

Late Backup

EXHIBIT E

Civic Reserve and Civic Uses

1. The Developer agrees to donate up to two school sites within the Project for the Del Valle Independent School District (the "School District") in such locations and upon such terms and subject to such conditions as may be mutually agreed between the Developer and the School District. The Developer agrees to negotiate in good faith with the School District during the PUD process to address the number and types of other schools within the Project. The Developer will extend water, wastewater and streets to each school site at no cost to the School District.
2. The Developer agrees to donate up to a net buildable two-acre tract to the City, at no cost to the City, for a fire/EMS site, on the terms and conditions provided in Exhibit H (Proposed Terms of Fire Protection Plan).

*Based on Developer offer,
language has changed
from "reserve school
sites" to the underlined
language. Also added the
word "other" to distinguish
remaining potential school
sites.*

At item 1 the number "40" was added, having been inadvertently left out.

EXHIBIT L

Affordable Housing Participation

In order to meet the City's affordable housing goals, the Developer agrees as follows:

1. Ten percent of the rental units within the Project will be set aside for households with an income level of 60% or less of the median family income in the Austin metropolitan statistical area for a period of 40 years from the Effective Date of this Agreement.
2. Ten percent of the owner-occupied units within the Project will be priced, at the time of their initial offering for sale, at a price that is affordable to a household with an income level of 80% of the median family income in the Austin metropolitan statistical area.
3. The Developer will make a financial contribution to the City's affordable housing program equal to two percent of the total "hard" construction cost reimbursements actually received by the Developer out of the proceeds of bonds issued by the District and the Other Pilot Knob Districts, up to a maximum total contribution of \$8.0 Million. This contribution will be calculated as follows:

Total District Bond Issue Amount: \$ _____

Less:

Non-Construction Costs, including:

Legal and Financial Advisory Fees: \$ _____

Interest Costs, including
Capitalized and
Developer Interest \$ _____

Bond Discount \$ _____

Administrative and Organizational
(including creation costs and operating
advances) \$ _____

Bond Application Engineering Report,
Market Study \$ _____

Bond Issuance Expenses, including
TCEQ Bond Issuance Fee, Attorney
General Review Fee, Rating Agency Fees,
Bond Insurance \$ _____

Application, Review and Inspection Fees \$ _____

Site Costs \$ _____

Offsite Costs \$ _____

Engineering and Geotechnical: \$ _____

Total Non-construction Costs: \$ _____

NET ELIGIBLE MUD BOND ISSUE AMOUNT

\$ _____

AFFORDABLE HOUSING CONTRIBUTION
PERCENTAGE:

X 2%

AFFORDABLE HOUSING CONTRIBUTION:

\$ _____

4. Each contribution will be calculated based upon costs approved for reimbursement under applicable Commission rules and a report on reimbursable costs prepared by a certified professional accountant on behalf of the District at the time of each Bond issue. Each contribution, along with a copy of the report on reimbursable costs, will be delivered to the City Controller until the maximum contribution of \$8.0 Million has been paid. A copy of each report on reimbursable costs will be submitted to the Finance Director concurrently with the delivery of the contribution and report to the Controller.

EXHIBIT N

Terms of Cost Reimbursement and Participation

Description	Terms of Cost Reimbursement and Participation
1. Exhibits	<p>Exhibits M-1, M-2, M-3 and M-4 are conceptual in nature, and the alignments and lengths of pipe shown thereon may increase or decrease as appropriate while maintaining the integrity of the overall distribution/collection systems. The size and capacity of Major Water and Wastewater Facilities may be decreased, at the City's sole discretion, if it is determined later that demands within the Districts on particular facilities will be less than originally estimated.</p> <p>The identified Major Water and Wastewater Facilities in the exhibits are based upon the report by the Developer's engineer (Jacobs Engineering Group, Inc.) dated October 2010 and sealed October 15, 2010. The sizing for the Districts' development and the City's oversizing is based upon that report.</p>
2. Easements in General	<p>With the exception of the Pilot Knob Pumpover Lift Station, all easements related to lift stations will extend to the edge of the District's outer boundary so that the City may send wastewater flows to each of the lift stations. All easements will be exclusive for water and wastewater and not for other utilities' or entities' use.</p>
3. Easement (temporary and permanent) for Internal Water and Wastewater Facilities, and Major Water and Wastewater Facilities	<p>The Developer and the District will convey easements to the City at no cost to the City. Width and length of the easements will be determined by the City in accordance with City design criteria, specifications, and policies. The Developer and the District, at its cost, are responsible for providing additional easements, if determined by the City, as a result of the Developer or the District increasing the capacity or to reach the ultimate capacity of any of the Major Water and Wastewater Facilities.</p>
4. Easement (temporary and permanent) for future extension of infrastructure by the City (see Exhibit M-4)	<p>The Developer and the District will convey to City, at no cost to City, (i) the easements required for the Major Water and Wastewater Facilities as indicated on Exhibits M-1, M-2, M-3, and M-4, and (ii) easements that are located on property owned by the Developer or the District. The Developer and the District will work cooperatively with the City to identify a utility alignment on property at the submittal of the UIR. Width and length of the easements will be determined by the City in accordance with City design criteria, specifications, and policies. Because the size and depth of the future infrastructure cannot be determined at this time, the Developer and the District agree that the easements will be sufficient to meet the City's future needs and will be conveyed to the City prior to the earlier to occur of City approval of construction plans or final plat for that portion of any District that will be affected by such easement.</p> <p>These easements are in addition to the easements described above for any infrastructure that will be conveyed to the City such as Internal Water and Wastewater Facilities, and Major Water and Wastewater Facilities.</p>

*Sections on p. N-7
relating to reclaimed
water negotiations
have been deleted.*

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5. Internal Water and Wastewater Facilities, and Major Water and Wastewater Facilities	<p>City's cost reimbursement ordinances and policies (where the City would pay more than just for its proportional share of costs for oversizing) will not be applied or used in any manner for any water, Reclaimed Water, and wastewater infrastructure (Austin City Code Chapter 25-9).</p> <p>For those Major Water and Wastewater Facilities identified on Exhibit M-1 and Exhibit M-2 which have been oversized at the request of the City, the Developer will pay 100% of all costs associated with the oversizing without reimbursement by the City or the District, but only up to the extent of the pipe diameters expressly set forth on Exhibit M-1 and Exhibit M-2. The Developer may seek reimbursement by the District for all infrastructure required to provide utility service to the development within the District.</p>
6. Easements (temporary and permanent) or land for Major Water and Wastewater Facilities oversized by the City in the future	<p>If the City requests oversizing for Major Water and Wastewater Facilities that (i) results in facility sizing that is in excess of the sizing identified in Exhibit M-1 and Exhibit M-2, and quantified in Exhibit M-3, or (ii) have <u>not</u> been identified in Exhibit M-1, Exhibit M-2 or Exhibit M-4 and quantified in Exhibit M-3, the City will pay its proportionate share of costs based upon the increased amount of easement/land necessary, if any, to accommodate the City's increase in size of the Major Water and Wastewater Facilities. Width and length of the easement/land will be determined by the City in accordance with City design criteria, specifications, and policies.</p>
7. Major Water and Wastewater Facilities oversized by the City in the future	<p>If the City requests oversizing for Major Water and Wastewater Facilities that (i) results in facility sizing that is in excess of the sizing identified in Exhibit M-1 or Exhibit M-2, and quantified in Exhibit M-3, or (ii) have <u>not</u> been identified in Exhibit M-1 or Exhibit M-2, and quantified in Exhibit M-3, the City will pay its proportionate share of costs for the City's oversizing in accordance with City ordinances.</p>
8. All Lift Stations	<p>The Developer and the District agree to provide lawn maintenance, at its cost and discretion, for that portion of all lift stations that is located outside of the fencing of the lift station.</p> <p>Lift station sizing will be based on peak wet-weather flow consistent with the conceptual plan presented in Exhibit M-3. The Developer or the District will donate a one-acre developable easement for each lift station, except the Pilot Knob Pumpover and North Fork at Hwy. 183 lift stations, prior to any City approval of construction plans for any District that would require such lift station to be constructed. The Developer or the District will donate a two-acre developable easement for the Pilot Knob Pumpover lift station and for the North Fork at Hwy. 183 lift station prior to any City approval of construction plans for any District that would require such lift</p>

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	<p>stations to be constructed; provided, however, the easement for the Pilot Knob Pumpover Lift Station will contain a provision for vacation of a portion of such easement (up to one acre) in the event that the Original Plan Route is ultimately utilized by the Developer or the District. The City, at its sole discretion, can agree to reduce the acreage for the easements if it determines that a smaller easement is sufficient in light of the use of adjacent property. Portions of the easements may be located within the 100-year floodplain, subject to the City's approval, which approval will not be unreasonably withheld, conditioned or delayed; however, all mechanical and electrical components of the lift stations and access to such lift stations must be elevated out of the floodplain. Developable acreage calculations shall include portions of the floodplain to the extent that the lift station buffer area and facilities can be located therein.</p> <p>The Developer will design and construct, at its sole cost, all lift stations required for the Districts. The Developer or the District will donate to the City any additional easements if the Developer designs and constructs a lift station in phases and in such a manner that does not provide, in the City's reasonable determination, the same buffer as would be provided by a single lift station designed for the ultimate build-out wastewater flows for that lift station. Except as otherwise identified in Exhibits M and N, the City will design and construct, at its sole cost, any infrastructure required to convey waste generated outside of the Districts to the lift stations.</p> <p>For each lift station, the Developer, at its sole cost, will also design and construct additional capacity designated for the City's sole use for areas outside of the Districts as described for each lift station herein, but only to the extent quantified in Exhibit M-3. The City's capacity as quantified in Exhibit M-3 will not be used by the Developer or the Districts at any time unless approved in writing by the Director. If the Developer or the District exceeds its capacity for a lift station as provided in Exhibit M-3 for three consecutive 30-day periods, the Developer will design and construct, at its sole cost, an expansion sufficient to replace the capacity used by the Developer or the District in a timely manner. After the period of curing such default has expired and the City's capacity is still being used by the Developer or the District, the City may choose to not approve any further construction plans and final plats for any areas within the Districts that contribute wastewater flows to the lift station until such expansion is completed (in addition to any other remedies available to the City).</p> <p>If the City exceeds its capacity as provided in this Exhibit N for a lift station for three consecutive 30-day periods, the City will construct and design, at the City's sole cost, an expansion to such lift station sufficient to replace the capacity used by the City in a timely manner. After the period of curing such default has expired and the District's capacity is still being</p>

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	<p>used by the City, the District or the Developer may pursue all remedies available to them under this Agreement.</p> <p>Capacity usage will be measured as an average daily flow (Average Daily Flow) using flow meters, where feasible, and pump run times. The Average Daily Flow will be calculated over a 30-day period by taking all of the meter readings for the 30-day period and averaging all of the individual reading (recorded minimally every minute). The City will use its flow meters to measure District and non-District flows. If a flow meter cannot be used to measure flow due to the system configuration or flow characteristics, then the City and the District will calculate the flows using sound engineering principles.</p> <p>The initial design of each lift station will include the conceptual plan and layout for phasing the station and force mains to reach the ultimate capacity shown on Exhibit M-3. The City will work cooperatively with the Developer to prepare an annual report ("Five-Year Facility Plan") and submit such report to the Developer by September 31st of each year. The report will address issues such as:</p> <ol style="list-style-type: none">1. Existing District Average Daily Flow2. Existing and projected non-District Average Daily Flow (information provided by the City)3. District flow projections for a five year period4. Peak wet weather flows5. Five-year Facility Plan for lift station expansion6. Total Average Daily Flows from District and non-District sources as indicated by lift station run time for the prior 12 months <p>Lift station expansion construction shall be underway when Average Daily Flow, for three consecutive months, reaches one-fourth of station firm capacity, at that time, as determined by drawdown testing, unless the Five-Year Facility Plan has determined that earlier or later construction is appropriate to address observed peak wet weather flows and projected future flows.</p> <p>To the extent capital improvements related to repair and replacement of existing lift station facilities are reasonably necessary elements of a lift station expansion required hereunder, whether such expansion is to be performed by the Developer or the City, such capital improvements shall be considered to be part of such an expansion.</p> <p>The City's wastewater service to the Project through all of the wastewater facilities identified in Exhibits M and N will be provided to the Project regardless of whether the City provides wastewater service to other properties outside of the Project through such facilities.</p>

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9. Pilot Knob Pumpover Lift Station	<p>(a) The Developer will design and construct the lift station to initially include 50 gpm Average Daily Flow designated for the City's use outside of the Districts. Per Exhibit M-3 it is anticipated that this station will be built to ultimate capacity in a single phase, with the District share being 130 gpm Average Daily Flow. If the City requires, for its sole use, additional capacity above the 50 gpm Average Daily Flow, then the City will be responsible for associated expansion costs for its additional capacity.</p> <p>(b) Upon the date that the District exceeds its capacity of 130 gpm Average Daily Flow for the Pilot Knob Pumpover Lift Station for three consecutive 30-day periods, the City may require that the Developer and Districts divert wastewater flows going to the Pilot Knob Pumpover Lift Station instead to the City's 84" wastewater interceptor (using the Original Plan Route or Contingency Plan Route as shown on Exhibit M-1 in accordance with the terms of this Agreement) at no cost to the City by delivery of a notice of such event (the "PKPLS Notice") to the Developer. Upon receipt of the PKPLS Notice, the Developer shall have 180 days to divert wastewater flows going to the Pilot Knob Pumpover Lift Station instead to the City's 84" wastewater interceptor. All facilities, including but not limited to the lift station and wastewater mains, required to redirect flows to the City's 84" wastewater interceptor (whether using the Original Plan Route or Contingency Plan Route) will be built by the Developer at no cost to the City. If the wastewater flows going to the Pilot Knob Pumpover Lift Station from the District have not been diverted to the City's 84" wastewater interceptor within 180 days after receipt of the PKPLS Notice, Developer will be subject to the restrictions set forth in paragraphs (c and d) below. In addition, within 30 days after receipt by Developer of an annual Five-Year Facility Plan that shows that the Average Daily Flow for the Pilot Knob Pumpover Lift Station is anticipated to reach 130 gpm of District-generated flow for a thirty-day period within the one-year period following the date of delivery to Developer of such Five-Year Facility Plan, the Developer will deliver to the City evidence that (i) the Developer has obtained easements as necessary to redirect flows to the City's 84" wastewater interceptor through the Original Plan Route or the Contingency Plan Route (whichever is then applicable), and (ii) Developer has begun the design work necessary for redirection of flows to such 84" wastewater interceptor.</p> <p>(c) If the Original Plan Route will be utilized and the wastewater flows going to the Pilot Knob Pumpover Lift Station from the District have not been diverted to the City's 84" wastewater interceptor within 180 days after receipt of the PKPLS Notice, the Developer and the District agree that the City, at its discretion, will not approve any further preliminary</p>

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	<p>plans, construction plans, and final plats until the Pilot Knob Pumpover Lift Station is decommissioned and those associated wastewater flows are permanently transported to the City's 84" wastewater interceptor through the Original Plan Route. If by necessity the Contingency Plan Route will be utilized and the wastewater flows going to the Pilot Knob Pumpover Lift Station from the District have not been diverted to the City's 84" wastewater interceptor within 180 days after receipt of the PKPLS Notice, the Developer and the District agree that the City, at its discretion, will not approve any further preliminary plans, construction plans, and final plats until the Pilot Knob Pumpover Lift Station is decommissioned and those associated wastewater flows are permanently transported to the North Fork at Hwy. 183 Lift Station and thence to the Contingency Plan Route gravity line.</p> <p>(d) Regardless of the above, unless by necessity the Contingency Plan Route is used, the Pilot Knob Pumpover Lift Station itself will be limited to a maximum of 180 gpm for Average Daily Flow, which may be increased at the City's sole discretion.</p>
10. Upper South Fork at Wende Rd. Lift Station	<p>The Developer will design and construct the lift station to initially include 18 gpm Average Daily Flow designated for the City's use outside of the Districts. Per Exhibit M-3 it is anticipated that this station will be built to ultimate capacity in a single phase. If the City requires, for its sole use, additional capacity above the 18 gpm Average Daily Flow, then the City will be responsible for associated expansion costs for its additional capacity. At the City's discretion, the Developer, at its cost, will also construct a parallel 8" force main in addition to the force main required for the lift station. The parallel force main will be capped at both ends of the pipe at the District's boundary and will only be used by the City for wastewater flows outside of the District's boundaries.</p>
11. North Fork at Hwy. 183 Lift Station	<p>The Developer will design and construct each phase of the lift station to include an additional 25% of the total amount of Average Daily Flow of capacity constructed for use by the Developer and the Districts. The added capacity will result in the City always having 20% of the lift station capacity assigned to the City for its use outside of the Districts, up to the ultimate loads identified in Exhibit M-3. The Developer will be responsible for lift station expansion unless the City requires additional capacity beyond the City's designated capacity available at that time. The City may require the station to be built in the dry pump pit configuration beyond a 2,000 gpm capacity.</p>
12. South Fork at Hwy. 183 Lift Station	<p>The Developer will design and construct each phase of the lift station to include an additional 100% of the total amount of Average Daily Flow of capacity constructed for use by the Developer and the Districts. The added capacity will result in the City always having 50% of the lift station capacity assigned to the City for its use outside of the Districts, up to the</p>

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	ultimate loads identified in Exhibit M-3. The Developer will be responsible for lift station expansion unless the City requires additional capacity beyond the City's designated capacity available at that time. The station will be designed to serve both sides of South Fork Creek by gravity; provided, however, Developer will only be required to construct a well to the depth of 40 feet and, if the well depth necessary to serve both sides of South Fork Creek by gravity exceeds 40 feet, then the City will be responsible for the associated costs to increase the well depth beyond 40 feet.
13. South Fork Trib. at FM 1625 Lift Station	The Developer will design and construct the lift station to initially include 45 gpm Average Daily Flow designated for the City's use outside of the Districts. If the City requires, for its sole use, additional capacity above the 45 gpm Average Daily Flow, then the City will be responsible for associated expansion costs for its additional capacity.
14. Original Plan Route	If the Developer is unsuccessful after a good faith effort, as determined by the City, to obtain easements for the Original Plan Route by agreement, the City agrees, upon request, to promptly request City Council approval to acquire the acquisition of the easement in question utilizing the City's power of eminent domain and, upon such approval, to promptly initiate and diligently pursue the condemnation of the easement in question. If the City Council does not approve proceeding with condemnation of any required easement for the Original Plan Route within 120 days of being formally requested to do so in writing, then the Developer or the District, at its discretion, may use the Contingency Plan Route to provide wastewater service.