

**Goodnight Ranch Water Cost Reimbursement**

**Developer Reimbursement for Water Improvements at Goodnight Ranch  
Cost Reimbursement Agreement between Austin Goodnight Ranch, LP, and the City of Austin  
dated October 6, 2006, and amended on 4/1/2009 requiring reimbursement within 90 days  
of final acceptance. Final acceptance received on 8/17/2015.**

CIP ID: 3353.072 SER 2416

Contacts: Phillip Jaeger, Austin Water Utility, Utility Development Services  
Tom Albin, Austin Water Utility, Financial Management Division

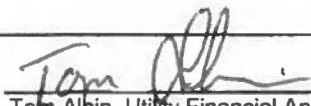
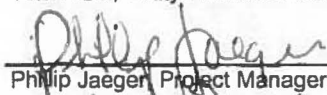

<b>Payment Amount Due:</b>	\$	<b>624,859.00</b>
Maximum Reimbursable Amount	\$	3,796,500.00
Payments - to date	(Includes current payment)	2,431,507.48
Remaining Balance to be Reimbursed		<b>\$1,364,992.52</b>

Vendor Code: VS0000008067  
Vendor Name: Austin Goodnight Ranch, LP  
610 W. 5th Street, STE 201  
Austin, TX 78749

Amount: **Water** \$ 624,859.00 **Total** \$ 624,859.00

AFS3 Attributes:	Fund	3960
	Department	2207
	Unit	2052
	Reporting Category	2804
	Object	5560
	Activity	2511

**AMOUNT APPROVED:****\$ 624,859.00**

Prepared by:	 Tom Albin, Utility Financial Analyst	Date: 11/6/15
Reviewed by:	 Phillip Jaeger, Project Manager	Date: 11-6-15
Approved by:	 Kristi Fenton, Utility Financial Manager	Date: 11/9/2015



PRINCIPALS:  
LAWRENCE M. HANRAHAN, P.E.  
ANDY CARTER, P.E.

August 18, 2015

Mr. Phillip Jaeger  
City of Austin Water  
625 E. 10th Street  
Austin, Texas 78701

Re: Goodnight Ranch Vertex Boulevard 24" Water Line Project (The "Project")  
City of Austin File No. SP-2013-0147D.SH  
**PHASE 2 24-INCH WATER IMPROVEMENTS ONLY**  
Water Service Extension No. 2416

On behalf of the Developer, Austin Goodnight Ranch L.P., we hereby request reimbursement of water line improvements as described in Paragraph 1.03(a) of the First Amendment to Cost Reimbursement Agreement ("Agreement") between the City of Austin and the Developer related to the above Service Extension Request. This is the final phase of improvements outlined in the Agreement, which was authorized by Ordinance No. 20080724-007). All other phases outlined in SER No. 2416 are complete and operational.

These improvements were included in construction plans for other improvements, including Vertex Boulevard, for which a single Project Construction Summary was prepared. Reimbursable improvements for the Project were constructed by Santa Clara Construction, Ltd. Other improvements were by a separate contractor and are non-reimbursable. These non-reimbursable improvements included some water line segments, and are included in the Project Construction Summary under Water Improvements. Therefore, the "Water Improvement Cost" shown in the Project Construction Summary exceeds the amount to be reimbursed. A Summary of Reimbursable Costs is attached to this letter, which clarify the reimbursable and non-reimbursable water improvements.

Reimbursable improvements (the Project) include construction of approximately 1,747 linear feet of 24-inch water line extending from an existing City of Austin water line in Vertex Boulevard (a previously-constructed segment of SER 2416), south in Vertex Boulevard to an existing 48-inch water line (constructed as a CIP as South IH-35 Segment 16 – Goodnight Ranch Phase II 48-Inch Water Transmission Main).

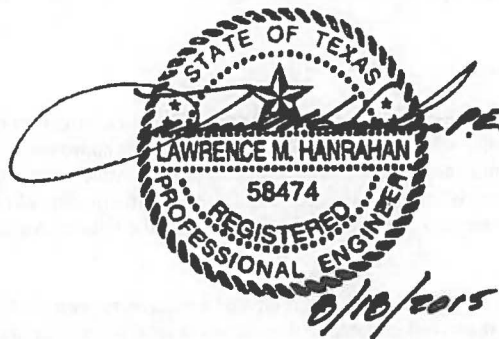
According to the Amendment to the Agreement, the City agrees to reimburse the developer for the actual reimbursable costs of the Project within 90 days of City of Austin acceptance. Actual reimbursable costs include only construction costs, not design costs associated with the 24-inch portion of the Project.

## SUMMARY OF REIMBURSABLE COSTS

Project: Goodnight Ranch Vertex Boulevard 24" Water Line Project  
CIP ID # 3353.072  
IFB # 6100 CLMC 483 8/18/2015

### Water Improvements

Contractor	Reimbursable Amount	Non-Reimbursable Amount	TOTAL
DNT	\$ -	\$ 52,923.16	\$ 52,923.16
Santa Clara	\$ 624,859.00	\$ -	\$ 624,859.00
TOTAL	\$ 624,859.00	\$ 52,923.16	\$ 677,782.16



## PROJECT CONSTRUCTION SUMMARY

PROJECT NAME: Goodnight Vertex Boulevard

FINAL ACCEPTANCE DATE: August 5, 2015

INSPECTOR: Ken Brewer/Lisa Weller

CONTRACTOR: DNT Construction, LLC and Santa Clara Construction, Ltd.

CIP PROJECT MANAGER: \_\_\_\_\_

CIP #(S): \_\_\_\_\_

SUBDIVISION FILE #: \_\_\_\_\_

SITE DEVELOPMENT #: SP-2013-0147D.SH

WATER / WASTEWATER JOB ID #: 2014-0573

Maintained By:	
COA	Other
Boxes checked by COA	

### CONSTRUCTION COSTS

STREET IMPROVEMENT COST: \$422,0845.55

SIDEWALK IMPROVEMENT COST: \$122,876.34

SIDEWALK RAMP IMPROVEMENT COST: \$7,578.63

BRIDGE IMPROVEMENT COST: \_\_\_\_\_

POND(S) COST: \$740,030.20

DRAINAGE IMPROVEMENT COST: \$587,802.01

WATER IMPROVEMENT COST: \$677,782.16

WASTEWATER IMPROVEMENT COST: \$158,506.99

EROSION CONTROLS / RESTORATION COST: \$314,688.91

**TOTAL IMPROVEMENT COST: \$3,031,349.79**

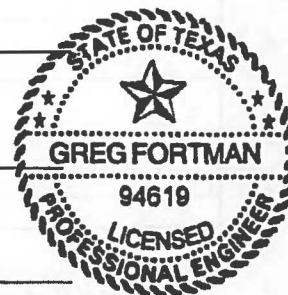
PREPARED BY (DESIGN ENGINEER):

Greg Fortman  
Greg Fortman, P.E.  
(TX PE Firm Reg. #15581)

CHECKED BY (CID SUPERVISOR): \_\_\_\_\_

Attachment No. 5

Procedure S-102  
09/10/02





## CONSTRUCTION SUMMARY FOR BRIDGES

BRIDGES / BRIDGE CLASS CULVERTS / DRAINAGE CULVERTS ACROSS ROW								
STREET NAME AND ADDRESS OR LOCATION	FEATURE CROSSED <sub>1</sub>	TYPE <sub>2</sub>	DESCRIPTION <sub>3</sub>	DECK		COST	PRIVATE	ETJ
				W (FT) <sub>4</sub>	L (FT) <sub>5</sub>			

1 – Feature Crossed: Creek name if major creek or branch, or roadway name if overpass.

2 – Type: B – Bridge, C - Culvert, P – Pipe. All crossings 20' and wider including multiple box culverts totaling 20' or wider shall be classified as a B – Bridge. Culverts are precast or cast-in-place box culverts. Pipes are smaller drainage pipe crossings with or without headwalls.

3 – Description: i.e. 2 spans (Bridge), 2 – 5 X 7' (Culverts), 2 – 24" RCP (Pipes).

4 – Deck Width: Use "footprint" of culvert/pipes for width on buried culvert/pipes; include full "out to out" dimension including sidewalks/railings for width of standard bridges.

5 – Deck Length: Measured along the centerline of the roadway

## CONSTRUCTION SUMMARY FOR DRAINAGE

STORM DRAIN			MANHOLES			INLETS		
SIZE (IN)	MATERIAL TYPE	L (FT)	QTY	SIZE (Dia - FT)	MATERIAL TYPE	QTY	SIZE (L - FT)	TYPE 1
96x60	RCP	440				12	10-FT	CURB
96x36	RCP	118						
18	RCP	880						

JUNCTION BOXES			OUTFALL STRUCTURES		
QTY	SIZE (FT x FT x FT)	MATERIAL TYPE 2	QTY	SIZE 3	DESCRIPTION 4
			2	8'X5'	HEADWALL (PARALLEL)
			1	8'X3'	HEADWALL (PARALLEL)
			1	8'X3'	WING WALL (FLARED)
			5	18-IN	HEADWALL

CHANNEL			
LENGTH (FT)	BOTTOM WIDTH (FT)	SIDE SLOPE (FT/FT)	LINING MATERIAL TYPE
1252	40	3/1	GRASS WITH TRICKLE CHANNEL
801	20	3/1	GRASS WITH TRICKLE CHANNEL
140	20	3/1	GRASS WITH TRICKLE CHANNEL

- 1) Grate, Area, Curb, Recessed Curb, Combination, Slotted Drain
- 2) Cast-in-Place, Precast
- 3) Pipe size / Culvert Size
- 4) Headwall, Wing Walls, Gabions



STATE OF TEXAS  
COUNTY OF TRAVIS

§  
§  
§

**COST REIMBURSEMENT AGREEMENT  
(Austin Goodnight Ranch L.P.)**

**THIS COST REIMBURSEMENT AGREEMENT ("Agreement")** is made and entered into by and between the **City of Austin**, a Texas municipal corporation chartered under Article XI, Sec. 5 of the Texas Constitution (the "**City**"); and **Austin Goodnight Ranch L.P.**, a Texas limited partnership (the "**Developer**").

**I.  
RECITALS:**

**1.01.** Developer has acquired for development that certain tract comprised of approximately 703 acres located east of Bluff Springs Road and south of Nuckols Crossing Road along the proposed extension of Slaughter Lane commonly known as "Goodnight Ranch Tract," for which the Developer is authorized to develop a mixed-use development and for which the Developer has requested City water utility service (the "Property"). The Property is located within the limited purpose jurisdiction of Austin, within the City's designated Desired Development Zone. Approximately 253 acres of the Property are located within the City's Utility and Impact Fee Service Area. In connection with Developer's development of the Goodnight Ranch Tract, Developer has conveyed a 15.604 acre portion of the Goodnight Ranch Tract to the Austin Independent School District for the construction of an elementary school and improvements ancillary thereto (the "School").

**1.02.** In order to obtain approval for City water utility services for the mixed-use development and the school within the Property, the Developer has made written application for approval of water utility service extension with the Director of the Austin Water Utility (the "**Director**") and requested reimbursement for the line extension necessary to connect the Property to existing City water facilities.

**1.03.** In **Water Service Extension No. 2416 ("WSER No. 2416")**, the Director determined that the requested extension of City water utility service to the Property will require the Developer to design and construct:

**(a) Phase One 24-Inch Central Water Pressure Zone Water Improvements:** approximately 4,100 linear feet of 24-inch water line and appurtenances extending from a point of connection with an existing 24-inch City water line in Salt Springs Drive at Thaxton Road and extend west and south along Thaxton Road and Nuckols Crossing Road within an appropriately sized easement to the Property;

**(b) Phase One 36 or 48-Inch South Water Pressure Zone Water Improvements:** approximately 2,400 linear feet of 36 or 48-inch water line and appurtenances extending from a point of connection with an existing 24-inch City water line in Bluff Springs Road at Slaughter Lane and extend east along the proposed

(a) authorized the construction of the Water Projects that the Director has determined are necessary to extend City water utility service to the Property;

(b) authorized the City Manager or her designee to negotiate and execute an agreement with the Developer to set forth terms and conditions whereunder the Developer would design and construct, and the City would reimburse the Developer for (i) the actual construction costs incurred for the Water Projects ("hard costs") in an amount not to exceed \$3,504,000; (ii) for actual costs incurred for engineering, design and project management ("soft costs") of the 36 or 48-Inch Water Improvements only in an amount not to exceed fifteen percent (15%) of the actual hard construction costs of the 36 or 48-Inch Water Improvements, or \$292,500, whichever is less, for an overall maximum cost reimbursement not to exceed \$3,796,500; and

(c) authorized payment of the cost reimbursement amount in one lump sum payment on March 1 of the second calendar year after final acceptance of the Water Projects by the City in accordance with Section 25-9-67, City Code.

**1.05. By Ordinance No. 20051020-003, adopted on October 20, 2005, the City Council waived the requirements of Section 25-9-63, City Code, to allow for reimbursement of certain soft costs of the Water Projects as described above.**

**1.06. The Developer has agreed to construct the Water Projects to service the needs of the development proposed for the Property and surrounding area and to finance the design and construction of said water facilities in accordance with this Agreement, the City Council Motion of October 20, 2005, and Ordinance No. 20051020-003.**

**NOW THEREFORE**, in consideration of these premises, the mutual covenants of each party, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and Developer agree as follows:

## **II.**

### **CONSTRUCTION AND OPERATION OF THE WATER PROJECTS**

**2.01. Description of the Water Projects.** The Water Projects required to extend City water utility service to the Property and surrounding areas shall consist of the construction of approximately 7,400 linear feet of 24-inch water line and approximately 5,000 linear feet of 36 or 48-inch water and appurtenances as more particularly described in Section 1.03 of this Agreement and in accordance with the final construction plans approved by the Director. The general routing of the Water Projects is depicted on **EXHIBIT A** attached hereto and incorporated herein.

**2.02. Developer To Act As Project Manager for Construction.** The Developer will serve as Project Manager for the construction of the Water Projects. The City acknowledges that the Developer may retain a qualified third party to assist in the execution of its duties as Project Manager for construction of the Water Projects but the



**2.06. Duties of the Developer.** Concerning the Water Projects, the Developer agrees to:

(a) permit the City to use the Plans and Specifications approved by the Director to solicit and publish invitations for bids for the construction of the Water Projects on a Phase by Phase basis following standard City bidding practices and procedures, including the minority-owned and women-owned business enterprise procurement program found in Chapter 2-9, City Code, as amended, and Chapters 212 and 252, Texas Local Government Code, as amended;

(b) resubmit the Plans and Specifications for a Phase to the Director for review and approval prior to bidding such Phase the Water Projects if a period of more than twelve (12) months pass after the Director has approved the Plans and Specifications for such Phase , and before the project is bid;

(c) prepare and submit to the Director for review and approval all construction contracts and proposed construction schedules for a Phase of the Water Projects (each a "Construction Contract") before execution; include general conditions in the Construction Contract no less stringent than those used by the City's Department of Public Works and Transportation including, without limitation:

(1) those conditions regarding warranties, insurance, and bonding requirements;

(2) provisions including the City as an approved future assignee of the Developer with the ability to complete the project in the event the Developer fails to complete the Construction Contract and the City exercises its right to complete a Phase of the Water Projects upon default of the Developer;

(3) a requirement that a certificate of insurance be provided evidencing that the City has been designated as an additional insured with respect to all liability coverages according to the City's Standard General Conditions;

(d) after approval by the Director, award a Construction Contract for the applicable Phase of the Water Projects to a qualified construction contractor (each a "Construction Contractor") in accordance with standard City construction contract procedures, including the minority-owned and women-owned business enterprise procurement program found in Chapter 2-9 of the Austin City Code, as amended;

(e) obtain all required permits, consents, variances, easements, inspections, tests, and authorizations necessary for construction of the Water Projects on a Phase by Phase basis;

(f) submit all payment and performance bonds and other documents required for the Construction Contract and this Agreement and then arrange a preconstruction meeting with the Construction Contractor, Project Engineer, and the City after the award

(o) notify the City and the Project Engineer of defects and deficiencies found in the work and instruct the Construction Contractor to correct such defects and deficiencies;

(p) ensure access and permit the City's inspectors and other authorized representatives to inspect the construction at all times during the construction and the contractor's one (1) year warranty period following construction;

(q) prepare certificates of substantial completion for Project Engineer concurrence; submit to the Construction Contractor a list of observed items requiring completion or correction;

(r) conduct and coordinate final inspection of the Water Projects on a Phase by Phase basis in the presence of the Project Engineer and the City inspector; transmit a final list of items to be completed or repaired to the Construction Contractor; and observe the Construction Contractor correcting the items;

(s) arrange preparation of a certificate of project completion by Project Engineer according to contract documents and approved change orders, and submit it to the Director for review and approval of a concurrence letter on a Phase by Phase basis;

(t) within thirty (30) days after final completion and acceptance on a Phase by Phase basis of the Water Projects by the City, provide to the City as-built drawings for such Phase of the Water Projects prepared and duly sealed by the Project Engineer;

(u) assign all warranties, guarantees, maintenance bonds, or like assurances of performance for each Phase to the City after final acceptance of such Phase of the Water Projects by the City;

(v) make timely payment to the Project Engineer and Construction Contractor for work performed in connection with the Water Projects;

(w) maintain master job files of correspondence, reports of conferences, shop drawings, samples, reproductions of contract documents, change orders, addenda, daily inspection reports, additional or revised drawings, and other related documents;

(x) keep separate books of account, accurately documenting costs and expenses incurred in connection with the Water Projects; submit actual cost data and support documentation to the City for all design and construction costs; close out records for the Water Projects; and deliver all records and documentation to the City; and

(y) secure easements for those portions of the Water Projects to be constructed on private property acceptable in form and content to the City Attorney and the Director; provided, however, that the City agrees to provide reasonable assistance, at the expense of the Developer, to obtain easements for those portions of the Water



acquired, produced or installed in aid of completing such Phase of the Water Projects by the Developer or its engineers or contractors before such default will become the property of the City and, in such event, the Developer will provide such documentation to the City on the City's request within five (5) business days. Reasonable delays in construction not reasonably within the control of the Developer and about which the Developer has notified the City in writing will not constitute default under this Agreement.

**2.10. City's Option to Terminate if Construction Has Not Commenced.**

(a) If the Developer has not awarded a Construction Contract for Phase One within one (1) year of the effective date of this Agreement, or if the Developer has awarded a Construction Contract for Phase One, Two or Three but has not commenced construction of the Phase for which a Construction Contract has been awarded Water Projects within one (1) year from the date of the award of the Construction Contract, and if the City has not elected to draw on the Fiscal Security for the Phase of the Water Projects for which a Construction Contract has been awarded in order to complete that Phase of the Water Projects, the City will have the right, at the sole discretion of the Director, to terminate this Agreement and withdraw its approval of all SERs relating to the Property; and

(b) If either the City or the Developer elects to terminate this Agreement because of a default by the other party that remains uncured after notice and opportunity to cure given in accordance with this Agreement, or if this Agreement expires of its own terms before completion and acceptance of the Water Projects, the City will have no obligation to provide water or wastewater utility service to the Property until the Water Projects, or an alternative project acceptable to the City, is constructed and accepted. The Developer shall be entitled to reimbursement for all reimbursable costs incurred in connection with a Phase or Phases of the Water Projects completed and accepted by the City, prior to default, if the Agreement is terminated as a result of a default by the Developer.

**2.11. Release and Return of Fiscal Security.** Except as provided in 3.03, the City agrees to promptly release the Fiscal Security for each Phase on a Phase by Phase basis in the following events:

(a) if either the City or the Developer elects to terminate this Agreement (except that the Fiscal Security shall not be released in the event that the City elects to take over and complete the applicable Phase of the Water Projects on the default of the Developer);

(b) if the City elects not to exercise its right and option to complete the applicable Phase of the Water Projects by commencing or resuming construction of the Water Projects within one (1) year of the date of the City's notice to the Developer of the Developer default; or

interest bearing Escrow Account for the purposes described in this Agreement or, alternatively, the City and the Developer may select a reputable third-party financial institution acceptable to the City and the Developer to act as escrow agent (the "Escrow Agent");

(c) If a third party Escrow Agent is selected, the City, the Developer and the Escrow Agent will execute one or more agreements ("Escrow Agreement") for the Water Projects (on a Phase by Phase basis) in a form acceptable to the City, the Developer and the Escrow Agent, to set out the purposes of the escrow, the terms and conditions of the escrow (which, among other things, shall provide for deposit of the escrowed funds in an interest bearing account) and the conditions under which the City or the Developer may draw from the Escrow Account to pay all costs for construction of the respective Phase of the Water Projects to which the Fiscal Security relates. The Developer will be responsible for the payment of all escrow fees. The Developer will be entitled to receive all interest earned on the escrow funds after final acceptance of the Phase of the Water Projects for which such escrow deposit was made if the escrowed funds are held by a third-party Escrow Agent. If the City holds the funds in trust, the City will retain all interest earned on the escrowed funds;

(d) Notwithstanding any provision in this Agreement to the contrary, if the Developer posts Fiscal Security in the form of funds to be placed in an Escrow Account, as referenced in 2.07(a) above, the Fiscal Security posted under this Agreement may be reduced ratably as the construction of a Phase progresses. For example, at such point as the construction of Phase One is 20% complete and Developer has paid the costs related thereto, the Fiscal Security held related to Phase One may be reduced by 20% upon written request by Developer, the amount of the reduction to be returned in a timely manner to Developer or paid as Developer may direct in writing. Developer may request a reduction not more than once per 30 day period; and

(e) all payments made from the Escrow Account to pay for construction of the respective Phases of the Water Projects, whether held by the City or a third-party Escrow Agent, shall be made strictly in accordance with this Agreement and if a third-party Escrow Agent is utilized, strictly in accordance with the Escrow Agreement.

#### **3.04. City's Agreement to Reimburse Certain Costs Incurred for the Water Projects.**

(a) Subject to completion of the Water Projects by the Developer on a Phase by Phase basis, and final acceptance thereof by the City, the City agrees to reimburse to the Developer:

(1) for actual hard construction costs incurred by the Developer for each Phase of the Water Projects in a total amount for all Phases not to exceed \$3,504,000; and

desires to be reimbursed for that amount, the Developer will need to make written request for City Council approval of the additional amounts. The City is not obligated to pay any additional amount until Council approval, if any, and the City makes no representation or assurance that City Council approval or funding for additional amounts will be forthcoming or that the payment of such amounts will be recommended by the Director; and

(g) If the Developer allows work to commence on a change order before receiving the Director's prior written approval (such approval not to be unreasonably withheld, conditioned or delayed), any costs incurred on that change order that are not so approved in advance by the Director are not eligible for reimbursement and are undertaken at the Developer's sole risk and expense. In this regard, it is acknowledged and understood that the Director is without authority to authorize change orders requiring additional funding not authorized by the Austin City Council or that would otherwise violate the Constitution and laws of the State of Texas or the Charter of the City of Austin.

**3.05. Payment Schedule.** The City and the Developer agree that the cost reimbursement amounts described above shall be paid as follows:

(a) the agreed cost reimbursement from the City to the Developer for the actual reimbursable costs of each Phase of the Water Projects in the amounts described above shall be paid to the Developer in one (1) lump sum payment for such Phase on March 1 of the second year following the year in which the City issues its final acceptance of such Phase of the Water Project. The parties acknowledge that as Phase One, Phase Two and Phase Three of the Water Projects are to be constructed separately and possibly singularly in successive Phases, Developer will post Fiscal Security separately with respect to each Phase, enter into separate Construction Contracts for each Phase and receive the reimbursement amounts for each will also be paid separately for each in accordance with the aforementioned time period; and

(b) The Developer agrees to timely provide all information and documents reasonably required by the Austin Water Utility for proper and processing and for accurate accounting and documentation of actual project costs. The City shall not be responsible for delays in payment occasioned from the Developer's untimely or incomplete submission of cost data or other information necessary to the verification of actual costs and processing of reimbursement payments.

**3.06. Report of Project Costs Required.** Within thirty (30) days of final acceptance of a Phase of the Water Projects by the City, the Developer will submit a written report to the Director of the total costs incurred by the Developer for such Phase of the Water Projects that includes supporting information documenting all amounts paid for which reimbursement is claimed and verifying that the Developer has complied with the City's procurement policies and other requirements of this Agreement in the construction of such Phase of the Water Projects. The City will use the report to determine and verify the amount of actual costs eligible to be reimbursed to the Developer for such Phase of the Water Projects under this Agreement. If the Director



cause the same to be fully and promptly discharged and released of record by payment, deposit, bond, or order of a court of competent jurisdiction or otherwise. The Developer will secure the release of the lien or other encumbrance within thirty (30) days after the filing or perfection thereof, unless the parties mutually agree in writing to additional time. The Developer agrees that the City will not accept any improvement burdened by any lien or other encumbrance and the City will not be obligated to provide water utility service to the Property until the lien or encumbrance is removed.

**4.04 Agreement May be Pledged as Collateral.** The Developer may pledge its right to payment under this Agreement as collateral for purposes of securing financing from one or more lenders for the Water Projects. The Developer or the lender will provide such documentation to the City Law Department for its review and approval. The City agrees to execute such documents as may be reasonably required by the lender to perfect their security interest in the collateral (as defined in the Texas Business & Commerce Code) provided such instruments do not amend, modify, diminish or prejudice the City's rights and interests under this Agreement or cause additional burden, expense or detriment of any kind to the City.

## **V.**

### **PROVISION OF UTILITY SERVICE FROM THE PROJECT**

**5.01 City's Policies and Ordinances Apply to Service Within the Property.** The parties agree that, from and after final acceptance of the Water Projects by the City, the City will provide utility service to customers within the Property subject to the conditions stated in this Agreement and the City's policies and ordinances, as amended. Nothing in this Agreement will be construed to limit, restrict, modify, or abrogate the City's governmental authority or ordinances respecting the operation and maintenance of its water systems nor its duty to provide at all times for the public health, safety, and welfare in the operation and maintenance of the same. The Developer specifically agrees that the Property will not be occupied before final acceptance of the Water Projects.

**5.02 Service Extension Request and Development of the Project.** The City's service extension policies and ordinances apply to service within the Property. The City and the Developer additionally acknowledge that:

(a) prior to execution of this Agreement, the Director has approved SERs for the tracts comprising the **Property**;

(b) this Agreement will not be construed to guarantee water service if later proposed plans for development within the Property will require greater water service capacity than was indicated by the Developer in its request for approval of the Water Projects or the Developer in their applications for approval of their SERs;

(c) this Agreement will not be construed to guarantee water service if later proposed development within the Property requires approval of additional water approach

## **VI. GENERAL PROVISIONS**

**6.01. Interpretation.** Except where the context otherwise clearly requires, in this Agreement:

- (a) words imparting the singular will include the plural and vice versa;
- (b) all exhibits attached to this Agreement are incorporated by reference for all purposes as if fully copied and set forth at length; and
- (c) references to any document mean that document as amended or as supplemented from time to time; and references to any party mean that party, its successors, and assigns.

**6.02. Notice of Default; Opportunity to Cure; Termination for Failure to Cure Default.** Should either party allege that the other has defaulted in the performance of any obligation, the non-defaulting party will provide at least thirty (30) days written notice to the other party specifying the nature of the alleged default and provide the other party a reasonable opportunity to cure the default before exercising any legal or equitable remedy related to the alleged default. If the default is not cured within the reasonable period specified to cure the default, the non-defaulting party may terminate this Agreement, on written notice to the defaulting party and pursue such legal remedies as are available to the non-defaulting party, whether at law or in equity.

If either party terminates this Agreement for any reason permitted by this Agreement or applicable law before the substantial completion of the Water Projects, then the City will have no obligation to provide water or wastewater service to the Property until the project is constructed, or an alternative project acceptable to the City is constructed.

**6.03. Entire Agreement.** This Agreement, including any attached exhibits, constitutes the entire agreement between the parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter of this Agreement.

**6.04. Amendment.** No amendment of this Agreement will be effective until the amendment has been reduced to writing, each party has duly approved it, and is signed by the authorized representatives of the parties. Any amendment will incorporate this Agreement in every particular not otherwise changed by the amendment.

**6.05. No Amendment of Other Agreements.** Unless otherwise expressly stipulated, this Agreement is separate from and will not constitute an amendment or modification of any other agreement between the parties.

**6.14. Notices.** When notices or other communications are required to be given under this Agreement, the parties will give written notice to the address of the party to be noticed by either:

- (a) delivering it in person;
- (b) depositing it in the United States Mail, first class mail, postage prepaid;
- (c) depositing it with a nationally recognized courier service; or

(d) by sending it by telefax (subject to electronic confirmation) with confirming copy sent by mail. For the purposes of notice, the addresses of the parties will, until changed as provided below, be as follows:

**DEVELOPER:**

Austin Goodnight Ranch L.P.  
c/o Terry Mitchell  
Momark Development LLC  
1717 West 6<sup>th</sup> Street, Suite 410  
Austin, Texas 78703  
Tel: (512) 391-1789  
Fax: (512) 233-2331

**CITY OF AUSTIN:**

City of Austin Water Utility  
P.O. Box 1088  
625 E. 10th Street  
Austin, Texas 78767-1088  
Attn: Director  
Tel. (512) 972-0108  
Fax: (512) 972-0111

With a copy to:

Dave Mahn  
Benchmark Development  
6001 West William Cannon  
Suite 201  
Austin, Texas 78749  
Tel: (512) 472-7455  
Fax: (512) 750-0571

With a copy to:

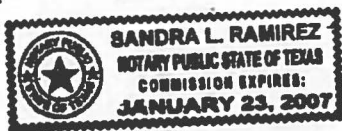
DuBois, Bryant, Campbell & Schwartz, LLP  
Attn: William C. Bryant  
700 Lavaca, Suite 1300  
Austin, Texas 78701  
Tel: (512) 457-8000  
Fax: (512) 457-8008

The parties notify each other of any changes to their respective addresses. If any date or notice period described in this Agreement ends on a Saturday, Sunday, or legal holiday, the parties will extend the applicable period for calculating the notice to the first business day following such Saturday, Sunday, or legal holiday.

STATE OF TEXAS       )  
                                  )  
COUNTY OF TRAVIS    )

THIS INSTRUMENT was acknowledged before me on this 6 day of October 2006, by Rudy Garza, Acting Assistant City Manager of the City of Austin, a Texas municipal corporation, on behalf of said municipal corporation.

(SEAL)



*Sandra L. Ramirez*  
Notary Public, State of Texas

STATE OF TEXAS       )  
                                  )  
COUNTY OF TRAVIS    )

THIS INSTRUMENT was acknowledged before me on this 5<sup>th</sup> day of October 2006, by *Terry E. Mitchell, Vice President* of Austin Goodnight Ranch GP LLC, a Texas limited liability company, general partner of Austin Goodnight Ranch L.P., a Texas limited partnership, on behalf of said limited liability company and partnership.

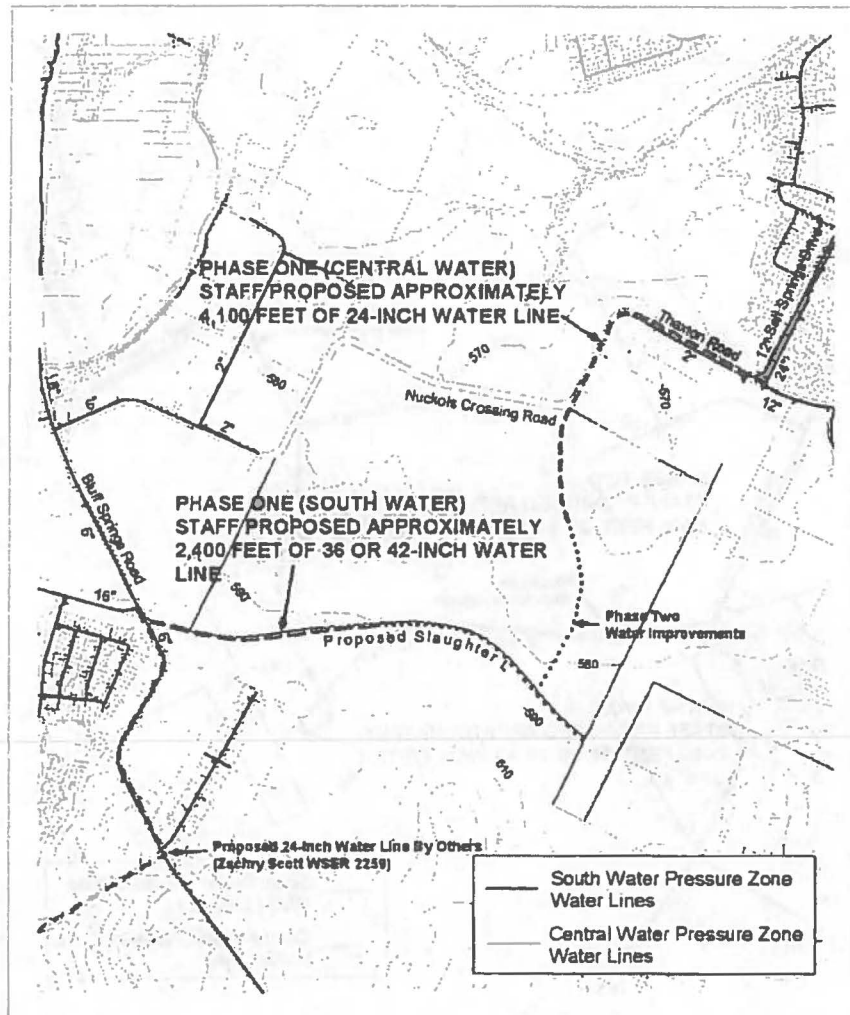
(SEAL)



*Christy Clark*  
Notary Public, State of Texas

RRC/paj

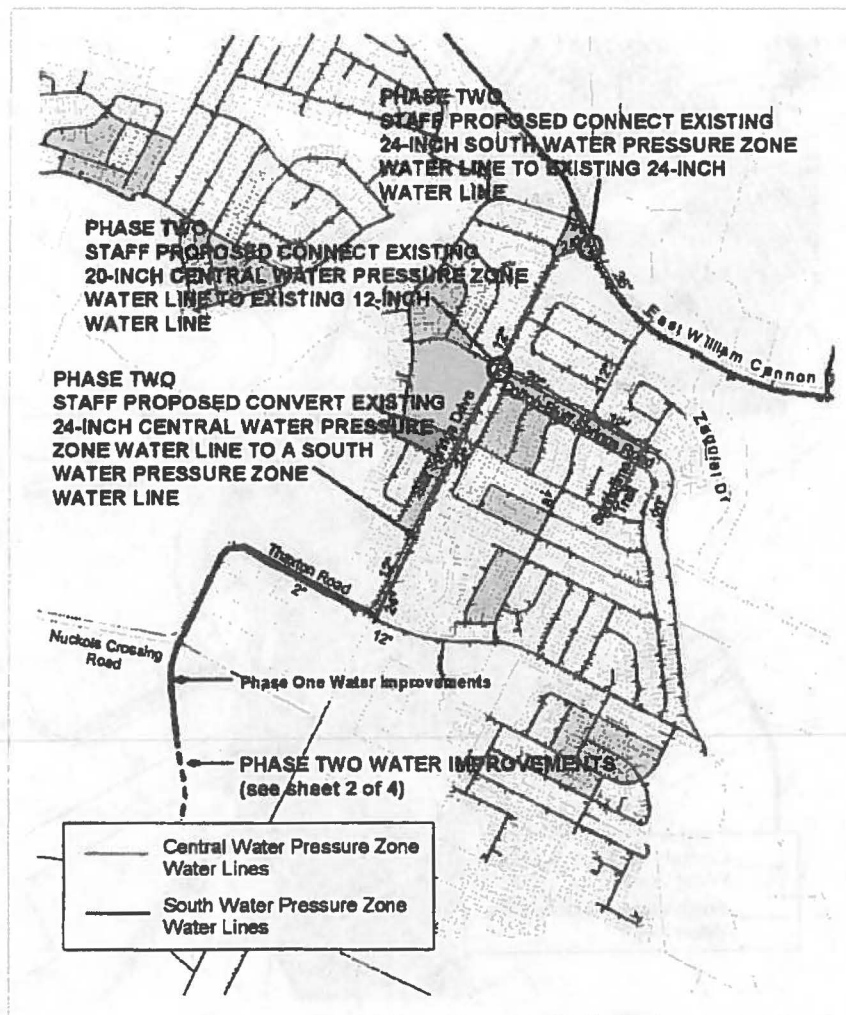




1000 0 1000 Feet

Subject Tract  
City Limits

W. S. E. R. Name: Goodnight Ranch Phase One  
Water Improvements Phase One  
W. S. E. R. Number: 2416



W. S.E.R. Name: Goodnight Ranch Phase One  
 Additional Phase Two  
 South Water Pressure Zone Improvements  
 W. S.E.R. Number: 2416

1000 0 1000 Feet  
 Subject Tract  
 City Limits

**WATER AND WASTEWATER  
SERVICE EXTENSION  
REQUEST FOR  
CONSIDERATION**

Name : Goodnight Ranch Phase 1

Service Requested : Water

S.E.R. No. : 2416

Date Received : 4/5/2005

Location : Nuckols Crossing Road

Acres : 253

Land Use : Mixed

Alt. Utility Service or S.E.R. Number : No2417 Administrative Approval

Quad1 : J-12,13

Quad2 : H-12,13

Drainage Basin : Onion Creek

Pressure Zone : Central

DDZ : Yes

Flow : (Estimated Peak Hour Flow, Gallons per Minute)

2189 gpm

DWPZ : No

Cost Participation : \$0.00

% Within City Limits : 0

% Within Limited Purpose : 0

**Description of Improvements:**

**Phase One Central Water Improvements**

Applicant will construct approximately 4,100 feet of 24-inch Central Water Pressure Zone water line from the existing 24-inch Central Water Pressure Zone water line in Salt Springs Drive at Thaxton Road, west and south to the subject tract.

**Phase One South Water Improvements (for development above the 590 foot contour)**

Applicant will construct approximately 2,400 feet of 36 or 48-inch (pipe sized to be determined prior to design) South Water Pressure Zone water line from the proposed 24-inch South Water Pressure Zone water line by others (Zachry Scott WSER 2259) in Bluff Springs Road at Slaughter Lane, east along the proposed extension of Slaughter Lane within the subject tract.

**Phase Two**

Applicant will construct approximately 1,900 feet of 24-inch Central Water Pressure Zone water line from the end of the Phase One Central Water Improvements, south to the proposed extension of Slaughter Lane within the subject tract and the proposed Phase Two 36 or 48-inch water line improvements.

Applicant will construct approximately 2,600 feet of 36 or 48-inch South Water Pressure Zone water line from the end of the Phase One South Water Improvements, east along the extension of Slaughter Lane to the eastern property line of the subject tract. These improvements will connect to the Phase Two 24-inch water improvements.

**Additional Phase Two Central/South Water Improvements**

Applicant will convert the existing 24-inch water line in Salt Springs Drive from the Central Water Pressure Zone to South Water Pressure Zone by connecting the 24-inch water line to the existing 24-inch South Water Pressure Zone water line in East William Cannon Drive at Salt Springs Drive, connect the existing 20-inch Central Water Pressure Zone water line in Cotton-Bluff Springs Road at Salt Springs Drive to the existing 12-inch Central Water Pressure Zone water line in Salt Springs Drive, and connect the existing 12-inch Central Water Pressure Zone water lines together in Salt Springs Drive and Thaxton Road. Applicant will also construct approximately 1,400 feet of 24-inch water line from the existing 20-inch Central Water Pressure Zone water line in Cotton-Bluff Springs Road east of Springtime Trail, north to the existing 36-inch Central Water Pressure Zone water line in East William Cannon Drive.

NOTE: All lots within the subject tract will need Individual Pressure Reducing Valves (PRVs).

**Completion and acceptance of the improvements described above and the conditions set forth below:**

- 1) Construction of all Service Extensions are subject to all environmental and planning ordinances.
- 2) Service Extensions are subject to the guidelines established in the Land Development Code, Section 25-9, Water and Wastewater Utility Service.
- 3) The level of service approved by this document does not imply commitment for land use.
- 4) Approval of a site plan that meets the Fire Department requirements for fire control.
- 5) Engineering Report submitted to Utility Development Services detailing the proposed water improvements.
- 6) The proposed water (within right-of-ways or public easements) improvements will be dedicated to the City of Austin for ownership, operation, and maintenance.
- 7) The approved Service Extension will automatically expire 120 days after date of approval unless a development application has been accepted by the Watershed Protection and Development Review Department. The Service Extension expires on the date the development expires, or if approved, on the date the development application approval expires.

*[Signature]* 7-11-05  
Austin Water Utility, Director Date  
*[Signature]* 7/7/05  
ESPO, Assistant Director Date  
*[Signature]* 6-6-05  
Prepared By Date

*[Signature]* 7/7/05  
Utility Development Services, Manager Date  
*[Signature]* 7/6/05  
Technical Reviews/Date

The Phase One and Two 48-Inch South Water Pressure Zone Water Improvements have been identified as part of the South IH-35 Water and Wastewater Infrastructure Improvements Program.

The existing Agreement allows for cost reimbursement of the soft costs for the 48-inch water main and appurtenances in one lump sum payment for each Phase on March 1 of the second year following the year in which the City issues its final acceptance of such Phase. This request waives the requirements of Section 25-9-67, thereby allowing cost reimbursement of the approved design, construction plans and specifications for the Phase One and Two 48-Inch South Water Pressure Zone Water Improvements within 30 days after the opening of the bids for the Water Improvements, and allowing cost reimbursement of the actual construction costs for the remaining 24-inch water improvements in one payment 90 days after final acceptance of the remaining 24-inch water improvements.

The amount of the cost reimbursement to the Developer for the procurement of the approved design, construction plans and specifications for the Phase One and Two 48-inch South Water Pressure Zone Water Improvements is estimated not to exceed \$250,000.

THE STATE OF TEXAS §  
COUNTY OF TRAVIS §

**FIRST AMENDMENT TO COST  
REIMBURSEMENT AGREEMENT  
(Austin Goodnight Ranch L.P.)**

**THIS FIRST AMENDMENT TO COST REIMBURSEMENT AGREEMENT ("First Amendment")** is made and entered into by and between the **City of Austin**, a Texas municipal corporation chartered under Article XI, Sec. 5 of the Texas Constitution (the "**City**") and **Austin Goodnight Ranch L.P.**, a Texas limited partnership (the "**Developer**").

**I.  
RECITALS:**

**1.01. WHEREAS**, on or about October 6, 2006, the City and Austin Goodnight Ranch L.P., (collectively "Parties") entered into a certain "**Cost Reimbursement Agreement**" (the "**Water Cost Reimbursement Agreement**") that sets forth agreed terms for the design and construction of certain utility improvements that were determined to be necessary to serve approximately 703 acres located east of Bluff Springs Road and south of Nuckols Crossing Road along the proposed extension of Slaughter Lane, all as more particularly described in the Water Cost Reimbursement Agreement.

**1.02. WHEREAS**, in accordance with the authorization by City Council in Ordinance No. 20051020-003 on October 20, 2005 the Parties agreed in the Water Cost Reimbursement Agreement that the authorized cost reimbursement shall be paid, for the Phase One and Two 24-Inch Water Improvements, Phase One and Phase Two 36 or 48-Inch South Water Pressure Zone Water Improvements (the City has determined that a 48-inch water main will need to be constructed) (the "**Phase One and Two 48-Inch South Water Pressure Zone Water Improvements**"), and the Phase Three Central/South Water Pressure Zone Water Improvements as described in Section 1.03(a-e) of the Water Cost Reimbursement Agreement and Water Service Extension Request No. 2416 (also referred to as the "Additional Phase Two Central/South Water Improvements" in Water Service Extension Request No. 2416), in one lump sum payment for such Phase on March 1 of the second year following the year in which the City accepts the Phase as required by City Code Section 25-9-67.

**1.03. WHEREAS**, in Ordinance No. 20080724-007, Council waived the requirements of City Code Section 25-9-67 and authorized reimbursement of:

(a) The actual construction costs of the Phase Two 24-Inch Water Improvements and the Phase Three Central/South Water Pressure Zone Water Improvements in one payment 90 days after final acceptance of the Phase Two 24-Inch Water Improvements and the Phase Three Central/South Water Pressure Zone Water Improvements; and



(b) The agreed cost reimbursement from the City to the Developer for the costs associated with the procurement of the approved design, construction plans, and specifications for the Phase One and Two 48-Inch South Water Pressure Zone Water Improvements, which the parties estimate not to exceed \$250,000, shall be paid to the Developer in one (1) lump sum within 30 days after the opening of the bids for the Phase One and Two 48-Inch South Water Pressure Zone Water Improvements.

(c) The parties acknowledge that as Phase One, Phase Two and Phase Three of the Water Projects are to be constructed separately and possibly singularly in successive Phases, Developer will post Fiscal Security separately with respect to each Phase, enter into separate Construction Contracts for each Phase and the reimbursement amounts for each will also be paid separately for each in accordance with the aforementioned time period.

(d) The Developer agrees to timely provide all information and documents reasonably required by the Austin Water Utility for proper processing and for accurate accounting and documentation of actual project costs. The City shall not be responsible for delays in payment occasioned from the Developer's untimely or incomplete submission of cost data or other information necessary to the verification of actual costs and processing of reimbursement payments.

**2.03. Partial Assumption by City of Cost Reimbursement Agreement Duties.** The City agrees to assume and does hereby assume all duty, responsibility and obligation to construct and complete the Phase One and Phase Two 48-Inch South Water Pressure Zone Water Improvements.

**2.04. Partial Release of Developer from Cost Reimbursement Agreement Duties.** The Developer is hereby released from any further duties, obligations, or liabilities under the Water Cost Reimbursement Agreement for the construction of the Phase One and Phase Two 48-Inch South Water Pressure Zone Water Improvements.

**2.05. Developer Remains Obligated under Cost Reimbursement Agreement.** Except as released above in Section 2.04, the Developer remains obligated under the Water Cost Reimbursement Agreement, including the obligation to complete the Phase Two 24-Inch Water Improvements and the Phase Three Central/South Water Pressure Zone Water Improvements under the Water Cost Reimbursement Agreement.

**3.10. Duplicate Originals.** This First Amendment may be executed in duplicate originals, each of equal dignity.

**3.11. Effective Date.** This First Amendment will be effective from and after the date of execution by the City and Developer.

**IN WITNESS WHEREOF,** the authorized representative of the City and the Developer has executed this First Amendment, as of the date(s) indicated below.

**APPROVED AS TO FORM:**

  
Assistant City Attorney

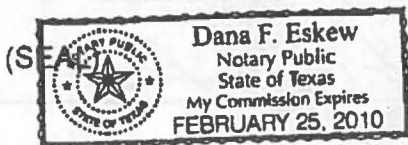
**CITY OF AUSTIN:**

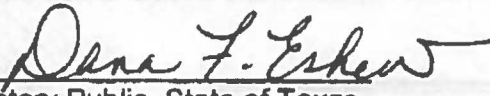
By:   
Rudy Garza  
Assistant City Manager

Date: 6/11/09

THE STATE OF TEXAS §  
§  
COUNTY OF TRAVIS §

THIS INSTRUMENT was acknowledged before me on this 11 day of June, 2008, by Rudy Garza, Assistant City Manager of the City of Austin, Texas, a municipal corporation, on behalf of said municipal corporation.



  
Notary Public, State of Texas