

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT ("**Agreement**"), dated as of _____, 2023 (the "**Effective Date**"), is entered into by and between Montgomery County, Texas, a political subdivision of the State of Texas ("County") and TW-VOGMVC, LLC, a Delaware limited liability company ("Owner"). County, and Owner may be referred to singly as a "Party" or collectively as "Parties."

RECITALS

WHEREAS, Owner owns that certain real property located in the Grogan's Mill Retail Center, The Woodlands, Montgomery County, Texas (the "**Property**") more particularly described in Exhibit A attached hereto;

WHEREAS, the County would like to replace the South Montgomery County Regional Library and the South Montgomery County Community Center (the "County Owned Properties") with new, modern facilities to be located on the Property.

WHEREAS, Owner desires to cause to be developed by an Affiliate of Owner, a new community center and public library complex of one or more buildings for the County on the Property (the "**Project**") in exchange for receiving the County Owned Properties from the County as further described in that certain Exchange Agreement entered into on _____ by and between the Parties;

WHEREAS, Owner, through its Affiliate, is capable and experienced in providing development services for developments similar to the Project; and

NOW, THEREFORE, in consideration of the foregoing Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I DEFINITIONS

Section 1.01 Definitions. The following defined terms shall have the meanings set out below:

(a) "**Affiliate**" means, with respect to a person, any other person directly or indirectly controlling, controlled by, or under common control with such first person. As used in this Agreement, the term "**control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract, or otherwise.

(b) "**Approve**," "**Approved**," or "**Approval**" means, as to the subject matter thereof and as the context may require or permit, an express approval contained in a written statement signed by County.

(c) "**Architect**" means the architect Approved by Owner and County under this Agreement as the architect for the Project.

(d) **"Bankruptcy"** means any of the following: (i) the filing of a voluntary petition under any federal or state law for the relief of debtors; (ii) the filing of an involuntary proceeding under any such law; (iii) the making of a general assignment for the benefit of the assignor's creditors; (iv) the appointment of a receiver or trustee for a substantial portion of a person's assets; or (v) the seizure by a sheriff, receiver, or trustee of a substantial portion of a person's assets; provided, however, that no bankruptcy shall be deemed to have occurred in the case of an event described in clause (ii), (iv), or (v) above, until the proceeding, appointment, or seizure has been pending for 60 days.

(e) **"Change in Control"** (i) a merger, consolidation, or conversion of the Owner with or into another business entity that is the surviving entity in such merger, consolidation, or conversion other than a merger, consolidation, or conversion with an Affiliate of the Owner; or (ii) a change in control of the Owner, including, without limitation, by the transfer of 50% or more of the stock in the Owner to any one person or entity in one or a series of transactions.

(f) **"Construction Contract"** is defined in Section 3.01(f)(ii) hereof.

(g) **"Construction Period"** means the period: (i) beginning with the commencement of actual construction of the Project, including, without limitation, demolition and excavation; and (ii) ending on Final Completion of all Work.

(h) **"Entitlement Obligations"** means dedications of land or improvements for, or contributions to the cost of, constructing, installing, operating, or maintaining public improvements, installations, or facilities or other special taxes, assessments, licenses, fees, charges, or impact or mitigation charges required under Governmental Requirements.

(i) **"Environmental Laws"** means any federal, state, or local law, rule, or regulation pertaining to environmental regulation, contamination, remediation, or clean-up, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.* and 40 CFR § 302.1 *et seq.*), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.* and 40 CFR § 116.1 *et seq.*), those relating to lead based paint, and the Hazardous Materials Transportation Act (49 U.S.C. § 1801 *et seq.*), Texas Water Code and the Texas Solid Waste Disposal Act, and the regulations promulgated pursuant to said laws, all as amended.

(j) **"Event of Default"** has the meaning set forth in Section 5.02.

(k) **"Final Completion"** means following Substantial Completion of the Work: (i) all Punch List Work has been completed and paid for; (ii) delivery to County of an Architect's certification that all the Work has been completed in accordance with the Plans and Specifications; and (iii) County has received final lien waivers and lien releases from Owner, General Contractor, and all subcontractors and materialmen whose subcontract amount exceeds One Million Dollars and no/100 (\$1,000,000.00).

(l) **"Final Development Budget"** means the complete Development Budget following the completion of the Plans and Specifications for the Project.

(m) **"Force Majeure Event"** means any of the following events: (i) acts of God; (ii) floods, fires, earthquakes, explosions, or other natural disasters; (iii) war, invasions, hostilities (whether war is declared or not), terrorist threats or acts, riots or other civil unrest; (iv) moratorium on the issuance of governmental approvals; (v) governmental authority, proclamations, orders, laws, actions, or requests; (vi) embargoes or blockades in effect on or after the date of this Agreement; (vii) epidemics, pandemics, or other national or regional public health emergencies; (viii) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (ix) shortages of supplies, adequate power, or transportation facilities.

(n) **"General Contractor"** means the general contractor Approved by Owner under the terms of this Agreement as the general contractor for the Project.

(o) **"Governmental Authorities"** means any and all federal, state, county, city, town, other municipal corporation, governmental or quasi-governmental board, agency, authority, department, or body having jurisdiction over the Project.

(p) **"Governmental Authorizations"** means the permits, licenses, variances, entitlements, approvals, and other actions that, under Governmental Requirements applicable to the Project, have been or must be issued, granted, or taken by Governmental Authorities in connection with the Project.

(q) **"Governmental Requirements"** means building, subdivision, traffic, parking, land use, environmental, occupancy, health, accessibility for disabled, and other applicable laws, statutes, codes, ordinances, rules, regulations, requirements, and decrees of any Governmental Authority pertaining to the Project. This term shall include the conditions or requirements of Governmental Authorizations.

(r) **"Hazardous Materials"** means any hazardous, toxic, or harmful substances, wastes, materials, pollutants, or contaminants (including, without limitation, asbestos, lead-based paint, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, infectious substances, or raw materials which include hazardous constituents) or any other substances or materials which are included under or regulated by Environmental Laws, or any molds, spores, fungi, or other harmful microbial matter.

(s) **"Material Subcontract"** means a subcontract with a price that is reasonably expected to exceed One Million Dollars and no/100 (\$1,000,000.00).

(t) **"Material Subcontractor"** means a counterparty to a Material Subcontract.

(u) **"Plans and Specifications"** means all working drawings and specifications setting forth in detail and prescribing all work to be done for the Project, including the Work, general conditions, special conditions, materials, workmanship, finishes, and equipment required for the architectural, structural, life safety, mechanical, electrical, and plumbing systems, parking, landscaping, on-site amenities, and facilities, and all addenda thereto and modifications thereof.

(v) **"Predevelopment Period"** means the period: (i) beginning on the date of this Agreement; and (ii) ending with the commencement of the Construction Period.

(w) **"Project"** is defined in the Recitals hereof.

(x) **"Project Costs"** means the total costs of designing, developing, permitting, connecting utilities, and constructing the Project, including the purchase and of installation of any new furniture and fixtures for the Project and all other costs related to relocating the County's existing re-utilized furniture, fixtures, equipment and personal property from the County Owned Facilities to the Project, as set out in the Final Development Budget; provided however that Project Costs will not include any of the items listed on Appendix A attached hereto unless any of such items are currently included in the County's existing furniture, fixtures, equipment and personal property which it desires to have relocated to the Project.

(y) **"Project Schedule"** means the schedule for the completion of the design and construction of the Project, identifying: (i) the projected dates for the achievement of major milestones in the development process; and (ii) the commencement and completion of construction for various stages of the Project.

(z) **"Property"** is defined in the Recitals hereof.

(aa) **"Punch List Work"** means minor items of Work necessary to complete the Project that will not materially interfere with the leasing and occupancy of the Project, and which are otherwise of a scope and nature as is commonly understood in the construction industry.

(bb) **"Services"** means the duties, obligations, responsibilities, and other services to be provided by Owner under this Agreement, including, without limitation, management of the Work.

(cc) **"Substantial Completion"** means: (i) all Work has been completed in accordance with the Plans and Specifications, subject only to completion of Punch List Work, as evidenced by an AIA G704 certificate from the Architect certifying substantial completion and identifying all such punch list items and the estimated cost thereof; and (ii) a temporary or permanent certificate of occupancy has been issued.

(dd) **"Work"** means all work and services required be performed by the General Contractor to develop and construct the Project in accordance with the Construction Contract and the Plans and Specifications.

ARTICLE II APPOINTMENT AND AUTHORITY OF OWNER

Section 2.01 Appointment. County hereby appoints Owner, and Owner accepts the appointment, as Owner of the Project to provide the Services, including, without limitation,

predevelopment studies, zoning approval, site plan approval, permitting, development, design, and construction management services with respect to the design and construction of the Project.

Section 2.02 Owner Right to Assign. Owner may at any time, without the consent of County, assign all of their rights and obligations under this Agreement to an Affiliate of Owner.

Section 2.03 Standard of Care. Owner shall perform the Services in accordance with the degree of professional care, skill, judgment, and diligence ordinarily exercised by project Owners regularly developing and operating development projects similar in scope and complexity to the Project in a similar geographic location at the time the Services are being provided under this Agreement. Owner shall fully and faithfully discharge its obligations and responsibilities hereunder and shall devote sufficient time and attention to ensure the full, prompt, and professional discharge of its duties under this Agreement. Owner will deal at arm's-length with all third parties and will use commercially reasonable efforts to serve the interests of County.

Section 2.04 Relationship of the Parties. Owner acknowledges and agrees that it is acting under this Agreement solely as an independent contractor, and not as a partner, joint venturer, or employee of County. Owner shall have no authority to act for, bind, or obligate County in any manner whatsoever, except to the extent specifically set out in the Exchange Agreement, this Agreement or as may be specifically authorized in writing by County.

Section 2.05 County's Objectives. County's objectives are to have the Project developed, designed, constructed, and completed in a good and workmanlike manner as a quality community center and library project. Owner will perform the Services in compliance with this Agreement to achieve the County's objectives in an efficient, economic, and timely manner. County agrees to timely provide Owner with full, complete, and accurate information regarding County's requirements for the Project and as necessary for the performance of Owner's duties under this Agreement, and to avoid delay in the orderly progress of the Services and the Project.

Section 2.06 Limitations on Owner's Authority. Notwithstanding anything to the contrary in this Agreement, Owner shall not:

- (a) Enter into or approve any change order relating to the Project except as permitted under Section 3.02(c)(ii).
- (b) Subject all or any portion of the Project to any mortgage, deed of trust, lien, or other encumbrance.
- (c) Commence any litigation on behalf of County against or settle claims with the General Contractor, Architect, any subcontractor, engineer, or any other third parties related to the Project.
- (d) Cause or knowingly permit any Hazardous Materials to be deposited, stored, disposed, placed, generated, manufactured, buried, refined, transported, treated, discharged, handled, exacerbated, or located on the Project.

**ARTICLE III
DEVELOPMENT SERVICES**

Section 3.01 Predevelopment Services. Owner shall perform the following Services during the Predevelopment Period:

(a) Permits and Entitlements.

(i) Determine all Governmental Authorizations required for the Project, and prepare a schedule indicating when each such item is to be obtained; and

(ii) Supervise and coordinate all work of the professionals associated with or necessary to applications for, and process, procure, and maintain all Governmental Authorizations required for, the entitlement, construction, and development of the Project. All fees and permit charges for such Governmental Authorizations shall be included in the Final Development Budget and paid by Owner as Project Costs. Owner shall negotiate on County's behalf regarding any Entitlement Obligations or off-site improvements required in connection with the Project, but final agreements regarding such matters shall be subject to County's Approval. Owner shall keep County informed on the processing status of all Governmental Authorizations.

(b) Project Schedule. Prepare and submit to County for Approval the Project Schedule before the Construction Period begins.

(c) Development Budget. Prepare and submit to County for Approval the Final Development Budget. The Final Development Budget shall include any and all Project Costs which are expected to be incurred through and including Final Completion. Owner may revise line-item budgets in its own discretion; however, except as otherwise provided in Section 3.02(c), the total amount of the Final Development Budget shall be revised only with the prior Approval of County, which shall not be unreasonably withheld, conditioned, or delayed.

(d) Architect and Other Design Professionals.

(i) Owner shall coordinate and oversee the preparation and negotiation of the agreement with the Architect and such design professionals and consultants.

(ii) In any and all contracts with the Architect and other design professionals and consultants for the preparation of drawings, CAD documents, designs, and Plans and Specifications for the Project, Owner shall obtain for County the right to use (at no additional cost) such drawings, designs, and Plans and Specifications in connection with the original construction of the Project and any future renovation or rehabilitation of the Project.

(e) Preparation and Approval of Plans and Specifications.

(i) Coordinate, guide, and oversee the preparation of the Plans and Specifications by the Architect and other design professionals for the Project and keep County informed of the progress of the design work. Owner shall cause the completed set of construction Plans and Specifications to be delivered to County for review, comment, and Approval. Owner shall coordinate the review and comment process and shall provide its advice to County concerning questions raised or comments made during the review process. Owner may deliver permit drawings and specifications or other drawings that are to some extent incomplete if such delivery will expedite the review process and maintain the Project Schedule. The final Approved construction set of plans and specifications shall be the "Plans and Specifications" and shall describe and define the scope of the Work for the Construction Contract (as defined below). The Approved Plans and Specifications shall be the basis for the Construction Contract to be entered into with the General Contractor. Owner shall cause the General Contractor to construct the Project and to perform the Work in accordance with the Plans and Specifications and the Construction Contract. Review design documents during their development and advise County on the relative feasibility of construction methods, selection and availability of materials, building systems and equipment, methods of Project delivery, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, labor availability and cost, and possible economies.

(ii) The parties acknowledge that Owner has agreed to pay up to \$16,500,000 for Project Costs. The Development Budget and Project Costs are based upon the Project Description included in **Appendix B**. In the event Project Costs is in excess of \$16,500,000, County shall have the right to commit to pay the additional costs associated therewith and in such case the parties will document that agreement in writing in a manner acceptable to both parties. Unless County agrees in writing to do so within 30 days of Owner's notice to County of the anticipated cost, this Agreement shall automatically terminate.

(f) General Contractor and Construction Contract.

(i) Owner shall: (A) prepare all construction bid documents and secure bids from prospective general contractors; (B) coordinate and oversee the preparation of, and negotiate agreements with the General Contractor; (C) have the General Contractor submit cost estimates for the Project and make recommendations concerning the design of the Project and construction procedures so that construction costs are consistent with the Final Development Budget and Project Schedule; and (D) require the General Contractor to competitively bid all Work for Material Subcontractors proposed to be employed on the Project. Owner will require the General Contractor to obtain at least three bids for each Material Subcontract and identify each Material Subcontractor.

(ii) As used herein, "**Construction Contract**" means a form of construction contract entered into in accordance with this Section 3.01(f). Owner shall enforce, at County's request and expense, the Construction Contract and the other obligations, warranties, and guarantees of the General Contractor.

(g) **Project Delivery System.** Owner may enter into contracts with all persons reasonably required to design and construct the Project on the basis of time and material; a stipulated sum; or cost plus fee with a guaranteed maximum cost; whichever basis is more appropriate in the sole and exclusive discretion of the Owner

(h) **Other Agreements to be Executed by County.** Negotiate and prepare, for Approval and execution by County, all agreements Owner recommends that County execute in connection with the Work, or any amendments or modifications to such existing agreements to which County is a direct party. Owner shall consult with County as to the terms of any such agreement that Owner is negotiating as reasonably necessary (and as requested by County).

(i) If County does not provide written approval or disapproval of any of the approval requests under this Article 3 within five (5) business days of receipt for Approval then the Parties agree that the Approval request shall be deemed approved.

Section 3.02 Construction Period Services. Owner shall perform the following Services during the Construction Period:

(a) **Performance of Work.** Cause: (i) the construction of the Project and performance of the Work to be completed in a good and workmanlike manner, free and clear of all materialmen's, mechanic's, and similar liens, in accordance with the Plans and Specifications, the Construction Contract, and Governmental Requirements; (ii) all necessary certificates of occupancy and other permits and approvals for the construction, occupancy, operation, and management of the Project to be obtained and to remain in full force and effect through Final Completion; and (iii) the Project to be equipped with all necessary and appropriate fixtures, equipment, and articles of personal property as required by the Plans and Specifications.

(b) **Cost Monitoring.** Monitor all costs and expenses of construction to confirm that at each stage of the construction process there are sufficient remaining funds within the Final Development Budget to complete the Project.

(c) **Change Orders.**

(i) (A) Recommend to County any necessary or desirable changes to the Plans and Specifications which Owner determines are reasonably advisable.

(ii) Notwithstanding the foregoing, Owner shall have the right, without County's prior review or consent, but with notice to County, to approve changes in the Plans and Specifications or to the Construction Contract which are required by field conditions and which do not: (A) affect the scope or quality of construction or alter the appearance or utility of the Project; (B) increase the overall Project Costs

by more than \$200,000, provided that in no event shall Owner have the right, without County's prior consent, to increase the overall Project Costs to over \$16,500,000; (C) diminish the quality of materials or workmanship; or (D) violate Governmental Requirements.

(iii) If at any time County desires a change in the Plans and Specifications or Construction Contract, on County's request, Owner shall cause the General Contractor to prepare a change order proposal stating the increase or decrease, if any, in the contract sum payable under the Construction Contract, including, without limitation, the extension or contraction, if any, in the contract schedule time and the effect on the Project Schedule and Final Development Budget if the change is implemented. All such change orders shall be subject to acceptance or rejection by County in its sole and absolute discretion.

(d) Inspections.

(i) At commercially reasonable intervals, inspect the progress of construction and verify that all materials and labor furnished in connection therewith have been supplied or completed in a good and workmanlike manner, using new materials, free and clear of all liens under the terms of this Agreement, in compliance with all Governmental Requirements, and free from material defects. Owner will promptly cause to be corrected any Work which fails to conform with Governmental Requirements in any material respect, and to the extent requested by the Architect, cause the General Contractor to correct any Work which fails to conform with the Plans and Specifications.

(ii) On Substantial Completion, make a final inspection and confirm in writing to Owner that the Work was completed substantially in accordance with the Plans and Specifications except with respect to Punch List Work.

Section 3.03 Post-Completion Services. Owner shall perform the following Services after Substantial Completion:

(a) **Certificate of Substantial Completion.** Coordinate with the Architect to deliver an AIA Form of Certificate of Substantial Completion.

(b) **Punch List Work.** Identify Punch List Work and cause the General Contractor to diligently complete the Punch List Work in accordance with the Plans and Specifications and the Construction Contract. County shall have the right to inspect the Project to verify that the Punch List Work has been completed to its satisfaction.

(c) **Transition of Operations.** Coordinate the transition of building systems and operation from the General Contractor to County's operating staff.

Section 3.04 General Services. In addition to the other Services set out in this Article III, Owner shall perform the following Services:

(a) **Project Administration.** Procure, coordinate, administer, supervise, and cause the implementation of all aspects of the Project planning, preparation, design, and engineering, including all architectural work, all engineering (such as hydrological, traffic, civil, environmental, landscape, soils, and structural engineering) and all other non-construction activities required for the diligent, professional planning and construction of the Project and performance of the Work in accordance with the Final Development Budget, the Plans and Specifications, the Project Schedule, and Governmental Requirements.

(b) **Contractors' Insurance.** Cause all contracts and Major Subcontracts to require that the contracting party maintain insurance coverage at such party's expense, consistent with County's requirements and obtain and keep on file certificates of insurance for each contract and Major Subcontract showing that each such party is insured. Owner and County shall be named as an additional insured on such policies.

(c) **Recordkeeping.** Maintain: (i) appropriate financial records and financial and accounting controls as required in this Agreement; (ii) copies of the Construction Contract, the Plans and Specifications, change orders, shop drawings, product data, samples, applicable manuals and handbooks, maintenance and operating manuals and instructions, warranties, and other documents, purchase orders, contracts, agreements, approvals, correspondence, and other writings related to the Project; and (iii) a copy of the General Contractor's daily log detailing weather, the Work occurring on the Project site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as may be required. Such materials shall be kept at the business office of Owner.

(d) **Meetings with County.** Hold regularly scheduled mutually agreeable meetings with County. These meetings may require the General Contractor and other consultants to attend as may be necessary.

(e) **Meetings with Third Parties.** Attend meetings with Governmental Authorities or other community stakeholders in connection with material matters related to the Project, and keep County reasonably informed of the progress of obtaining Governmental Authorizations and of the results of any material decisions relating to the Project made in such meetings.

(f) **Contract Monitoring; Claims and Disputes.** Monitor compliance by the General Contractor, Architect, and other parties with contracts and agreements relating to the Project.

(g) **Retainage.** Require and administer retainage in the amounts required by the Construction Contract. In no event shall Owner release or permit the release of any retainage held under the Construction Contract except in compliance with the terms of the Construction Contract.

(h) **Utility Hookups.** To the extent not required under the Construction Contract, Owner shall arrange for all water, sewer, natural gas, electric, telephone, data

communication, and drainage facilities to be brought to and connected at the boundaries of the Project with proper permits as contemplated by the Plans and Specifications. All connection fees and permits shall be procured and paid by the General Contractor if appropriate under the Construction Contract.

(i) **General.** Generally perform such other acts and things as may be required in accordance with this Agreement for the full and complete supervision and coordination of the planning, design, development, and construction of the Project.

ARTICLE IV Reserved

ARTICLE V TERM

Section 5.01 Term. Unless sooner terminated, the term of this Agreement shall commence on the date hereof and continue until all the following have occurred: (a) Final Completion of the Work; and (b) the full performance of all Services in connection therewith.

Section 5.02 Event of Default. IN THE EVENT OF ANY ACTUAL OR THREATENED DEFAULT IN, OR BREACH OF, ANY OF THE TERMS, CONDITIONS AND PROVISIONS OF THIS AGREEMENT, THE PARTY WHO IS OR IS TO BE THEREBY AGGRIEVED SHALL HAVE THE RIGHT TO SPECIFIC PERFORMANCE AND INJUNCTIVE OR OTHER EQUITABLE RELIEF OF ITS RIGHTS UNDER THIS AGREEMENT; PROVIDED HOWEVER, THAT THE NON-BREACHING PARTY HEREBY WAIVES ANY RIGHT TO RECEIVE DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, THE RENTAL VALUE OF THE PROPERTY FROM THE DATE OVOGM'S ALLEGED BREACH AND ALL INCIDENTAL, CONSEQUENTIAL AND PUNITIVE DAMAGES. THE PARTIES AGREE THAT THE REMEDIES AT LAW FOR ANY BREACH OR THREATENED BREACH, INCLUDING MONETARY DAMAGES, MAY BE INADEQUATE COMPENSATION FOR ANY LOSS AND THAT ANY DEFENSE IN ANY ACTION FOR SPECIFIC PERFORMANCE THAT A REMEDY AT LAW WOULD BE ADEQUATE IS WAIVED. ANY REQUIREMENTS FOR THE SECURING OR POSTING OF ANY BOND WITH SUCH REMEDY ARE WAIVED BY THE PARTIES TO THIS AGREEMENT.

This Section 5.02 shall survive the expiration or earlier termination of this Agreement.

ARTICLE VI INSURANCE

Section 6.01 Owner's Insurance. Owner will maintain, at its sole cost and expense insurance coverages throughout the term of this Agreement that it deems commercially reasonable.

Section 6.02 Waiver of Claims/Subrogation. To the extent permitted under their policies of insurance and applicable law, Owner and County agree that regarding any loss or claim

that is covered by insurance then carried by either Owner or County: (a) the party carrying such insurance and suffering such loss releases the other party of and from any and all claims regarding such loss to the extent of the insurance proceeds paid with respect thereto and specifically excepting from such release any deductible required to be paid; and (b) their respective insurance companies shall have no right of subrogation against the other or their respective agents, contractors, employees, licensees, or invitees on account thereof.

ARTICLE VII INDEMNIFICATION

Section 7.01 Indemnity by Owner. To the full extent permitted by law, Owner shall indemnify, defend, and hold harmless County, and each of County's Affiliates, employees, members, partners, officers, directors, agents, consultants, attorneys, successors, and assigns, from and against any and all liabilities, losses, claims, costs, damages, and expenses (including, without limitation, attorneys' fees, costs, and expenses, but specifically excluding any consequential, special, or punitive damages) arising from, relating to, or in connection with: (a) the gross negligence, fraud, or willful misconduct of Owner; (b) an Event of Default of Owner; or (c) acts by Owner outside the scope of authority granted under this Agreement.

Section 7.02 Indemnity by County. To the fullest extent permitted by law, County shall indemnify, defend, and hold harmless Owner, and each of Owner's Affiliates, employees, members, partners, officers, directors, agents, consultants, attorneys, successors, and assigns from and against any and all liabilities, losses, claims, costs, damages, and expenses (including, without limitation, attorneys' fees, costs, and expenses, but specifically excluding any consequential, special, or punitive damages) arising from, relating to, or in connection with, any third party claims against Owner if, and only if, resulting from County's gross negligence, fraud, or willful misconduct.

Section 7.03 Limitation on Indemnities. Before enforcing its rights under Section 7.01 or Section 7.02 (as applicable), each party shall first seek defense and indemnity from any insurer that provides coverage for that claim, and the General Contractor and any subcontractor that provides indemnity and defense for the claim, regardless of the cause of the claim, and the defense and indemnity obligations of each party will apply only to the extent that defense and indemnity is not timely provided by any applicable insurer or the General Contractor or its subcontractors.

Section 7.04 Survival. The provisions of this Article VII will survive the expiration or earlier termination of this Agreement for two (2) years.

ARTICLE VIII

Section 8.01 Force Majeure.

(a) Neither party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by a Force Majeure Event. The failure or inability of either party to perform its obligations in this Agreement due to a Force Majeure Event shall be excused for the

duration of the Force Majeure Event and extended for a period equivalent to the period of such delay. Nothing contained in this Section shall excuse either party from paying in a timely fashion any payments due under the terms of this Agreement.

(b) Either party (the “**Noticing Party**”) shall give the other party notice within 10 days of the commencement of the Force Majeure Event, explaining the nature or cause of the delay and stating the period of time the delay is expected to continue. The Noticing Party shall use diligent efforts to minimize the effects of such Force Majeure Event. The Noticing Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

ARTICLE IX

Reserved

ARTICLE X REPRESENTATIONS AND WARRANTIES

Section 10.01 Owner Representations. Owner hereby represents, warrants, and covenants to County as follows:

(a) Owner is a limited liability company, duly formed, validly existing, and in good standing under the laws of the State of Delaware and is qualified to do business and is in good standing under the laws of the State of Texas.

(b) Owner has all requisite power and authority, has taken all actions required by its organizational documents and applicable law, and has obtained all necessary consents, to: (i) execute and deliver this Agreement; and (ii) consummate the transactions contemplated by this Agreement. This Agreement has been duly authorized and properly executed and delivered and constitutes the valid and binding obligations of Owner, enforceable in accordance with its terms, subject to principles of equity, bankruptcy, insolvency, and other laws generally affecting creditors' rights and the enforcement of debtors' obligations.

(c) Owner is qualified and has the skill and professional competence, expertise, and experience to undertake the obligations imposed, and to perform the Services contemplated, by this Agreement and the requirements of a project of the magnitude and scope of the Project.

(d) Owner has and shall at all times during the term of this Agreement maintain sufficient facilities, expertise, staff, assets, and other resources necessary to perform the Services. The Services shall be performed and rendered by professionals experienced, licensed (if a license is required), and qualified to perform such services in the state in which the Project is located.

(e) Owner holds and shall at all times during the term of this Agreement maintain all licenses, permits, or other certifications necessary to perform the Services, and is in compliance with and shall continue to comply with all applicable laws.

(f) Neither Owner nor any partner, member, or shareholder of Owner is, and no legal or beneficial interest in a partner, member, or shareholder of Owner is or will be held, directly or indirectly, by a person or entity that appears on a list of individuals and/or entities for which transactions are prohibited by the US Treasury Office of Foreign Assets Control or any similar list maintained by any other Governmental Authority, with respect to which entering into transactions with such person or entity would violate the USA Patriot Act or regulations or any Presidential Executive Order or any other similar applicable law, ordinance, order, rule, or regulation (a "**Prohibited Person**").

Section 10.02 County Representations. County hereby represents and warrants to Owner and Owner as follows:

(a) County is a political subdivision of the State of Texas and has all requisite power and authority, has taken all actions required by its organizational documents and applicable law, and has obtained all necessary consents, to: (i) execute and deliver this Agreement; and (ii) consummate the transactions contemplated by this Agreement. This Agreement has been duly authorized and properly executed and delivered and constitutes the valid and binding obligations of County, enforceable in accordance with its terms, subject to principles of equity, bankruptcy, insolvency, and other laws generally affecting creditors' rights and the enforcement of debtors' obligations.

ARTICLE XI MISCELLANEOUS

Section 11.01 Notices. Unless specifically stated otherwise in this Agreement, all notices, waivers, and demands required or permitted under this Agreement shall be in writing and delivered to all other parties at the addresses below, by one of the following methods: (a) hand delivery, whereby delivery is deemed to have occurred at the time of delivery; (b) a nationally recognized overnight courier company, whereby delivery is deemed to have occurred the business day following deposit with the courier; (c) registered US Mail, signature required and postage-prepaid, whereby delivery is deemed to have occurred on the third business day following deposit with the United States Postal Service; or (d) electronic transmission (facsimile or email) provided that the transmission is completed no later than 5:00 PM CST on a business day and the original also is sent via overnight courier or US Mail, whereby delivery is deemed to have occurred at the end of the business day on which electronic transmission is completed.

To County:

James Noack, Commissioner
1130 Pruitt Road
Spring, TX 77380
Email: evan.besong@mctx.org

with a copy to:

B.D. Griffin, County Attorney
501 N. Thompson St., Suite 300
Conroe, Texas 77301
Tel: (936) 539-7828
Email: Bd.griffin@mctx.org

To Owner and to Owner:

Jim Carman, President
c/o The Howard Hughes Corporation
9950 Woodloch Forest Drive, Suite 1200
The Woodlands, Texas 77380
Email: jim.carman@howardhughes.com

with a copy to:

General Counsel
The Howard Hughes Corporation
9950 Woodloch Forest Drive
The Woodlands, Texas 77380
Email: GeneralCounsel@howardhughes.com

Any party shall change its address for purposes of this Section 11.01 by giving written notice as provided in this Section 11.01. All notices and demands delivered by a party's attorney on a party's behalf shall be deemed to have been delivered by said party. Notices shall be valid only if served in the manner provided in this Section 11.01.

Section 11.02 Confidentiality. In providing the Services, Owner may be provided with and may accumulate documentation, data, or other information regarding County (and its partners, members, or shareholders) and the Project that are confidential and proprietary in nature. Owner shall hold and maintain all such documents and other information, including, but not limited to, any Plans and Specifications, Development Budgets, market reports, contracts, and any other reports and data and all components thereof, in the strictest confidence, and shall not disclose any such information to any person or entity without County's prior written Approval, except as may be required to perform the Services under this Agreement or as required by law. Confidential information shall not include information which:

(a) is or becomes generally available to the public other than as a result of a disclosure by Owner or by a breach of Owner of this provision;

(b) was within the possession of Owner before being furnished to Owner under this Agreement, if Owner did not know the source of such information to be bound by a confidentiality agreement with or other contractual, legal, or fiduciary obligation of confidentiality to County regarding such information; or

(c) becomes available to Owner on a non-confidential basis from a source other than County, if such source is not bound by a confidentiality agreement with or other

contractual, legal, or fiduciary obligation of confidentiality to County regarding such information.

Section 11.03 Further Assurances. Each party agrees to do such things, perform such acts, and make, execute, acknowledge, and deliver such documents as may be reasonably necessary and customary to carry out the intent and purposes of this Agreement, so long as any of the foregoing do not materially increase any party's obligations hereunder or materially decrease any party's rights hereunder.

Section 11.04 Assignment; Successors and Assigns. Owner may not assign any of its rights or delegate any of its obligations hereunder without the prior Approval of the County, which may be withheld in its sole and absolute discretion. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Owner of any of its obligations hereunder. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns.

Section 11.05 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

Section 11.06 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Texas.

Section 11.07 Attorneys' Fees.

(a) **Each Party's Attorney.** Each party to this Agreement shall be responsible for all costs it incurs in connection with the preparation, review, and negotiation of this Agreement and the transactions contemplated by this Agreement, including any attorneys' or consultants' fees.

(b) **Prevailing Party Fees.** If any action is brought by either party against the other in connection with, relating to, or arising out of this Agreement or any of the documents and instruments delivered in connection herewith or in connection with the transactions contemplated hereby, the prevailing party shall be entitled to recover from the other party its reasonable out-of-pocket costs and expenses, including, without limitation, reasonable attorneys' fees, incurred in connection with the prosecution or defense of such action.

Section 11.08 Submission to Jurisdiction. The parties hereby agree that any suit, action, or proceeding seeking to enforce any provision of, or based on any matter arising out of, relating to, or in connection with, this Agreement or the transactions contemplated hereby, whether in contract, tort, or otherwise, shall be brought in the federal or state courts of the State of Texas, so long as such courts shall have subject-matter jurisdiction over such suit, action, or proceeding, and that any cause of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of Texas. Each of the parties hereby irrevocably consents to

the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action, or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action, or proceeding in any such court or that any such suit, action, or proceeding that is brought in any such court has been brought in an inconvenient forum. Service of process, summons, notice, or other document delivered by registered mail to the address set out in Section 11.01 shall be effective service of process for any suit, action, or other proceeding brought in any such court.

Section 11.09 Waiver of Jury Trial. EACH PARTY HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION, OR PROCEEDING BROUGHT BY THE OTHER PARTY HERETO UNDER THIS AGREEMENT OR IN CONNECTION WITH ANY TRANSACTION CONTEMPLATED HEREBY, ANY AND EVERY RIGHT EACH PARTY MAY HAVE TO A TRIAL BY JURY.

Section 11.10 Interpretation and Construction.

(a) **Drafting Party.** The parties acknowledge that, in connection with negotiating and executing this Agreement, each has had its own counsel and advisors and that each has reviewed and participated in drafting this Agreement. The fact that this Agreement was prepared by Owner's counsel as a matter of convenience shall have no import or significance to the construction of this Agreement. Any rule of construction that requires any ambiguities to be interpreted against the drafter shall not be employed in the interpretation of: (i) this Agreement; (ii) any exhibits to this Agreement; or (iii) any document drafted or delivered in connection with the transactions contemplated by this Agreement.

(b) **Headings.** Any captions or headings used in this Agreement are for convenience only and do not define or limit the scope of this Agreement.

(c) **Singular or Plural.** The singular of any term, including any defined term, shall include the plural and the plural of any term shall include the singular. The use of any pronoun regarding gender shall include the neutral, masculine, feminine, and plural.

Section 11.11 Severability. If any term or provision of this Agreement is determined to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 11.12 Entire Agreement. This Agreement, together with the Exchange Agreement and all related exhibits and schedules, constitutes the sole and entire agreement of the parties to this Agreement regarding the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter. In the event of any inconsistency between the

statements in the body of this Agreement, the Exchange Agreement and the related exhibits and schedules (other than an exception expressly set out as such in the schedules), the statements in the body of this Agreement shall control.

Section 11.13 Amendments. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto.

Section 11.14 Waiver. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set out in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

Section 11.15 Days; Performance on a Saturday, Sunday, or Holiday. Whenever the term "day" is used in this Agreement, it shall refer to a calendar day unless otherwise specified. A "business day" shall mean any weekday except for those weekdays that a banking institution within the State of Texas is required by said state to be closed (a "**Holiday**"). Should this Agreement require an act to be performed or a notice to be given on a Saturday, Sunday, or Holiday, the act shall be performed or notice given on the following business day.

Section 11.16 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 11.17 Time of the Essence. Time is of the essence in the performance of this Agreement.

Section 11.18 County Approval. It is a condition precedent to County's obligation and duty to close that this Agreement and the transactions contemplated thereby have been properly approved by the Commissioners Court of Montgomery County, Texas and all requirements of Chapter 263 of the Texas Local Government Code have been met.

Section 11.19 Non-appropriation. Notwithstanding anything to the contrary herein, if the Commissioners Court of Montgomery County fails to provide funding for this Agreement during budget planning and adoption of the budget for County fiscal year 2025 or beyond, Owner may terminate this Agreement upon thirty (30) days written notice to County as Owner's sole remedy for County's non-appropriation of funds. The County's failure to provide funding for this Agreement as provided herein shall not be a default under this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

COUNTY:

MONTGOMERY COUNTY, TEXAS

By: _____

Evan Besong, Sr. Chief of Staff
Pct. 3 Commissioner James Noack

OWNER:

TW-VOGMVC, LLC,
a Delaware limited liability company, LLC,

By: _____

Name: _____

Title:

EXHIBIT A

PROPERTY DESCRIPTION



APPENDIX A

Reserved

1.

APPENDIX B

The Development Budget for design and construction is \$16,500,000. This budget is based upon the Concept Design generated by Architect and encompasses the renovation of a former grocery store into the Project. The renovation will be “turn-key” and will include all structural, MEP (mechanical, electrical, and plumbing), and architectural systems necessary for the delivery of a functioning library and community center. The Development Budget includes new signage and FFE; however, the Parties will work together to mutually determine any additional items that will be included or excluded from Project Costs and the Development Budget prior to completion of the Plans and Specifications. The Project will utilize the existing parking lot and site improvements, to include any necessary parking lot renovations. A new façade consisting of storefront glass, natural stone, and metal wall panels will be included. The Project will include a new porte cochere drop off as well as raised roof elements and skylights.

Included within this Appendix B are proposed renderings of the completed renovation as well as a floor plan which illustrates the proposed programming of the library and community center.



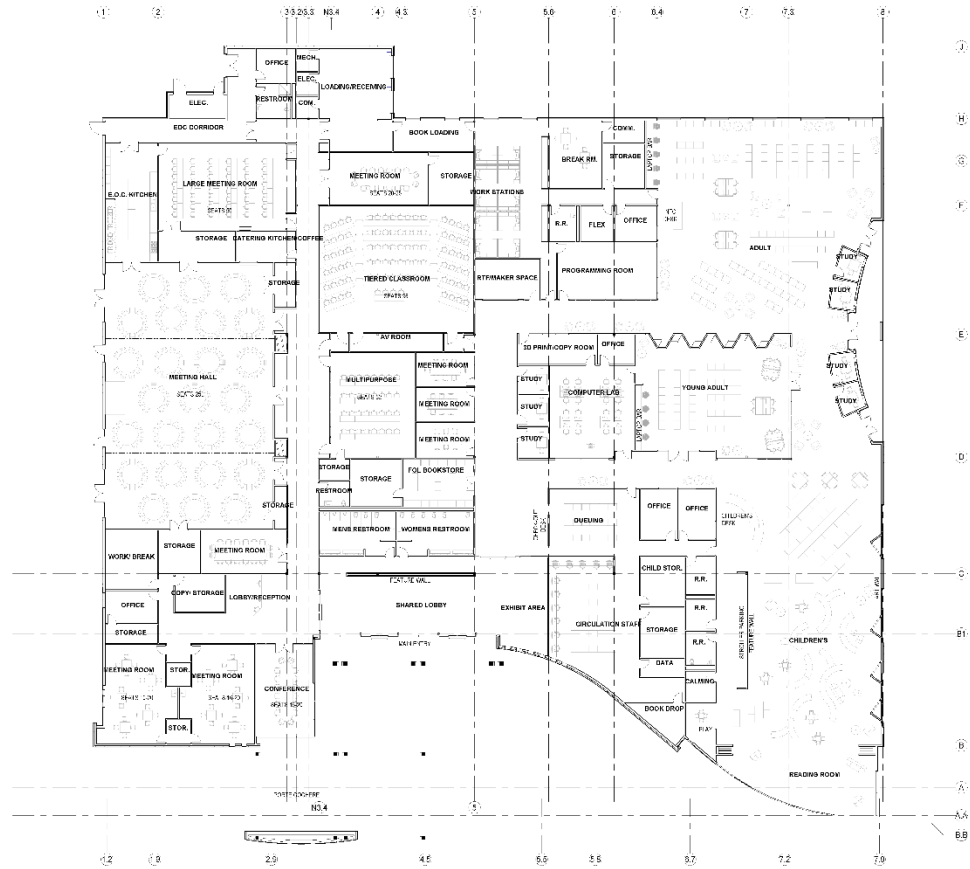
Howard Hughes

GROGAN'S MILL DEVELOPMENT
SITE PLAN

09/11/2023
PGAL, LLC







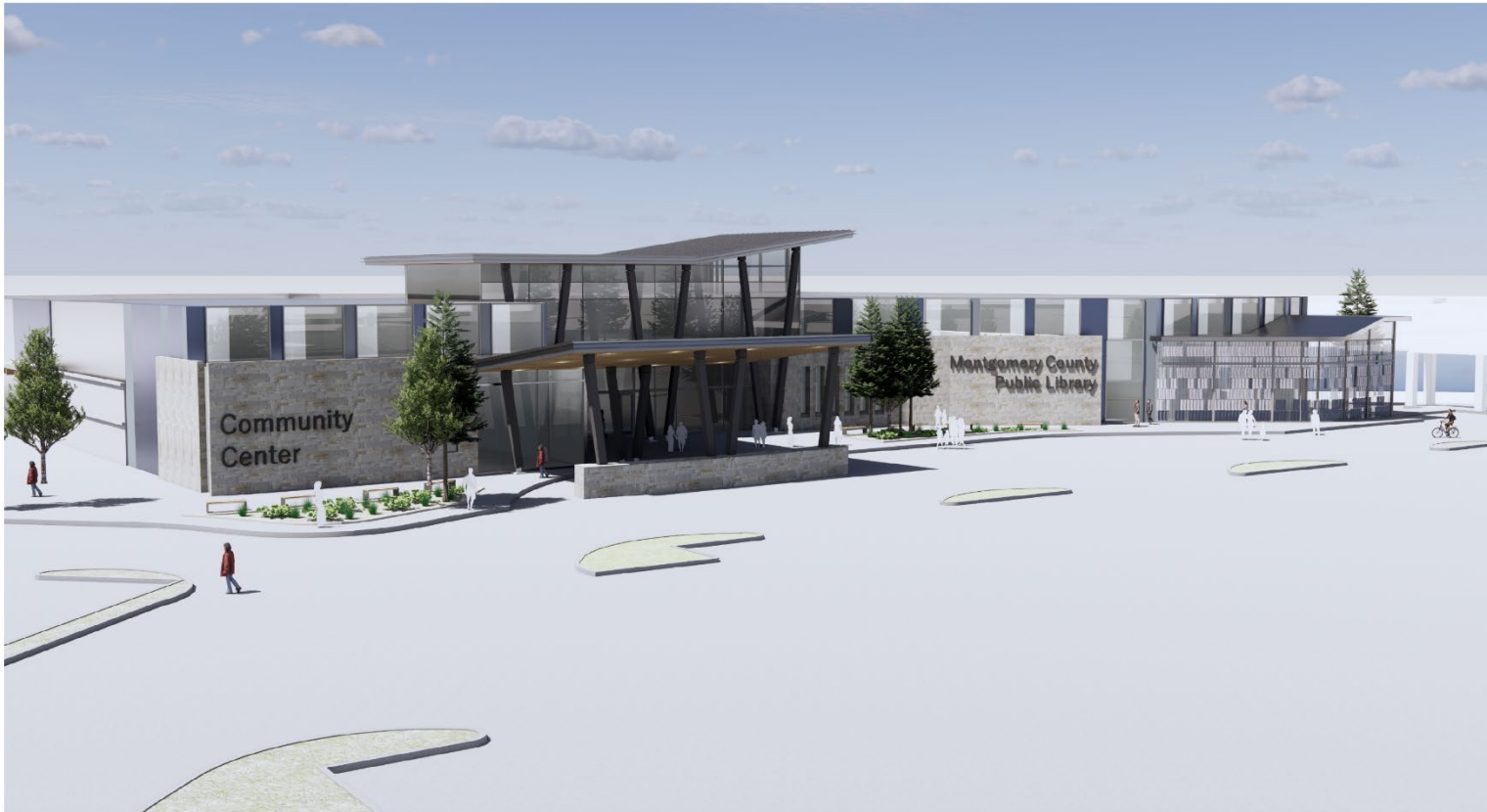
Howard Hughes

GROGAN'S MILL DEVELOPMENT
LIBRARY/ COMMUNITY CENTER FLOOR PLAN

09/18/2023
PGAL, LLC



08/03/2023



GMVC
DESIGN PROGRESS



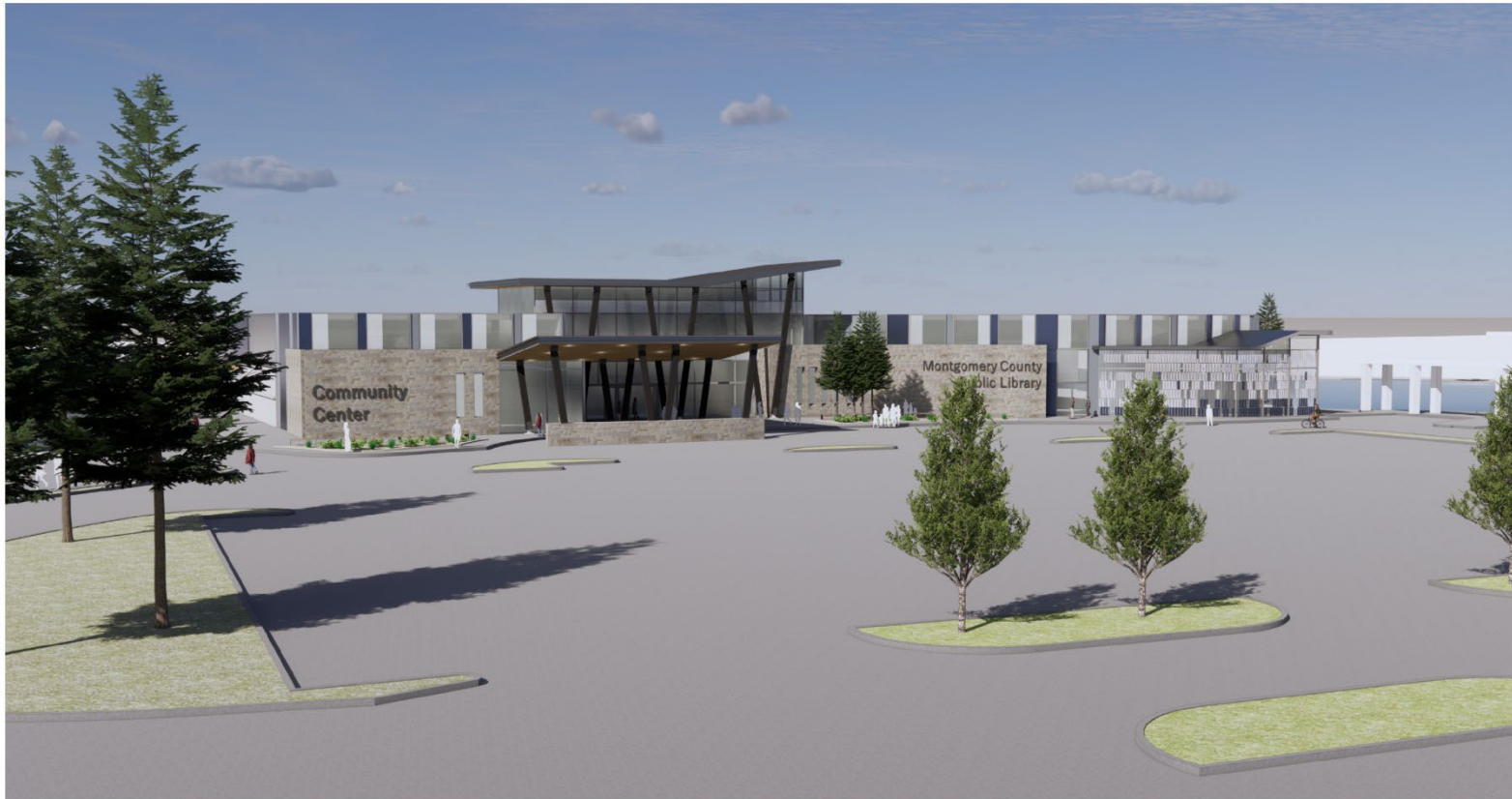
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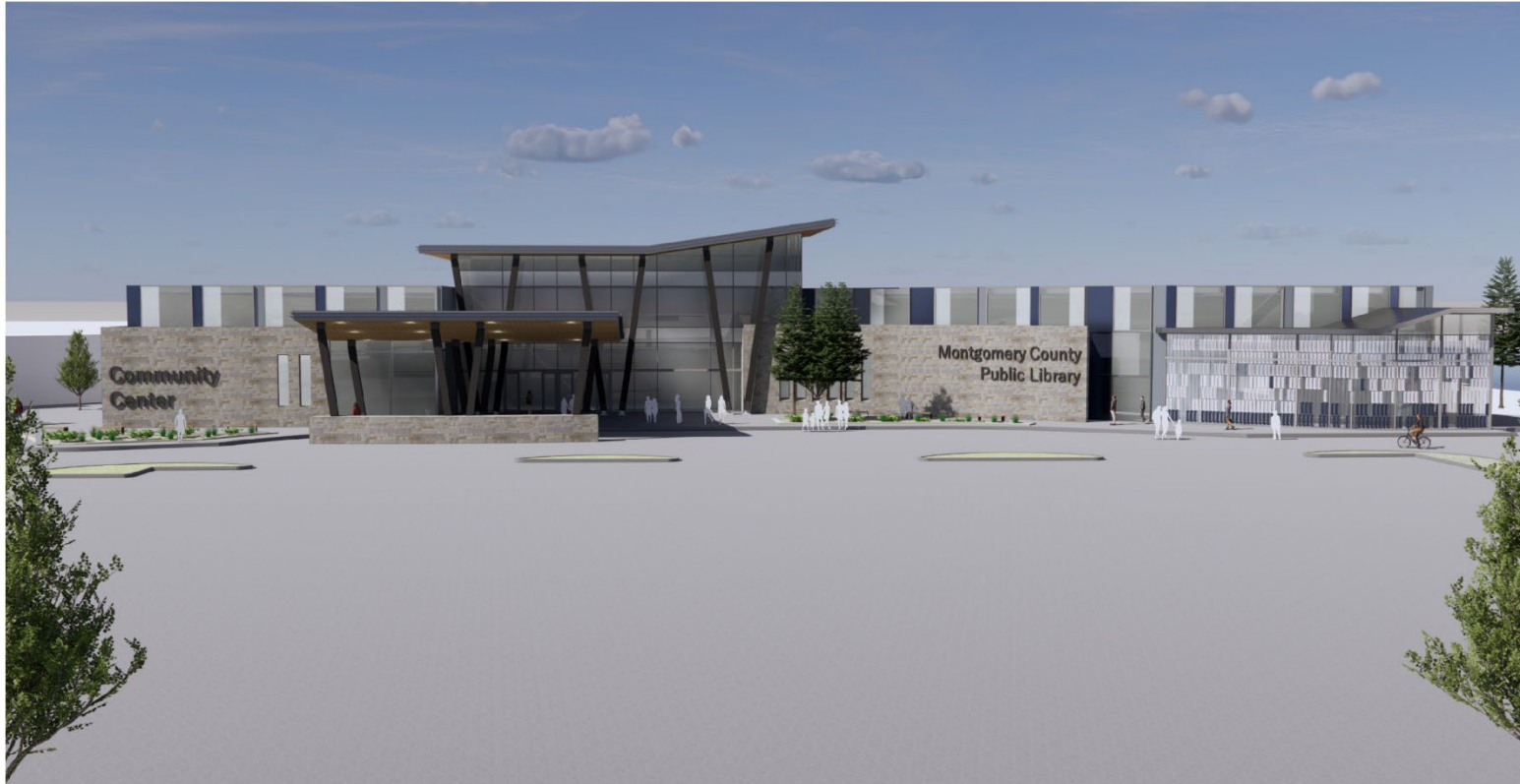


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DESIGN PROGRESS





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