

RESOLUTION NO. R2024-66

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, APPROVING A MONUMENT SIGN RIGHTS-OF-WAY LICENSE AGREEMENT WITH THE CREEKFALL SUBDIVISION PHASES ONE AND TWO HOMEOWNERS ASSOCIATION AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT ON BEHALF OF THE CITY

WHEREAS, the developers of Creekfall Subdivision Phases One and Two desire to place a Subdivision Monument Sign within the entryway to the subdivision off of State Highway 29; and

WHEREAS, the City Engineer has no objection to the placement of the Subdivision Monument Sign as proposed; provided certain public health, safety, and welfare precautions are addressed; and

WHEREAS, City Council deems it appropriate to offer a Rights-of-Way License Agreement giving permission for the placement of the Subdivision Monument Sign subject to certain terms and conditions.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF BURNET, TEXAS, AS FOLLOWS:

Section One. Findings. The recitals set out above are hereby approved and incorporated herein for all purposes.

Section Two. Approval. The Rights-of-Way License Agreement attached hereto is hereby approved.

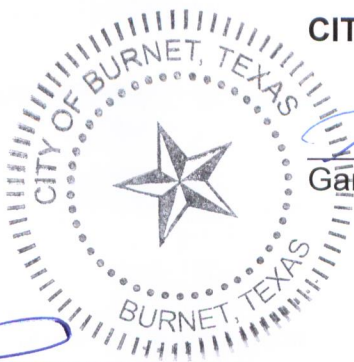
Section Three. Authorization. The City Manager is authorized and directed to take those actions that are reasonably necessary to facilitate the purpose of this Resolution.

Section Four. Open Meetings. It is hereby officially found and determined that the meeting at which this resolution was passed was open to the public and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

Section Five. Effective Date. That this resolution shall take effect immediately upon its passage, and approval as prescribed by law.

PASSED AND APPROVED on this the 10th day of September 2024.

CITY OF BURNET, TEXAS



[Handwritten Signature]

Gary Wideman, Mayor

ATTEST:

[Handwritten Signature]

Maria Gonzales, City Secretary

RIGHTS OF WAY LICENSE AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF BURNET §

This License Agreement (this "**Agreement**") is made the date set forth below by and between the CITY OF BURNET, TEXAS, a home-rule city located in Burnet County, Texas (the "**CITY**"), and the Creekfall Homeowner's Association, Inc., a Texas non-profit corporation (the "**ASSOCIATION**").

RECITALS:

WHEREAS, Creekfall, Phase 1 and Phase 2 is a subdivision development located within the corporate limits of the CITY consisting of residential lots and associated improvements, according to the map or plat thereof recorded as Document No. 202407630 and 202407631 on July 31, 2024, in the Official Public Records of Burnet County, Texas (the "**Subdivision**"); and

WHEREAS, the ASSOCIATION was created to administer the affairs of the Subdivision pursuant to the terms of that certain Declaration of Covenants, Conditions and Restrictions recorded as Document No. 202408310 on August 20, 2024, in the Official Public Records of Burnet County, Texas; and has the authority to levy assessments against the lots within the Subdivision to provide a permanent source of funding for the ASSOCIATION to pay for maintenance of improvements and associated landscaping or other improvements placed within the public rights-of-way; and

WHEREAS, in accordance with the Restrictions, the ASSOCIATION is authorized to maintain improvements within the rights-of-way of the public streets within and adjacent to the Subdivision; and

WHEREAS, the ASSOCIATION acknowledges and agrees that the CITY has exclusive jurisdiction and control of the public rights-of-way; and

WHEREAS, the ASSOCIATION has requested that the CITY grant it a license to install and maintain a subdivision entry monument sign within public right of way, to include a landscaped island with irrigation (collectively, the "**Improvements**") within portions of the public rights-of-way for the benefit and/or beautification of the Subdivision, as authorized by City Council as Resolution No R2024-66; and

WHEREAS, the ASSOCIATION acknowledges and agrees that the Improvements may not be placed within any portion of the public rights-of-way that would cause a hazard, or potential hazard to public health and safety, as determined in the sole discretion of the CITY.

NOW, THEREFORE, in consideration of the of the mutual promises given herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CITY and the ASSOCIATION agree as follows:

1. **RECITALS ADOPTED.** The recitals set out above in this instrument are hereby adopted in whole as each were set out herein.

2. **PUBLIC RIGHTS-OF-WAY** (the "ROW")

2.1. **License granted subject to City approval.** Subject to review and approval of the requirements set out in Section 2.2, immediately below, the CITY grants the ASSOCIATION the specific license, permission, authorization and right, at the sole cost and expense of the ASSOCIATION, to (A) construct, install, place, operate, maintain, repair, upgrade, replace and remove the Improvements; and (B) to mow the grass and maintain the landscaping surrounding the Improvements, including pruning shrubs, plants and ground cover, that may from time to time be located on or within the ROW located in close proximity to the Improvements, all of which are described and/or depicted in **Exhibit A** attached hereto (the "**Licensed Property**"). This license specifically excludes the right to install any other type of improvement or exercise any other type of control within the ROW. Should the ASSOCIATION wish to install additional improvements within the ROW, it must first secure a separate license from the CITY to do so. Vegetation authorized to be planted within the Licensed Property shall be limited to that which is stated in the "Plant List" on **Exhibit B**.

2.2. **Review and approval.** The ASSOCIATION is not authorized to, and shall not, install or otherwise enter any ROW for the purpose of installing the Improvements contemplated under this License, without submitting all plans for any such Improvements to the CITY and obtaining approval of said plans. The plans shall be submitted to the CITY in such form as required by the City Engineer to assure that the proposed Improvements will not pose a threat to either public safety, including but not limited to impairment of sight lines, or public infrastructure, including but not limited to water, sewer or utility lines.

2.3. **Construction and Operation.** The ASSOCIATION shall be solely responsible for constructing or installing, or causing to be constructed and installed, such Improvements within such ROW, and shall be solely responsible for the operation, maintenance, repair, removal and/or replacement of the Improvements that it may elect to construct and install within the ROW from time to time, subject to the terms of this License.

2.4. **Maintenance.** The ASSOCIATION shall be solely responsible for the maintenance of the Improvements and to ensure that said maintenance does not result in damage to the ROW or any public utility infrastructure. If damage should occur, the ASSOCIATION shall make payment to the CITY for full reimbursement of all costs the CITY incurs repairing such damages to the public infrastructure within thirty (30) days' receipt of an invoice from the CITY for the same. When maintenance occurs by the ASSOCIATION or its contractors, traffic control measures shall be utilized in conformance with the Texas Manual on Uniform Traffic Control Devices, latest edition.

3. **CITY RIGHTS WITH RESPECT TO THE ROW**

3.1 This License is expressly subject and subordinate to the present and future right of the CITY, its successors, assigns, lessees, grantees, and licensees, to construct, install, establish, maintain, use, operate, and renew any public utility facilities, franchised public utilities, roadways, or streets on, beneath or above the surface of the Licensed Property.

3.2 The CITY shall take reasonable measures to prevent damage to any improvements installed by or on behalf of the ASSOCIATION on the Licensed Property, however, any damage to, or destruction of, the ASSOCIATION's property by the CITY in the exercise of the above-described rights shall be at no charge, cost, claim or liability to the CITY, its agents, contractors, officers, employees, licensees, franchisees, or any successors or assigns.

3.3 Nothing in this License shall be construed to limit in any way the power of the CITY to widen, alter or improve the Licensed Property pursuant to official action by the governing body of the CITY or its successors. The CITY shall endeavor to provide the ASSOCIATION with notice of proposed improvements within the Licensed Property but shall be under no obligation to do so prior to commencement of work on such improvements.

3.4 NOTWITHSTANDING ANY PROVISIONS IN THIS LICENSE TO THE CONTRARY, THE CITY RETAINS THE ABSOLUTE RIGHT TO ENTER UPON THE LICENSED PROPERTY, AT ANY TIME AND WITHOUT NOTICE, TO REMOVE ANY OF THE IMPROVEMENTS OR ALTERATIONS THEREOF, WHENEVER SUCH REMOVAL IS DEEMED NECESSARY FOR: (A) EXERCISING THE CITY'S RIGHTS OR DUTIES WITH RESPECT TO THE LICENSED PROPERTY; (B) PROTECTING PERSONS OR PROPERTY; OR (C) PROTECTING THE PUBLIC HEALTH OR SAFETY WITH RESPECT TO THE LICENSED PROPERTY OR OTHER ROW. THE ASSOCIATION SHALL REIMBURSE ALL COSTS INCURRED BY THE CITY IN THE CITY'S ENFORCEMENT OF THIS SECTION. SHOULD THE CITY INVOKE THE REMEDIES PROVIDED IN THIS SECTION THE CITY MAY IMMEDIATELY TERMINATE THIS LICENSE UPON A DETERMINATION, IN THE CITY'S SOLE DISCRETION, THAT THE IMPROVEMENTS OR A PORTION OF THEM CONSTITUTE A DANGER TO THE PUBLIC WHICH CANNOT BE REMEDIED BY ALTERATION OR MAINTENANCE THEREOF.

4. INSURANCE

4.1 Prior to the commencement of any work under this Agreement, the ASSOCIATION shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the CITY's City Manager, which shall be clearly labeled with a reference to this License in the Description of Operations block of the Certificate. The CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The CITY shall have no duty to perform under this License until such certificate and endorsements have been received and approved by the CITY's City Manager. No officer or employee, other than the CITY's City Manager, shall have authority to waive this requirement.

4.2 The CITY reserves the right to review the insurance requirements of this Section 4 during the effective period of this License and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by CITY's City Manager based upon changes in statutory law, court decisions, or

circumstances surrounding this License. In no instance will the CITY allow modification whereupon the CITY may incur increased risk.

4.3 Subject to ASSOCIATION's right to maintain reasonable deductibles in such amounts as are approved by the CITY, ASSOCIATION shall obtain and maintain in full force and effect for the duration of this License, and any extension hereof, at ASSOCIATION's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

<u>TYPE</u>	<u>AMOUNTS</u>
Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Personal Injury c. Broad form property damage	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
Business Automobile Liability a. Owned/leased vehicle b. Non-owned vehicle c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence

4.4 The CITY shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the CITY, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). The ASSOCIATION shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to CITY at the address provided below within ten (10) days of the requested change. The ASSOCIATION shall pay any costs incurred resulting from said changes.

City of Burnet
Attn. City Manager
P.O. Box 1369
BURNET, TX 78611

4.5 ASSOCIATION agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City of Burnet, its officers, officials, employees, volunteers, and elected representatives as additional insureds by

endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of Burnet where the CITY is an additional insured shown on the policy;
- Provide thirty (30) calendar days advance written notice directly to the CITY of any suspension, cancellation, non-renewal, or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

4.6 Within five (5) calendar days of suspension, cancellation or non-renewal of coverage, the ASSOCIATION shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend ASSOCIATION's authorization under this License should there be a lapse in ASSOCIATION's insurance coverage at any time during the term of this License. Failure to provide and to maintain the required insurance shall constitute a material breach of this License.

4.7 Nothing herein contained shall be construed as limiting in any way the extent to which the ASSOCIATION may be held responsible for payments of damages to persons or property resulting from ASSOCIATION's or its subcontractors' performance of the work covered under this License.

4.8 It is agreed that ASSOCIATION's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the CITY for liability arising out of operations under this License.

4.9 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this License.

5. **INDEMNIFICATION**

5.1 ASSOCIATION COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, CITY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES OF CITY, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, BODILY INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON CITY, DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO ASSOCIATION'S ACTIVITIES UNDER THIS LICENSE AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF ASSOCIATION, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUB-ASSOCIATION OF ASSOCIATION, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES

WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS LICENSE AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. ASSOCIATION SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY OR ASSOCIATION KNOWN TO ASSOCIATION RELATED TO OR ARISING OUT OF ASSOCIATION'S ACTIVITIES UNDER THIS LICENSE AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT ASSOCIATION'S COST. CITY SHALL HAVE THE RIGHT, AT ITS OPTION, AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING ASSOCIATION OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

5.2 IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS LICENSE AGREEMENT, THAT THE INDEMNITY PROVIDED FOR IN THIS ARTICLE, IS AN INDEMNITY EXTENDED BY ASSOCIATION TO INDEMNIFY, PROTECT AND HOLD HARMLESS CITY FROM THE CONSEQUENCES OF CITY'S OWN NEGLIGENCE, PROVIDED, HOWEVER THAT THE INDEMNITY PROVIDED FOR IN THIS ARTICLE SHALL APPLY ONLY WHEN THE NEGLIGENT ACT OF CITY IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH OR DAMAGE, AND SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF CITY IS THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH OR DAMAGE. ASSOCIATION FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF CITY AND IN THE NAME OF CITY, ANY CLAIM OR LITIGATION BROUGHT AGAINST CITY AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES, IN CONNECTION WITH ANY SUCH INJURY, DEATH OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY AS SET FORTH ABOVE.

6. TERMINATION

6.1 Termination by the Association. This License may be terminated by the ASSOCIATION with at least thirty (30) days' advanced notice to CITY. In the event of termination under this section, ASSOCIATION shall remove all Improvements and restore the Licensed Property to a condition as good as or better than the condition the Licensed Property was in immediately prior to the time ASSOCIATION commences work on the Improvements contemplated herein.

6.2 Termination by the City. This License may be revoked at any time by the CITY, if such revocation is reasonably required by the public interest, after providing at least thirty (30) days' prior written notice to the ASSOCIATION, except as otherwise provided in Section 3.4 above. Circumstances under which the CITY may revoke this License, pursuant to this subsection include, but are not limited to the following:

- (a) The improvements installed on the Licensed Property by or on behalf of the ASSOCIATION (or a portion of them) interfere with the CITY's use of the Licensed Property;
- (b) Use of the Licensed Property becomes necessary for a public purpose; provided, however, the CITY may remove landscaping and other improvements installed by the ASSOCIATION without terminating this License pursuant to Section 3.4 above; and
- (c) Despite thirty (30) days' written notice and opportunity to cure, the ASSOCIATION fails to: (i) maintain or make necessary alterations to prevent deterioration of the aesthetic or structural integrity of the Improvements; (ii) maintain the associated landscaping and vegetation in an aesthetically pleasing manner; or (iii) comply with any other terms and conditions of this License, including but not limited to, the insurance requirements specified herein.

6.3 In the event that this License is terminated by either Party, then at the election of the CITY, either: (i) the Improvements installed by or on behalf of the ASSOCIATION within the Licensed Property shall be removed by the ASSOCIATION and the Licensed Property and any other affected ROW will be restored to a condition as good as or better than the condition the Licensed Property was in immediately prior to the time ASSOCIATION commences work on the Improvements contemplated herein; or (ii) the CITY shall assume all rights, title and ownership to the ASSOCIATION's improvements within the Licensed Property and shall promptly invoice the ASSOCIATION for any expense incurred for remediation of the Licensed Property, which shall be due in full thirty (30) days following receipt of the same. Should the City elect to have the removal of the installed Improvements, restoration of the Licensed Property and any other affected ROW will be completed by the ASSOCIATION at its sole expense within sixty (60) days following notification by the CITY to do so.

7. ASSIGNMENT

7.1 The ASSOCIATION shall not assign, sublet, or transfer its interest in this License without the prior written consent of the CITY, which may be withheld for any reason.

8. MISCELLANEOUS PROVISIONS

8.1 Laws Observance. ASSOCIATION shall not do, nor suffer to be done by any of its employees, agents, contractors, or others for which the ASSOCIATION is legally liable, anything on the Licensed Property, during the term of this License, in violation of the laws of the United States, the State of Texas, or any of the ordinances of CITY.

8.2 Attorney's fees. If either Party is required to file suit to collect any amount owed under this License or to enforce its rights hereunder, the prevailing party shall be entitled to seek and recover reasonable attorney's fees.

8.3 No Waiver. No waiver by either Party of any default or breach of any covenant, condition, or stipulation herein contained shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition, or stipulation hereof.

8.4 Severability. In case any one or more of the provisions contained in this License shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this License shall be considered as if such invalid, illegal, or unenforceable provision had never been contained herein.

8.5 Notice. Any notices required or appropriate under this License shall be given in writing to the ASSOCIATION at the address shown below, and to, City of Burnet; Attn. City Manager, P.O. Box 1369, Burnet, TX 78691

8.6 Headings. The paragraph headings contained herein are for convenience of reference and are not intended to define, extend, or limit any provisions of this License.

8.7 Jurisdiction and Venue. This License will be interpreted according to the Constitution and laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this License shall be in Burnet County, Texas. This License is made and is to be performed in Burnet County, Texas, and is governed by the laws of the State of Texas.

8.8 Authorized Agent. The signer of this License for the ASSOCIATION hereby represents that he or she has full authority to execute this License on behalf of the ASSOCIATION.

8.9 Entire Agreement. This License and any exhibits and addendum hereto contain the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon, and supersedes all other agreements, oral or otherwise, regarding the subject matter of this License, none of which shall hereafter be deemed to exist or to bind the parties hereto; it being the intent of the parties that neither shall be bound by any term, condition, or representation not herein written.

SIGNATURE AND ACKNOWLEDGEMENT PAGES FOLLOW.

Monument Sign License Agreement

EXECUTED AND EFFECTIVE as of this 10 day of September, 20 .

CITY:

CITY OF BURNET, TEXAS,
(a Texas home-rule municipality)

By: 

David Vaughn, City Manager

ASSOCIATION:

Creekfall Homeowners Association, Inc. (a Texas non-profit corporation)

By: 

Name: DALE JANDA

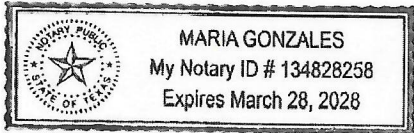
Title: VICE - PRESIDENT

Address: 3515 SW HK DODGEN LOOP
TEMPLE, TX. 76502

Monument Sign License Agreement

STATE OF TEXAS §
 §
COUNTY OF BURNET §

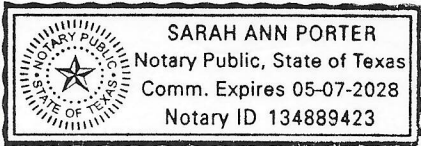
This instrument was acknowledged before me on this 10th day of September, 2024, by David Vaughn as City Manager of THE CITY OF BURNET, TEXAS, a home rule city, on behalf of said city.



[Signature]
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF DALL §

This instrument was acknowledged before me on this 18 day of SEPTEMBER, 2024 by DALE JANDA as VICE PRESIDENT of Creekfall Homeowners Association, Inc., a Texas non-profit corporation, on behalf of said non-profit corporation.



[Signature]
Notary Public, State of Texas

AFTER RECORDING, PLEASE RETURN TO:

City of BURNET
Attn. City Manager
P.O. Box 1369
BURNET, TX 78611

EXHIBIT A

Licensed Property Location Map

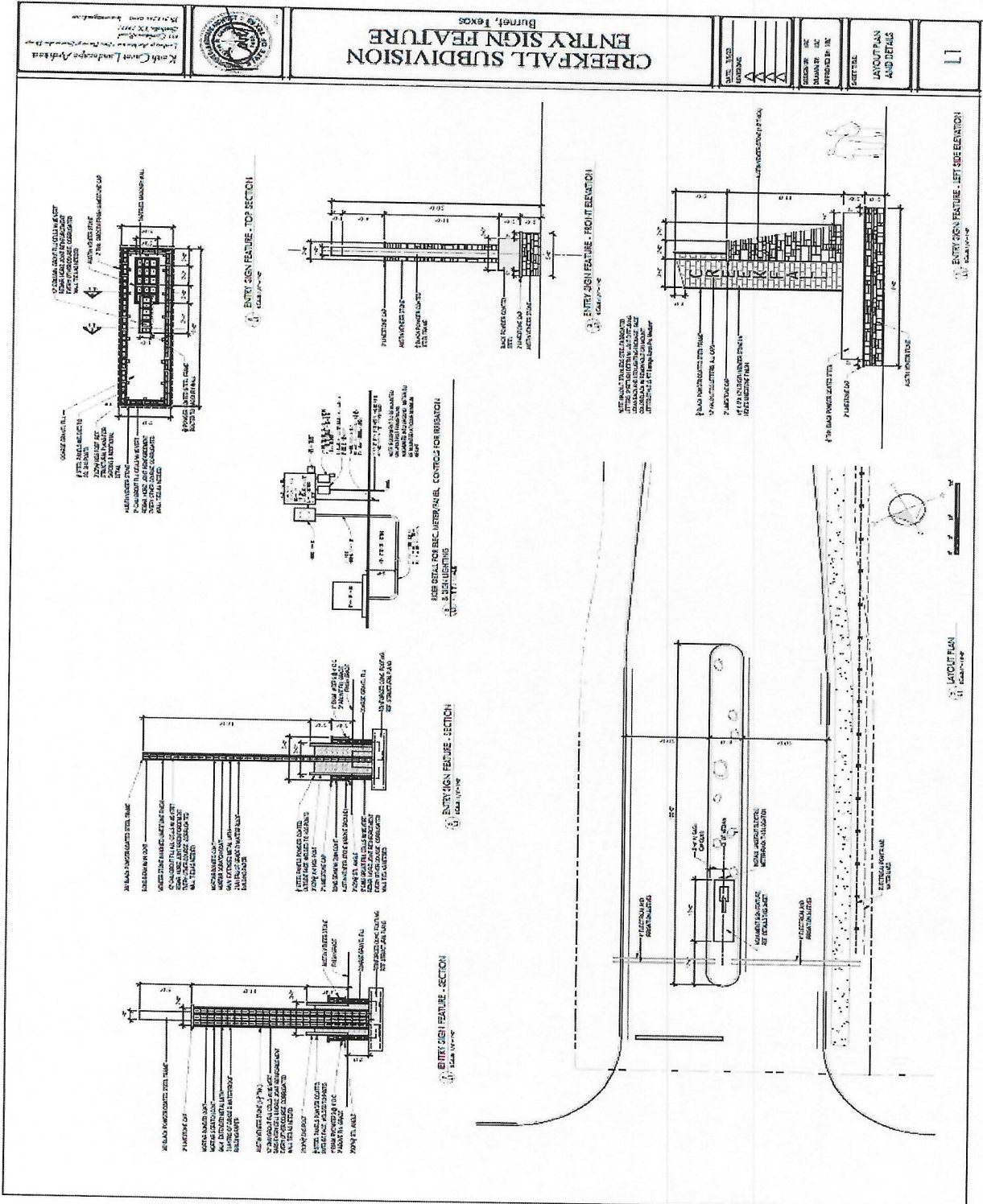


EXHIBIT B

Approved Plant List

PLANT LIST

QTY	COMMON NAME	BOTANICAL NAME	SIZE
40	Blackfoot Daisy	Melampodium leucanthum	1 gal.
8	Golden Barrel Cactus	Echinocactus Griseonii	5 gal.
1	Caribbean Agave	Agave angustifolia	30 gal.
4	Foxtail Agave	Agave attenuata Salm-Dyck	15 gal.
1	Twin Flower Agave	Agave geminiflora	15 gal.
6	Gulf Muhly	Muhlenbergia capillaris	5 gal.
3	Red Flowering Yucca	Hesperaloe parviflora	7 gal.
5	Rock Rose	Pavonia lasiopetala	5 gal.
5	Cherry Sage - white	Salvia greggii	3 gal.