the City actually receives the Owner's request for payment and required materials.
- (d) Combined Maximum Amount. Notwithstanding any provision of this Agreement, the combined total of any and all Grant Payments made by the City shall not exceed \$1,000,000.00.
- (e) Grant Limitations. Under no circumstances shall City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.
- (f) Tax Protest. In the event the Owner timely and properly protests or contests (including any motion to correct the appraisal roll) the Taxable Value and/or the taxation of the Premises, or any portion thereof, with the applicable appraisal district (or its successor), and such protest and/or contest results in a final determination that changes the appraised value and/or the Taxable Value of the Premises or the amount of ad valorem taxes assessed and due for the Premises, or portion thereof, after a Grant Payment has been paid for such Premises for such tax year, the Grant Payment for such tax year shall be adjusted (increased or decreased as the case may be) accordingly on the date of payment of the next Grant Payment, or within sixty (60) business days after such determination in the event no further Grant Payment is due under this Agreement
- (g) Refunds. In the event the City determines in its sole discretion that the amount of an Grant Payment paid by the City to the Owner was incorrect, the Owner shall, within sixty (60) days after receipt of written notification thereof from the City specifying the amount by which such Grant Payment exceeded the correct amount to which the Owner was entitled (together with such records, reports and other information necessary to support such determination), pay such amount to the City. If the City determines that the amount by which such Grant Payment was less than the correct amount to which the Owner was entitled (together with such records, reports and other information necessary to support such determination), the City shall, within sixty (60) days after making such determination, pay the adjustment to the Owner. If the Owner disputes the City's determination, the parties shall seek to amicably resolve the matter, subject to either party's right to pursue any available rights or remedies in connection therewith.
- (h) Payment of Taxes. Owner's failure to timely and fully pay all ad valorem and business personal property taxes due on the Medical Office Property and/or the Additional Development Property ("Tax Payment Default") shall be an event of default and material

breach of this Agreement. Notwithstanding any other provision of this Agreement, a Tax Payment Default shall not be considered to have been cured unless the amount due and owing and any penalties and other associated costs and expenses are paid in full.

## **SECTION 6. COLLECTION OF IMPACT FEES**

The City agrees that it will forgo collection of all impact fees that would otherwise be assessed on the Medical Office Property and collected by the City provided that Owner timely fulfills its obligations under Section 4 of this Agreement. The City will not be obligated to forgo collection of any impact fees that would otherwise be assessed on the Medical Office Property and the City shall be entitled to collect said impact fees at or any time after the time said impact fees would otherwise be due under applicable City Regulations if the Owner does not timely fulfill its obligations under Section 4 of this Agreement and this Agreement is terminated in accordance with Section 3 and Section 13 of this Agreement.

## **SECTION 7. ADDITIONAL OBLIGATIONS**

- (a) Performance Bond, Payment Bond and Other Security. For each construction contract for any part of the Public Improvements, Owner or Owner's contractor must execute a performance bond in favor of the City and a payment bond for the construction and work covered by those contracts, which bonds shall be in accordance with Texas Government Code, Chapter 2253 and applicable City Regulations. For each construction contract for any part of the Public Improvements, Owner or Owner's contractor further must execute a Maintenance Bond in accordance with applicable City Regulations that guarantees the costs of any repairs which may become necessary to any part of the construction work performed in connection with the Public Improvements, arising from defective workmanship or materials used therein, for a full period of two (2) years from the date of final acceptance of the Public Improvements constructed under such contract.
- (b) Public Improvements, Generally. Except as otherwise expressly provided for in this Agreement, Owner shall provide all Public Improvements, including streets, utilities, drainage, sidewalks, trails, street lighting, street signage, and all other required improvements, at no cost to the City except as provided herein, in accordance with City Regulations, and as approved by the City's engineer or the City's Director of Public Works. Owner shall cause the installation of such improvements within all applicable time frames in accordance with the City Regulations unless otherwise approved herein. Owner shall provide engineering studies, plan/profile sheets, and other construction documents at the time of platting as required by City Regulations. Such plans shall be approved by the City's engineer or the City's Director of Public Works prior to approval of a Final Plat. Construction of such improvements shall not be initiated until a pre-construction conference has been held regarding the proposed construction and City has issued a written notice to proceed.
- (c) Acceptance of Public Improvements and Owner's Remedy. It shall not be a breach or event of default of this Agreement if the City withholds City utility services of any type that it is obligated to provide under this Agreement or otherwise obligated to provide until all

required Sanitary Sewer Facilities, Stormwater/Drainage Facilities and Water Facilities are properly constructed according to the approved engineering plans and City Regulations, and until such Sanitary Sewer Facilities, Stormwater/Drainage Facilities and Water Facilities are dedicated to and accepted by the City. From and after the inspection and acceptance by the City of the Public Improvements and any other dedications required under this Agreement, such improvements and dedications shall be owned by the City.

- (d) Approval of Plats/Plans/Submittals. Approval by the City, the City's Engineer or other City employee or representative, of any plans, designs, specifications, cost estimates, or other submittals submitted by Owner pursuant to this Agreement or pursuant to City Regulations shall not constitute or be deemed to be a release of the responsibility and liability of Owner, his engineer, employees, officers or agents for the accuracy and competency of their design, specifications or estimates. Further, any such approvals shall not be deemed to be an assumption of such responsibility and liability by the City for any defect in the design, specifications or estimates prepared by Owner's engineer, his officers, agents, servants or employees, it being the intent of the parties that approval by the City's engineer or other agent signifies the City's approval on only the general design concept of the improvements to be constructed.
- (e) Insurance. Owner or its contractor(s) shall acquire and maintain, during the period of time when any of the Public Improvements are under construction (and until the full and final completion of the Public Improvements and acceptance thereof by the City: (a) workers compensation insurance in the amount required by law; and (b) commercial general liability insurance including personal injury liability, premises operations liability, and contractual liability, covering, but not limited to, the liability assumed under any indemnification provisions of this Agreement, with limits of liability for bodily injury, death and property damage of not less than \$1,000,000.00. Such insurance shall also cover any and all claims which might arise out of the Public Improvements construction contracts, whether by Owner, a contractor, subcontractor, materialman, or otherwise. Coverage must be on a "per occurrence" basis. All such insurance shall: (i) be issued by a carrier which is rated "A-1" or better by A.M. Best's Key Rating Guide and licensed to do business in the State of Texas; and (ii) name the City as an additional insured and contain a waiver of subrogation endorsement in favor of the City. Upon the execution of Public Improvement construction contracts, Owner shall provide to the City certificates of insurance evidencing such insurance coverage together with the declaration of such policies, along with the endorsement naming the City as an additional insured. Each such policy shall provide that, at least 30 days prior to the cancellation, non-renewal or modification of the same, the City shall receive written notice of such cancellation, non-renewal or modification.
- (f) Indemnification and Hold Harmless. OWNER COVENANTS AND AGREES TO INDEMNIFY AND DOES HEREBY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING BUT NOT LIMITED TO DEATH, TO ANY AND ALL PERSONS, OF WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES

AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND OTHER CONSULTANTS) ARISING OUT OF OR IN CONNECTION WITH, DIRECTLY OR INDIRECTLY, THE NEGLIGENT OR OTHERWISE WRONGFUL ACTS OR OMISSIONS OF OWNER, ITS AGENTS, SERVANTS, CONTRACTORS, SUBCONTRACTORS, MATERIAL MEN OR EMPLOYEES IN CONNECTION WITH THE DESIGN, CONSTRUCTION OR INSTALLATION OF THE PUBLIC IMPROVEMENTS, INCLUDING BUT NOT LIMITED TO INJURY OR DAMAGE TO CITY-OWNED PROPERTY. SUCH INDEMNITY SHALL SURVIVE THE TERM OF THIS AGREEMENT. AT NO TIME SHALL THE CITY HAVE ANY CONTROL OVER OR CHARGE OF THE OWNER'S DESIGN, CONSTRUCTION OR INSTALLATION OF ANY OF THE PUBLIC IMPROVEMENTS THAT ARE THE SUBJECT OF THIS AGREEMENT, NOR THE MEANS, METHODS, TECHNIQUES, SEQUENCES OR PROCEDURES UTILIZED FOR SAID DESIGN, CONSTRUCTION OR INSTALLATION. THIS AGREEMENT DOES NOT CREATE A JOINT ENTERPRISE BETWEEN THE CITY AND OWNER. EACH OWNER FURTHER COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY AGAINST ANY AND ALL CLAIMS OR SUITS, BY ANY PERSON CLAIMING AN OWNERSHIP INTEREST IN THE PROPERTY WHO HAS NOT SIGNED THIS AGREEMENT AND WHICH CLAIMS: (1) ARISE IN ANY WAY FROM THE CITY'S RELIANCE UPON THAT OWNER'S REPRESENTATIONS IN THIS AGREEMENT; (2) RELATE IN ANY MANNER OR ARISE IN CONNECTION WITH THIS AGREEMENT OR IN CONNECTION WITH OWNERSHIP OF THE PROPERTY; OR (3) ARISE IN ANY WAY FROM THE CITY'S APPROVAL OF ANY TYPE OF DEVELOPMENT APPLICATION OR SUBMISSION WITH RESPECT TO THE PROPERTY. THE OWNER'S DUTY TO THE CITY TO INDEMNIFY, HOLD HARMLESS, AND DEFEND, AS SET FORTH IN THIS PARAGRAPH, SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

#### **SECTION 8. DEVELOPMENT FEES**

Except as otherwise expressly stated in this Agreement, Owner shall pay all applicable development and permit application fees and inspection fees in the amounts and at the times as required under generally applicable City Regulations that are in effect at the time each required development or permit application is submitted for development of the Medical Office Property or the Additional Development Property.

#### **SECTION 9. DEVELOPMENT STANDARDS**

Development of the Medical Office Property, the Medical Office Project, the Anna Surgical Center Property, and the Additional Development Property shall meet or exceed the applicable minimum development standards and requirements, including without limitation any standards or requirements for building materials or methods, as set forth in City of Anna, Texas Ordinance No. 765-2018 as amended by City of Anna, Texas Ordinance No. 846-2020, as said ordinances may be amended from time to time (the "Development Standards"). Additionally, and notwithstanding Texas House Bill 2439, 86(R), codified as Chapter 3000 of the Texas Government Code, this Agreement shall contractually require Development of the Medical

Office Property, the Medical Office Project, the Anna Surgical Center Property, and the Additional Development Property to meet or exceed the Development Standards.

**SECTION 10. EFFECTIVE DATE**

The Effective Date of this Agreement is the date that the last of the Parties' signatures to this Agreement is fully and properly affixed to this Agreement and acknowledged by a public notary. The City's duties and obligations hereunder shall not arise unless and until the City Manager has executed this Agreement and Owner has duly executed and delivered this Agreement to the City Manager.

**SECTION 11. WARRANTIES**

- (a) The accuracy of the warranties set forth in this section are conditions for the Deferment to continue to be in effect. Owner shall notify the City if and when any of the following warranties are no longer accurate. The failure to so notify the City is an event of default and material breach of this Agreement. Owner warrants and represents to the City the statements set forth in this section are true and accurate.
- (b) Owner is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Texas. Owner has all corporate power and authority to carry on its business as presently conducted in the State of Texas.
- (c) Owner has the authority to enter into and perform, and will perform, the terms of this Agreement to the best of its ability.
- (d) Owner has timely filed and will timely file all local, State, and Federal tax reports and returns required by law to be filed and all taxes, assessments, fees, and other governmental charges related to the Development, including applicable ad valorem taxes, have been timely paid, and will be timely paid, during the term of this Agreement.
- (e) Any entity(ies)/individual(s) executing this Agreement on behalf of Owner are duly authorized to execute this Agreement on behalf of Owner.
- (f) In accordance with Chapter 2264 of the Texas Government Code, Owner certifies that neither it, nor a branch, division, or department of Owner, will ever knowingly employ an undocumented worker and that if, after receiving any public subsidies under this Agreement, Owner, or a branch, division, or department of Owner, is convicted of a violation under 8 U.S.C. §1324a(f), as amended or recodified, Owner shall repay the total amount of all public subsidies and/or incentives theretofore received under this Agreement with interest at two percent (2%) per annum not later than the 120th day after the date the City notifies Owner in writing of the violation. The Owner does not boycott Israel and will not boycott Israel during the term of this Agreement.
- (g) No litigation or governmental proceeding is pending or, to the knowledge of Owner and its general partner and officers, is threatened against or affecting Owner, or the Development or the Medical Office Property, Medical Office Project, Anna Surgical Center, or the

Additional Development Property that may result in any material adverse change in Owner's business, properties or operation.

- (h) Owner shall not be in breach of any other contract by entering into and performing this Agreement. Owner shall amend or enter into any other contract that may be necessary for Owner to fully and timely perform its obligations under this Agreement.

## **SECTION 12. SUCCESSORS AND ASSIGNS**

- (a) All obligations and covenants of Owner under this Agreement shall constitute covenants running with the land and shall bind Owner and each successive owner of all of any portion of the Medical Office Property.
- (b) Without limiting the generality of the foregoing and except as otherwise provided in this paragraph, Owner has the right (from time to time upon delivery of 14 days' prior written note to the City) to assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of Owner under this Agreement, to any person or entity (an "Assignee") that is or will become an owner of any portion of the Medical Office Property or that is an entity that is controlled by or under common control with Owner. Further, no assignment by Owner shall release Owner from any liability that resulted from an act or omission by Owner that occurred prior to the effective date of the assignment unless the City approves the release in writing. Notwithstanding the foregoing, Owner shall not assign this Agreement, in whole or in part, to an Assignee if the City, after action by the City Council (which action shall be considered by the City in good faith based upon financial and performance criteria, and which action shall not be unreasonably withheld, conditioned or delayed), notifies Owner within 14 days of receipt of the written notice required by this that such Assignee fails to satisfy the City's financial and performance criteria. If the City provides such notice to Owner then the Parties, within 14 days of such notice, shall mediate the dispute. The mediator shall be mutually agreed-upon; and the cost of such mediator shall be paid equally by the Parties. The mediator's determination shall be binding on the Parties. If a Party refuses to mediate, then the decision of the Party willing to mediate shall be binding.
- (c) Each assignment shall be in writing executed by Owner and the Assignee and shall obligate the Assignee to be bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title, or interests being assigned. From and after such assignment, the City agrees to look solely to the Assignee for the performance of all obligations assigned to the Assignee and agrees that Owner shall be released from subsequently performing the assigned obligations and from any liability that results from the Assignee's failure to perform the assigned obligations; provided, however, Owner shall not be released until the City receives an executed copy of such assignment. Further, no assignment by Owner shall release Owner from any liability that resulted from an act or omission by Owner that occurred prior to the effective date of the assignment unless the City approves the release in writing. Owner shall maintain written records of all assignments made by Owner to Assignees, including a copy of each executed assignment and the Assignee's Notice

information as required by this Agreement, and, upon written request from any Party or Assignee, shall provide a copy of such records to the requesting person or entity.

### **SECTION 13. DEFAULT, NOTICE, AND CURE**

- (a) Events of Default by Owner. In addition to other events of default by Owner set forth in this Agreement, each of the following events constitute a default of this Agreement by Owner:
- (1) The City reasonably and in good faith determines that any representation or warranty on behalf of Owner contained in this Agreement or in any financial statement, certificate, submittal, report, or opinion submitted to the City in connection with this Agreement was incorrect or misleading in any material respect when made.
  - (2) Any attachment or other levy against the Development or any portion thereof with respect to a claim, excluding mechanic's and materialman's liens, remains unpaid, undischarged, or not dismissed for a period of 90 days.
  - (3) Owner makes an assignment for the benefit of creditors.
  - (4) Owner files a voluntary petition in bankruptcy or is adjudicated insolvent or bankrupt.
  - (5) If taxes owed to the City by Owner become delinquent, and Owner fails to timely and properly follow the legal procedures for protest or contest.
  - (6) Owner fails to timely, fully and completely comply with any one or more of the material requirements, obligations, duties, terms, conditions or warranties of this Agreement, including without limitation the Owner's obligations as set forth in Section 4.
- (b) Notice of Default. Should the City determine that Owner is in default according to the terms of this Agreement, the City shall notify Owner in writing of the event of default, and provide 30 days from the date of the notice ("Cure Period") for Owner to cure the event of default; provided, however, in the event that an event of default that Owner has diligently undertaken to cure is not able to be cured within such 30-day period, Owner shall be permitted additional time to effectuate such cure, provided, that in no event shall the Cure Period exceed 60 days from the date of notice from the City. Should the City fail to timely, fully and completely comply with any one or more of its obligations under this Agreement, such failure shall be an act of default by the City and the City shall have sixty 60 days to cure and remove the Default after receipt of written notice to do so from Owner. Owner's sole remedy as against the City is to seek specific performance and shall not be entitled to an award of attorney's fees nor monetary damages.
- (c) Results of Uncured Default by Owner. If Owner fails to cure any default during the Cure Period, the City may provide written notice to Owner that this Agreement has terminated at which time the termination of this Agreement shall be deemed to be effective for all purposes.

**SECTION 14. MISCELLANEOUS PROVISIONS**

- (a) Authority to execute contract. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.
  
- (b) Notice. All notices, demands or other communications required or provided hereunder shall be in writing and shall be deemed to have been provided on the earlier to occur of actual receipt or three (3) days after the same are given by hand delivery or deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, addressed to the parties at the addresses set forth below or at such other addresses as such parties may designate by written notice to the other parties in accordance with this notice provision.

If to the City:           City of Anna  
                                  Attn: City Manager  
                                  P.O. Box 776  
                                  111 N. Powell Parkway  
                                  Anna, TX 75409

With copy to:           Wolfe, Tidwell & McCoy, LLP  
                                  Attn: Clark McCoy  
                                  2591 Dallas Parkway, Suite 300  
                                  Frisco, TX 75009

If to Owner:            Anna MOB Partners, LLC  
                                  Attn: Richard Jelsma  
                                  6426 Glendora Avenue  
                                  Dallas, TX 75230

With copy to:           Anna Investments, LLC  
                                  1625 N. Highway 75  
                                  Sherman, TX 75090

- (c) Complete Agreement. This Agreement embodies the entire Agreement between the Parties and cannot be varied or terminated except as set forth in this Agreement, or by written agreement of the City and Owner expressly amending the terms of this Agreement.
  
- (d) Applicable Law and Venue. This Agreement shall be performable and all compensation payable in Collin County, Texas. Venue and exclusive jurisdiction under this Agreement lies in a court of competent jurisdiction in Collin County, Texas.
  
- (e) Severability. If any clause, paragraph, section or portion of this Agreement shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of this Agreement

shall remain in full force and effect and the unlawful provision shall be replaced with a provision as similar in terms and effect to such unlawful provision as may be valid, legal and enforceable.

- (f) Representation. Each signatory representing this Agreement has been read by the party for which this Agreement is executed and that such Party has had an opportunity to confer with its counsel.
- (g) Consideration. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is hereby acknowledged.
- (h) Waiver. Waiver by either Party of any breach of this Agreement, or the failure of either Party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such Party's right thereafter to enforce and compel strict compliance of this Agreement.
- (i) Force Majeure. The time frames for Owner's performance as set forth in this Agreement shall be extended by time frames equal to any delays caused by events of Force Majeure which include an act of God, fire, earthquake, floods, explosion, adverse weather, war, terrorism, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market for reasons other than cost increases, failure of transportation, strikes, lockouts, action of labor unions, condemnation, laws, orders of governmental or civil military or naval authorities, governmental delays in approving plans and issuing permits in cases where same are ultimately approved or issued, when the foregoing causes are not within the control of Owner.
- (j) Miscellaneous Drafting Provisions. This Agreement was drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.
- (k) No Other Beneficiaries. This Agreement is for the sole and exclusive benefit of the City, Owner and Payee and is not intended to and shall not confer any rights or benefits on any third party not a signatory hereto.
- (l) Binding Effect. This Agreement shall bind and inure to the benefit of the City and Owner and to any successor owner/developer of the Medical Office Property, may be recorded in the Collin County property records, and runs with the land. City agrees to execute documents in recordable form evidencing completion of one or more Public Improvements once completed in accordance with this Agreement.
- (m) Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

[SIGNATURES PAGES FOLLOW, REMAINDER OF THIS PAGE INTENTIONALLY LEFT  
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Anna MOB Partners LLC, a Texas limited liability company

By: Richard Jelsma  
Richard Jelsma, Manager

IN WITNESS WHEREOF:

STATE OF TEXAS §  
                                          §  
COUNTY OF Bryant §

Before me, the undersigned notary public, on the 19th day of October, 2020, personally appeared Richard Jelsma, known to me (or proved to me) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same in his capacity as Manager of Anna MOB Partners LLC, a Texas limited liability company.



Melissa Bryant  
Notary Public, State of Texas

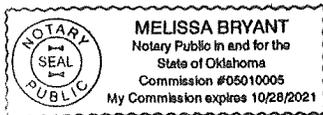
Anna Investments LLC, a Texas limited liability company

By: Richard Jelsma  
Richard Jelsma, Manager

IN WITNESS WHEREOF:

STATE OF TEXAS §  
                                          §  
COUNTY OF P Bryan §

Before me, the undersigned notary public, on the 19th day of October, 2020, personally appeared Richard Jelsma, known to me (or proved to me) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same in his capacity as Manager of Anna Investments LLC, a Texas limited liability company.

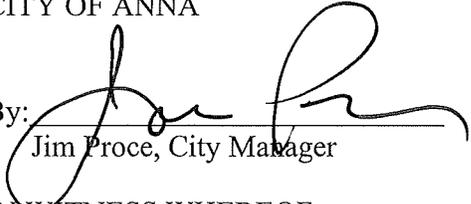


Melissa Bryant  
Notary Public, State of Texas



CITY OF ANNA

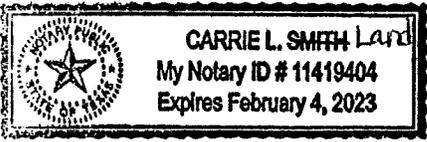
By:

  
Jim Proce, City Manager

IN WITNESS WHEREOF:

STATE OF TEXAS           §  
                                          §  
COUNTY OF Collin     §

Before me, the undersigned notary public, on the 28<sup>th</sup> day of October, 2020, personally appeared Jim Proce, known to me (or proved to me) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same in his capacity as City Manager of the City of Anna, Texas.



  
\_\_\_\_\_  
Notary Public, State of Texas

## **ATTACHMENTS**

Exhibit A – Legal Description of the Medical Office Property

Exhibit B – Development Plan of Medical Office Project

Exhibit C – Description of Additional Development Property

Exhibit D – Description of Anna Surgical Center Property

Exhibit E – Sanitary Sewer Facilities

Exhibit F – Stormwater/Drainage Facilities

Exhibit G – Water Facilities

Exhibit "A"

BEING a tract or parcel of land situated in the W.S. Rattan Survey, Abstract No. 752 and located in the City of Anna, Texas, same being a portion of that tract of land conveyed to Anna Instruments, LLC by deed recorded in Document No. 20180622000777080, Deed Records, Collin County, Texas, and being more particularly described as follows:

COMMENCING at an aluminum monument found for the northeast corner of the Anna Investments tract and southeast corner of the remainder of that tract of land, called Tract Four, conveyed to Jon Sherley Miller by deed recorded in Volume 2667, Page 671, Deed Records, Collin County, Texas, said corner lying in the west right of way line of US Highway No. 75.

THENCE S89°56'12"W, departing the west line of US Highway 75, a distance of 811.81 feet to a point, said point lying in the east line of proposed Standridge Boulevard;

THENCE along the east line of proposed Standridge Boulevard the following:

South 01°06'39"E, a distance of 54.35 feet to a point;

Along a curve to the right a angle of 14°39'37", a radius of 780.00 feet, an arc distance of 199.58 feet, a chord bearing of S06°13'10"W, 199.03 feet to the POINT OF BEGINNING.

THENCE S81°31'00"E, leaving east line of proposed Standridge Boulevard, a distance of 437.38 feet to a point for corner;

THENCE S08°29'00"W, a distance of 276.38 feet to a point for corner, said point being the northeast corner of proposed Lot 2, Block A of the One Anna Two Addition;

THENCE N81°31'00"W, along the north line of Lot 2, Block A, a distance of 458.78 feet to a point for corner, said point being the northwest corner of Lot 2, Block A and in the east line of Standridge Boulevard;

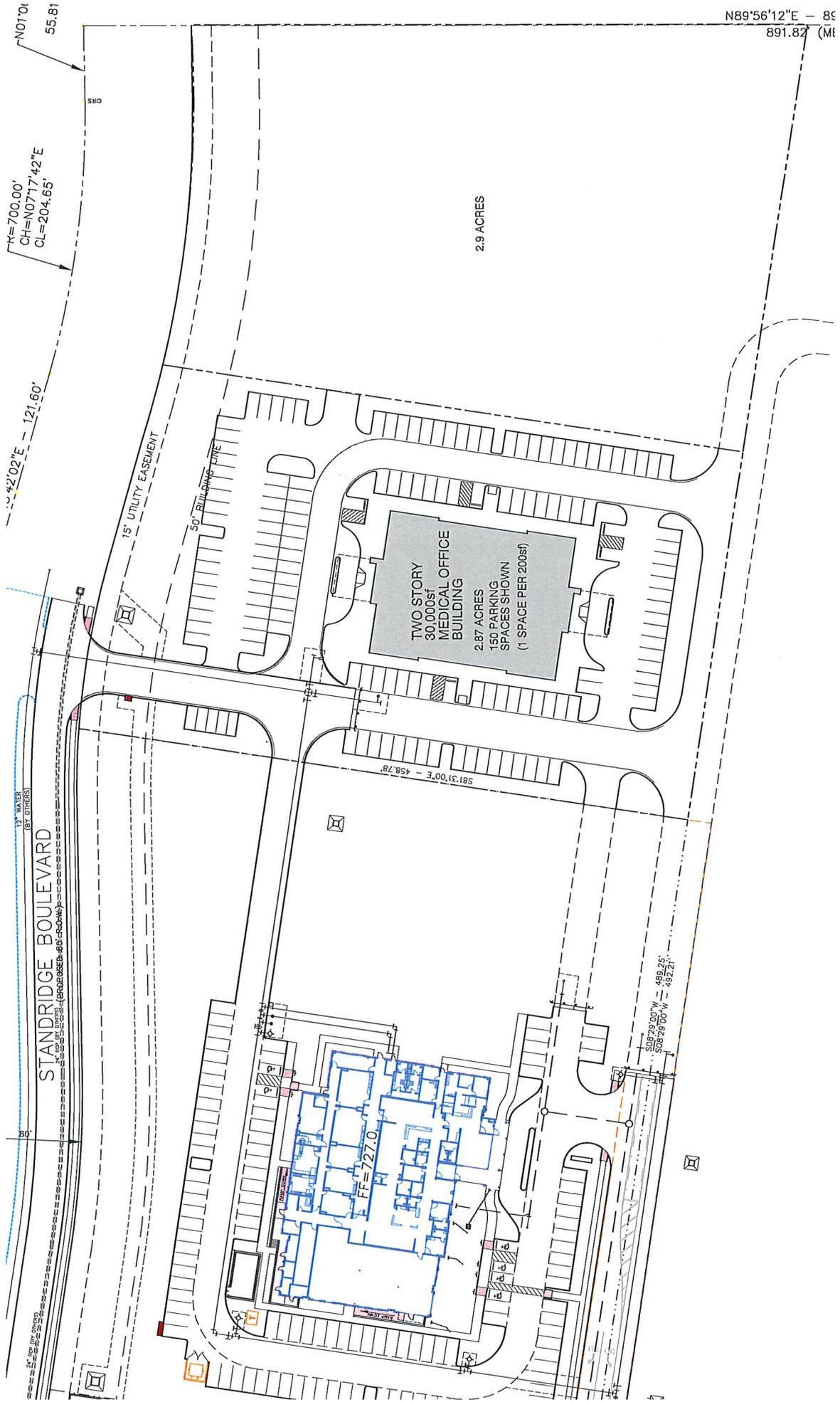
THENCE along the east line of proposed Standridge Boulevard the following:

Along a curve to the right having a delta angle of 11°43'33", a radius of 620.00 feet, an arc length of 126.89 feet, a chord bearing of N09°50'16"E, 126.66 feet;

N15°42'02"E, a distance of 121.60 feet;

Along a curve to the left having a delta angle of 02°09'03", a radius of 780.00 feet, an arc distance of 29.28 feet, a chord bearing of N14°37'30"E, 29.28 feet;

to the POINT OF BEGINNING and containing 125,019 square feet, 2.870 acres of land more or less.



**MEDICAL OFFICE BUILDING**  
**Exhibit B**  
 Anna, TX

DATE: 08-14-2020  
 PRELIM DRAWING  
 NOT FOR BIDDING,  
 PERMITTING, OR  
 CONSTRUCTION  
 MATT WILLIAMS  
 17881



N89°56'12"E - 89°  
 891.82' (M)

2.9 ACRES

**TWO STORY  
 30,000sqft  
 MEDICAL OFFICE  
 BUILDING**  
 2.87 ACRES  
 150 PARKING  
 SPACES SHOWN  
 (1 SPACE PER 200sqft)

STANDRIDGE BOULEVARD

12" WATER  
 (BY OTHERS)

K=700.00'  
 CH=N07°17'42"E  
 CL=204.65'

42°02"E - 121.60'

CRS

15' UTILITY EASEMENT

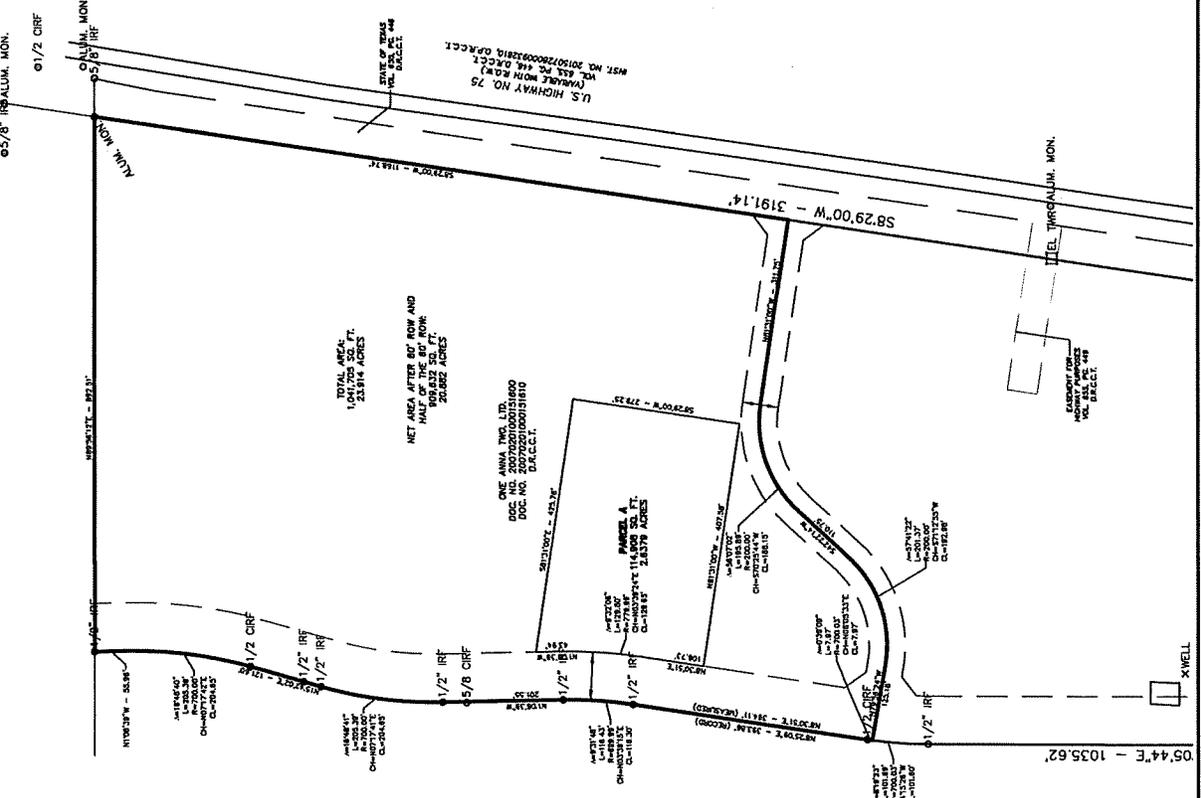
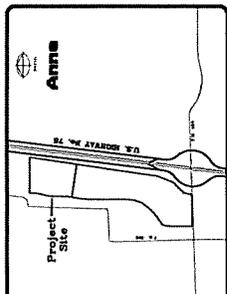
50' BUILDING SETBACK

S81°31'00"E - 458.78'

S08°29'00"W - 495.25'  
 S08°29'00"W - 432.21'

FF=727.0





**Parcel A**

BEING a 2.6379 acre tract of land situated in the W. S. Rattson Survey, Abstract No. 752 and located in the City of Anna, Texas, some being a portion of that tract of land conveyed to One Anna Two, Ltd. by deeds recorded in Document Nos. 20070201000151600 and 20070201000151610, Deed Records, Collin County, Texas, and being more particularly described as follows:

COMMENCING at the northeast corner of the remainder of said One Anna Two, Ltd. tract and southeast corner of the remainder of that tract of land, called Tract Four, conveyed to Jan Shirley Miller by deed recorded in Volume 2667, Page 671, Deed Records, Collin County, Texas, said corner lying in the west right of way line of U.S. Highway No. 75;

THENCE along said west right of way line and the east line of said One Anna Two, Ltd. tract, S08° 29' 00" W, for a distance of 108.74 feet to a point for which the line hereinafter end of a proposed corner clip line between said right of way line and the north line of Suzie Lane, a proposed 60 foot right of way;

THENCE along said corner clip line, S53° 29' 00" W, for a distance of 42.43 feet to a point on said north line of Suzie Lane;

THENCE along said north line of Suzie Lane, N81° 31' 00" W, at a distance of 281.75 feet leaving said north line of Suzie Lane and continuing for a total distance of 318.50 feet to a point for corner, the POINT OF BEGINNING;

THENCE N81° 31' 00" W, for a distance of 407.68 feet to a point for corner the east line of Standridge Boulevard, a proposed 60 feet right of way;

THENCE along said east line of Standridge Boulevard, N08° 30' 51" E, for a distance of 105.73 feet to a point for corner at the beginning of a tangent curve to the left having a central angle of 09° 32' 06", a radius of 779.99 feet and a chord which bears N03° 39' 24" E, for a distance of 129.65 feet;

THENCE continuing along said east line of Standridge Boulevard and along said curve to the left, for an arc distance of 129.80 feet to a point for corner;

THENCE continuing along said east line of Standridge Boulevard, N01° 06' 39" W, for a distance of 43.94 feet to a point for corner;

THENCE departing said east line of Standridge Boulevard, S81° 31' 00" E, for a distance of 425.76 feet to a point for corner;

THENCE S08° 29' 00" W, for a distance of 279.25 feet to the POINT OF BEGINNING and containing 114,908 square feet or 2.6379 acres of land, as computed.

DESIGNED		DATE	SCALE	NOTES	FILE	NO.
JAR	DJA	08/18/20	1"=200'	BDD	C200XX	C4

**2.6 ACRES TRACT**  
**EXHIBIT "D"**

**ANNA MEDICAL OFFICE BUILDING**  
**CITY OF ANNA, TEXAS**

**BROCKETTE/DAVIS/DRAKE, INC.**  
 consulting engineers  
 Civil & Structural Engineering - Surveying  
 Texas Registered Engineering Firm F-441  
 1144 North Central Expressway, Suite 1100  
 Dallas, Texas 75202  
 (214) 834-3467 • fax (214) 834-7004





