



M E M O R A N D U M

**City of Austin
Financial & Administrative Services Department
Purchasing Office**

DATE: September 28, 2016
TO: Memo to File
FROM: Joshua Pace
RE: MA 2200 NA160000191

This agreement was created by the Austin Water Department and is administered and maintained by same. There is no procurement function other than the creation of the payment vehicle.

Originally, CT 16072600790 was created as the payment vehicle. Upon further discussions with the Controller's Office, Austin Water, and Purchasing Management, it was decided that an MA is a better suited payment vehicle for cost reimbursement agreements. Therefore, the original CT was modified down to \$0, and MA NA160000191 was created as the replacement payment vehicle.

STATE OF TEXAS § **AMENDED WASTEWATER
COST REIMBURSEMENT AGREEMENT--2016**
COUNTY OF TRAVIS §

THIS AMENDED WASTEWATER COST REIMBURSEMENT AGREEMENT ("Agreement") is entered into by and between the **City of Austin**, a Texas municipal corporation (the "**City**"); and Club Deal 120 Whisper Valley, Limited Partnership, a Texas limited liability company, or any other corporation, and any other person acting on behalf of any of the same persons, hereinafter referred as the "**Developer**." Developer shall also include any person acting on behalf of, under the control of, or at the direction of any person who holds an interest or rights in the Property (defined below) and as is more particularly described in the attached **EXHIBIT A** attached hereto and incorporated herein by reference. For purposes herein, "**Party**" means the City, or the Developer; as the case may be.

**I.
RECITALS:**

1.00. This Agreement supersedes and replaces in its entirety the Cost Reimbursement Agreement between the City and the Developer entered into on June 21, 2007 (the "**Original CRA**"), as amended by (i) that certain First Amendment to the Cost Reimbursement Agreement dated October 9, 2009 ("**First Amendment to Original CRA**"), (ii) that certain Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions dated as of November 1, 2010 (the "**Restatement of Water CRA**"), (iii) that certain Third Amendment to Cost Reimbursement Agreement dated November 3, 2011 (the "**Third Amendment to Original CRA**"), (iv) that certain Fourth Amendment to Cost Reimbursement Agreement dated November 3, 2011 (the "**Fourth Amendment to Original CRA**"), (v) that certain Fifth Amendment to Cost Reimbursement Agreement dated February 6, 2012 (the "**Fifth Amendment to Original CRA**"), (vi) that certain Sixth Amendment to Cost Reimbursement Agreement dated October 30, 2013 (the "**Sixth Amendment to Original CRA**"), and (vii) that certain Seventh Amendment to Cost Reimbursement Agreement dated October 30, 2013 (the "**Seventh Amendment to Original CRA**").

1.01. The Developer is planning to develop certain tracts comprised of approximately 2,063 acres generally located east of the F.M. 973, west of Burleson-Manor Road, north of the Colorado River and south of Blake-Manor Road that the Developer proposes to develop into a mixed-use development. The tract as shown on **EXHIBIT A** attached hereto (the "**Property**").

Currently, the entire Property is located outside the corporate limits of the City and within the City's designated Desired Development Zone. As of the date of execution of this Agreement, Developer warrants and represents that it is the sole owner of the Property.

1.02. The Ancillary Agreement to Cost Reimbursement Agreement, executed on June 21, 2007, between the Developer and the City ("**Settlement Agreement**") provides for the extension of City wastewater utility service to the Property. The Settlement Agreement also allows for City cost

reimbursement of wastewater infrastructure that is oversized at the City's request to serve others and constructed by the Developer.

1.03. This Agreement requires the Developer to design and construct the following oversized wastewater improvements within and to the Property, to make certain financial contributions, to serve up to the full build-out estimated to be 8,600 service units (a service unit is defined in accordance with the City design criteria equal to estimated flows for one single family residence) and to allow the City to serve others in the City's service area.

(a) Design and construction of certain improvements described on **EXHIBIT B-1** attached hereto which are commonly referred to as lift station components ("**Lift Station 1a**" and "**Lift Station 1b**"), a 100,000 gallon per day (average) metal wastewater treatment plant ("**Start-up WWTP**") and a 250,000 gallon per day (average) wastewater treatment plant ("**Second WWTP**"). Lift Station 1a and Lift Station 1b components, the Start-up WWTP and the Second WWTP shall collectively be referred to herein as, (the "**Package WWTP**"), which will be built in phases/components as more particularly described on **EXHIBIT B-1**, and located within the Property as described in **EXHIBIT B** and as shown on **EXHIBIT C** to provide wastewater treatment for service units connected within the Property and for other customers of the City. After conditional acceptance of the Start-up WWTP and the design for the Second WWTP receiving final approval, the City agrees to provide 350,000 gallons per day (average) treatment to the Property without the Developer having to pay for any further expansion(s) of the wastewater treatment plant infrastructure (except for the WWTP Repayment Amount which is described in Section 3.07 of this Agreement). The plant configuration for the Start-up WWTP is more particularly described on **EXHIBIT B-1**. Unless the Second WWTP is constructed by the City or their assignees, the plant configuration for the Second WWTP will be determined by mutual consent of the Director of the City's Austin Water Department (such consent not to be unreasonably withheld, conditioned or delayed) and Developer taking into consideration budget restraints, but it is hereby agreed that the Second WWTP will consist of concrete basins and will be a 250,000 gallon per day (average) wastewater treatment plant.

(b) Construction of **approximately 13,400 linear feet of 30-inch gravity wastewater line and appurtenances from the terminus point west of Taylor Lane near the eastern property line of the MGS Tract in a northwest direction to the northern property line of the Property at F.M. 973 (the "Whisper Valley Northwest Line")**, with the exact route to be approved by the Director in conjunction with the approval of the final design, plans, and specifications for the Whisper Valley Northwest Line all as more particularly shown on **EXHIBIT C**, a copy of which is attached hereto. The Package WWTP and the Whisper Valley Northwest Line shall sometimes collectively be referred to herein as the "**Wastewater Project**".

1.04. By Ordinance No. 20160128-007 the City Council approved this Agreement, which, amount other things, established the overall maximum cost reimbursement amount to \$9,000,000 for hard costs for the Package WWTP and \$5,500,000 for the Whisper Valley Northwest Line, and \$3,694,779 for related soft costs for the Wastewater Project; established the components of the Package WWTP (Lift Station 1a, Lift Station 1b, Start-up WWTP, and the Second WWTP), and

includes the Whisper Valley Northwest Line, to form the Wastewater Project Ordinance No. 20160128-007 also waived resolution 20080214-055 related to the prohibition of the use of wastewater pump and haul services for developments except for emergency or unique operational situations.

1.05. Notwithstanding any provision in this Agreement to the contrary and subject to the terms and conditions of Section 6.20 below, the City, at its sole discretion, may construct the Second WWTP, or may have another developer construct the Second WWTP. If the City chooses to construct the Second WWTP or have the Second WWTP constructed by others, the City will provide written notice to the Developer as early as possible, but in no event any later than the date upon which the Start-up WWTP reaches 75% of its permitted treatment capacity on a monthly basis for more than three consecutive months (as defined by the Texas Commission of Environmental Quality ("TCEQ")). If the City chooses to construct the Second WWTP, the City will commence construction of the Second WWTP no later than the date upon which the Start-up WWTP reaches 90% of its permitted treatment capacity on a monthly basis for more than three consecutive months as defined by the TCEQ. Additionally, if the City chooses to build the Second WWTP, then the Developer is released from all obligations herein to construct the Second WWTP and post any fiscal security associated therewith, and the City will assume all of the obligations related to the construction of the Second WWTP. Once the City has commenced construction of the Second WWTP, the City will use its best efforts to diligently pursue completion of the Second WWTP. The City may use any remaining hard cost funding related to the Package WWTP to fund the City's construction of the Second WWTP. The City, at its sole discretion, may assign such funding to others to construct the Second WWTP on the City's behalf.

1.06. It is anticipated that the City, at the City's cost, will also construct over time and in phases an expansion of the Package WWTP capacity up to 10 million gallons per day (average) (the "**Interim Whisper Valley WWTP**"), to provide wastewater treatment service to the Property and for other retail and wholesale customers of the City, with the exact plant configuration to be determined by the Director. The City, as part of its work constructing the Interim Whisper Valley WWTP, will be responsible for removing applicable components of the then existing Package WWTP, if applicable. The City also hereby acknowledges and agrees that the Interim Whisper Valley WWTP is not intended to be a permanent wastewater treatment plant. Therefore, once the Interim Whisper Valley WWTP reaches its full capacity (10 MGD) (or at the City's election, at any time prior to this event), the City shall (either through construction of the City's future Regional Northeast Wastewater Treatment Plant ("**Regional Northeast WWTP**") or some other method): (1) convey wastewater from the Property to another permanent facility for treatment or (2) comply with the terms for decommissioning the Interim Whisper Valley WWTP as provided in the easement recorded in the Official Public Records of Travis County, Texas under Instrument No. #2007128044 ("**WWTP Easement Agreement**").

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

II.

DESIGN AND CONSTRUCTION OF THE WASTEWATER PROJECT

2.01. Agreed Protocol for Funding the Design and Construction of the Wastewater Project.

The City will be responsible for obtaining all water quality discharge permits for the Start-up WWTP, the Second WWTP, the Interim Whisper Valley WWTP, and the Regional Northeast WWTP. Developer and the City hereby agree as follows:

(a) Developer has procured design phase engineering services to produce the final design, plans, and specifications for the Package WWTP. Developer will complete the final design, plans, and specifications of the Package WWTP which will allow for a treatment capacity of 350,000 gallons per day (average);

(b) Developer has previously designed and constructed a portion of the 30-inch Whisper Valley Northwest Line. Developer must secure all applicable permits and complete construction of the remaining portion of the Whisper Valley Northwest Line to serve the proposed and existing development and request final acceptance of that remaining portion of the Whisper Valley Northwest Line concurrently with the phase of development within the Property which require the portion(s) of the line to be completed (such portions to be mutually agreed upon by Developer and the City) in order to serve the applicable phase of development within the Property. The portion of the Whisper Valley Northwest Line that has been constructed and accepted by the City as of the date of this Agreement shall be referred to herein as the **"Initial Segment of the Whisper Valley Northwest Line"**;

(c) Developer has previously designed and paid for the design of the first phase of the Interim Whisper Valley WWTP (0.5 million gallons per day) which plans have been delivered to, approved and reimbursed by the City. Subject to the terms set forth herein, it is the City's option to build any phase of the Interim Whisper Valley WWTP in the future at the location shown on **EXHIBIT C** (the same location as the Package WWTP). The Developer will provide to the City the **Wastewater Treatment Plant Repayment Amount** equal to \$1,800,000 as its proportionate share of funding for: (i) the City's cost of engineering and final design of additional wastewater treatment capacity in the Interim Whisper Valley WWTP, and (ii) the City's cost of easements, engineering, and final design of the City's future Regional Northeast WWTP. The Developer shall pay the City the Wastewater Treatment Plant Repayment Amount through funds available to the Developer in addition to those obtained through the sale of property as discussed in Section 3.07. Any other users who connect to the Interim Whisper Valley WWTP and/or future Regional Northeast WWTP shall be responsible for paying their proportionate share of funding for the Interim Whisper Valley WWTP and/or future Regional Northeast WWTP as determined by the City;

(d) Developer has previously provided easements to the City for the Initial Segment of the Whisper Valley Northwest Line (Document No. 2012164039 and for the Package WWTP and Interim Whisper Valley WWTP (Document No. 2007128044);

(e) Within six (6) months of the execution date of this Agreement, Developer will provide an easement to the City that will allow the remaining portion of the Whisper Valley Northwest Line to be extended from its current location to the northern boundary of the Property.

The form and content of the easement shall be substantially similar to the previously provided easement noted in subparagraph (d) above;

(f) For any required easements in this Agreement, Developer may request a variance from the City related to the location of wastewater lines in the floodplain. The Developer acknowledges that there is no warrant or representation that such variance shall be approved by City Council or recommended by City staff; provided, however, the Director agrees not to oppose such requests unless the Director determines that the wastewater lines must be located outside of the floodplain for technical reasons relating to the construction or maintenance of the wastewater lines; and

(g) Other than provided for in this Agreement, Developer shall not be required to construct additional wastewater facilities or dedicate (at no cost) easements to serve any other area outside of the Property.

2.02. Developer's Agreement to Design the Wastewater Project. Developer will retain a registered professional engineer licensed in the State of Texas (the "**Project Engineer**") to prepare the engineering design, plans and specifications for the unconstructed portions of the Wastewater Project in conformance with City design criteria and construction standards. The final design plans and specifications for each component of the Wastewater Project will provide the sizing, routing, materials selection, cost estimates, proposed construction schedule, easements, and such other information as the Director deems necessary or advisable for proper review and assessment of the plan and specifications. The plans and specifications for the Wastewater Project and the form of construction contract (the "**Construction Contract**") that contractors will be required to execute will be submitted to the Director prior to the City advertising for bids for the construction of the Wastewater Project. After the plans and specifications for a phase or component have been submitted to the Director and approved by the Director, the City will advertise for bids for the construction work for the applicable phase or component by employing the City's procurement processes and the plans and specifications approved by the Director. The bids will be communicated in a timely manner to the Developer and accepted, reviewed, and approved by the City and the Developer.

The Director agrees to expedite the review and approval of the engineering design, plans, and specifications submitted by Developer and to otherwise cooperate with Developer to the extent reasonably possible without detriment to proper engineering review, comment, and revision. If the City does not provide written comments/notes regarding Developer submitted engineering design, plans and specifications within 30 days of the City's receipt of such plans, the City agrees to pay \$500 per business day in liquidated damages for each day after the 30 day period until the written comments/notes are provided to Developer.

2.03. Developer Responsibility for Soft Costs. Subject to the terms and conditions of this Agreement, Developer shall be reimbursed for soft costs associated with the design and construction of the Wastewater Project. For purposes herein, the term "**soft costs**" shall mean the costs for preliminary engineering reports, surveying, geotechnical studies, permitting, design, project management of the construction and installation of infrastructure, governmental fees (including

inspection fees, legal fees and any other consultant fees related to construction) for the Wastewater Project.

2.04. City's Procurement of Contractor for Construction of Wastewater Infrastructure.

Subject to the terms and conditions of this Agreement, the City agrees to employ its procurement processes to engage one or more contractors to construct: (1) additional wastewater treatment infrastructure beyond the Start-up WWTP if the City determines it will construct the Second WWTP; (2) the Interim Whisper Valley WWTP, together with the removal of the then existing Package WWTP as part of such work (if required) after the City completes construction of the Interim Whisper Valley WWTP; and (3) the initial and subsequent additional wastewater treatment capacity at the City's future Regional Northeast WWTP, all in conformance with the City design criteria and the final design, plans, and specifications approved by the Director (collectively, the "City Wastewater Project"). The City shall not be required by this Agreement to accept a bid that the Director determines, in his discretion, to be an unreasonable bid for construction of any component of the Wastewater Project. Notwithstanding any other provision of this Agreement, those facilities, identified in this Agreement, that the City will construct, the City agrees to place penalties and other provisions to encourage prompt completion in the construction contracts in order to ensure timely construction of such facilities.

2.05. Developer's Procurement of Contractor to Construct the Wastewater Project. Subject to the terms and conditions of this Agreement, Developer agrees to engage one or more contractors to construct the Wastewater Project as required under this Agreement, in accordance with the City's design criteria and the final design, plans, and specifications approved by Developer and the Director. Developer acknowledges that Chapter 25-9, City Code and the laws of the State of Texas require Developer to follow all of the City's procurement process and procedures in order to obtain the cost reimbursements described in this Agreement. The City shall not be required by this Agreement to accept a bid that the Director determines, in his discretion, to be an unreasonable bid for construction of any component of the Wastewater Project. Developer further agrees to include, at a minimum, in each construction contract:

- (a) general conditions of contract no less stringent than those employed by the City for its public works construction contracts;
- (b) provisions requiring the contractor to pay per diem liquidated damages that are at least equivalent to those incorporated into other City public works contracts of similar magnitude, provisions requiring the contractor to submit a recovery plan in the event construction falls behind schedule, and such other provisions to encourage prompt completion that the Director determines are reasonably necessary and appropriate upon review and approval of the construction contracts;
- (c) requirements for contractor insurance no less stringent than those incorporated by the City for its public works construction contract; and
- (d) will require the contractor to provide a payment and performance bond.

2.06. Developer's Agreement to Construct the Wastewater Project. The Developer shall fund the construction of the Wastewater Project at its sole expense subject to cost reimbursement for the hard and soft costs incurred by Developer for design and construction of the Wastewater Project in accordance with the terms of this Agreement. All other wastewater facilities required to provide City wastewater utility service to the Property (excluding the Wastewater Project), or to individual tracts within the Property, shall be designed and constructed at the sole expense of the Developer, without reimbursement from the City. Upon the completion of construction of the Wastewater Project by the Developer, and final acceptance thereof by the City, the Wastewater Project will be owned, operated, and maintained by the City as part of the City's wastewater utility system; and no other conveyance documents will be required to effectuate this transfer (other than easements that are not conveyed by plat).

2.07. Construction Management of the Wastewater Project. Developer will serve as project manager for the construction of the Wastewater Project. The City shall be responsible for the construction of any expansions to the Package WWTP, the Interim Whisper Valley WWTP, the removal of the then existing Package WWTP (if required) and the construction of the City's future Regional Northeast WWTP. Either party hereunder may procure the services of a professional engineer or project manager to conduct the day-to-day performance of project management tasks for their respective portions of the Wastewater Project but, as between the City and Developer, the hiring of such a qualified third party to assist in the execution of its duties as project manager for construction of the Wastewater Project will not affect their responsibility to act as project manager under this Agreement nor increase the funding obligations of either party.

2.08. Duties of the Developer. Concerning the Wastewater Project, 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 Wastewater Project 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 to the Director for review and approval prior to bidding the Wastewater Project if a period of more than twelve (12) months pass after the Director has approved the plans and specifications, 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 the Wastewater Project before execution, and 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 the Wastewater Project upon default of the Developer; and

- (3) a requirement that a certificate of insurance be provided evidencing that the City has been designated as an additional insured, together with others, 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 Wastewater Project to a qualified construction contractor (the "**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 (except the wastewater treatment plants' water quality discharge permits from the TCEQ), consents, variances, easements, inspections, tests, and authorizations necessary for construction of the Wastewater Project;

(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 of the Construction Contract and before the beginning of construction;

(g) monitor the Wastewater Project's costs to effect the completion of construction according to the estimated construction costs, and undertake such corrective action as the Developer deems necessary to assist in controlling project costs;

(h) review all change orders to the Construction Contract including any requested by the City and submit such change orders along with the Project Engineer's recommendations to the Director for review and approval; prohibit work on change orders that the Director has not approved unless required for an emergency; and ensure that change orders for the Wastewater Project, either singly or in accumulation with others so approved, do not increase the Construction Contract costs by more than twenty percent (20%);

(i) monitor activities of the Construction Contractor and the day-to-day progress of construction of the Wastewater Project to encourage the timely and efficient completion of the Wastewater Project following the approved plans and specifications and construction schedule, subject to Force Majeure;

(j) provide assistance to the Davis-Bacon inspector, if any, including allowing on-site interviews of employees of the Construction Contractor and review of the weekly payroll records;

(k) review inspection reports, conduct field inspections, and coordinate with approved inspectors and the Construction Contractor to cure defects and deficiencies in the construction before final acceptance;

(l) provide monthly and final reports to the Director setting forth the status of the Wastewater Project, costs to date, problem areas, including anticipated construction delays, and recommendations for problem resolution as appropriate;

(m) arrange and coordinate materials testing with the Construction Contractor and the City, reject all work found not to conform to minimum requirements of the Construction Contract documents, and advise the Project Engineer and the City of work that the Developer determines should be corrected or rejected or which requires special testing, adjustment, or inspection for approval. The Developer will also provide the testing information to the City. If the City reasonably determines that the work needs to be corrected or rejected or which requires special testing, the City will notify the Developer and the Developer will take timely action to remedy the identified problem;

(n) arrange and observe with the Construction Contractor all acceptance testing (including, without limitation, pressure testing, infiltration/inflow, bacteriological testing, etc.) and notify the City and the Project Engineer of the conduct of the same;

(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, and submit to the Construction Contractor a list of observed items requiring completion or correction;

(r) conduct and coordinate final inspection of the Wastewater Project 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;

(t) prior to the City's final acceptance of the Wastewater Project components or phases by the City, provide to the City as-built drawings for the Wastewater Project component or phase prepared and sealed by the Project Engineer;

(u) assign all warranties, guarantees, maintenance bonds, or like assurances of performance to the City for final acceptance of the Wastewater Project component or phase by the City;

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

(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; and

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

2.09. Temporary Pump and Haul. The Developer may, at its sole cost and without reimbursement by the City or use of PID bond (as defined in the Whisper Valley Public Improvement District Financing Agreement, dated November 1, 2011) funding, contract for wastewater pumping and hauling services for the proper removal and disposal of wastewater in accordance with TCEQ and City rules and regulations. The Developer assumes all liability of such and agrees to indemnify and hold harmless the City from any suits, claims, fees, fines, or other costs or damages related to the Developer's use of contracted wastewater pump and haul services. All such contracted services shall be coordinated with the City. The City will also be allowed to review all contracts for pump and haul services. The Developer shall only be allowed to use contracted wastewater pump and haul services from the date that the City has conditionally accepted Lift Station 1a component to the City's conditional acceptance of the Start-up WWTP. However, if the Developer has not obtained conditional acceptance of the Start-up WWTP within the one-year anniversary date of City Council approval of this Agreement, then the Developer agrees that the City will not release any certificates of occupancy or issue any new water meters for any structures constructed within the Property until such time that the Start-up WWTP has been conditionally accepted by the City. The City agrees to use reasonable efforts to cause the conditional acceptance of the Start-up WWTP as soon as reasonably possible, provided Developer meets the requirements of conditional acceptance as set forth in this Agreement.

2.10. Future City Approval of Site Plans and Subdivisions within the Property. The City will not approve another platted subdivision or site plan within the Property until such time as the Start-up WWTP is conditionally accepted by the City and the design for the Second WWTP has obtained the City's final approvals. Thereafter, the Developer can continue to plat as determined by the Developer. As stated above, the City agrees to use reasonable efforts to cause the conditional acceptance of the Start-up WWTP as soon as reasonably possible, provided Developer meets the requirements of conditional acceptance as set forth in this Agreement.

2.11. Posting of Fiscal Security. In regard to fiscal security for the Wastewater Project, the parties agree as follows:

(a) the Developer will post fiscal security (the "**Fiscal Security**") in accordance with the City's policies and ordinances to secure the completion of the Wastewater Project in accordance with the terms of this Agreement;

(b) the Developer agrees to post Fiscal Security for the Wastewater Project within ten days of the award of the Construction Contract for such component of the Wastewater Project;

(c) the City acknowledges that it will accept Fiscal Security in the form of either an irrevocable letter of credit, surety bond and/or construction bond (at Developer's election), or cash deposit sufficient to cover one hundred percent (100%) of the actual Construction Contract award amount for the Wastewater Project component;

(d) Fiscal Security posted by the Developer for the Wastewater Project must comply with all applicable policies and requirements of the City and state law;

(e) the Developer will also post fiscal security (the "**Pump and Haul Fiscal Security**"), using its own cash and not PID bond funding, to secure the Pump and Haul Service;

(f) the Developer agrees to post the Pump and Haul Fiscal within ten days of the award of the Pump and Haul Service Contract (hereinafter defined); and

(g) the City acknowledges that it will accept the Pump and Haul Fiscal Security in the form of either an irrevocable letter of credit or cash deposit of \$130,650.

2.12. Developer Responsibility for City Engineering Review and Inspection Fees. Developer is responsible for paying for all engineering review and inspection fees and other inspection costs of the Wastewater Project. The City's Public Works Department will establish the estimated amount of engineering review and inspection fees applicable to the Wastewater Project, and Developer will deposit the estimated amount with both actions in accordance with the City's usual and customary requirements and procedures for same. If the amount deposited is greater than the amount of the cost of inspection, the City shall release any of the deposited amount after final acceptance of the Wastewater Project. If the amount deposited is less than the actual cost of inspection, the Developer shall pay the City the remaining balance within thirty days of being invoiced by the City.

2.13. City's Option to Construct Wastewater Project on Default of Developer. If the Developer has commenced construction but fails or refuses to timely complete the construction of a component of the Wastewater Project, such failure or refusal shall be considered an event of default and, after giving notice of default and reasonable opportunity to cure as herein provided, the City will have the right, but not the obligation, to draw on the Fiscal Security posted by the Developer or use this Agreement's reimbursement funding and complete the component of the Wastewater Project.

In the event the City elects to complete a component of the Wastewater Project, all plans and specifications, designs, easements, real and personal property, and improvements acquired, produced, or installed in aid of completing such component of the Wastewater Project by the Developer or its engineers or contractors before such default, will become the property of the City. In such event, the Developer will provide, within five business days of the City's request, documentation to the City that the above listed items have been conveyed and have become the property of the City. Reasonable delays in construction not reasonably within the control of the Developer and about which the Developer has notified the City in writing will extend, for the time

period of the reasonable delay, the deadline for completion and will not constitute default under this Agreement. Notwithstanding anything to the contrary contained herein, if the Developer fails or refuses to timely complete the construction of a given component of the Wastewater Project (subject to Force Majeure and delays caused by the City, including without limitation delays in approving plans and issuing permits), the City shall provide the Developer with written notice of said default and provide 30 days to cure said default; provided, however, if the default cannot reasonably be cured in 30 days, Developer shall have such additional time as is reasonably necessary to cure as long as the Developer commences the cure within 30 days and diligently pursues the same to completion. If Developer has still not completed the applicable component of the Wastewater Project after the notice and cure periods provided for above, the City shall either:

(1) Assume the construction management role and direct the completion of the applicable component of the Wastewater Project; or

(2) Assume the construction management role and direct the closeout of the applicable component of the Wastewater Project as determined by the City so that such component qualifies for a partial reimbursement payment pursuant to Section 3.05(a) (for the work completed).

In the event the City assumes the construction management role for a given component of the Wastewater Project (as provided above) then the Developer agrees as follows:

(1) the City may draw down unreimbursed City funds authorized by this Agreement to complete the component of the Wastewater Project in question;

(2) all construction contracts, related completion bonds, warranties, plans and specifications, designs, easements, and improvements acquired, produced, or installed in connection with completing such given component of the Wastewater Project by the Developer or its engineers, contractors, or other consultants, and all other personal property and rights associated with the applicable component of the Wastewater Project, will automatically without further action by the Developer become the property of the City (provided, however in no event shall the City obtain fee simple ownership of the property encumbered by the easement for the Whisper Valley Northwest Line or the Package WWTP and Interim Whisper Valley WWTP);

(3) the Developer will automatically forgo and release any claims or rights to those items listed in (1) and (2) above; and

(4) the City may draw down on any Fiscal Security posted or unreimbursed funds authorized by this Agreement to complete such component of the Wastewater Project.

2.13(A). Developer's Option to Construct City Wastewater Project on Default of City. If the City fails or refuses to commence or cause to commence construction of the Second WWTP and/or an expansion of the Package WWTP or the Interim Whisper Valley WWTP, up to but not including the last phase to reach 10 MGD permitted capacity, within 120 days of the existing daily average wastewater flows of the Start-up WWTP, Second WWTP and/or Interim Whisper Valley WWTP (as applicable) exceeding 90% of the permitted capacity on a monthly basis for more than three

consecutive months (“**Expansion Trigger Period**”), such failure or refusal shall be considered an event of default and, after giving notice of default and reasonable opportunity to cure as provided in Section 6.02 hereof, the Developer will have the right, but not the obligation, to complete the design (if applicable) and construction of the Second WWTP and/or the expansion of the Package WWTP and/or Interim Whisper Valley WWTP (as applicable) in a diligent and good and workmanlike manner and in accordance with the plans and specifications set forth herein and Developer shall be entitled to receive reimbursement for (i) 100% of the hard costs, and soft costs in an amount up to 15% of the hard costs incurred by Developer for construction of the expansion of the Package WWTP and/or Interim Whisper Valley WWTP (as applicable) and (ii) 100% of the hard costs and soft costs incurred by Developer for construction of the Second WWTP, subject to City Council approval and adherence to City ordinances. Notwithstanding the above, if the City fails or refuses to commence construction of the City’s future Northeast Regional Wastewater Treatment Plant on or before the expiration of the Expansion Trigger Period (after giving notice of default and reasonable opportunity to cure as provided in Section 6.02 hereof) and as a result the City needs to request TCEQ to authorize an increase in the 10 MGD permitted capacity of the Interim Whisper Valley WWTP, such failure or refusal shall be considered an event of default and, after giving notice of default and reasonable opportunity to cure as provided in Section 6.02 hereof, the Developer will have the right, but not the obligation, to request TCEQ to authorize an increase in the 10 MGD permitted capacity of the Interim Whisper Valley WWTP and complete any improvements associated with such expansion in accordance with City plans and specifications, in a diligent and good and workmanlike manner and Developer shall be entitled to receive reimbursement for 100% of the hard costs and soft costs in the amount of 15% of the hard costs incurred by Developer for the construction of the improvements associated with such expansion, subject to City Council approval and adherence to City ordinances. However, Developer and City may mutually agree, by written amendment to this Agreement, to increase the permitted capacity of the Interim Whisper Valley WWTP without invoking the remedies described in this Section.

The Parties hereby acknowledge and agree that the purpose of obtaining City Council’s approval of the reimbursement amounts set forth in this Section 2.13(A) is to allow City Council the authority to negotiate the amount of reimbursement due to Developer (i.e. the business terms) if Developer has exercised its self-help rights herein, but not the concept of Developer’s right of self-help and reimbursement itself.

If necessary to facilitate the Developer’s completion of the particular component of the City Wastewater Project, the City shall assign to the Developer (or its designee) the City’s rights under any construction contract and take any other reasonable action necessary to effectuate the Developer’s completion of the applicable component of the City Wastewater Project.

If Developer exercises any of its self-help rights contained in this Section 2.13(A) and is therefore entitled to receive reimbursements from the City, the City shall reimburse Developer for such costs and expenses within 12 months after City issues its final acceptance of such component of the Wastewater Project.

2.13(B). Developer’s Voluntary Option to Construct City Wastewater Project. In the event the City is not in default for failure to timely commence or complete the construction of a component

of the City Wastewater Project, but Developer desires to voluntarily complete a component of the City Wastewater Project, Developer shall send written notice to the City of its intent to commence construction (the "**Commencement Notice**") on a particular component of the City Wastewater Project. After delivery of any Commencement Notice, the City shall have 30 days to respond to Developer in writing ("**Response**") of its decision to allow Developer to construct the particular component of the City Wastewater Project. If the City so elects, Developer shall design and construct the particular component of the City Wastewater Project in the same manner and under the same terms and conditions as are provided for in this Agreement and the City shall reimburse Developer for 100% of the hard costs (and soft costs in the amount of 15% of the hard costs) incurred by the Developer for construction of the applicable component of the City Wastewater Project. Notwithstanding the above, Developer acknowledges that the City is not obligated to pay any reimbursement amounts exceeding the maximum cost reimbursement amount set forth in this Agreement until City Council approval is obtained, if any, and the City does not represent that the City Council will approve additional amounts. However, the Director agrees to recommend the payment of such amounts unless the Director finds such amounts to be unreasonable or unsubstantiated.

2.14. Release and Return of Fiscal Security. Except as provided in Section 3.02, the City agrees to promptly release the Fiscal Security 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 component of the Wastewater Project on the default of the Developer);
- (b) if the City elects not to exercise its right and option to complete the applicable component of the Wastewater Project by commencing or resuming construction of the Wastewater Project within one year of the date of the City's notice to the Developer of the Developer default; or
- (c) upon final acceptance of each component of the Wastewater Project by the City.

The Whisper Valley Northwest Line (30-inch wastewater interceptor) may be constructed in a manner in which a component of the line would be constructed, finally accepted by the City, and fiscal security released to the Developer and then the sequence repeated until the necessary portion of wastewater line to provide wastewater service to the particular development phase of the Property is completed. The City will work in a cooperative manner with the Developer on this issue, but the City will have sole discretion in the determination of the portion of line for a particular component. All other components of the Wastewater Project will be handled in accordance with the City's standard procedures unless otherwise identified in the terms and conditions set forth herein.

2.15. Permit for the Package WWTP and Interim Whisper Valley WWTP. The City (at its cost and expense) has prepared and submitted to TCEQ a minor amendment to the existing 3.0 mgd permit (for phasing of 0.1 mgd, 0.35 mgd, and 3 mgd) and will thereafter diligently pursue said amendment from TCEQ, so as to obtain a permit from TCEQ for the Start-up WWTP prior to the City's conditional acceptance of Lift Station 1b component. The City will be responsible for the

preparation cost of the permit application and for filing the permit application, requesting TCEQ approval, and defending the City's permit application in judicial and regulatory proceedings. The permit holder will be the City. The Developer agrees to provide the necessary information in order for the City to file the permit application in a timely manner. The City is responsible for any environmental studies requested by TCEQ. The City is also responsible for all permits from TCEQ for the Interim Whisper Valley WWTP and the City's future Regional Northeast WWTP. Developer agrees not to protest at TCEQ, or take any other action to impede, the City's permit application or amendments for the Package WWTP, Interim WWTP or the future Regional Northeast WWTP, so long as the City is not in default under the terms of this Agreement.

III.

FUNDING AND REIMBURSEMENT OF PROJECT COSTS

3.01. Developer's Agreement to Fund Design and Construction of Wastewater Project. Subject to reimbursement of the hard and soft costs in accordance with the terms and conditions of this Agreement, the Developer agrees to fund and timely pay all other costs not included in the costs of the Wastewater Project in accordance with this Agreement.

3.02. Procedure for Deposit and Use of Funds Placed in Escrow for Construction. For posting Fiscal Security, as referenced in Section 2.11(a), and/or for the receipt and disbursement of the funding of the Wastewater Project to be made by the Developer for construction, the City and the Developer may, as referenced in Section 2.11(c), establish an escrow account as follows:

(a) An Escrow Account (the "**Escrow Account**") may be maintained for funds deposited by the Developer to pay the agreed costs for construction of the Wastewater Project on a component by component basis as described in this Agreement and the funds so deposited shall not be commingled with other funds of the City or the Developer;

(b) If the Developer posts Fiscal Security in the form of funds to be placed in an Escrow Account, as referenced in Section 2.11(a), then on or before the time period described in Section 2.11(b), the Developer shall deposit the funds for the applicable component into escrow with the City, and the City shall hold the same in trust in an interest bearing Escrow Account for the purposes described in this Agreement or, alternatively, the City and 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 (the "**Escrow Agreement**") for the Wastewater Project (on a component by component 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 Developer may draw from the Escrow Account to pay all costs for construction of the respective component of the Wastewater Project 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 respective component of the Wastewater Project 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 Section 2.11 above, the Fiscal Security posted under this Agreement may be reduced ratably as the construction of a component progresses. The Fiscal Security held related to a component of the Wastewater Project may be reduced 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 component of a Wastewater Project, 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.

3.03. City's Agreement to Reimburse Certain Costs Incurred for the Wastewater Project.

(a) The City agrees to reimburse the Developer for soft costs for the Wastewater Project in accordance with the payment schedule set forth in Section 3.04(a) below.

(b) Subject to conditional acceptance or final completion (as applicable) of the Wastewater Project by the Developer on a component-by-component or phase basis, the City agrees to reimburse to the Developer for the amounts set forth below on a component-by-component or phase basis;

(i) For actual hard costs incurred by the Developer for each phase of the Whisper Valley Northwest Line, the City's overall hard cost reimbursement to the Developer will not exceed \$5,500,000 originally approved by City Council;

(ii) For actual hard costs incurred by the Developer for the Wastewater Project (excluding the remaining portion of the Whisper Valley Northwest Line), the City's overall hard cost reimbursement to the Developer will not exceed \$9,000,000; and

(iii) For actual soft costs incurred by the Developer for each component or phase of the Wastewater Project, the City's overall soft cost reimbursement to the Developer will not exceed \$3,694,779. If the remaining portion of the Whisper Valley Northwest Line is to be designed and constructed by others, the City's overall soft cost reimbursement to the Developer will not exceed \$3,154,779. Developer has agreed that \$540,000 of the \$3,694,779 in soft costs shall be set aside exclusively for the design of the remaining portion of the Whisper Valley Northwest Line. \$3,154,779 of authorized soft costs may be used for any other portion of the Wastewater Project. Any remaining amount of the \$540,000 of the soft costs that are not spent upon the completion of the remaining portion of the Whisper Valley Northwest Line may be used for any authorized soft costs.

(c) If at any time prior to the commencement or completion of construction of a component or phase of the Wastewater Project the Developer anticipates that any soft costs that would otherwise be eligible for reimbursement from the City will exceed the maximum reimbursable amounts set forth in this Section, the Developer at its discretion, may make timely written request in advance of approving such excess cost to the Director for consideration and City Council approval for authorization of additional reimbursement. The City is not obligated to pay any additional amounts unless the City Council approved such reimbursement 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. Any additional funds approved by City Council for soft costs for a component or phase of the Wastewater Project will be transferred from the authorized funding from the "Restated Cost Reimbursement Agreement (Water Infrastructure) Indian Hills and Whisper Valley Subdivisions" executed on October 22, 2015 to this Agreement's wastewater soft costs;

(d) If at any time prior to the commencement or completion of construction of a component or phase of the Wastewater Project the Developer anticipates that any hard costs that would otherwise be eligible for reimbursement from the City will exceed the maximum reimbursable amounts set forth in this Section, the Developer at its discretion, may make timely written request in advance of approving such excess cost to the Director for consideration and City Council approval for authorization of additional reimbursement. The City is not obligated to pay any additional amounts unless the City Council approved such reimbursement 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;

(e) The Developer will design, construct, and dedicate to the City for ownership, operation and maintenance, without reimbursement from the City, all other improvements internal to the Property (excluding the Wastewater Project) that the Director has determined are required for wastewater service to the Property and each tract comprising the Property;

(f) 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; and

(g) Developer hereby agrees to forgo using (\$6,600,000) within the Project Fund (PID Bond funding) to complete the construction of the Package WWTP and will personally fund the cost to complete construction of the Package WWTP, subject to being reimbursed by the City as set forth in this Agreement. In consideration of Developer's commitment to personally fund the cost to complete the construction of the Package WWTP and subject to the approval of the City's bond counsel and the PID Bond Trustee, the City hereby agrees to apply the funds currently held in the

Project Fund that have been earmarked for the Wastewater Project towards the PID Bond payment due in 2016.

3.04. Payment Schedule.

(a) The City and the Developer agree that the cost reimbursement amounts described in Section 3.03 shall be paid as follows:

(i) The agreed cost reimbursement from the City to the Developer for the actual reimbursable hard and soft costs of each remaining phase of the Whisper Valley Northwest Line shall be paid to the Developer in one lump sum payment 90 days following the City's final acceptance of such phase.

(ii) The agreed cost reimbursement from the City to the Developer for the soft costs of the design of each of the four components (Lift Station 1a, Lift Station 1b, Start-up WWTP, and Second WWTP) of the Package WWTP shall be paid to the Developer for each component within ninety (90) days following the City's final acceptance of the design of each component.

(iii) The agreed cost reimbursement from the City to the Developer for the hard costs of each of the four components (Lift Station 1a, Lift Station 1b, Start-up WWTP, and Second WWTP) of the Package WWTP and construction management fees and other soft costs not reimbursed pursuant to subparagraph (ii) above, shall be paid to Developer for each component within ninety (90) days of the City's conditional acceptance of each component.

(iv) The soft costs associated with the engineering and survey services needed to dedicate the easement for the unconstructed portion of the Whisper Valley Northwest Line, as provided in Section 2.01(e) above shall be paid to the Developer within ninety (90) days following the recordation of the easement in the Official Public Records of Travis County, Texas.

(v) The City agrees that any additional funds (including soft costs and construction management fees) expended by the Developer for Lift Station 1a, Lift Station 1b, Start-up WWTP, and Second WWTP between conditional acceptance of the applicable component and final acceptance of the particular component (as applicable) will also be reimbursed by the City (up to the Maximum Reimbursement Amount and subject to the terms herein) within 90 days of the City's final acceptance of each particular component.

(vi) The parties hereby acknowledge that the design for the first phase of the Interim Whisper Valley WWTP (0.5 million gallons per day WWTP) has been completed and sealed, and accepted by the City, and reimbursed to the Developer.

(b) Developer agrees to timely provide all information and documents reasonably required by Austin Water 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;

(c) As used in this Agreement, the phrase "component by component" or "phase" means as each portion of a facility is completed, and accepted by the City, on an incremental basis as completed by the Developer to serve a portion of the Property;

(d) Lift Station 1a, Lift Station 1b, the Start-up WWTP and the Second WWTP shall be deemed conditionally accepted when the items required for conditional acceptance, as set forth on **EXHIBIT B-1** attached hereto and made a part hereof, have been provided to the City; and

(e) Final acceptance of a component will be granted after conditional acceptance, all final record drawings and all applicable utility services have been transferred to Austin Water, all operation and maintenance manuals, as built vendor drawings, chemical supply (if applicable), warranties, guarantees, maintenance bonds, or like assurances of performance to the City have been submitted to the City, the items set forth on **EXHIBIT B-1** have been provided, and final payment to the Project Engineer and/or Construction Contractor for work performed have been submitted.

3.05. Report of Project Costs Required for City Reimbursement.

(a) Within 30 days of the City's final acceptance of each component or phase of the Wastewater Project by the City, the Developer will submit a written report to the Director of the total costs incurred by Developer for such component or phase of the Wastewater Project 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 the Wastewater Project. The City will use the report to determine and verify the amount of actual costs eligible to be reimbursed to the Developer for the component or phase of the Wastewater Project under this Agreement. If the Director determines that the Developer's report is incomplete or otherwise insufficient to determine the actual costs eligible for reimbursement, the Director will notify Developer in writing of the particulars in which its documentation is deficient within thirty days of the date of Developer's submission of its report of project costs and the Developer will timely provide all additional information reasonably required by the Director to determine the actual costs eligible for reimbursement. If the Director does not notify Developer in writing of any deficiencies within such 30-day period, the Developer's report shall be deemed approved by the Director.

(b) It is hereby further acknowledged that any additional funds expended by the City in order to close out uncompleted components of the Wastewater Project that were eligible to be reimbursed by the City shall be deemed paid for purposes of this Agreement and shall reduce the maximum reimbursement amount of \$18,194,779 on a dollar per dollar basis.

3.06. Obligation of the City. The obligations of the City under this Agreement to make payments in any fiscal year shall constitute a current expense for that fiscal year payable solely from the revenues of Austin Water for that fiscal year. The obligation of the City to make payments does not constitute a general obligation or indebtedness of the City for which the City is obligated to levy or pledge any form of taxation.

3.07. Sales Set Aside.

- (a) For purposes of this Section 3.07, the following definitions shall apply:
- (1) The “SSA” (sales set aside) shall be an amount equal to the net proceeds received by the Developer on a Third Party Sale multiplied by one percent (1%) until the Wastewater Treatment Plant (“WWTP”) Repayment Amount has been paid in full to the City or the WWTP Maximum Outstanding Balance is held in the escrow account. During any such time (i) the balance in the Whisper Valley (“WV”) Escrow Account (hereinafter defined) equals or exceeds the WV Maximum Outstanding Balance (hereinafter defined), or (ii) the WV Water Escrow Agreement (hereinafter defined) is terminated or no longer in existence, the SSA shall be increased to 21% of the net proceeds received by the Developer on a Third Party Sale.
 - (2) “**Third Party Sale**” shall mean the initial sale, conveyance, or transfer of any portion of the Property by the Developer to any person or entity. A transfer or conveyance of all of the remaining portion of the Property to (A) an affiliate of Developer which does not involve the use of any amount of cash (“**Affiliate**”), or (B) a joint venture arrangement of which the Developer (or an Affiliate of Developer) is a part and which does not involve the use of any amount of cash (“**Joint Venture**”), shall not be considered a Third Party Sale. A transfer or conveyance all of the remaining portion of the Property to (C) a Designated Successor or Assign (hereinafter defined) shall not be considered a Third Party Sale. If the Developer has transferred or conveyed the entire remaining portion of the Property to an Affiliate or Joint Venture, then the term “Developer” in this Agreement shall be deemed to be the succeeding Affiliate or Joint Venture. If the condition of either (A), (B), or (C) applies to such transfer or conveyance, then the Developer shall not be required to place the SSA into escrow for that transaction, but (subject to the other terms and provisions hereof) the SSA shall be placed into escrow on any subsequent Third Party Sale of the Property that was subject to such transfer or conveyance.
 - (3) The “**WWTP Current Outstanding Balance**” shall mean an amount equal to the then-current WWTP Repayment Amount due by the Developer to the City (the portion of the maximum reimbursement for the Wastewater Project [i.e. \$18,194,779] delivered by the City to the Trustee or the Developer as of the then-current date up to a capped amount of \$1,800,000 for purposes of this calculation) less the portion of the WWTP Repayment Amount repaid to the City by the Developer as of such date.
 - (4) The “**WWTP Maximum Outstanding Balance**” shall mean an amount equal to the difference between the WWTP Repayment Amount and the portion of the WWTP Repayment Amount that has been paid to the City by the Developer as of the then-current date.

- (5) The **“WV Wastewater Escrow Agreement”** shall mean that certain Escrow Agreement by and between Developer, the City and Escrow Agent dated November 3, 2011.
- (6) The **“WV Water Escrow Agreement”** shall mean that certain Escrow Agreement by and between Developer, Orix Public Finance, LLC, the City and Escrow Agent dated November 5, 2011.
- (7) The **“WV Escrow Account”** shall have the meaning ascribed to it in the WV Water Escrow Agreement.
- (8) The **“WV Maximum Outstanding Balance”** shall have the meaning ascribed to it in the WV Water Escrow Agreement.
- (9) **“Designated Successor or Assign”** shall have the meaning ascribed to it in Section 6.16 below.
- (10) **“Senior Master PID Bonds”** shall mean those certain City of Austin, Texas Special Assessment Revenue Bonds, Senior Series 2011 (Whisper Valley Public Improvement District).

(b) Upon a Third Party Sale of any portion of the Property, the Developer shall place the SSA into an escrow account with Heritage Title Company of Austin, Inc. (**“Escrow Agent”**). Such escrow account shall not be comingled with other escrow accounts related to the Property. All of the SSA placed into escrow by the Developer shall be used to fund the WWTP Repayment Amount. Timing and the amount of payments to the City will be such that repayment to the City of the WWTP Repayment Amount is the same as or shorter than the guaranty schedule provided in Section 3.07(d) below. The SSA shall be delivered to the Escrow Agent and disbursed as set forth herein and in the WV Wastewater Escrow Agreement.

(c) The SSA shall be disbursed to the City to pay the WWTP Repayment Amount. If the SSA is greater than the WWTP Current Outstanding Balance, then the SSA shall be held in escrow and shall be disbursed to the City as set forth in the WV Wastewater Escrow Agreement.

(d) The Developer or its Designated Successor or Assign shall guarantee the repayment to the City of the WWTP Repayment Amount as follows (**“Repayment Deadline”**):

October 31, 2020	50% of the WWTP Repayment Amount
October 31, 2025	50% of the WWTP Repayment Amount

(e) A Notice Regarding Transfer Restrictions and Requirements has been recorded on the Property in the Official Public Records of Travis County as Document No. 201101872 (the **“WWTP Transfer Restriction Document”**). The WWTP Transfer Restriction Document shall serve to provide notice to the future landowners and the Escrow Agent that upon a Third Party Sale

of all or any portion of the Property, the Developer is required to place in escrow the SSA from any such Third Party Sale or such sale transaction or transfer of land cannot be completed.

(f) Upon the request of the Developer, the City shall record a release or partial release, as applicable, of the WWTP Transfer Restriction Document upon the occurrence of any of the following:

- (i) upon completion of a Third Party Sale, at which time the City shall release the portion of the Property which was the subject of such sale;
- (ii) upon Developer (or its Designated Successor or Assign) fully repaying the City the WWTP Repayment Amount, and the City concurring that the City has been fully repaid, at which time the Developer may release all remaining Property; and
- (iii) upon the WWTP Maximum Outstanding Balance being deposited into the Escrow Account as defined in the WV Wastewater Escrow Agreement.

(g) Heritage Title Company of Austin, Inc. (the Escrow Agent) shall be the title company for any Third Party Sale and for holding and disbursing the SSA. The instructions to the Escrow Agent are included in the WV Wastewater Escrow Agreement. Escrow Agent shall promptly disburse the SSA as described in the WV Wastewater Escrow Agreement.

Any fees charged by the Escrow Agent shall be paid by the Developer or its Designated Successor or Assign, or out of the Developer's gross proceeds from a Third Party Sale (excluding the SSA).

The amount of SSA that exceeds the WWTP Current Outstanding Balance shall be held in an interest bearing escrow account by the Escrow Agent until such time as additional reimbursement funds related to the hard costs of the Wastewater Project are delivered by the City to the Trustee, at which time the funds held in escrow shall be released as set forth in the WV Wastewater Escrow Agreement (but in no event shall any amounts be released to the City in excess of the WWTP Current Outstanding Balance). For example, if the Developer has delivered \$1 million dollars toward the SSA to the Escrow Agent and the City has only delivered to the Trustee \$500,000 of reimbursement funds related to the hard costs of the Wastewater Project, then the Escrow Agent would only release \$500,000 to the City and \$500,000 would remain in that escrow. If later the City delivers to the Trustee \$200,000 of reimbursement funds related to the hard costs of the Wastewater Project, then the Escrow Agent would release \$200,000 to the City and retain the remaining \$300,000 in that escrow account until the City delivers additional monies to the Trustee.

During any such time as the Escrow Agent is holding funds related to the Wastewater Project in an amount equal to the WWTP Maximum Outstanding Balance, then the Developer (or its Designated Successor or Assign) shall have no obligation to escrow any further portion of any net sales proceeds from a Third Party Sale that would result in the escrowed funds related to the Wastewater Project exceeding the WWTP Maximum Outstanding Balance. Under no

circumstances shall the SSA be used for any other purpose than to repay the City pursuant to this Agreement.

The Escrow Agent will provide annual reports to the Director that identify, the total costs reimbursed by the City to the Trustee and the amount repaid to date to the City by the Developer. Such annual reports shall be submitted by September 30th of each year to the Director.

IV. OWNERSHIP OF FACILITIES

4.01. City to Own, Operate and Maintain Wastewater Project. Upon the time of final completion of any component or phase of the Wastewater Project by the Developer and the City's inspection and final acceptance of same, the City will own, operate, and maintain the component or phase of the Wastewater Project as part of the City's wastewater system and shall be responsible for all costs associated with same. Treated effluent from the WWTP belongs to the City for the City to use, reuse, or sell in accordance with its ordinances and policies.

4.02. Developer's Delivery of Instruments of Transfer, Other Project Documentation. As stated in this Agreement, the Developer agrees to execute and deliver to the City such bills of sale, assignments, or other instruments of transfer if requested by the City, in a form and content acceptable to the Director and the City Attorney, to evidence the City's ownership of same. The Developer agrees that the City's written notice of final acceptance of those facilities designated to be owned, operated, and maintained by the City shall be sufficient to convey the Developer's ownership and rights to the City of such facilities, if all cost reimbursements due to Developer for said facilities have been paid for by the City. The Developer will also deliver to the City all bonds, warranties, guarantees, and other assurances of performance, record drawings, easements, project manuals, and all other documentation related to the applicable components of the Wastewater Project that are within the custody and control of the Developer prior to receiving any reimbursement attributable to the time period between conditional acceptance and final acceptance of a particular component of the Wastewater Project from the City.

4.03. No Liens Permitted. Developer will make timely payment to its engineers, contractors, and materialmen for all aspects of the work and for all materials and services relating to the Wastewater Project including, without limitation, all costs for engineering, design, construction, project management, financing, interest, fiscal security, insurance, and all other costs for labor, materials, and services relating to the Wastewater Project. The Developer will not cause, suffer, or permit the filing, perfection, or execution of any lien or other encumbrance against the Wastewater Project or any portion thereof.

Nothing in this Section prohibits the Developer from withholding payment for any work that the Developer, as Project Manager, deems defective or unacceptable. In that event, the Developer has the right to withhold payment even if, in the exercise of that right, a lien or other encumbrance is perfected against the Wastewater Project. However, if any lien or other encumbrance is filed against the Wastewater Project, or any part of it, due to work performed or materials furnished by or at the request of the Developer, Developer will 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 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 wastewater utility service to the Property until the lien or encumbrance is removed.

4.04. Agreement May Be Pledged as Collateral. Developer may pledge its right to payment under this Agreement as collateral for purposes of securing financing from one or more lenders for the Wastewater Project. The Developer or the lender will provide such documentation to the City Law Department for its review and approval, which approval will not be unreasonably delayed or denied. The City agrees to execute such documents as may be reasonably required by the lender to perfect the lender's 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 PROJECTS

5.01. City's Policies and Ordinances Apply to Service Within the Property. It shall be the City's responsibility to undertake all measures necessary to provide such level(s) of wastewater utility service up to the maximum levels described in this Agreement as the Director shall determine appropriate and necessary in a timely manner sufficient to meet the Developer's needs, but in no event later than the timeframes set forth in this Agreement. Furthermore, upon final acceptance of the Wastewater Project by the City for each phase of development within the Property, unless stated otherwise herein, the City will provide utility service to all customers within each phase of the Property subject to the conditions stated in this Agreement and the City's policies and ordinances, as amended, relating to each customer obtaining and maintaining retail wastewater service from the City. 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 wastewater systems nor its duty to provide at all times for the public health, safety, and welfare in the operation and maintenance of the same.

5.02. Service Levels.

(a) After the obligations of Developer under this Agreement to construct or provide partial funding for wastewater infrastructure, or for a described component thereof, are fully performed and discharged, for each phase of development of the Property, Developer shall be entitled to receive the level(s) of service described in this Agreement by the City in a manner acceptable to the City that are attributable to the portions of the Wastewater Project, or portions thereof, so constructed or funded by Developer in accordance with this Agreement for that phase of development of the Property. The City acknowledges and agrees that any additional fees the Developer is obligated to pay to receive the level(s) of service described in this Agreement will be based upon applicable City ordinances as charged to similarly situated users. It shall be the City's

responsibility to undertake all measures necessary to provide such level(s) of wastewater utility service up to the maximum levels described in this Agreement as the Director shall determine appropriate and necessary in a timely manner sufficient to meet the Developer's needs, but in no event later than the timeframes set forth in this Agreement.

(b) The City and the Developer additionally acknowledge that:

(1) This Agreement will not be construed to create or confer upon the Developer, or its successors and assigns, any ownership rights in or monopoly regarding capacity in the Wastewater Project, whether total or partial, after final acceptance of a Wastewater Project by the City;

(2) This Agreement does not exempt the Developer from the requirements of any ordinance applicable to development within the Property;

(3) This Agreement sets out terms and conditions for cost reimbursement for the wastewater facilities described herein as the Wastewater Project and does not address nor guarantee approval of any proposed land uses or any particular development density, intensity, level of buildout or percentage of impervious cover; and

(4) This Agreement will not be construed to create or confer upon the Developer, or its successors or assigns, any manner of legal title to, equitable interest in, or other claim of joint ownership with respect to property, whether real, personal, or mixed, comprising the Wastewater Project, or any portion thereof, after final acceptance of the Wastewater Project by the City.

5.03. Transfer of Service Commitment Prohibited. This Agreement and the commitment for wastewater service set forth are for development of the Property only. Developer may not assign or transfer, in whole or in part, the commitment for wastewater service set forth or its rights and obligations under this Agreement to any other property or development. Developer has no right to limit the City in its access to or use of the wastewater lines and appurtenances constituting the Wastewater Project or in its provision of wastewater service to other customers through any of the wastewater facilities it constructs or acquires. Developer may enter into agreements with other developers or other entities to share in the cost of certain common benefit wastewater infrastructure or other costs associated with the Wastewater Project. Developer may not withhold access to any component of the Wastewater Project.

5.04. Term and Effect. This Agreement shall remain in effect until retail and wholesale wastewater service is provided by the City that meets the full build-out needs of the Property.

5.05. Preliminary Plan Extension. In accordance with City Code Section 30-2-62, the Austin Estates at Gilleland Creek preliminary plan (C8-01-0157) expires June 6, 2011. All previously approved variances associated with the approval of the preliminary plan are still in effect. The submitted final plat and construction plan applications for the Austin Estates at Gilleland Creek (C8J-01-0157.1A, 2A, 1B and 2B) also maintain their respective status based on expiration of the preliminary plan on July 2, 2011, including fees paid and review comments as of June 30, 2006.

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;
- (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, and its successors and assigns; and
- (d) numbers of days refer to calendar days except where otherwise specified.

6.02. Notice of Default; Opportunity to Cure; Remedies for Failure to Cure Default. If one Party believes that the other Party is in Default (herein so called) of any other provision of this Agreement, the non-defaulting Party will give written notice to the other Party, specifying the event of Default and extending the defaulting Party 30 days to cure the Default or, if the curative action cannot reasonably be completed within 30 days, 30 days to commence the curative action and thereafter to diligently pursue the curative action to completion. This 30-day period for notice and opportunity to cure must pass before the non-defaulting Party may initiate any remedies available to the non-defaulting Party due to an alleged Default. The non-defaulting Party must mitigate any direct or consequential damages arising from any Default to the extent reasonably possible under the circumstances. The Parties agree that they will use good faith, reasonable efforts to resolve any dispute by agreement, including engaging in non-binding arbitration, mediation or other alternative dispute resolution methods as recommended by the laws of the State of Texas, before initiating any lawsuit to enforce their respective rights under this Agreement. If the Default is not cured within the 30-day period, or if curative action is not commenced or diligently pursued in the case of curative action that cannot reasonably be completed in 30 days, the non-defaulting Party may pursue all remedies, at law or in equity, that it deems appropriate to redress such Default.

If either party terminates this Agreement for any reason permitted by this Agreement or applicable law, or Developer does not obtain the City's acceptance of the Wastewater Project or portion of a Wastewater Project required to service a particular phase of development within any tract within the Property, then the City will have no obligation to provide wastewater service to the phase of development within the Property until the portion of the Wastewater Project required to serve the particular phase of development is constructed, or an alternative project acceptable to the City, is constructed.

Either Party may seek specific performance of a default by the other Party at any time, and neither Party will be liable for damages to the other Party, except for the costs as specifically listed herein.

In addition to the other remedies of the City, the Developer's obligation to repay the City on the schedule set forth in Section 3.07 above shall be secured by a lien on the Property that has not been sold to a third-party for the unpaid amount due on a pro-rata basis per acre; provided, however, such lien shall attach only upon recordation of a notice thereof in the real property records of Travis County, Texas, which notice shall include the following information: the name of the lien claimant (the City); a description of the Property; a description of the amount of the lien claim at that time (i.e., applicable WWTP Current Outstanding Balance then due and payable); and a statement that the lien is claimed pursuant to the provisions of this Agreement ("**Lien Claim**"). The City acknowledges that any such Lien Claim shall be subordinate to a claim pursuant to the Senior Master PID Bonds. Notwithstanding the foregoing or anything to the contrary contained herein, if the Developer does not cure such default after the applicable notice and cure period set forth above, then the City shall give the Developer and holder of the Senior Master PID Bonds not less than 14 days written notice prior to filing any Lien Claim. The holder of the Senior Master PID Bonds may, but shall have no obligation to, cure such delinquency on or before the expiration of such 14-day period. Upon payment of the applicable Current Outstanding Balance or any portion thereof, the Lien Claim shall be released as to the applicable portion of the Property for which the WWTP Current Outstanding Balance was paid. For example, if the WWTP Current Outstanding Balance equals \$500,000, and there are 1,000 acres owned by the Developer at the time of such Lien Claim, then the lien amount would be applied to each acre in the amount of \$500 per acre. If the Developer sells 150 acres and pays a total of \$75,000 to the City (\$500 per acre multiplied by 150 acres), then the City will release such Lien Claim from the 150 acre parcel and the Lien Claim of \$425,000 would remain on the remainder of the Property then owned by the Developer. At such time as the WWTP Current Outstanding Balance is paid in full, then the Lien Claim is released on the remainder of the Property.

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. In the case of any conflict between this Agreement and the Settlement Agreement, this Agreement controls.

6.04. Amendments. No amendment of this Agreement will be effective until the amendment has been reduced to writing, each party has approved it, and it 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.

6.06. Other Instruments, Actions. The parties agree that they will take such further actions and execute and deliver any other consents, authorizations, instruments, or documents that are necessary or incidental to achieve the purposes of this Agreement.

6.07. No Third Party Beneficiaries. Except as expressly provided in this Agreement, nothing will be construed to confer upon any person other than the parties any rights, benefits or remedies under or because of this Agreement.

6.08. No Joint Venture, Partnership, Agency. This Agreement will not be construed in any form or manner to establish a partnership, joint venture, or agency, express or implied, nor any employer-employee or borrowed servant relationship by and among the parties.

6.09. Applicable Law. This Agreement will be construed under and according to the laws of the State of Texas.

6.10. Severability. The provisions of this Agreement are severable. If any court of competent jurisdiction ever holds any part of this Agreement or the application of it to any person or circumstance to be invalid or unconstitutional for any reason, it will not affect the remainder of this Agreement and, in such event, this Agreement will be construed as if it had never contained such invalid or unconstitutional portion in it.

6.11. Force Majeure. If, by reasons of Force Majeure, any party will be rendered wholly or partially unable to carry out its obligations under this Agreement after its effective date, then such party will give written notice of the particulars of such Force Majeure to the other party or parties within a reasonable time after the occurrence of it. They will suspend the obligations of the party giving such notice, to the extent affected by such Force Majeure, during the continuance of the inability claimed and for no longer period, and any such party will in good faith exercise its best efforts to remove and overcome such inability.

The term "Force Majeure" as utilized in this Agreement will mean and refer to acts of God; strikes, lockouts or other industrial disturbances; acts of terrorism or other public enemies; orders of any kind of the government of the United States, the State of Texas, or any other civil or military authority; insurrections; riots; epidemics; landslides; earthquakes; lightning; fires; hurricanes; storms; floods; washouts; other natural disasters; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines or canals; or other causes not reasonably within the control of the party claiming such inability. Force Majeure does not relieve the Developer of its obligation to make payment to the City as provided in this Agreement.

6.12. Venue. Venue for any suit arising under this Agreement will be in Travis County, Texas.

6.13. Multiple Originals. The parties may execute this Agreement in multiple originals each of equal dignity.

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:

City Of Austin:

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

Developer:

Club Deal 120 Whisper Valley, Limited Partnership
C/o Douglas H. Gilliland
Taurus of Texas GP, LLC
9285 Huntington Square
North Richland Hills, Texas 76180
Tel. 827-788-1000
Fax: 817-788-1670

With a Copy To:

Metcalf Wolff Stuart & Williams, LLP
221 W. 6th Street, Suite 1300
Austin, Texas 78701
Attn: Steven C. Metcalfe
Tel: 512-404-2209
Fax: 512-404-2245

The parties agree to 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.

6.15. Non-Appropriations. The payment obligations of the City hereunder that are not payable within the current fiscal year are subject to annual appropriations by the City Council.

6.16. Assignment

(a) Except as provided in Section 6.20 below, the rights and obligations of the City under this Agreement may not be assigned or transferred unless the assets constituting the Wastewater

Project are sold by the City, in whole or in part, to another political subdivision of the State of Texas or a utility company holding a certificate of public convenience and necessity issued by the TCEQ or its successor agency.

(b) The provisions of this Agreement concerning the wastewater service commitment to be provided to the Property shall run with the land; provided however, the remaining provisions of this Agreement shall be the individual requirement of or benefit to (as the case may be) of the Developer and its Designated Successors and Assigns. For purposes herein “**Designated Successors and Assigns**” and “**Designated Successor or Assign**” shall mean an entity to which the Developer expressly assigns (in writing) all of its remaining rights and obligations contained in this Agreement pursuant to this Section 6.16. Upon any assignment to its Designated Successors and Assigns, the Developer may request the City to approve the release of the Developer from all of the rights and obligations set forth in this Agreement, such approval not to be unreasonably withheld, conditioned or delayed. Upon such approval by the City, the Developer shall no longer be liable for the remaining rights and obligations herein and the City shall look solely to the Designated Successors and Assigns for performance. Any sale of a portion of the Property and assignment of any right hereunder shall not be deemed a sale and assignment to a Designated Successor or Assign unless:

- (i) the conveyance or transfer instrument effecting such sale and assignment is not a Third Party Sale and expressly states that the City has approved the Designated Successor or Assign for such sale and assignment;
- (ii) the conveyance or transfer is for all Property then owned by the Developer; and
- (iii) the Designated Successor or Assign assumes, in writing and without modification or hypothecation to the Agreement, all remaining rights and obligations of the Developer including, but not limited to, the repayment to the City of the applicable WWTP Repayment Amount.

6.17. Binding Obligation; Releases; Estoppel.

(a) Binding Obligation. This Agreement shall bind and inure to the benefit of the Parties and their permitted successors and assigns; however, this Agreement is not binding on, and does not create any encumbrance to title as to, any end-buyer of a fully developed and improved lot within the Property except for regulations that apply to specific lots. For purposes of this Agreement, the Parties agree as follows: (1) that the term “end buyer” means any owner, lessee, or occupant; and (2) that term “fully developed and improved lot” means any lot, regardless of proposed use, for which the City has approved a final plat. With the exception to the regulations that continue to be applicable to final platted lots, this Agreement is automatically terminated with respect to any portion of the Property for which the City has approved a final plat and that the portion of a Wastewater Project, and any other additional wastewater facilities, required to provide wastewater service to the lot has been completed and accepted by the City.

(b) Releases. From time to time the applicant for any final plat (or the owner of the land covered by any final plat) may request, in writing, that the City execute, in recordable form, a release

of this Agreement with respect to any portion of the Property covered by an approved final plat (subject, however, to the continuing applicability of the "regulations that apply to specific lots" as identified above); and if the final plat has been approved, the City shall evidence such release by a statement included on the face of the approved final plat provided; however, the failure of the approved final plat to include such an express release shall not affect the automatic release provided by this Agreement.

(c) **Estoppel Certificates.** From time to time upon written request by any seller or purchaser of property within the Property, or any lender or prospective lender of Developer or its assignees, the City shall execute a written estoppel certificate to such seller or purchaser stating, if true that the City has not given or received any written notices alleging any events of default under this Agreement.

6.18. Effective Date. This Agreement will be effective upon execution by all parties.

List of Exhibits

Exhibit A	-	Combination of Tracts Forming Whisper Valley Property
Exhibit B	-	Field Notes of Portion of Property for Location of Package/Interim Wastewater Treatment Plant
Exhibit B-1	-	Package WWTP Description (Including Components)
Exhibit C	-	Wastewater Project (Package/Interim Wastewater Treatment Plant and Wastewater Interceptor)

6.19 Temporary Sales Restriction. Developer may not transfer ownership of any lots within the Property to a third party until Lift Station 1a is conditionally accepted ("**Temporary Sales Restriction**"). For purposes of only the foregoing sentence, "conditionally accepted" shall mean the infrastructure for Lift Station 1a has been completed to a point that it can be used for beneficial purposes of its intended use. For example, Lift Station 1a must be completed to a point that Lift Station 1a can allow the proper transport of wastewater from the wastewater main to another destination. There may still be additional items in a "punch list" that may need to be completed, but those items on the "punch list" shall not negatively impact the beneficial use of Lift Station 1a for its intended use as determined by the City. Upon conditional acceptance of Lift Station 1a as defined in this Section, the Temporary Sales Restriction shall automatically terminate. Upon Developer's written request, the Director shall also execute documentation evidencing the removal of the Temporary Sales Restriction.

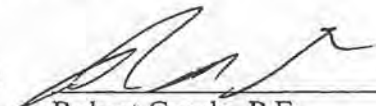
6.20 Right to Construct Whisper Valley Northwest Line and/or Second WWTP. If another developer or owner desires to build the unconstructed portion of the Whisper Valley Northwest Line or the Second WWTP, the City shall notify Developer in writing and Developer shall have the right to construct such unconstructed portion of the Whisper Valley Northwest Line or the Second WWTP (as applicable) in accordance with the same time frame proposed by the other developer, provided Developer shall so indicate its intention to the City in writing within fifteen (15) business days after the date of Developer's receipt of the notice from the City. If within said 15-business day period Developer does not elect to construct the unconstructed portion of the Whisper Valley Northwest Line or Second WWTP capacity (as applicable) as indicated in writing, the City shall be free to

allow the other developer to construct said line or Second WWTP. Additionally, if another developer builds the unconstructed portion of the Whisper Valley Northwest Line and/or the Second WWTP, then the Developer shall be released from all obligations herein to construct the unconstructed portion of the Whisper Valley Northwest Line and/or the Second WWTP (as applicable) and released from posting any fiscal security associated therewith, and the other developer will assume all of the obligations related to the construction of the unconstructed portion of the Whisper Valley Northwest Line and/or Second WWTP, as applicable. If the other developer fails to complete construction of the unconstructed portion of the Whisper Valley Northwest Line or Second WWTP capacity (as applicable) within the applicable time period, then Developer's right of first refusal under this Section shall be reinstated and Developer shall have the right to complete the construction of the unconstructed portion of the Whisper Valley Northwest Line or Second WWTP capacity (as applicable). Any remaining City authorized hard and/or cost reimbursement funds designated for either the Whisper Valley Northwest Line and/or the Second WWTP capacity may be assigned by the City in whole or part to complete the Whisper Valley Northwest Line and/or the Second WWTP, as applicable, subject to Developer's right of first refusal set forth above.

[Signature Pages Follow]

(Note: Add page number to signature sheets)

CITY OF AUSTIN:

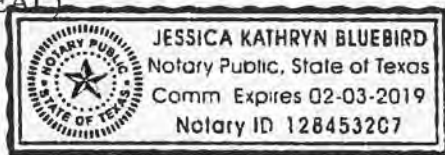
By: 
Robert Goode, P.E.
Assistant City Manager

Date: 2/19/16

STATE OF TEXAS)
)
COUNTY OF TRAVIS)

THIS INSTRUMENT was acknowledged before me on this 19 day of February, 2016, by Robert Goode, P.E., Assistant City Manager of the City of Austin, a Texas municipal corporation, on behalf of that municipal corporation.

(SEAL)



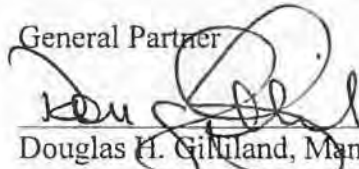

Notary Public, State of Texas

[Signatures Continue on Next Page]

CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP, a Delaware limited partnership qualified to do business in Texas

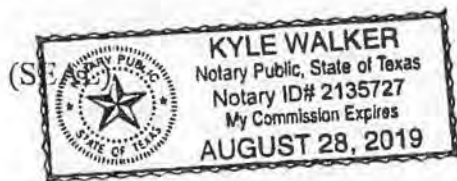
By: CD120 GP, LLC, a Delaware limited liability company qualified to do business in Texas

Its: General Partner

By: 
Douglas H. Gilliland, Manager

STATE OF TEXAS)
)
COUNTY OF TRAVIS)

THIS INSTRUMENT was acknowledged before me on this 17th day of February, 2016, by Douglas H. Gilliland, Manager of CD120 GP, LLC, a Delaware limited liability company, general partner of Club Deal 120 Whisper Valley, Limited Partnership, a Delaware limited partnership, on behalf of said limited liability company and limited partnership.



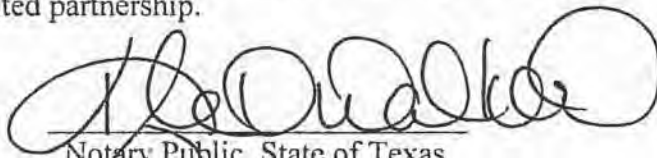
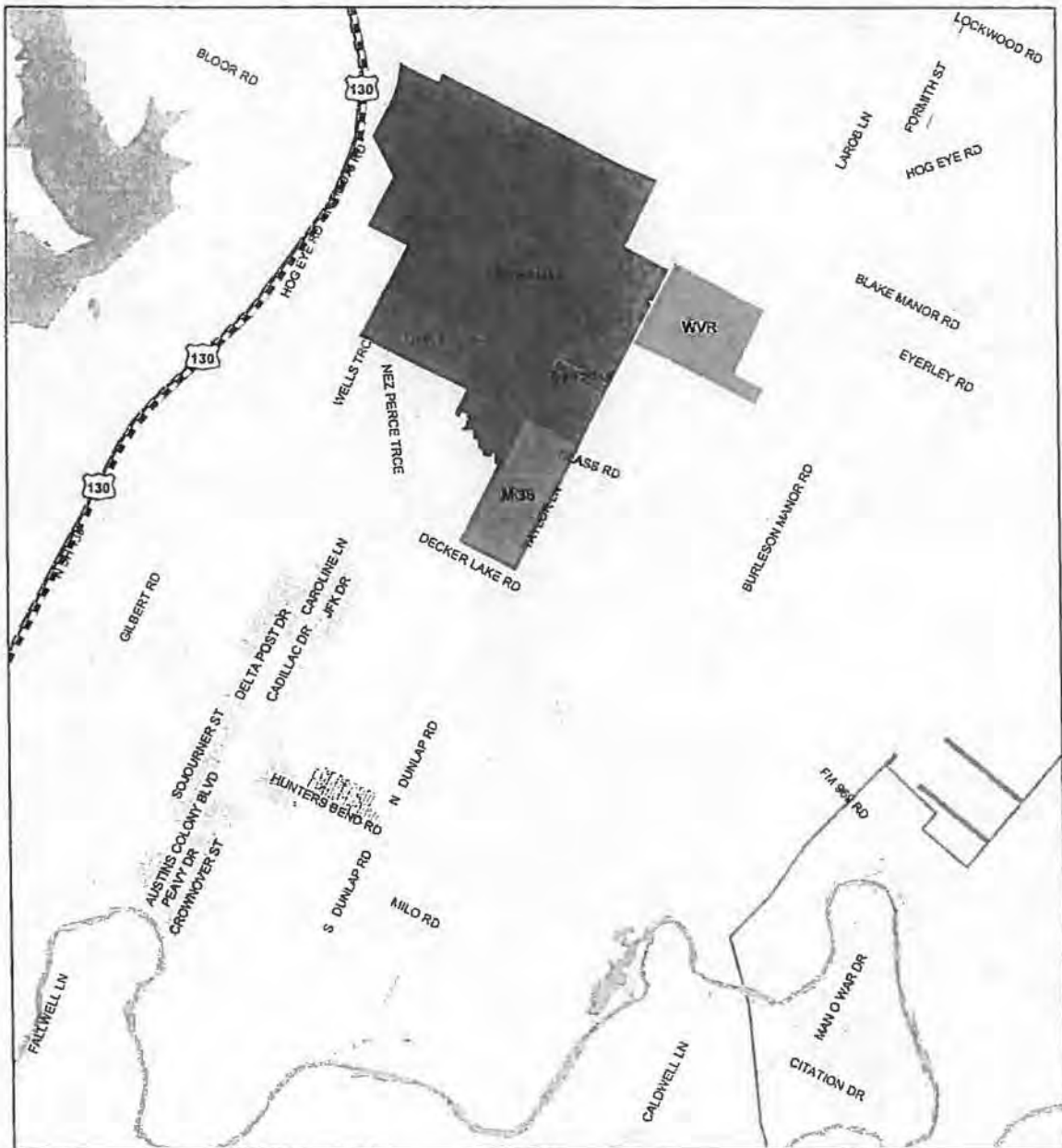
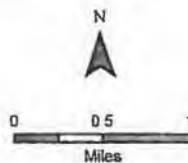

Notary Public, State of Texas

EXHIBIT A **Combination of Tracts Forming Whisper Valley Property**



- WVR Tract
- Stonelake Tract
- MGS Tract
- Glass Tract
- Sandifer Tract
- City of Austin ETJ
- SH 130 Centerline



City of Austin
 Austin Water Utility
 July 27, 2006



Exhibit A

Produced by Systems Analysis Division

This map has been produced by the City of Austin for its needs and purposes and is not warranted for any other use. No warranty is made by the City regarding its accuracy or completeness.

*Color copy available at
 Austin Water Utility*

EXHIBIT B—

Field Notes of Portion of Property for Location of Package/Interim Wastewater Treatment Plant

B

WASTEWATER TRACT
117.768 ACRES
WHISPER VALLEY

FW NO. 07-335 (AJM)
JUNE 05, 2007
BPI JOB NO. 1758-02

DESCRIPTION

OF 117.768 ACRES OF LAND OUT OF THE JOHN BURLESON SURVEY NO. 33, SITUATED IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 750.533 ACRE TRACT OF LAND CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP BY DEED OF RECORD UNDER DOCUMENT NO. 2006152076 AND BEING A PORTION OF THAT CERTAIN 213.563 ACRES OF LAND CONVEYED TO HORNSBY LAND PARTNERS, L.P. OF RECORD UNDER DOCUMENT NO. 2005129632, BOTH OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 117.768 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a point in the westerly right-of-way line of Taylor Lane (80' right-of-way), same being a portion of the easterly line of said 213.568 acre tract from which an iron rod found bears S27°42'26"E a distance of 63.15 feet;

THENCE, S27°42'26"W, along the said westerly right-of-way line of Taylor Lane, same being a portion of the easterly line of said 213.568 acre tract a distance of 75.00 feet for an angle point hereof;

THENCE, leaving the westerly right-of-way line of Taylor Lane, over and across said 213.568 acre tract, with a portion of the easterly and southerly lines hereof, the following two (2) courses and distances:

- 1) N62°19'27"W, distance of 462.21 feet to an angle point;
- 2) S27°40'33"W, a distance of 2024.66 feet to a point at or near the centerline of Gilleland Creek for the southeasterly corner hereof;

THENCE, continuing along the centerline of Gilleland Creek for a portion of the southerly line hereof, the following fifty (50) courses and distances:

- 1) N42°14'24"W a distance of 18.72 feet for an angle point hereof;
- 2) N27°03'11"W a distance of 47.76 feet for an angle point hereof;
- 3) N54°25'20"W a distance of 39.65 feet for an angle point hereof;
- 4) N92°13'30"W a distance of 55.65 feet for an angle point hereof;
- 5) N46°05'56"W a distance of 27.93 feet for an angle point hereof;

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JUNE 05, 2007
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- 6) N71°32'22"W a distance of 27.94 feet for an angle point hereof;
- 7) N05°20'26"E a distance of 49.36 feet for an angle point hereof;
- 8) N10°58'42"W a distance of 42.27 feet for an angle point hereof;
- 9) N24°46'01"W a distance of 31.22 feet for an angle point hereof;
- 10) N23°34'32"E a distance of 43.12 feet for an angle point hereof;
- 11) N33°25'36"E a distance of 53.14 feet for an angle point hereof;
- 12) N42°34'19"E a distance of 50.20 feet for an angle point hereof;
- 13) N54°03'09"E a distance of 95.80 feet for an angle point hereof;
- 14) N32°58'03"E a distance of 36.40 feet for an angle point hereof;
- 15) N26°02'50"E a distance of 41.61 feet for an angle point hereof;
- 16) N09°52'03"E a distance of 76.18 feet for an angle point hereof;
- 17) N37°40'51"E a distance of 37.41 feet for an angle point hereof;
- 18) N04°12'35"W a distance of 45.91 feet for an angle point hereof;
- 19) N01°53'25"E a distance of 41.33 feet for an angle point hereof;
- 20) N65°36'19"E a distance of 94.19 feet for an angle point hereof;
- 21) N19°42'17"E a distance of 50.69 feet for an angle point hereof;
- 22) N07°42'11"E a distance of 36.81 feet for an angle point hereof;

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PAGE 3 OF 6

- 23) N27°32'25"W a distance of 40.07 feet for an angle point hereof;
- 24) N07°48'06"W a distance of 36.36 feet for an angle point hereof;
- 25) N45°41'57"E a distance of 45.65 feet for an angle point hereof;
- 26) N58°07'17"E a distance of 36.56 feet for an angle point hereof;
- 27) N24°11'50"E a distance of 42.59 feet for an angle point hereof;
- 28) N03°38'15"W a distance of 90.98 feet for an angle point hereof;
- 29) N47°41'53"W a distance of 52.22 feet for an angle point hereof;
- 30) N65°39'25"W a distance of 94.58 feet for an angle point hereof;
- 31) N57°17'36"W a distance of 31.69 feet for an angle point hereof;
- 32) N75°38'51"W a distance of 93.87 feet for an angle point hereof;
- 33) N70°12'39"W a distance of 44.12 feet for an angle point hereof;
- 34) N65°04'29"W a distance of 53.53 feet for an angle point hereof;
- 35) N59°44'19"W a distance of 95.73 feet for an angle point hereof;
- 36) N44°50'19"W a distance of 106.52 feet for an angle point hereof;
- 37) N52°53'07"W a distance of 50.71 feet for an angle point hereof;
- 38) N71°15'32"W a distance of 52.32 feet for an angle point hereof;
- 39) N59°49'11"W a distance of 33.06 feet for an angle point hereof;

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JUNE 05, 2007
PAGE 4 OF 6

- 40) N49°26'22"W a distance of 86.16 feet for an angle point hereof;
- 41) N19°26'47"W a distance of 45.20 feet for an angle point hereof;
- 42) N30°42'23"E a distance of 41.66 feet for an angle point hereof;
- 43) N11°03'35"W a distance of 60.93 feet for an angle point hereof;
- 44) N23°17'08"W a distance of 71.86 feet for an angle point hereof;
- 45) N51°19'07"W a distance of 30.29 feet for an angle point hereof;
- 46) N75°09'27"W a distance of 31.66 feet for an angle point hereof;
- 47) S80°08'41"W a distance of 62.24 feet for an angle point hereof;
- 48) N47°56'30"W a distance of 53.71 feet for an angle point hereof;
- 49) N73°48'49"W a distance of 56.12 feet for an angle point hereof;
- 50) N83°31'05"W a distance of 31.09 feet to the southeasterly corner of said 750.533 acre tract, being the westernmost northwesterly corner of said 213.568 acre tract for an angle point hereof, from which a 60d nail approximately 5 feet above natural ground in a 14 inch elm tree bears N27°44'30"E a distance of 152.34 feet;

THENCE, continuing along said centerline of Gilleland Creek, being a portion of the westerly line of said 213.568 acre tract, same being a portion of the southerly line of said 750.533 acre tract, the following two (2) courses and distances:

- 1) S89°22'01"W, a distance of 59.68 feet for an angle point hereof;
- 2) N62°15'22"W a distance of 70.09 feet to the northeasterly corner of that certain 137.772 acre tract of land conveyed to Jennifer Scott Riggs by Warranty Deed of record in Document No. 2003117240 of said Official Public Records, for an angle point hereof;

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JUNE 05, 2007
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THENCE, leaving the westerly line of said 213.568 acre tract, continuing along said centerline of Gilliland Creek, being a portion of the southerly line of said 750.533 acre tract, same being a portion of the northerly line of said 137.772 acre tract, for a portion of the southerly line hereof, the following eight (8) courses and distances:

- 1) N73°42'02"W a distance of 77.74 feet for an angle point hereof;
- 2) N29°34'57"W a distance of 49.46 feet for an angle point hereof;
- 3) N00°31'21"E a distance of 69.33 feet for an angle point hereof;
- 4) N30°43'04"W a distance of 70.19 feet for an angle point hereof;
- 5) N05°32'28"E a distance of 139.88 feet for an angle point hereof;
- 6) N40°23'29"W a distance of 59.67 feet for an angle point hereof;
- 7) S40°32'18"W a distance of 163.68 feet for an angle point hereof;
- 8) N60°12'41"W a distance of 119.83 feet to the southwesterly corner hereof;

THENCE, leaving said centerline of Gilliland Creek, being the common line of said 750.533 acre tract and 137.772 acre tract, over and across said 750.533 acre tract for the westerly, northerly and a portion of the easterly lines hereof, the following three (3) courses and distances:

- 1) N27°40'33"E a distance of 2215.19 feet to the northwesterly corner hereof;
- 2) S62°19'27"E a distance of 2003.00 feet to the northeasterly corner hereof;
- 3) S27°40'33"W a distance of 536.82 feet to the northerly line of said 213.568 acre tract, being the southerly line of said 750.533 acre tract and continuing another 844.79 feet over and across said 213.568 acre tract for a total distance of 1381.61 feet to an angle point hereof;

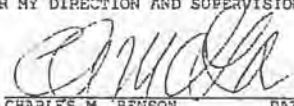
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JUNE 05, 2007
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TRENCHE, S62°15'27"E, continuing over and across said 213.568 acre tract, a distance of 482.25 feet to the POINT OF BEGINNING containing an area of 117.786 acres of land, (5,129,966 square feet) more or less, within these metes and bounds.

BEARING BASIS: TEXAS COORDINATE SYSTEM, NAD 83(93), CENTRAL ZONE, UTILIZING LCRA CONTROL NETWORK.

I, CHARLES M. BENSON, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION.

BLRY & PARTNERS, INC.
ENGINEERING SOLUTIONS
221 WEST SIXTH STREET, STE 600
AUSTIN, TEXAS 78701


CHARLES M. BENSON
R.P.L.S. NO. 4863
STATE OF TEXAS

DATE

June 05, 2007



CURVE TABLE

NO.	DELTA	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING
C1	125°05'	13545.14	697.70	697.63	N26°13'52"E

LINE TABLE

LINE	BEARING	LENGTH
L1	S27°42'25"W	75.00'
L2	N62°19'27"W	492.21'
L3	N42°14'24"W	18.70'
L4	N27°09'11"W	41.78'
L5	N54°28'20"W	39.85'
L6	N82°13'30"W	65.65'
L7	N48°05'56"W	27.95'
L8	N31°32'22"W	27.94'
L9	N05°20'20"E	48.35'
L10	N10°58'42"W	42.27'
L11	N24°46'01"W	31.22'
L12	N23°34'32"E	48.12'
L13	N33°25'36"E	53.14'
L14	N42°34'19"E	50.32'
L15	N54°08'09"E	95.80'
L16	N32°58'03"E	36.43'
L17	N26°02'50"E	41.61'
L18	N09°52'03"E	76.18'
L19	N37°40'51"E	57.41'
L20	N04°12'35"W	45.91'
L21	N01°53'25"E	41.93'
L22	N65°36'18"E	94.19'
L23	N49°42'17"E	50.89'
L24	N07°42'17"E	38.84'
L25	N27°32'25"W	40.07'
L26	N07°48'06"W	36.36'
L27	N45°41'57"E	45.65'
L28	N58°07'17"E	36.66'
L29	N24°11'50"E	42.59'
L30	N03°38'15"W	90.98'
L31	N47°41'53"W	52.22'
L32	N65°30'25"W	94.58'
L33	N57°17'36"W	31.69'
L34	N75°38'51"W	93.87'
L35	N70°12'38"W	44.12'

LINE TABLE

LINE	BEARING	LENGTH
L36	N85°04'29"W	58.53'
L37	N59°44'19"W	95.73'
L38	N44°50'19"W	106.52'
L39	N52°53'07"W	50.71'
L40	N71°15'32"W	52.52'
L41	N50°49'11"W	38.08'
L42	N49°28'22"W	66.18'
L43	N19°26'47"W	45.20'
L44	N00°42'23"E	41.68'
L45	N11°08'55"W	60.93'
L46	N23°17'08"W	71.86'
L47	N51°19'07"W	30.29'
L48	N78°08'27"W	31.66'
L49	S80°08'41"W	62.24'
L50	N47°56'30"W	55.71'
L51	N73°48'49"W	56.12'
L52	N85°31'05"W	31.09'
L53	S69°22'51"W	58.88'
L54	N92°45'22"W	70.09'
L55	N73°42'02"W	72.35'
L56	N20°34'57"W	49.46'
L57	N00°31'21"E	69.33'
L58	N30°13'04"W	70.19'
L59	N05°32'28"E	139.89'
L60	N10°29'20"W	59.87'
L61	S40°32'18"W	163.68'
L62	N60°13'41"W	119.83'
L63	S62°19'27"E	482.25'
L64	N27°42'26"E	63.19'
L65	S27°42'26"W	102.10'
L66	N27°44'50"E	152.34'

SHEET 2 OF 2

Bury-Partners
ENGINEERING SOLUTIONS
221 West 8th Street, Suite 100
Austin, Texas 78701
Tel: 512-224-9111 Fax: 512-224-9112
Bury-Partners, Inc. 06/09/10/11/12

SKETCH TO ACCOMPANY DESCRIPTION
OF 117.988 ACRES OF LAND SITUATED IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT 152,333 ACRES OF LAND CONVEYED TO CLIMB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP BY DEED OF RECORD UNDER DOCUMENT NO. 2008112778 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND BEING A PORTION OF THAT CERTAIN 213,988 ACRES OF LAND CONVEYED TO HORNBEY LAND PARTNERS, L.P. OF RECORD UNDER DOCUMENT NO. 2005126333 OF SAID OFFICIAL PUBLIC RECORDS.

**WHISPER VALLEY
AUSTIN, TEXAS**

DATE: 05/05/07 FILE: H:\1758\02\175802DX10.dwg PLOT No: 07-335AAM DRAWN BY: ALM PROJ. No: 1758-02

EXHIBIT B-1
Package WWTP Description (Including Components)

Lift Station Phase 1A

Scope of Work Shall Include:

1. Access Road – all weather access road to lift station
 - a. 2-foot minimum excavation and select fill replacement
 - b. 27-foot width
2. Chain Link Security Fence – encompassing lift station site, comprised of:
 - a. 6-foot height chain link topped with,
 - b. 3-strands barb wire hung on a single outrigger for a total height of 7-feet.
 - c. 18-inch wide concrete mowing strip
 - d. 14-foot minimum width double door entry gate

Conditional Acceptance for 1A shall include*:

1. Testing - Materials testing results as specified in 210 Subgrade preparation
2. Inspection
3. Acceptance – site visit inspection, review of materials testing reports and a letter of verification by owners representative stating that components identified above have been constructed and tested per contract documents, specifications and approved shop drawing submittals.

*Site restoration, equipment testing, startup and administration submittals included in Specification -01700 Project Closeout shall not be required for conditional acceptance of Phase 1A.

Lift Station Phase 1B

Scope of Work Shall Include:

1. Culvert – concrete constructed per TxDOT standards, multiple box (5, 10-foot span x 4-foot height)
2. Access Road – 9” lime stabilization, geogrid, and 9” base
3. Influent line – 30-inch HOBAS pipe
4. Wet well – 10-foot diameter, 35-foot depth, polymer concrete, air vent, access hatch pumps, valves, piping and all other ancillary equipment
5. Valve vault – precast concrete with air vent, access hatch, piping, valving and drain
6. Flow meter – precast concrete vault and meter
7. Yard piping – including DIP forcemain, electrical conduits, vents, drains and chemical feed conduits
8. Water lines – 2” and 8”
9. MCC Buildings – Precast masonry with wall mounted AC units
 - a. 20x60 MCC/Office building at WWTP with cast in place concrete foundation

- b. 10x12 MCC building at lift station with fabricated foundation
- 10. Electrical/mechanical equipment in place
- 11. Generator
- 12. Water quality and detention pond (without re-veg)

Conditional Acceptance of Phase 1B, shall include:

- 1. Testing - Materials testing results as specified in
 - a. 210 Subgrade preparation,
 - b. 202S Hydrated Lime Slurry
 - c. 210S Flexbase
 - d. 403S Concrete for Structures
 - e. 401 Structural excavation and backfill
 - f. 510 Pipe
 - g. 13035 Lift Station Valve vaults
- 2. Testing – 01650 Submersible startup, Testing shall be performed with potable water
 - a. Functions tests for control system
 - b. Functions tests for pumping system
 - c. Generator testing
- 3. Inspection – 01650 Submersible startup
 - a. copies of all inspection reports
 - b. Inspection data sheet completed
 - c. Performance inspection
- 4. Acceptance – site visit inspection, review of materials testing reports and a letter of verification by owners representative stating that components identified above have been constructed and tested per contract documents, specifications and approved shop drawing submittals.

Final Acceptance of Phase 1B shall include:

- 1. Site restoration
- 2. Electric and telephone Service Transfer
- 3. Operation and maintenance Manuals
- 4. As-built record drawings
- 5. Chemical Supply
- 6. Final approved shop drawing submittals
- 7. Electrical as-built drawings
- 8. Electronic format of PLC
- 9. Easement records
- 10. Construction and Operating permits
- 11. Keys, Tools and spare parts
- 12. Punch list completed
- 13. Letter of concurrence
- 14. confirmation of sub-consultants receiving final payment
- 15. commencement of warranty phase

Start-up Plant (0.1 MGD WWTP)

Scope of Work Shall Include:

1. 0.1 MGD average daily flow steel package plant (Including headworks screening, flow equalization and blowers)
2. Yard Piping (force main, plant influent/line, chemical and electrical conduits, gravity sewer from all components to lift station wet well)
3. Disk filters – on concrete pad with stairs and platform access for operation and maintenance
4. Sodium hypochlorite and alum chemical feed systems – including concrete containment and shade canopy
5. Chemical feed vault
6. Chlorine contact basin – concrete cast in place
7. Non-potable water system
8. Electrical controls installed at plant and in MCC Building
9. Concrete Cascade/metering structure, cast in place
10. Effluent line, 24" RCP and outfall structure
11. HMAC pavement 22 feet in width with 1 ½ foot concrete ribbon curb on each side
12. Chain Link Security Fence – encompassing WWTP station site

Conditional Acceptance of Start-up 0.1 MGD WWTP, shall include:

1. Testing - Materials testing results as specified in
 - a. 210 Subgrade preparation
 - b. 340 Hot mix Asphaltic Concrete Pavement
 - c. 401 Structural excavation and backfill
 - d. 403S Concrete for Structures
 - e. 510 Pipe
2. Testing – Shall Conform to Specification S1670 WWTP Startup, Testing shall be performed with potable water for a minimum of 7 days
 - a. Functions tests for control system
 - b. Functions tests for pumping/aeration systems
3. Inspection – Shall conform to specification S1670 WWTP Startup, Testing shall be performed with potable water for a minimum of 7 days
 - a. copies of all inspection reports
 - b. Inspection data sheet completed
 - c. Performance inspection
4. Acceptance – site visit inspection, review of materials testing reports and a letter of verification by owners representative stating that components identified above have been constructed and tested per contract documents, specifications and approved shop drawing submittals.

Final Acceptance of Start-up 0.1 MGD WWTP shall include:

1. Site restoration
2. Electric and telephone Service Transfer
3. Operation and maintenance Manuals
4. As-built record drawings

5. Chemical Supply
6. Final approved shop drawing submittals
7. Electrical as-built drawings
8. Electronic format of PLC
9. Construction and Operating permits
10. Keys, Tools and spare parts
11. Punch list completed
12. Letter of concurrence
13. confirmation of sub-consultants receiving final payment
14. commencement of warranty phase

Second Plant (0.25 MGD WWTP)

1. Headworks on concrete pad
2. Blowers on concrete pad with shade canopy
3. Plant Equipment, for modular package WWTP
4. Concrete Tank for WWTP
5. Yard Piping
6. Electrical, Controls
7. Splitter Box

Conditional Acceptance of 0.25 MGD WWTP, shall include:

1. Testing - Materials testing results as specified in
 - a. 210 Subgrade preparation
 - b. 401 Structural excavation and backfill
 - c. 403S Concrete for Structures
 - d. 510 Pipe
2. Testing – S1670 WWTP startup, Testing shall be performed with potable water for a minimum of 7 days
 - a. Functions tests for control system
 - b. Functions tests for pumping/aeration systems
3. Inspection – S1670 WWTP startup, Testing shall be performed with potable water for a minimum of 7 days
 - a. copies of all inspection reports
 - b. Inspection data sheet completed
 - c. Performance inspection
4. Acceptance – site visit inspection, review of materials testing reports and a letter of verification by owners representative stating that components identified above have been constructed and tested per contract documents, specifications and approved shop drawing submittals.

Final Acceptance of 0.25 MGD WWTP shall include:

1. Site restoration
2. Electric and telephone Service Transfer
3. Operation and maintenance Manuals
4. As-built record drawings
5. Chemical Supply

6. Final approved shop drawing submittals
7. Electrical as-built drawings
8. Electronic format of PLC
9. Construction and Operating permits
10. Keys, Tools and spare parts
11. Punch list completed
12. Letter of concurrence
13. confirmation of sub-consultants receiving final payment
14. commencement of warranty phase

Drawing Path: EMCAD\Drawings\T2500TP.dwg, Drawing Name: T-250-PL 001.dwg

