

ORDINANCE NO. 20150917-008

AN ORDINANCE AUTHORIZING NEGOTIATION AND EXECUTION OF AMENDED COST REIMBURSEMENT AGREEMENTS WITH CLUB DEAL 120 WHISPER VALLEY, L.P. AND CLUB DEAL 116 INDIAN HILLS TX, L.P. TO ALLOW TRANSFERS BETWEEN WATER AND WASTEWATER CAPITAL IMPROVEMENT FUNDS; AND WAIVING CITY CODE SECTION 25-9-66.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Council approved a cost reimbursement agreement, for an amount not to exceed \$2,000,000, with Club Deal 120 Whisper Valley, L.P. and Club Deal 116 Indian Hill TX, L.P. (collectively, "Developer") in Ordinance No. 20100527-006 for design of water mains to serve the Whisper Valley and Indian Hills developments, and for a decertification fee for Manville Water Supply Corporation to allow the City the legal authority to provide retail water service in the Whisper Valley Development.

PART 2. Council approved an amended and restated cost reimbursement agreement, for an additional amount not to exceed \$22,500,000, in Ordinance No. 20100826-004, for the design and construction of water mains, and design of a wastewater treatment plant. The maximum sum of the previous authorization and this authorization is limited to \$24,500,000.

PART 3. On January 17, 2013, the Council authorized the City Manager to negotiate and execute amended cost reimbursement agreements to increase the reimbursement amount for wastewater soft costs by \$100,000 to a total of \$2,500,000, and to decrease the reimbursement amount of water construction costs by \$100,000 to a total of \$22,000,000.

PART 4. On August 7, 2014, Council authorized the City Manager to negotiate and execute amended cost reimbursement agreements with Developer to increase the reimbursement amount for wastewater soft costs by \$800,000 to a total of \$3,300,000, and to decrease the reimbursement amount of water construction costs by \$800,000 to a total of \$21,200,000, however the amendment was not executed.

PART 5. The Developer has not made the PID assessment payment in the amount of approximately \$5.5 million which was due to the City from the Developer on July 1, 2015. The proposed changes to the Cost Reimbursement Agreement described below potentially resolves the issue of the outstanding assessment payment by modifying the reimbursement schedule of payments due to the Developer. Currently the Cost Reimbursement Agreement requires the City to pay 50% of eligible reimbursement costs

for the design and construction of the water mains within 90 days of the City's final acceptance of the infrastructure and the remaining 50% one year later. The proposed change will have the City pay 100% of eligible reimbursement costs within 90 days of the City's conditional acceptance of each City-approved phase of water infrastructure. Payments for the City-approved phase of water infrastructure will be sent directly to the Trustee on behalf of the Developer to satisfy the payment of the outstanding assessment. The City will conditionally accept the water infrastructure provided for under the Cost Reimbursement Agreement only if the Director of the Austin Water Utility is satisfied that the infrastructure is free and clear of all liens and encumbrances and that all contractually required warranties are intact and in full effect, or if the Director of the Austin Water Utility is satisfied that the City's interests are protected with regard to any liens and encumbrances on, and warranties for, the water infrastructure. Prior to the City's conditional acceptance all final record drawings must be provided to the City along with performance bonds acceptable to the City that address outstanding issues, such as revegetation, that must be completed prior to final acceptance.

PART 6. Subject to approval by the bond trustees, the City agrees that the amount of any assessment payment under the Subordinate PID Bonds that is paid by the Developer that was intended to be paid by reimbursements from the City under the Cost Reimbursement Agreement, will be refunded to the Developer by the trustee once the subordinate bonds are fully paid.

PART 7. City Council directs the City Manager to negotiate and execute an amendment to the Cost Reimbursement Agreement to address the foregoing changes.

PART 8. Council waives City Code Section 25-9-66 (A) (*Cost Participation Payment*) relating to cost reimbursement payments. Section 25-9-66 provides that the City pay 90 days after acceptance. Payments will be made within 90 days of the City's conditional acceptance versus final acceptance of each City-approved phase of water infrastructure.

