

**ORDINANCE NO. 20170608-022**

**AN ORDINANCE ADOPTING THE FIRST AMENDMENT TO THE CONSENT AGREEMENT OF SOUTHEAST TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 2.**

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

**PART 1.** The Council finds that:

- (1) In 2012, the City granted its consent to the creation of the Southeast Travis County Municipal Utility District No. 2 ("District") and the City, the District and QUALICO CR LP, original developer of the District, entered into an "Agreement Concerning Creation of the District ("Consent Agreement") which sets forth terms and conditions for creation and operation of the District.
- (2) On April 13, 2017, the District submitted an application to amend the Consent Agreement between the City and the MUD.

**PART 2.** The First Amendment to the Consent Agreement is attached as Exhibit A and incorporated as part of this ordinance.

**PART 3.** This ordinance takes effect on June 19, 2017.

**PASSED AND APPROVED**

\_\_\_\_\_, June 8, 2017

**APPROVED:** \_\_\_\_\_  
Anne L. Morgan  
City Attorney

§ \_\_\_\_\_  
§ \_\_\_\_\_  
§ \_\_\_\_\_  
Steve Adler  
Mayor

**ATTEST:** \_\_\_\_\_  
Jannette S. Goodall  
City Clerk

**FIRST AMENDMENT TO CONSENT AGREEMENT  
OF SOUTHEAST TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 2**

THE STATE OF TEXAS   §  
  §  
COUNTY OF TRAVIS    §

**KNOWN BY ALL THESE PRESENTS:**

**THIS FIRST AMENDMENT TO CONSENT AGREEMENT ("Amendment")** is entered into between the City of Austin, Texas, a home rule municipality (the "**City**"), acting by and through its City Manager, Southeast Travis County Municipal Utility District No. 2 (the "**District**"), a political subdivision of the State of Texas created under Chapter 8383, Subtitle F, Title 6, Texas Special District Local Laws Code and Chapters 49 and 54 of the Texas Water Code, acting by and through its Board of Directors, and QUALICO CR, LP, a Texas limited partnership (the "**Developer**"). The City, the District, and the Developer are sometimes referred to in this Amendment collectively as the "**Parties**."

**RECITALS**

By adoption of Ordinance No. 20120322-37 the City Council consented to the creation of the District subject to certain conditions as more particularly stated therein and authorized the execution of that certain Consent Agreement ("**Consent Agreement**") by and among the City, the District, and the Developer. The Consent Agreement was executed by the City on or about April 14, 2012.

The City, the District, and the Developer desire to amend the Consent Agreement to set forth in writing the agreed amendments to the Consent Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual agreement of the parties contained in the Consent Agreement and this Amendment, and other good and valuable consideration, the City, the District, and the Developer agree as follows, and all other terms and conditions remain as stated in the Consent Agreement:

**AMENDMENTS TO CONSENT AGREEMENT**

1. Amendment to Section 10.04. Section 10.04 of the Consent Agreement, "Maximum Amount of New Money Bonds", is amended to read as follows:

**"Section 10.04 Maximum Amount of New Money Bonds.**

The District agrees that the total principal amount of new money Bonds that may be issued by the District for capital improvements may not exceed \$46,522,294 without City Council approval. This maximum will be exclusive of the principal amount of any refunding Bonds."

2. Amendment to Section 10.05. Section 10.05 of the Consent Agreement, "Timing of Issuance; Amortization Period; Maturities", is amended to read as follows:

**"Section 10.05 Timing of Issuance; Amortization Period; Maturities.**

In order to provide the City with some assurance as to the timing of the District's issuance and retirement issuance and retirement of its debt, the District will use good faith efforts, subject to market conditions and sufficient tax base existing, to sell its last issue of Bonds on or before December 30, 2037. If the District fails or is unable to do so, the City will have the authority to revoke District's authority to issue its remaining authorized but unissued Bonds and to proceed with annexation of the District for full purposes. All Bonds must be amortized over a period that does not exceed 25 years from the date of issuance, each issue of Bonds must be structured so that substantially level debt service requirements will be maintained throughout the amortization period of the issue, and each Bond issue must include an optional redemption date no later than 10 years after the date of issuance. These requirements may only be modified if the modification is approved in writing by the Finance Director following receipt of a written application from the District, setting forth the justification for the requested modification. The Finance Director will have no obligation to approve such application."

3. Amendment to Section 12.10. "List of Exhibits" is amended to delete Exhibit O from the List of Exhibits.
4. Amendment to Exhibit K. **Exhibit K** attached to the Consent Agreement is deleted in its entirety and replace with **Exhibit K** attached to this Amendment.
5. Amendment to Exhibit O. **Exhibit O** attached to the Consent Agreement is deleted in its entirety.
6. Effect of Amendment. Except as specifically provided in this Amendment, the terms of the Consent Agreement continue to govern the rights and obligations of the Parties, and all terms of the Consent Agreement remain in full force and effect. If there is any conflict or inconsistency between this Amendment and the Consent Agreement, this Amendment will control and modify the Consent Agreement.
7. Execution. This Amendment may be executed in any number of counterparts, and it will not be necessary that the signatures of all Parties be contained on any one counterpart. Additionally, for purposes of facilitating execution of this Amendment, the signature pages from separate, executed counterparts of this Amendment may be combined to form multiple fully executed counterparts and a facsimile signature will be deemed to be an original signature for all purposes. All executed counterparts of this Amendment will be deemed to be originals.

[Signature Pages to Follow]

**IN WITNESS WHEREOF**, the authorized representative of each party has signed this Amendment as of the date(s) indicated below.

**CITY OF AUSTIN, TEXAS:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

Name:

Title: Assistant City Attorney

Date: \_\_\_\_\_

SOUTHEAST TRAVIS COUNTY MUNICIPAL UTILITY  
DISTRICT NO. 2

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: President, Board of Directors

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Secretary, Board of Directors

Date: \_\_\_\_\_

**DEVELOPER:**

QUALICO CR, LP, a Texas Limited Partnership

By: Qualico CR Management, LLC a Texas limited  
liability company, its general partner

By: \_\_\_\_\_

Name: Brian Higgins

Title: Vice President

By: \_\_\_\_\_

Name: Vera Massaro

Title: Assistant Secretary

## **EXHIBIT K**

### **Affordable Housing Participation**

1. 10 percent of the total number of multifamily rental housing units located within the Project will be set aside for occupancy by households whose income is 60 percent or below the median family income in the Austin metropolitan statistical area for a rental affordability period of 40 years from the date of a certificate of occupancy.
2. The Developer will donate to the Austin Housing Finance Corporation ("**AHFC**") fully developed platted lots in an amount equal to 3.5 percent of the total number of single-family lots located within the Project. The number of lots anticipated for donation is approximately 87. Donated lots will be interspersed within Southeast Travis County Municipal Utility District No. 2, 3, and 4, with at least 15 lots located throughout each of Southeast Travis County Municipal Utility District No. 2, 3, and 4. The Developer's phasing schedule will include the schedule of conveyance of the lots under this section.