

AGENDA



Thursday, March 26, 2009

**Austin Water Utility
RECOMMENDATION FOR COUNCIL ACTION**
Item No. 2

Subject: Approve an ordinance authorizing negotiation and execution of an amendment to the Cost Reimbursement Agreement with MAK Marshall Ranch, L.P., to increase reimbursable costs from \$4,478,500.00 to an amount not to exceed \$5,150,275.00; waiving the requirements of Section 25-9-63 of the City Code relating to amount of cost reimbursement; and waiving the requirements of Section 25-9-67 of the City Code relating to cost reimbursement payment schedule.

Amount and Source of Funding: Funding in the amount of \$671,775.00 is available in the Fiscal Year 2008-2009 Capital Budget of the Austin Water Utility.

Fiscal Note: A fiscal note is attached.

For More Information: Seyed Miri, P.E., 972-0202; Denise Avery, 972-0104

Boards and Commission Action: Recommended by the Water and Wastewater Commission.

Prior Council Action: MAugust 24, 2006, Ordinance No. 20060824-005 - AK Marshall Ranch LP, Cost Reimbursement Agreement originally approved by Council on .

The Watersedge PUD is a proposed mixed-use development located on approximately 418 acres of land east of Onion Creek, south of the Colorado River, west of Doctor Scott Drive and north of State Highway 71 (the "Property"), currently within the limited purpose jurisdiction of Austin, that, upon completion, will receive City water service pursuant to SER No. 2406.

The City Council approved the negotiation and execution of a cost reimbursement agreement with the Owner on August 24, 2006. The Cost Reimbursement Agreement was executed on May 7, 2007, with City cost reimbursement not to exceed \$4,478,500.00, for the actual hard construction costs of approximately 16,100 linear feet of 24-inch water main and appurtenances to provide water service to the Property and surrounding area. The proposed 24-inch water main improvements are divided into two phases.

Phase One Water Improvements:

The Owner will construct approximately 3,400 feet of 24-inch water main from the existing 16-inch water main in Ross Road at State Highway 71, north across the right-of-way of State Highway 71 and east along State Highway 71 in an appropriately sized water line easement, to the main entrance of the proposed development.

Phase Two Water Improvements:

The Owner will construct approximately 12,700 feet of 24-inch water main from the existing 24-inch water main in Fallwell Lane at State Highway 71, east along the north side of State Highway 71 in an appropriately sized water line easement, to the proposed 24-inch water main constructed in Phase One. The 24-inch water main improvements have been identified as a required water improvement to supply water to the State Highway 71 area east and south of the Austin-Bergstrom International Airport.

The Owner has obtained the construction permits for Phase One and is currently seeking permits for Phase Two.

The amendments to the Cost Reimbursement Agreement will allow the City of Austin to reimburse the Owner for its costs to obtain permitted construction plans for Phase Two in the contingency that the City completes the construction of Phase Two. The amendments will also allow reimbursement for costs of engineering, design and project management "soft costs" for the 24-inch water mains and appurtenances, reimbursement of the Owner's incurred costs for construction inspection and review fees for Phase Two Water Improvements, and change the cost reimbursement payment dates. The amendment will also extend the expiration of the Cost Reimbursement Agreement from the normal two years to three years after the effective date of the Agreement.

City Constructs Phase Two Water Improvements and Owner Constructs Phase One:

If the City of Austin elects to construct Phase Two, the City will reimburse the Owner for the actual cost of the engineering and design of Phase Two up to maximum of \$300,000.00, and up to a maximum of \$29,000.00 for Owner's incurred costs for Phase Two construction inspection and review fees, for a total not to exceed \$329,000.00 for the Phase Two 24-inch water main and appurtenances. The City will also reimburse the Owner for the actual construction costs for Phase One 24-inch water main and appurtenances constructed within public right-of-way or easements for a total not to exceed \$954,850.00, and the cost for engineering, design and project management of the Phase One 24-inch water main and appurtenances within public right-of-way or easements for a total not to exceed 15% of the actual construction costs of the Phase One 24-inch water main and appurtenances up to a maximum of \$143,227.50, whichever is less, for a total not to exceed \$1,098,077.50 for Phase One 24-inch water main and appurtenances. The Owner will bear all other costs for financing, interest, fiscal security, inspections, permitting, accounting, insurance, easement acquisition, and legal services associated with the construction of the Phase One Water Improvements. The total maximum cost reimbursement to the Owner, should the City construct the Phase Two Water Improvements and the Owner construct the Phase One Improvements, the overall maximum for these Improvements shall not exceed \$1,427,077.50.

Owner Constructs Phase One and Phase Two Water Improvements:

If the City of Austin does not construct the Phase Two Water Improvements, the City will reimburse the Owner for the actual construction costs for the Phase Two 24-inch water main and appurtenances constructed within public right-of-way or easements for a total not to exceed \$3,523,650.00, and the cost for engineering, design and project management of the Phase Two 24-inch water main and appurtenances within public right-of-way or easements for a total not to exceed 15% of the actual construction costs of the Phase Two 24-inch water main and appurtenances up to a maximum of \$528,547.50, whichever is less, for a total not to exceed \$4,052,197.50 for Phase Two 24-inch water main and appurtenances. The City will also reimburse the Owner for the actual construction costs for the Phase One 24-inch water main and appurtenances constructed within public right-of-way or easements for a total not to exceed \$954,850.00, and the cost for engineering, design and project management of the Phase One 24-inch water main and appurtenances within public right-of-way or easements for a total not to exceed 15% of the actual construction costs of the Phase One 24-inch water main and appurtenances up to a maximum of \$143,227.50, whichever is less, for a total not to exceed \$1,098,077.50 for Phase One 24-inch water main and appurtenances. The Owner will bear all other costs for financing, interest, fiscal security, inspections, permitting, accounting, insurance, easement acquisition, and legal services associated with this construction. The total maximum cost reimbursement to the Owner for Phase One and Phase Two shall not exceed \$5,150,275.00.

Because the Owner will construct water improvements beyond those needed only to serve the proposed development, the Owner is requesting a waiver from City Ordinance requirements of:

1) Section 25-9-63 relating to the amount of cost reimbursement. Currently, the waived section of code limits cost reimbursement to the actual construction costs and does not include soft costs.

2) Section 25-9-67 relating to cost reimbursement payments. Currently, the waived section of code mandates that a single cost reimbursement payment may only be made on March 1 of the second year following the year in which the improvements are accepted.

Waiving § 25-9-63 allows the reimbursement for:

1) Owner's costs for engineering and design of Phase Two, up to a maximum of \$300,000.00, should the City of Austin elect to construct Phase Two.

2) Owner's costs for construction inspection and review fees for Phase Two, to a maximum of \$29,000.00, should the City of Austin elect to construct the Phase Two Water Improvements.

3) Owner's engineering, design and project management costs of Phase One capped at the lesser of 15% of the actual construction costs of Phase One or \$143,227.50, if Phase One is constructed by the Owner.

4) The engineering, design and project management costs of the Phase Two Water Improvements up to 15% of the actual construction costs of the Phase Two Water Improvements with a maximum of \$528,547.50, whichever is less, if the Phase Two Water Improvements are constructed by the Owner.

Waiving § Section 25-9-67 allows:

1) Reimbursement payment to the Owner for its eligible costs for either phase in one payment 90-days after City's final acceptance.

2) In the event the City constructs Phase Two, reimbursement payment to Owner for its eligible costs for Phase Two in one payment 30-days after all invoices have been reconciled by the City.