

AGENDA



Thursday, June 7, 2007

**Austin Water Utility
RECOMMENDATION FOR COUNCIL ACTION**
Item No. 4

Subject: Approve an ordinance authorizing negotiation and execution of an agreement relating to a mediated settlement, and the negotiation and execution of a cost reimbursement agreement with Club Deal 120 Whisper Valley, Limited Partnership for construction of a 500,000 gallon per day wastewater treatment plant and approximately 13,400 linear feet of 30" gravity wastewater main with a cost not to exceed \$11,500,000; waiving the requirements of Sections 25-9-33 and 25-9-64, City Code, relating to submission of a Service Extension Request application for required wastewater improvements and cost reimbursement; waiving the requirements of Sections 25-9-61 and 25-9-63, City Code, relating to the amount of reimbursement for wastewater improvements; and waiving Section 25-9-67 relating to the schedule of cost reimbursement payment.

Amount and Source of Funding: Funding is available in the Fiscal Year 2006-2007 Capital Budget of the Austin Water Utility.

Fiscal Note: A fiscal note is attached.

For More Information: David Juarez, 972-0191, Bart Jennings, 972-0118, Denise Avery, 972-0104

Club Deal 120 Whisper Valley, Limited Partnership ("Taurus") owns approximately 2,178 acres ("Property") generally located south of the City of Manor, east of FM 973 and north of FM 969 within the City's extraterritorial jurisdiction, the Gilleland basin, and the City's Desired Development Zone. Taurus plans to construct single-family, multi-family, and commercial development within the Property that will require an estimated 8,600 units of wastewater service ("LUEs"). The Property is located in Manville Water Supply Corporation's certificated water service area.

As part of the City's provision of wastewater service, the City and Taurus agreed to enter into a cost reimbursement agreement, subject to City Council approval. In addition, the previous landowner of the Property, Austin Estates Limited Partnership ("AELP"), was involved with the City in three legal proceedings (a District Court appeal of the Texas Commission on Environmental Quality's ("TCEQ") decision to grant the City its wastewater CCN; a wastewater dual certification application at TCEQ for land that includes the Property; and a lawsuit initiated by the City against AELP for contractual default). To the extent that each legal proceeding involves the Property, Taurus has agreed to release its claims and not pursue the legal proceedings against the City and vice versa.

The proposed terms of the cost reimbursement agreement include:

1. Taurus will provide to the City, at no cost to the City, an approximately 64-acre easement for the interim use of land for the ultimate construction of a 3.0 million gallons per day ("MGD") interim wastewater treatment plant ("WWTP").
2. Taurus will design a 3.0 MGD WWTP and construct the initial phase with a capacity of 0.5 MGD. The City will reimburse Taurus the actual construction costs ("hard costs") for the 0.5 MGD WWTP, estimated to be \$6,000,000. Taurus will be responsible for the engineering, design and project management costs ("soft costs") for this phase. The City will be responsible for subsequent expansions of the 0.5 MGD WWTP to a 3.0 MGD WWTP. Taurus will contribute \$503 per LUE for design costs associated with the

expansion of the WWTP beyond 0.5 MGD. All terms and conditions of the reimbursement agreement shall apply to current and future owners of this development.

3. Taurus will design and construct approximately 13,400 feet of 30" wastewater main, and will provide a 90' permanent easement at no cost to the City. The City will reimburse Taurus the hard costs for the wastewater main, estimated to be \$5,500,000.

4. The City will design and construct the permanent Northeast Regional WWTP, upon a currently undetermined site, and will decommission, at the City's cost, the interim WWTP upon the completion of the permanent Northeast Regional WWTP. Taurus or future owners of this development will contribute to the City \$1.1 million toward the cost of the easements and the design of the permanent Northeast Regional WWTP.

The proposed cost reimbursement agreement waives the requirements of Sections 25-9-33 and 25-9-64, City Code, relating to submission of a Service Extension Request application for required wastewater improvements and cost reimbursement because the cost reimbursement agreement is a part of a mediated settlement with Taurus. The proposed cost reimbursement agreement waives the requirements of Sections 25-9-61 and 25-9-63, City Code, relating to the amount of reimbursement for wastewater improvements because the amount of reimbursement will be for the total hard costs. (No "soft" costs (engineering, design, and project management costs) will be reimbursed, unless the City has defaulted and the Developer must complete the project.). The proposed cost reimbursement agreement does not waive Section 25-9-67, City Code, relating to cost reimbursement payments made in one payment on March 1 of the second year following the year in which the wastewater improvements are accepted (unless the City has defaulted and the Developer must complete the project).