



## **M E M O R A N D U M**

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

**DATE:** February 8, 2019  
**TO:** Memo to File  
**FROM:** Georgia Billela, Procurement Specialist III  
**RE:** MA 2200 NI190000007

This Master Agreement Contract was created and administered by Austin Water. All original documents are located with the department. The Purchasing Office is not responsible for any procurement action for this Master Agreement Contract other the creation of the payment mechanism for accounting purposes.

**ORDINANCE NO. 20150917-008**

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

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

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

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

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

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

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

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

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

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

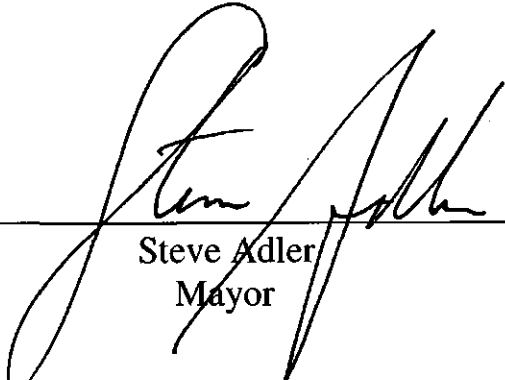
**PART 8.** Council waives City Code Section 25-9-66 (A) (*Cost Participation Payment*) relating to cost reimbursement payments. Section 25-9-66 provides that the City pay 90 days after acceptance. Payments will be made within 90 days of the City's conditional acceptance versus final acceptance of each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

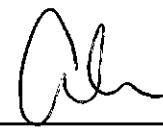
**PART 9.** This ordinance takes effect on September 28, 2015.

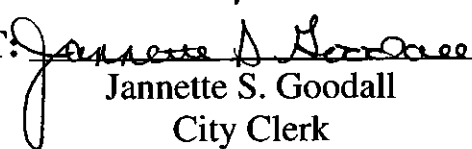
**PASSED AND APPROVED**

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September 17, 2015

§  
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§

  
Steve Adler  
Mayor

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

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

STATE OF TEXAS                    §        RESTATED COST REIMBURSEMENT AGREEMENT  
(WATER INFRASTRUCTURE)

COUNTY OF TRAVIS            §        INDIAN HILLS        AND        WHISPER        VALLEY  
SUBDIVISIONS

THIS RESTATED COST REIMBURSEMENT AGREEMENT (WATER INFRASTRUCTURE) ("**Agreement**") is made and entered into by and between the City of Austin, a Texas municipal corporation chartered under Article XI, Sec. 5 of the Texas Constitution ("**City**") and Club Deal 120 Whisper Valley, Limited Partnership, a Texas limited liability company ("**WV Developer**") and Club Deal 116 Indian Hills Tx, Limited Partnership, a Texas limited partnership ("**IH Developer**") (WV Developer and IH Developer may collectively be referred to herein as the "**Developer**"). For purposes herein, "**Party**" means the City, or the Developer, as the case may be.

I.  
RECITALS AND ACKNOWLEDGEMENTS

1.01 This Agreement supersedes and replaces in its entirety that certain Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) between the City and the Developer executed on November 1, 2010 and that certain First Amended and Restated Cost Reimbursement Agreement (Water Infrastructure) and Wastewater Soft Costs (as amended, the "**Restatement of CRA**").

1.02 The WV Developer owns a total of approximately 2,066 acres of land located in Travis County, Texas, contained within the area described in the attached and incorporated Exhibit "A" (the "**WV Property**"), upon which the Developer intends to develop a mixed-use project including residential and commercial uses (the "**WV Project**" or "**Whisper Valley**").

1.03 The IH Developer owns a total of approximately 240 acres of land located in Travis County, Texas contained within the area described in the attached Exhibit "A-1" (the "**IH Property**"), upon which the Developer intends to develop a mixed-use project including residential and commercial uses (the "**IH Project**" or "**Indian Hills**"). The WV Property and the IH Property shall sometimes be collectively referred to herein as the "**Property**" and the WV Project and the IH Project shall sometimes be collectively referred to herein as the "**Project**" and/or "**Projects**". The Property is currently outside the corporate limits, within the City's designated Desired Development Zone, and within the City's Utility and Impact Fee Service Areas.

1.04 The Developer and the City are parties to the Annexation and Development Agreement dated June 18, 2009 (the "**Master Development Agreement**"), which provided that the City will provide retail water service to the IH Property; that the City will provide retail water service to the WV Property if Manville Water Supply Corporation ("**Manville**") does not serve the WV Property and furthermore, that the Parties will enter into a Water Infrastructure and Cost Reimbursement Agreement that will address the design, construction and reimbursement of certain water infrastructure for the Project.

1.05 The Texas Commission on Environmental Quality (“TCEQ”) approved Manville’s release of its Certificate of Convenience and Necessity (“CCN”) covering the WV Property on December 9, 2010.

1.06 The Whisper Valley Public Improvement District was formed on August 26, 2010 and the Indian Hills Public Improvement District was formed on August 26, 2010. The aforementioned public improvement districts shall be referred to herein as a “PID”. PID bonds have also been issued to fund water and wastewater infrastructure and other costs associated with the development of these Projects. The City and the Developer entered into the PID Finance Agreements (one for each PID), which discusses the use and payment of PID bonds.

1.07 In order to serve the Projects at their anticipated build out (approximately 1,635 LUEs (Living Unit Equivalents as defined by the City; one Living Unit is generally equated to one single family residence) for Indian Hills and approximately 8,270 LUEs for Whisper Valley), the City and the Developer have determined that the following infrastructure (as generally depicted on Exhibit “B” attached hereto) will need to be constructed by the Developer:

(a) (1) 48-inch water line approximately 19,700 linear feet in length commencing at the intersection of the 66-inch Central Pressure Zone Transmission Main at Loyola Lane and Johnny Morris Road (“**Origination Point**”), continuing east along Loyola Lane and then Decker Lake Road and terminating at State Highway 130, as more particularly shown as “**Line 1**” on Exhibit “B” (“**Line 1**”). The Parties acknowledge that if Line 1 were constructed to serve only the IH Property, only a 24-inch water line would be required. The Parties further acknowledge and agree that if Line 1 were constructed to only serve both the IH Property and the WV Property, then only a 42-inch water line would be required; however, the City has elected to oversize Line 1 to a 48 inch water line and therefore the City will be responsible for the “oversizing costs”. Such oversizing costs attributable to the City shall be calculated based upon the City’s share of the oversizing of the water line from 42 inches to 48 inches (which City’s share equals 12.5% of the hard construction cost of the 48-inch water line and 12.5% of the calculated soft cost of the 48-inch water line). Such oversizing costs of the City will be part of the reimbursement to Developer provided herein, but shall not be eligible for repayment to the City.

(2) The parties hereby acknowledge and agree that there are four components to Line 1, (i) the first component of Line 1 shall consist of approximately 14,500 linear feet of 48-inch water line commencing at the Origination Point and terminating at the intersection of Blue Bluff and Decker Lake Road ( “**Line 1A**”), (ii) the second component of Line 1 shall consist of approximately 3,482 linear feet of 48-inch water line commencing at the termination of Line 1A and extending along Decker Lake Road (the “**Line 1B**”), (iii) the third component of Line 1 shall consist of approximately 1,048 linear feet of 48-inch water line commencing at the termination of Line 1B extending along Decker Lake Road (the “**Line 1C**”), and (iv) and the fourth component of Line 1 shall consist of approximately 891 linear feet of 48-inch water line commencing at the termination of Line 1C and terminating at the intersection of Decker Lake Road and State Highway 130 (the “**Line 1D**”) and therefore, completing the entirety of Line 1;

(b) 24-inch water line approximately 17,620 linear feet in length commencing on Lindell Lane and turning northeast on Blue Bluff Road, then turning southeast along SH 130, crossing SH 130, continuing southeast along SH 130, then turning east crossing FM 973 and then continuing to the boundary of the WV Property, as more particularly shown as "**Line 2**" on Exhibit "B" attached hereto. Line 2 consists of one component;

(c) 24-inch water line approximately 8,145 linear feet in length commencing at the intersection of FM 969 and FM 973 and terminating at Decker Lake Road, as more particularly shown as "**Line 4**" on Exhibit "B" (or such other location mutually agreed to by the Parties). Line 4 consists of one component; and

(d) either (i) a 48-inch water line approximately 18,100 linear feet in length commencing at the terminus of Line 1, continuing north and terminating at Whisper Valley, as more particularly shown as "**Line 5**" on Exhibit "B" attached hereto or (ii) a 24 inch water line approximately 18,100 linear feet in length commencing at the terminus of Line 1, continuing north and terminating at Whisper Valley, as more particularly shown as "**Line 6A**" on Exhibit "B" attached hereto ("**Line 6A**") and parallel 36-inch water line, as more particularly shown as "**Line 6B**" on Exhibit "B" attached hereto ("**Line 6B**"). Line 6A and Line 6B shall sometimes collectively be referred to herein as "**Line 6**". Whichever line is constructed, Line 5 or Line 6, shall be referred to herein as the "**Alternative Line**". The Alternative Line may consist of multiple components. The Parties acknowledge and agree that if Line 5 were constructed to only serve the WV Property, then only a 42-inch water line would be required; however, the City has elected to oversize Line 5 to a 48-inch water line, if Line 5 is constructed by the Developer. Such oversizing costs attributable to the City for Line 5 shall be calculated based upon the City's share of the oversizing of Line 5 from 42 inches to 48 inches (which City's share equals 12.5% of the hard construction cost of the 48-inch water line and 12.5% of the calculated soft cost of the 48-inch water line). Such oversizing costs of the City for Line 5 will be part of the reimbursement to Developer provided herein, but shall not be eligible for reimbursement to the City. The Parties further acknowledge and agree that if Line 6B were constructed to only serve the WV Property, then only a 30-inch water line would be required; however, the City has elected to oversize Line 6B to a 36-inch water line if Line 6B is constructed by the Developer. All oversizing costs attributable to the City for Line 6B shall be calculated based upon the City's share of the oversizing of Line 6B from 30 inches to 36 inches (which City's share equals 16.6% of the hard construction cost of the 36-inch water line and 16.6% of the calculated soft cost of the 36-inch water line). Such oversizing costs of the City for Line 6B will be part of the reimbursement to Developer provided herein, but shall not be eligible for repayment to the City.

Line 1, Line 2, Line 4, and the Alternative Line shall collectively be referred to herein as the "**Water Project**". Nothing in this Agreement shall prohibit the Developer from allocating all or a portion of the PID bond proceeds attributable to Line 1 and/or Line 4 among the Projects, so long as such allocation is permitted by state law and does not diminish the amount due to the City. The Developer agrees that it shall be responsible for the funding of Line 4 either through PID bond proceeds or other Developer funding and none of the costs of Line 4 shall be reimbursed by the City.

1.08 The City and the Developer have determined that the following additional infrastructure will need to be constructed by the City: a 24 inch water line (or such other appropriately sized main determined by the City) approximately 10,841 linear feet in length commencing at the intersection of Decker Lane and FM 969, continuing east along FM 969 and terminating at the intersection of FM 969 and FM 973, as more particularly shown as “**Line 3**” on Exhibit “B”. Line 3 will be included within in the Capital Improvement Plan of the City and will be constructed by the City, subject to Austin City Council approval, at the City’s cost.

1.09 As used in this Agreement, the phrase “component by component” means as each portion of a particular improvement is accepted by the City, on an incremental basis as completed by the Developer to serve a portion of the Property. For example, if a 5,000 linear feet component of Waterline 1 is constructed, then upon the 5,000 linear feet being accepted (such 5,000 linear feet being deemed a “component”), the Developer would be incrementally reimbursed by the City for such component in accordance to the terms of this Agreement.

1.10 By its Ordinance adopted on August 26, 2010, the Austin City Council:

(a) waived the requirements of Section 25-9-33, City Code, relating to the requirement of filing a service extension application;

(b) waived the requirements of Section 25-9-62, City Code, relating to the use of cost participation methods for certain size water mains;

(c) waived the requirements of Section 25-9-63, City Code, relating to the amount of cost reimbursement for soft costs;

(d) waived the requirements of Section 25-9-64, City Code, relating to the requirement of filing an application for cost participation and cost reimbursement;

(e) waived the requirements of Section 25-9-67, City Code, relating to cost participation and cost reimbursement payment schedules;

(f) waived the license fee related to the use of the City’s right-of-way for the Water Project;

(g) waived the application fee of \$6,595 for certain service extension requests (City Ordinance 20090916-004);

(h) authorized the City Manager or his designee to reimburse the WV Developer in the amount of \$800,000 (“**CCN Release Fee**”) for costs incurred by the WV Developer to secure the release of the WV Property from Manville’s CCN. Upon the terms and conditions contained in this Agreement, the City shall be repaid in full for the CCN Release Fee; and

(i) authorized the City Manager or his designee to negotiate and execute an agreement with the Developer to set forth terms and conditions whereby the Developer would



design and construct, and the City would reimburse the Developer for the following (collectively, the “**Reimbursement Amount**”):

(1) “actual hard construction costs” for Line 1, Line 2, and the Alternative Line (hard construction costs mean the cost for excavation, purchase and installation of pipe and appurtenances, equipment and appurtenances for the provision of electricity and water, and construction site restoration), and including any applicable oversizing costs;

(2) “actual soft costs” (soft costs 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 Line 1, Line 2 and the Alternative Line, and including any applicable oversizing costs. The entity providing overall project management services shall not be the same entity or affiliate of the entity providing construction management services. Stated differently, the entity collecting the project management services fee shall not be the same entity or affiliate of the entity collecting the construction management fee under this Agreement; and

(3) where applicable, “calculated soft costs” (means an amount equaling 15% of actual hard construction costs) for Line 1 and the Alternative Line.

As further described in this Agreement and except as expressly set forth in Section 4.01 herein, the Reimbursement Amount will be paid to the Developer in portions as the respective components of Line 1, Line 2, and the Alternative Line are accepted by the City. The City Council authorized the maximum amount of cost reimbursement for the Reimbursement Amount and CCN Release Fee of \$21,200,000 (the “**Maximum Reimbursement Amount**”).

The City and the Developer agree if the Maximum Reimbursement Amount exceeds the amount of actual expenses for the eligible expenses, then the Developer is not entitled to a payment, credit, or transfer of funding for the difference.

Waivers of ordinances are to effectuate the terms of this Agreement and shall not be construed to void any terms and conditions as agreed upon in this Agreement.

1.11 Only costs that are eligible to be reimbursed pursuant to Chapter 372 of the Texas Local Government Code (“**PID Statute**”) and approved by the Attorney General of the State of Texas shall be included within the Reimbursement Amount. The Developer represents and affirms that the overall actual costs for the CCN Release Fee and the items contained in the Reimbursement Amount are anticipated to exceed the Maximum Reimbursement Amount. The Developer represents, warrants, and agrees that it, its agents, affiliates, successors and assignees:

(a) shall fund and timely pay (or cause its contractor to fund and pay) all costs related to the engineering, design, construction, financing, accounting, project management, inspection,

legal services and all other costs associated with the completion of the Water Project in accordance with this Agreement;

(b) shall not lobby, support, or request, in any form, an increase to the Maximum Reimbursement Amount from City employees or the City Council for the funding authorized in this Agreement;

(c) has the obligation and the financial, technical, and managerial means to complete the construction of Line 1, Line 2, Line 4, the Alternative Line, and internal water facilities as described in this Agreement;

(d) shall not seek additional reimbursement from the City if the Developer is fully or partially reimbursed for an allowable item in the Maximum Reimbursement Amount and that action results in insufficient funds for the Developer to be able to obtain full or partial reimbursement by the City for that item or other allowable items not fully reimbursed; and

(e) shall timely pay any amounts exceeding the Maximum Reimbursement Amount related to the costs for Line 1, Line 2, and the Alternative Line.

1.12 By Ordinance No. 20150917-008, adopted on September 17, 2015, the City Council approved this Agreement, which, among other things, amends the payment schedule for the Water Project.

1.13 In consideration for the City's commitment to provide retail utility service of approximately 1,635 LUEs for Indian Hills and 8,270 LUEs for Whisper Valley, the Developer has agreed to construct the Water Project and to finance the design and construction of said facilities in accordance with this Agreement.

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

## II CONSTRUCTION AND OPERATION OF THE WATER PROJECT

2.01 Description of the Water Project. The Water Project shall consist of the construction of Line 1, Line 2, Line 4, and the Alternative Line by the Developer as more particularly described in Section 1.07 of this Agreement and in accordance with the final construction plans approved by the City's Austin Water Director ("**Director**"), the general routing of said infrastructure being as depicted on Exhibit "B" attached hereto.

2.02 Developer to Act as Project Manager for Construction. The Developer will serve as Project Manager for the design and construction of the Water Project. The City acknowledges that the Developer may retain a qualified third party to assist in the execution of its duties as Project Manager for the Water Project but the Developer shall be and remain responsible under this Agreement for the performance of same as between the Developer and the City.

2.03 Developer's Agreement to Design the Water Project. Subject to the terms and conditions of this Agreement, the Developer agrees to engage the services of a professional engineer registered in the State of Texas (the "**Project Engineer**") to produce the engineering design, including detailed plans and specifications for the Water Project in conformance with the City's design criteria and construction standards. The final design plans and specifications for each line of the Water Project will provide the sizing, routing, materials selection, cost estimates, proposed construction schedule, easements, and such other and further information as the Director deems reasonably necessary or advisable for proper review and assessment of the plan and specifications. Subject to reimbursement in accordance with the terms and conditions of this Agreement, the Developer agrees to fund and timely pay all costs related to the engineering, design, construction, financing, accounting, project management, inspection, legal services and all other costs associated with the completion of the Water Project in accordance with this Agreement. The City shall not issue a permit for the construction of the Water Project until the Developer has paid all costs (or bonded around any disputed amounts to the satisfaction of the City) related to engineering, design and all other costs associated with the engineering and design of the Water Project or the City has obtained a written acknowledgment and sealed plans from the Project Engineer that the City can use the plans for the Water Project.

(a) The IH Developer will procure design phase engineering services to produce the final design, plans and specifications for Line 4 within 30 days after the City commences the construction of Line 3 and notifies the IH Developer in writing. The IH Developer will complete the design of Line 4, in accordance with City policies and procedures, within 12 months of procuring design phase engineering services for Line 4.

(b) The WV Developer and the City shall mutually agree on whether to construct Line 5 or Line 6. Such decision shall be made prior to the first 1,100 LUEs being provided retail water service in the WV Property by the City from Line 2 ("**Decision Date**"). If Line 5 is chosen as the Alternative Line, the WV Developer will procure design phase engineering services to produce the final design, plans and specifications for the Alternative Line within 30 days after the Decision Date. The WV Developer will complete the design of the Alternative Line in accordance with City policies and procedures, within 12 months of procuring design phase engineering services for the Alternative Line. If Line 6 is chosen as the Alternative Line, the WV Developer will procure design phase engineering services to produce the final design, plans and specifications for Line 6A within 30 days after the Decision Date. The WV Developer will complete the design of Line 6A in accordance with City policies and procedures, within 12 months of procuring design phase engineering services for Line 6A. Once 1,600 LUEs are being provided retail water service by the City to the WV Property ("**Line 6B Trigger**"), the WV Developer will procure design phase engineering services to produce the final design, plans and specifications for Line 6B within 30 days after the Line 6B Trigger. The WV Developer will complete the design of Line 6B in accordance with City policies and procedures, within 12 months of procuring design phase engineering services for Line 6B. Otherwise, if a joint decision by the City and the WV Developer has not been made by the Decision Date, then the WV Developer shall proceed with the design and construction of Line 5 unless a Party has issued a Default Notice related to the Decision Date.

2.04 Easements to be Granted to City by the Developer. The Developer has dedicated easements across its land to City for Line 1 and Line 2. The Developer will also provide reasonably necessary temporary and permanent easements across its land to the City, at no cost to the City, in a form and content attached hereto and incorporated as Exhibit "C" for the Alternative Line and Line 4; the location and width of the temporary and permanent easements will be mutually agreed upon by the Developer and the City. All right of entry, temporary easement, and permanent easement documents pertaining to Line 1 and Line 2 have been provided to the City. The Developer shall grant a right of entry, temporary, and permanent easement for Line 6 and if it is determined that Line 5 will be constructed as the Alternative Line, the City shall convey back to the Developer the incremental excess of easement area.

2.05 Additional Easements Required for Water Project. It is not anticipated that any offsite easements will be needed for the construction of the Water Project; however if such offsite easements are required, the Developer shall diligently attempt to obtain such easements at the Developer's expense including those easements owned by the Developer's affiliated persons or entities. After demonstrating to the City that the Developer has made a good faith effort to obtain such easements and that the Developer is unable to secure the easements, the Director agrees to recommend the use of the City's powers of eminent domain to the City Council. The parties agree to work together in good faith to extend any timeframes contained in this Agreement that become unattainable due to delays created by the easement procurement process (whether through private negotiations with landowners or eminent domain). Following the City's completion of obtaining such easements if the use of eminent domain powers is approved by the City Council, the Developer shall reimburse the City within 30 days of receipt of the City's invoice for the City's reasonable and actual costs to obtain such easements ("**Easement Costs**"). Notwithstanding the above, the City shall not settle any eminent domain case or appeal of such without prior written notification to and discussion with the Developer. If determined to be an eligible reimbursement cost under the PID Statute, the Easement Costs may be included within the PID bonds. Notwithstanding the foregoing, the City will make available, at no cost to the Developer, the right to use any City rights-of-way or the easements obtained by the use of the City's eminent domain powers for the Water Project. All easements for all water improvements shall be dedicated to the City, in a form and content approved by the City Law Department, prior to the City's approval of the Developer's construction plans for any line of the Water Project.

2.06 Plans and Specifications. The plans and specifications for each line of the Water Project must be submitted to the City for review and approval prior to the commencement of construction of such line. In addition, the form of construction contract that contractors will be required to execute for the Water Project (or applicable line thereof) will be submitted to the Director prior to the advertising for bids for the construction of Water Project (or applicable line thereof). The Director agrees to expedite the review and approval of the engineering design, plans, and specifications submitted by the Developer and to otherwise cooperate with the Developer to the extent reasonably possible without detriment to proper engineering review, comment, and revision. The City agrees to provide written comments/notes regarding the Developer submitted engineering design, plans, and specifications within 30 days of the City's receipt of such plans. The Parties acknowledge that the Water Project shall be publicly bid in accordance with the laws of the State of Texas and City ordinances, including standard City procedures regarding minority-owned and women-owned business enterprise programs and

participation, in order for the Developer to receive City reimbursement. The City acknowledges and agrees that the Developer may require the contractor for all or a portion of the Water Project to finance said project and such requirement may be included as a condition of bidding on the Water Project.

2.07 Developer's Procurement of Contractor to Construct Water Project. Subject to the terms and conditions of this Agreement, the Developer agrees to engage one or more contractors to construct the Water Project (or applicable line thereof), as required under this Agreement, in accordance with the City's design criteria and the final design, plans, and specifications approved by the Director. The Developer agrees to include, at a minimum, in the construction contract for the Water Project (or applicable line thereof):

(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; and

(c) requirements for contractor insurance no less stringent than those incorporated by the City for its public works construction contracts.

2.08 Status of Line 1 and Line 2. The City has approved the design of Line 1 and Line 2. Line 1A has been constructed. Line 2 has been constructed.

2.09 Developer's Agreement to Construct Line 4. The Developer agrees to bid the construction of Line 4 within 30 days of the City approving the final design of Line 4. The Developer agrees to exercise reasonable diligence to assure Line 4 is constructed in conformance with the approved Plans and Specifications and this Agreement and is substantially completed by the City within 24 months from the award of the construction contract for Line 4 and no later than 6 months after the City's construction of Line 3. The commencement and completion dates for Line 4 may be extended by the Director for good cause, as determined by the Director.

2.10 Developer's Agreement to Construct the Alternative Line.

(a) The Developer agrees to bid the construction of the Alternative Line within 30 days of the City approving the final design of the Alternative Line. The Developer agrees to commence construction of the Alternative Line, within 90 days after the award of the approved construction contract for the Alternative Line and assure the substantial completion of the Alternative Line, in accordance with City policies and procedures within 24 months from the award of the construction contract for the Alternative Line. The commencement and completion dates for the Alternative Line may be extended by the Director for good cause, as determined by the Director.

(b) The City and Developer hereby acknowledge and agree that if Line 6 is constructed as the Alternative Line, solely for the purposes of subparagraph (a) above, the defined term “Alternative Line” shall mean Line 6A only. For purposes of Line 6B, the following shall apply:

The Developer agrees to bid the construction of Line 6B within 30 days of the City approving the final design of Line 6B. The Developer agrees to commence construction of Line 6B, within 90 days after the award of the approved construction contract for Line 6B and assure the substantial completion of Line 6B, in accordance with City policies and procedures within 24 months from the award of the construction contract for Line 6B. The commencement and completion dates for Line 6B may be extended by the Director for good cause, as determined by the Director.

2.11 Developer’s Agreement to Construct Remainder of the Water Project. All other water facilities required to provide City water utility service to the Property, or individual tracts within the Property shall be designed and constructed in accordance with City design criteria and standards at the sole expense of the Developer, without reimbursement from the City; provided, however, nothing herein shall prohibit the Developer from obtaining PID bond proceeds to reimburse the Developer for PID eligible expenses related to the Water Project that are not included in the Reimbursement Amount and CCN Release Fee.

2.12 Duties of Developer. Concerning the Water Project (or applicable line thereof), the Developer agrees to:

(a) engage the services of the Project Engineer to prepare plans and specifications for the Water Project (the “**Plans and Specifications**”);

(b) enter into a contract with the Project Engineer for the engineering design of the Water Project;

(c) ensure that the Plans and Specifications for the Water Project:

(1) conform to the City design criteria and construction standards in effect at the time the Developer submits the Plans and Specifications to the Director for approval;

(2) are submitted to the Director for review and approval before the advertisement for bids for construction of the applicable line of the Water Project;

(3) are accompanied by an engineering report discussing the sizing, routing, materials selection, cost estimates, proposed construction schedule, easements, anticipated volumes of flow and such other and further information that the Director deems reasonable necessary or advisable for proper review and assessment of the Plans and Specifications; and

(4) include all necessary documentation required by the Director for proper review and assessment of the Plans and Specifications;

(d) permit the City to use the plans and specifications approved by the Director to solicit and publish invitations for bids for the construction of the Water 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;

(e) submit the final Plans and Specifications to the Director for review and approval prior to bidding the applicable line of the Water Project if a period of more than 24 months pass after the Director has approved the Plans and Specifications, and before the project is bid;

(f) prepare and submit to the Director for review and approval all construction contracts and proposed construction schedules for the Water Project (the "**Construction Contract**") before execution, including 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 Water 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 with respect to all liability coverages according to the City's Standard General Conditions;

(g) obtain all required permits, consents, variances, easements, inspections, tests, and authorizations necessary for construction of the Water Project;

(h) submit all payment and performance bonds (if required) and other documents required for the Construction Contract (herein so called) 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;

(i) monitor the Water Project costs to effect the completion of construction according to the estimated construction costs and undertake such corrective action as the City and the Developer mutually agree upon as necessary to assist in controlling project costs;

(j) review all change orders to the Construction Contract for the Water Project (or applicable line thereof) including any requested by the City and submit said change orders along with the Project Manager'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 Water Project, either singly or in accumulation with others so approved, do not increase the Construction Contract costs by more than 20%;

(k) monitor activities of the Construction Contractor and the day-to-day progress of construction of the Water Project to encourage the timely and efficient completion of the Water Project following the approved Plans and Specifications and construction schedule;

(l) 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;

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

(n) 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 requires special testing, the City will notify the Developer and the Developer will take timely action to remedy the identified problem;

(o) 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;

(p) 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;

(q) 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;

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

(s) conduct and coordinate final inspection of the Water Project (or applicable component thereof) 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;



(t) 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;

(u) within 30 days after final completion and acceptance of an applicable component of the Water Project by the City, provide to the City as-built drawings for such component of the Water Project prepared and duly sealed by the Project Engineer;

(v) assign all warranties, guarantees, maintenance bonds, or like assurances of performance to the City after final acceptance of the Water Project (or applicable component thereof) by the City;

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

(x) 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

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

2.13 Posting of Fiscal Security. In regard to fiscal security for the Water 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 Water Project in accordance with the terms of this Agreement on a component by component basis within 10 days of the award of the Construction Contract for such applicable component of the Water Project;

(b) for such applicable component of the Water Project, 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, cash deposit, or other security acceptable to the City any of which must be: (1) sufficient to cover 100% of the actual Construction Contract award amount and any change order amounts, as and if they occur, and (2) must be available to the City for the City’s use in constructing the applicable component should the Developer be unable to fulfill its obligations under this Agreement with respect to such component. The Developer shall elect the form of Fiscal Security from the options provided in the preceding sentence;

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

(d) Notwithstanding anything to the contrary contained herein, with respect to components of the Water Project funded by the Senior Master PID Bonds or the Subordinate

Master PID Bonds as contemplated in the PID Finance Agreement, if there are funds in a segregated account within the Project Fund sufficient to pay for the completion of a given component, as reasonably determined by the City, it is intended that Developer not be required to post Fiscal Security for the applicable component of the Water Project. For example, if a separate account is formed within the Subordinate Master PID Bond Project Fund for Line 2 (which fully funds the reimbursement eligible cost of Line 2), then Fiscal Security will not be required for Line 2.

The estimated costs for the components of the Water Project funded by the Senior Master PID Bonds or the Subordinate Master PID Bonds shall be determined prior to placement of funds in a segregated account within the Project Fund for the applicable component. If at any time (including if any shortfall becomes evident after construction bids are received) it is reasonably determined by the City that (i) there are insufficient funds contained in a segregated account within the Project Fund to complete the construction of the given component for which the segregated account was established, and (ii) there are no additional bond proceeds designated for the Project Fund available to cover the shortfall between the funds contained in the segregated account for applicable component and the bided cost to complete the construction of the applicable component, then the Developer agrees to post Fiscal Security, in accordance with the Agreement and City policies, for such shortfall amount prior to the City's deadline. Until such time that adequate Fiscal Security is posted, the City may withhold, at its discretion, any advances of any bond proceeds to the Developer by the Trustee (as defined in the PID Finance Agreements).

2.14 Developer Responsibility for City Engineering Review and Inspection Fees. The Developer is responsible for paying for all City engineering review and inspection fees and other fees of the Water Project. The City's Public Works and Transportation Department will establish the estimated amount of engineering review and inspection fees applicable to the Water Project in accordance with the City's usual and customary requirements and procedures for same. If the amount deposited, based on the estimated construction amount is greater than the amount of the cost of inspection, the City shall release any of the deposited amount after final acceptance of the Water Project. If the amount deposited is less than the actual cost of inspection, the Developer shall pay the City the remaining balance within 30 days of being invoiced by the City.

2.15 City's Option to Construct Water Project Upon Default of the Developer. If the Developer fails or refuses to timely complete the construction of a given component of the Water Project by the required completion date (subject to Force Majeure and delays caused by the City, including without limitation delays in approving plans and issuing permits), as provided in Section 7.02, the City shall provide the Developer with written notice of said default and provide thirty (30) days to cure said default; provided, however, if the default cannot reasonably be cured in 30 days, the 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 the Developer has still not completed the applicable component of the Water Project after the notice and cure periods provided for above, the City shall either:

- i. assume the construction management role and direct the completion of the applicable component of the Water Project so that it qualifies for the agreed upon Reimbursement Amount specified herein, in which event the Reimbursement Amount will be paid by the City to the Trustee (as defined in the PID Finance Agreements) and will be used by the Trustee to repay the applicable PID Bonds; or
- ii. assume the construction management role and direct the closeout of the applicable component of the Water Project so that such component qualifies for a partial reimbursement payment pursuant to Section 4.04(b) (for the work completed) in which event the partial reimbursement amount payment will be funded to the Trustee and together with unspent applicable PID Bond proceeds in the Project Fund (as defined in the PID Finance Agreements), will be used to fund the repayment of the applicable PID Bonds.

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

- i. the City, at its discretion, may draw down funds from the Project Fund to complete the component of the Water Project in question,
- ii. 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 Water 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 Water Project, will automatically without further action by the Developer become the property of the City,
- iii. the Developer will automatically forgo and release any claims or rights to those items listed in (ii) above, and
- iv. the City, at its discretion, may draw down on any Fiscal Security posted to complete such component of the Water Project.

2.16 Release and Return of Fiscal Surety. If Fiscal Security is required to be posted under this Agreement, 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 any line within the Water Project due to the default of the Developer);
- (b) if the City elects not to exercise its right and option to complete any line within the Water Project by commencing or resuming construction of said component within 1 year of the date of the City's notice to the Developer of the Developer's default; or

(c) upon final acceptance of the applicable component within the Water Project by the City, which acceptance shall not be unreasonably withheld, conditioned, or delayed.

#### 2.17 Reduction of Fiscal Surety.

(a) If the construction of the Water Project is to proceed on a component by component manner (as defined in the approved Plans and Specifications), the City agrees that the fiscal security posted by the Developer for a particular line may be reduced as the construction of that component thereof progresses in an amount equal to the Developer's payment to the contractor for that particular component thereof. At the written request of the Developer, and if the Developer is not then in default under this Agreement or the fiscal security or other obligations relating to the Water Project, and has provided documentation to the City that the payment has been made to the contractor for that component thereof of the Water Project, the City shall complete, execute, and deliver to the escrow agent a reduction letter indicating the amount paid by the Developer and documenting that the amount of the fiscal security has been reduced by stating the balance of the fiscal security remaining after the reduction described by the first sentence of this paragraph. The City shall not be required to authorize or process reductions in the fiscal security more frequently than every thirty (30) days.

(b) If the Developer posts its own cash as its form of Fiscal Security, then the funds shall be deposited for the applicable component into escrow with the City, and the City shall hold the same in trust in an interest bearing Escrow Account (herein so called) for the purposes described in this Agreement or, alternatively, the City and the Developer may select a reputable third-party financial institution acceptable to the City and the Developer to act as escrow agent (the "**Escrow Agent**"). 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 Water Project in a form acceptable to the City, the Developer, and the Escrow Agent, to set out the purposes of the escrow, the terms and conditions of the escrow (which, among other things, shall provide for deposit of the escrowed funds in an interest bearing account), and the conditions under which the City or the Developer may draw from the Escrow Account to pay all costs for construction of the respective line of the Water 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 a respective component of the Water 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

Notwithstanding any provision in this Agreement to the contrary, the Fiscal Security posted under an Escrow Agreement may be drawn upon by the Developer (upon the Developer's written request) as the construction of a particular line (or component thereof) of the Water Project progresses, but a request may not be made more than once every 30 days. All payments made from the Escrow Account to pay for construction of the respective component of the Water 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.

### III CITY'S CONSTRUCTION OF LINE 3

Subject to the terms and conditions of this Agreement, the City, at its sole cost, agrees to employ its procurement processes to engage one or more contractors to design and construct Line 3. 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. The City is responsible, at its cost, for obtaining any easements required to construct Line 3.

### IV FUNDING AND REIMBURSEMENT OF PROJECT COSTS

#### 4.01 Payment Schedule and Issues.

(a) The City and the Developer agree that:

(i) 100% of the Reimbursement Amount for Line 2 shall be paid within ninety (90) days of conditional acceptance of Line 2 provided that Line 2 is conditionally accepted and all the requirements specified in the following subsection 4.01(a)(iv), or elsewhere in this agreement are met;

(ii) 100% of the Reimbursement Amount for the components of Line 1 shall each be paid within ninety (90) days of conditional acceptance of each component provided that the particular component of Line 1 is conditionally accepted and all the requirements specified in the following subsection 4.01(a)(iv), or elsewhere in this agreement are met;

(iii) 100% of the Reimbursement Amount for any component the Alternative Line shall be paid within ninety (90) days of final acceptance of any component of the Alternative Line;

(iv) The City agrees that conditional acceptance shall not be unreasonably withheld, conditioned, or delayed; provided, however that (1) the infrastructure to be conditionally accepted by the City must be free and clear of all liens and encumbrances, any contractually required warranties must be in full force and effect, and any required paperwork and record drawings due to the City; or (2) if not, then the Director, at his sole discretion, is satisfied that the all of the City's interests are protected with regard to any liens and encumbrances on and warranties for the applicable infrastructure, and any required paperwork and record drawings due to the City. The terms of this subsection 4.01(a)(iv) are included pursuant to City Council Ordinance 09172015-008. To the extent that there are any inconsistencies between that Ordinance and this subsection 4.01(a)(iv), the terms of the Ordinance shall prevail.

(v) The City agrees that any additional funds expended by the Developer for Line 1 and/or Line 2 between conditional acceptance of Line 1 and/or Line 2 (as

applicable) and final acceptance of Line 1 and/or Line 2 (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 of Line 1 and/or Line 2 (as applicable).

(b) The CCN Release Fee has been paid to the Developer by the City.

(c) The Developer agrees to timely provide all information and documents reasonably required by the City for proper processing and for accurate accounting and documentation of actual project costs for the Reimbursement Amount and the CCN Release Fee and the City agrees to timely review, comment and process all information provided by the Developer. The City shall not be responsible for delays in payment, or any associated surcharges or late fees, 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. The City shall be held harmless by the Developer for any expenses, fees, or charges associated with events as a consequence of the Developer not fully complying with the terms and conditions of this Agreement.

(d) The Developer and City agree that the Developer may request a modification to the period described in Section 4.01 (a) of this Agreement for the City to reimburse the Developer. The Director or designee shall have sole discretion in such decision. If the Director or designee agrees to such a modification, the modification will be documented in writing as an amendment to this Agreement. The Developer represents, warrants, and agrees that it, its agents, affiliates, successors and assignees, shall not lobby, support, or request, in any form, a modification of the reimbursement period to the Austin City Council.

#### 4.02 City Repaid by Developer.

(a) The WV Developer shall repay the City that portion of the Maximum Reimbursement Amount that is associated with the CCN Release Fee, the WV Developer's share (i.e. 75%) of the non-oversizing portion of Line 1, and the non-oversizing portion of Line 2 (the **"WV First Repayment Amount"**). The WV Developer shall also repay the City that portion of the Maximum Reimbursement Amount that is associated with the non-oversizing portion of the Alternative Line (**"Alternative Line Repayment Amount"**). The IH Developer shall repay the City that portion of the Maximum Reimbursement Amount that is associated with the IH Developer's share (i.e. 25%) of the non-oversizing portion of Line 1 (the **"IH Repayment Amount"**). In other words, the terms **"WV First Repayment Amount"**, **"Alternative Line Repayment Amount"**, and **"IH Repayment Amount"**, as applicable, shall mean the maximum amount that would be repaid to the City by the applicable Developer assuming the Developer and the Trustee, in combination, have been paid the entire Maximum Reimbursement Amount.

The Developer agrees that once the exact dollar amounts (the **"Agreed Upon Amounts"**) for the IH Repayment Amount, Alternative Line Repayment Amount, and each component of the WV First Repayment Amount, are finalized by the Developer and approved by the City, such Agreed Upon Amounts shall be repaid to the City in accordance with the terms of this Agreement. The Developer shall have no further right to modify the Agreed Upon Amounts.

The Developer (as provided for in this paragraph) shall use its own funding source to pay for any costs exceeding the Agreed Upon Amounts.

The City will not be repaid for any portion of the Water Project that the City elected to oversize. The Developer shall repay the City through funds available to the Developer in addition to those obtained through the sale of property as discussed in Section 4.02.

(b) Upon a Third Party Sale of any portion of the IH Property, the IH Developer shall place the SSA related to the IH Project into escrow accounts with Heritage Title Company of Austin, Inc. ("**Escrow Agent**"). All or a portion of the SSA placed into escrow by the IH Developer shall be used to fund the IH Repayment Amount, or otherwise be disbursed as set forth in the IH Escrow Agreement (defined below). Timing and the amount of payments to the City will be such that repayment to the City of the IH Repayment Amount is the same as or shorter than the guaranty schedule provided in Section 4.03 below. The SSA shall be delivered to the Escrow Agent and disbursed as set forth herein and in the Escrow Agreement by and between Escrow Agent, the City and IH Developer dated November 2, 2011 (as may be amended from time to time, the "**IH Escrow Agreement**").

(c) Upon a Third Party Sale of any portion of the WV Property, the WV Developer shall place the SSA related to the WV Project into escrow accounts with the Escrow Agent. All or a portion of the SSA placed into escrow by the WV Developer shall be used to fund the WV First Repayment Amount and Alternative Line Repayment Amount, or otherwise be disbursed as set forth in the WV Escrow Agreement (defined below). Timing and the amount of payments to the City will be such that repayment to the City of the WV First Repayment Amount and Alternative Line Repayment Amount is the same as or shorter than the guaranty schedule provided in Section 4.03 below. The SSA shall be delivered to the Escrow Agent and disbursed as set forth herein and in the Escrow Agreement by and between Escrow Agent, the City and WV Developer dated November 3, 2011 (as may be amended from time to time, the "**WV Escrow Agreement**").

(d) The City Share shall be disbursed to the City to pay the IH Repayment Amount, WV First Repayment Amount, and Alternative Line Repayment Amount. If the IH City Share is greater than the IH Current Outstanding Balance, then the IH City Share shall be held in escrow and shall be disbursed to the City as set forth in the IH Escrow Agreement. If the WV City Share is greater than the WV Current Outstanding Balance, then the WV City Share shall be held in escrow and shall be disbursed to the City as set forth in the WV Escrow Agreement.

The IH Bond Share shall be held in escrow and shall be disbursed to the City (or become part of the City Share) on (i) the date the Senior Master PID Bonds related to the IH Project are no longer outstanding, or (ii) on the date of the Repayment Deadline (as defined herein) provided there is no Property Owner Delinquency or a Holding Period (as defined in the Escrow Agreement) then in effect and the Developer has not paid the City in full by the Repayment Deadline, or (iii) after the first Repayment Deadline (i.e., October 31, 2020) when the IH City Share and the IH Bond Share in total are sufficient to fully repay the IH Maximum Outstanding Balance to the City, provided there is no Property Owner Delinquency or a Holding Period then in effect. In all other circumstances or if a Property Owner Delinquency has occurred or a

Holding Period is then in effect, the IH Bond Share shall be disbursed as set forth in the IH Escrow Agreement.

The WV Bond Share shall be held in escrow and shall be disbursed to the City (or become part of the City Share) on (i) the date the Senior Master PID Bonds related to the WV Project are no longer outstanding, or (ii) on the date of the Repayment Deadline (as defined herein) provided there is no Property Owner Delinquency or a Holding Period then in effect and the Developer has not paid the City in full by the Repayment Deadline, or (iii) after the first Repayment Deadline (i.e., October 31, 2020) when the WV City Share and WV Bond Share in total are sufficient to fully repay the WV Maximum Outstanding Balance (excluding the Alternative Line portion of the WV Maximum Outstanding Balance) to the City, provided there is no Property Owner Delinquency or a Holding Period then in effect, or (iv) after the first Repayment Deadline (i.e., October 31, 2020) when the WV City Share and WV Bond Share in total are sufficient to fully repay the portion of the WV Maximum Outstanding Balance related to the Alternative Line to the City, provided there is no Property Owner Delinquency or a Holding Period then in effect. In all other circumstances or if a Property Owner Delinquency has occurred or a Holding Period is then in effect, the WV Bond Share shall be disbursed as set forth in the WV Escrow Agreement.

#### 4.03 Guaranty of Payment.

The WV Developer or its Designated Successor or Assign shall guarantee the repayment to the City of the WV First Repayment Amount and the Alternative Line Repayment Amount.

The IH Developer or its Designated Successor or Assign shall guarantee the repayment to the City of the IH Repayment Amount.

For each reimbursement amount paid by the City to the Trustee for WW Soft Costs, CCN Release Fee, Line 1, Line 2, and the Alternative Line, the applicable Developer will ensure the repayment to the City of the IH Repayment Amount, WV First Repayment Amount, and Alternative Line Repayment Amount (up to the Reimbursement Amount paid by City) as follows (“**Repayment Deadline**”):

<b>October 31, 2020</b>	CCN Release Fee	WV Developer
<b>October 31, 2025</b>	IH Developer’s share of Line 1 WV Developer’s share of Line 1	IH Developer WV Developer
<b>October 31, 2030</b>	Line 2	WV Developer
<b>5 years after City’s acceptance of entire Alternative Line (Line 5 or both Line 6A and 6B)</b>	Alternative Line	WV Developer



If a Developer does not timely repay the City in accordance with the schedule set forth above, then the City may at its sole discretion, until such default is cured:

- i. (x) refuse to issue any more PID Bonds for the applicable Developer's Property, and/or (y) cause the Trustee to hold the proceeds of any bonds for that Developer until such time as the applicable Developer pays such past due amounts to the City; provided, however, if the City elects, at its option, to issue more PID Bonds, the City agrees to release the portion of the proceeds of such PID Bonds necessary to pay off the Senior Master PID Bonds encumbering the portion of the Developer's Property for which the PID Bonds are issued; and
- ii. charge interest at a rate of 4% per annum on such past due amount, beginning on the date such amount was due and ending on the date the past-due amount is paid. Such remedy is in addition to any other remedies allowed in this Agreement.

The City shall be held harmless by the Developer, and its Designated Successor or Assign, from any penalties or fees associated with the City's actions stated in this Section.

If the Developer submits a Request (defined below) for the issuance of PID Bonds for a component of the Water Project or CCN Release Fee and the City does not subsequently issue the PID Bonds, then the requesting Developer's Repayment Deadline for that same component of the Water Project shall be extended for the same period of time until the date that City approves such Request. However, the Developer shall not be released of the obligation to guarantee to repay the City for the other portions of the IH Repayment Amount, WV First Repayment Amount, and Alternative Line Repayment Amount. For purposes herein, a "**Request**" shall mean a written request made by the Developer to the City Manager and City's Chief Financial Officer, accompanied by reasonable documentation required by the City. The City will use reasonable and good faith efforts to sell bonds after receiving a valid Request from the Developer, provided that the Developer can reasonably demonstrate to the City and its financial advisors via a Feasibility and Market Study Analysis (or such other similar documentation) that there is sufficient security for the PID Bonds, based upon the bond market existing at the time of such proposed sale. PID Bonds may not be issued under this Section unless:

- i. the statutory requirements set forth in Chapter 372 of the Texas Local Government Code have been satisfied;
- ii. the City receives at the time of issuance an opinion of counsel selected by the City stating in effect that the PID Bonds are legal and valid under Texas law and that all preconditions to their issuance under State and Federal law have been satisfied; and
- iii. the Attorney General of the State of Texas has approved the issuance of the PID Bonds as required by the PID Act.

Any Request not meeting the above requirements shall not be considered valid and will not affect the Developer's Repayment Deadline, or IH Repayment Amount, WV First Repayment Amount, and Alternative Line Repayment Amount.

#### 4.04 Report of Project Costs Required.

(a) Within 30 days of acceptance of the applicable component of the Water Project, the Developer will submit a written report to the Director of the total costs incurred by the Developer for such applicable line of the Water Project that includes supporting information documenting all amounts paid for which reimbursement is claimed and verifying that the Developer has complied with all other requirements of this Agreement in the construction of the applicable component of the Water 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 applicable line of the Water Project under this Agreement. If the Director determines the Developer's report to be incomplete or otherwise insufficient to determine the actual costs eligible for reimbursement, the Director will notify the Developer of the particulars in which its documentation is deficient within 30 days of the date the Developer 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 the Developer in writing of any deficiencies within such 30-day period, the Developer's report shall be deemed approved by the Director.

(b) Notwithstanding anything to the contrary, the Parties hereby acknowledge that if the City elects to assume the construction management role and elects to direct the close out of the unpaid expenses for the uncompleted components of the Water Project secured by the applicable PID Bonds as provided in Section 2.16 above, then the City will pay the Reimbursement Amount to the Trustee as contemplated in Section 2.16 above, despite the fact that the given component of the Water Project has not been completed and finally accepted by the City. The Reimbursement Amount so paid will be calculated on the total PID-eligible costs incurred by the Developer to date for the applicable component of the Water Project as determined by the Director based on contracts, invoices, bills paid affidavit, City reimbursement eligible costs, and related materials submitted to the City by the Developer (and accepted by the City) throughout the construction process. It is hereby further acknowledged that any additional funds expended by the City in order to close out uncompleted components of the Water 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 on a dollar per dollar basis.

4.05 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.

#### 4.06 Restriction on Property.

(a) Transfer Restriction Document. A Notice Regarding Transfer Restrictions and Requirements has been recorded in the Official Public Records of Travis County, Texas, for both the WV Project (Document No. 201101872) and the IH Project (Document No. 201101872) (collectively, the “**Transfer Restriction Document**”). The Transfer Restriction Document provides notice to the future landowners and the Escrow Agent that upon a Third Party Sale of all or any portion of the Property, the WV Developer is required to place in escrow the WV City Share and WV Bond Share and the IH Developer is required to place in escrow the IH City Share and IH Bond Share from any such Third Party Sale or such sale transaction or transfer of land cannot be completed.

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

- i. upon completion of a Third Party Sale, the City shall release the portion of the Property which was the subject of such sale;
- ii. after the Senior Master PID Bonds related to the IH Project are no longer outstanding, upon IH Developer (or its Designated Successor or Assign) and the City agreeing that there are sufficient funds held in escrow to equal the IH Maximum Outstanding Balance, the IH Developer may release all remaining IH Property (as further described in the IH Escrow Agreement);
- iii. after the Senior Master PID Bonds related to the WV Project are no longer outstanding, upon WV Developer (or its Designated Successor or Assign) and the City agreeing that there are sufficient funds held in escrow to equal the WV Maximum Outstanding Balance, the WV Developer may release all remaining WV Property (as further described in the WV Escrow Agreement);
- iv. upon IH Developer (or its Designated Successor or Assign) fully repaying the City the IH Repayment Amount, and the City concurring that the City has been fully repaid, the IH Developer may release all remaining IH Property (as further described in the IH Escrow Agreement); and
- v. upon WV Developer (or its Designated Successor or Assign) fully repaying the City the WV Repayment Amount and the Alternative Line Repayment Amount, and the City concurring that the City has been fully repaid, the WV Developer may release all remaining WV Property (as further described in the WV Escrow Agreement).

(c) Escrow Agent; Escrow of SSA. 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 set forth in the WV Escrow Agreement and IH Escrow Agreement, respectively.

Escrow Agent shall promptly disburse the SSA as described in the WV Escrow Agreement and IH Escrow Agreement; provided however, that the amount released to the City for the IH Repayment Amount shall not exceed the IH Current Outstanding Balance and the amount released to the City for the WV First Repayment Amount and Alternative Line Repayment Amount shall not exceed the WV Current Outstanding Balance.

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

The amount of IH City Share that exceeds the IH 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 IH 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 IH Escrow Agreement (but in no event shall any amounts be released to the City in excess of the IH Current Outstanding Balance). The amount of WV City Share that exceeds the WV 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 WV 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 Escrow Agreement (but in no event shall any amounts be released to the City in excess of the WV Current Outstanding Balance). For example, if the WV Developer has delivered \$10 million dollars toward the WV City Share to the Escrow Agent and the City has only delivered to the Trustee \$2 million dollars of reimbursement funds related to the WV Project, then the Escrow Agent would only release \$2 million dollars to the City and \$8 million dollars would remain in that escrow. If later the City delivers to the Trustee \$5 million dollars of reimbursement funds related to the WV Project, then the Escrow Agent would release \$5 million dollars to the City and retain the remaining \$3 million dollars 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 IH Project in an amount equal to the IH Maximum Outstanding Balance, then the IH 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 IH Project exceeding the IH Maximum Outstanding Balance. If at any time such escrowed funds are less than the IH Maximum Outstanding Balance (due to disbursement of the IH Bond Share as provided for in the Escrow Agreement to cure a Property Owner Delinquency), then the IH Developer (or its Designated Successor or Assign) shall resume escrowing the IH City Share and IH Bond Share until the funds held in escrow equal the IH Maximum Outstanding Balance.

During any such time as the Escrow Agent is holding funds related to the WV Project in an amount equal to the WV Maximum Outstanding Balance, then the WV 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 WV Project exceeding the WV Maximum Outstanding Balance. If at any time such escrowed funds are less than the WV Maximum Outstanding Balance (due to disbursement of the WV Bond Share as provided for in the Escrow Agreement to cure a Property Owner Delinquency), then the WV Developer (or its Designated Successor or Assign) shall resume escrowing the WV

City Share and WV Bond Share until the funds held in escrow equal the WV Maximum Outstanding Balance.

Notwithstanding anything to the contrary, the Bond Share shall only be released to the Trustee to offset a Property Owner Delinquency if the Delinquency Reserve Account is insufficient to cure such Property Owner Delinquency. Under no circumstances shall the City Share 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, for each Developer, 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 30<sup>th</sup> of each year to the Director.

## V MAINTENANCE OF FACILITIES

5.01 City to Own, Operate, and Maintain Water Project. Upon completion of any component of the Water Project and internal facilities (i.e., water infrastructure located within the Property and designated on City approved construction plans for City ownership) by the Developer and City's inspection and acceptance of same, the City will automatically own, operate, and maintain such line of the Water Project and internal facilities as part of the City's water system and shall be responsible for all future costs associated with same. Notwithstanding the above, if required to facilitate the PID, the Developer and the City hereby agree to enter into any acquisition agreements, installment sales contracts or other similar type agreements regarding the Water Project and/or internal facilities so that the intent of this Section of the Agreement is achieved.

5.02 Developer's Delivery of Instruments of Transfer, Other Project Documentation. Within 15 days after the completion and acceptance of any component of the Water Project, the Developer agrees to execute and deliver to the City such bills of sale, assignments, or other instruments of transfer 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 the Developer for said facilities have been paid for by the City. Within said 15 day period, the Developer will also deliver to the City all bonds, warranties, guarantees, and other assurances of performance, record drawings, easements, designs, specifications, project manuals and all other documentation related to such line of the Water Project that is within the custody and control of the Developer.

5.03 No Liens Permitted. The 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 Water Project including, without limitation, all costs for engineering, design, construction (including inspection fees), project management, financing, interest, fiscal security, insurance, and all other costs for labor, materials, and services relating to the Water Project. The Developer will not cause, suffer, or permit the filing, perfection, or execution of any lien or other encumbrance against the Water 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 Water Project. However, if any lien or other encumbrance is filed against the Water Project, or any part of it, due to work performed or materials furnished by or at the request of the Developer, the 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 (or will adequately bond around said lien) within 30 days after the filing or perfection thereof, unless the parties mutually agree in writing to additional time. The Developer agrees that the City will not accept any improvement burdened by any lien or other encumbrance and the City will not be obligated to provide water utility service to the Property until the lien or encumbrance is removed (or adequately bonded around).

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

## VI PROVISION OF UTILITY SERVICE FROM THE PROJECT

6.01 City's Policies and Ordinances Apply to Service Within the Property. The Parties agree that upon conditional acceptance of \ Line 1 by the City, the City will provide water utility service to customers within Indian Hills in the amount of 1,635 LUEs, subject to the City's policies and ordinances, as amended. The Parties agree that upon conditional acceptance of Line 2, the City will provide water utility service to customers within Whisper Valley in the amount of 1,500 LUEs, subject to the City's policies and ordinances, as amended. Upon final acceptance of the Alternative Line, the City will provide water utility service to customers within Whisper Valley in the additional amount of 6,770 LUEs, for an aggregate of 8,270 LUEs, subject to the City's policies and ordinances, as amended. Nothing in this Agreement will be construed to limit, restrict, modify, or abrogate the City's governmental authority or ordinances respecting the operation and maintenance of its water systems nor its duty to provide at all times for the public health, safety, and welfare in the operation and maintenance of the same.

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

(a) subject to Section 6.01 above, 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 Water Project, whether total or partial, after final acceptance of the Water Project by the City;

(b) this Agreement does not exempt the Developer from the requirements of any ordinance applicable to development within the Property unless expressly provided for herein or in the Master Development Agreement;

(c) this Agreement sets out terms and conditions for cost reimbursement for the Line 1, Line 2, and the Alternative Line, 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

(d) 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 Water Project and internal facilities of the project, or any portion thereof, after final acceptance of the Water Project and internal facilities by the City.

6.03 Transfer of Service Commitment Prohibited. This Agreement and the commitment for water service set forth herein for development of the Property only. The Developer may not assign or transfer, in whole or in part, the commitment for water service set forth herein or its rights and obligations under this Agreement to any other property or development. The Developer has no right to limit the City in its access to, or use of, the lines constituting the Water Project nor in its provision of water service to other customers through any of the water facilities it constructs or acquires. The Developer may enter into agreements with other developers or other entities to share in the cost of water infrastructure, or other costs associated with the Water Project or other water which may be of common benefit to the Property and such other developers. The Developer may not withhold access to any component of the Water Project.

## VII GENERAL PROVISIONS

7.01 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) number of days refers to calendar days except where otherwise specified.

7.02 Notice of Default; Opportunity to Cure. If one Party believes that the other Party is in Default (herein so called) of any other provision of this Agreement, the nondefaulting Party will give written notice to the other Party ("**Default Notice**"), specifying the event of Default and extending the defaulting Party 30 days to cure the Default (unless a longer period is provided elsewhere in this Agreement) 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 nondefaulting Party may initiate any remedies available to the nondefaulting Party due to an alleged Default. The nondefaulting 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 nonbinding 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 nondefaulting Party may pursue all remedies, at law or in equity, that it deems appropriate to redress such Default. This 30-day period for notice and opportunity to cure must pass before the nondefaulting Party may initiate any remedies available to the nondefaulting Party due to an alleged Default. The nondefaulting 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 nonbinding 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, including the right of the City to withhold water service to any portion of the Whisper Valley Property not receiving water service if the WV Developer is in default and to withhold water service to any portion of the Indian Hills Property not receiving water service if, the IH Developer is in default until any such default is cured.

Notwithstanding the foregoing, a default by the WV Developer or the City under this Agreement with respect to Whisper Valley that does not affect or involve the IH Developer shall not constitute a default by the IH Developer with respect to Indian Hills, and in such event, the terms of this Agreement shall remain in full force and effect and bind the City and the IH Developer in all respects as this Agreement affects Indian Hills. A default by the IH Developer or the City under this Agreement with respect to Indian Hills that does not affect or involve the WV Developer shall not constitute a default by the WV Developer with respect to Whisper Valley, and in such event, the terms of this Agreement shall remain in full force and effect and bind the City and the WV Developer in all respects as this Agreement affects Whisper Valley.

Also, notwithstanding the above, if the City believes that the WV Developer or the IH Developer is in default under this Agreement, the City shall concurrently send the nondefaulting Developer a copy of the Notice provided to the defaulting Developer and the nondefaulting Developer shall



have the right, but not the obligation to cure said default pursuant to the terms of this Agreement, including the right to complete applicable portions of the Water Project.

If either party terminates this Agreement for any reason permitted by this Agreement or applicable law, or the Developer does not obtain substantial completion of the portion of a Water Project required to service a particular phase of development within any tract within the Property, then the City will have no obligation to provide Water service to that phase of development within the Property not currently receiving water service until the portion of the Water 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 (after the period to cure the default has expired), 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 4.03 above shall be secured by a lien on the applicable Developer's 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 Developer's Property; a description of the amount of the lien claim at that time (i.e., applicable 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 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 fourteen (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 Current Outstanding Balance was paid. For example, if the WV Current Outstanding Balance equals \$3,000,000, and there are 1,000 acres owned by the WV Developer at the time of such Lien Claim, then the lien amount would be applied to each acre in the amount of \$3,000 per acre. If the WV Developer sells 150 acres and pays a total of \$450,000 to the City (\$3,000 per acre multiplied by 150 acres), then the City will release such Lien Claim from the 150 acre parcel and the Lien Claim of \$2,550,000 would remain on the remainder of the Property then owned by the WV Developer. At such time as the WV Current Outstanding Balance is paid in full, then the Lien Claim is released on the remainder of the WV Property.

**7.03 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. As stated in the recitals above, this Agreement supersedes and replaces in its entirety the Restatement of CRA.

7.04 Amendment. No amendment of this Agreement will be effective until the amendment has been reduced to writing, each Party has duly approved it, and it is signed by the authorized representatives of the Parties. In addition, as long as WV Developer owns any portion of Whisper Valley, WV Developer (or WV Developer's Designated Successors and Assigns) and the City may amend those Sections of this Agreement applicable only to Whisper Valley without the joinder of the IH Developer or any other landowner. In addition, as long as IH Developer owns any portion of Indian Hills, IH Developer (or IH Developer's Designated Successors and Assigns) and the City may amend those Sections of this Agreement applicable only to Indian Hills without the joinder of the WV Developer or any other landowner. Any amendment will incorporate this Agreement in every particular not otherwise changed by the amendment.

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

7.06 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.

7.07 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.

7.08 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.

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

7.10 Severability. The provisions of this Agreement are severable. If any court of competent jurisdiction will 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.

7.11 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. This 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, its agents, affiliates, successors and assignees of their obligation to make payment to the City as provided in this Agreement.

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

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

7.14 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:

Whisper Valley  
Developer:

Club Deal 120 Whisper Valley, Limited Partnership  
c/o Douglas H. Gilliland  
9285 Huntington Square  
North Richland Hills, Texas 76182  
Fax: 817-788-1670

With copy to:

Metcalfe 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

IH Developer:

Club Deal 116 Indian Hills Tx, Limited Partnership  
c/o Douglas H. Gilliland  
9285 Huntington Square

North Richland Hills, Texas 76182  
Fax: 817-788-1670

With copy to: Metcalfe 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

City: City of Austin  
PO Box 1088  
Austin, Texas 78767  
Attn: City Manager  
Fax: 512-974-2833

Austin Water  
P.O. Box 1088  
625 E. 10<sup>th</sup> Street  
Austin, Texas 78767-1088  
Attn: Director  
Fax: 512-972-0111

With copy to: City of Austin  
PO Box 1088  
Austin, Texas 78767  
Attn: City Attorney  
Fax: 512-974-6490

The parties will 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.

7.15 Conflict. In the case of any conflict between this Agreement and the Master Development Agreement, or any agreement related to the provision of water service to the Property this Agreement controls.

7.16 Assignment.

(a) The rights and obligations of the City under this Agreement may not be assigned or transferred unless the assets constituting the Water Project are sold by the City, at its sole discretion, 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) Subject to subparagraphs (c) and (d) below, the Developer may assign this

Agreement with respect to all or part of the Property from time to time to any party, so long as the assignee has demonstrated to the City, whose approval shall not be unreasonably withheld, conditioned, delayed or denied, that the assignee has the financial and managerial capacity, the experience, and expertise to perform any duties or obligations so assigned and so long as the assigned rights and obligations are assumed without modifications to this Agreement. The Developer shall provide the City 30 days prior written notice of any such assignment. Upon such assignment or partial assignment, the Developer shall be fully released from any and all obligations under this Agreement and shall have no further liability with respect to this Agreement for the part of the Water Project so assigned.

(c) The provisions of this Agreement concerning the water 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 7.16. 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 in accordance with the parameters set forth in Section 7.16(b) for such sale and assignment;
- (ii) the conveyance or transfer is for all WV Property then owned by WV Developer, if related to the WV Property; or all IH Property then owned by the IH Developer, if related to the IH Property; 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 IH Repayment Amount, WV First Repayment Amount, and Alternative Line Repayment Amount within the Repayment Deadline.

(d) Except as provided in the subpart (c) above, the Developer and all future owners of all or any portion of the Project, including, without limitation, any affiliates of the Developer to which all or any portion of the Property is conveyed or contributed, shall have the benefits of this Agreement, and the Property may be developed as set forth herein without notice or approval to the City (except as provided in subparagraph (b) above); provided, however, that this

Agreement may be amended as otherwise set forth herein. In the case of nonperformance by one owner, the City may pursue all remedies against that nonperforming owner, but will not impede development activities of any performing owner as a result of that nonperformance unless and to the limited extent that such nonperformance pertains to a City requirement that also is necessary for the performing owner's project, which performing owner may also pursue remedies against the nonperforming owner.

(e) Unless expressly stated in the assignment documentation, no assignment of any rights and/or obligations of the Developer under this Agreement shall be deemed an assignment of (i) the Developer's rights to receive proceeds from the sale of PID bonds on the Project or (ii) the Developer's right to receive the reimbursements set forth in this Agreement.

The City represents and warrants that the Assistant City Manager has the requisite authority to consent to any such assignment of this Agreement.

#### 7.17 Binding Obligation; Releases; Estoppel.

(a) Binding Obligation. Subject to Section 7.16 above, 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 for which the portion of the Water Project, and any other additional water facilities, required to provide water service to the lot has been completed and accepted by the City.

(b) 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 the 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.

#### 7.18 Effective Date. This Agreement will be effective upon due execution by all parties.

7.19 Assessment Payments. Subject to approval by the Trustee (which the City will diligently pursue), the City hereby agrees that the amount of any Special Assessment payment due under the Subordinate Master PID Bonds that is paid by the Developer, but was intended to be paid by a reimbursement payment from the City pursuant to this Agreement, shall be refunded to the Developer by the Trustee upon the full payment of the entire amount of Subordinate Master PID Bonds. If required by the Trustee, the City shall provide written instructions to the Trustee directing Trustee to refund such amounts to the Developer.

## VIII DEFINITIONS

8.01 Definitions. Unless the context requires otherwise, and in addition to the terms defined above, each of the following terms and phrases used in this Agreement has the meaning ascribed thereto below:

**“Component”** means a distinct portion of a particular facility within the Water Project. For example, Line 1A is a “component” of Line 1.

**“Conditional acceptance”** or **“conditionally accepted”** means all work for a particular component of the Water Project has been completed, tested, and inspected and is ready to be placed into service for its intended purpose, however re-vegetation has not been established. “Conditional Acceptance” shall be evidenced by a “conditional acceptance letter” issued by the Development Services Department of the City or its successor department with the concurrence of Austin Water. The City will issue the conditional acceptance letter upon the Developer (1) posting a revegetation bond for the benefit of the City and/or a performance bond for any other outstanding issues (as determined by the Director pursuant to Section 4.01(a) above, if necessary or required), and (2) providing all required paperwork by the City and final record drawings of the particular component of the Water Project that has been provided to the City. To the extent that this section conflicts with City of Austin Ordinance 09172015-008, the terms of the Ordinance shall control.

**“Current Outstanding Balance”** shall mean an amount equal to the then-current IH Repayment Amount, WV First Repayment Amount, and Alternative Line Repayment Amount due by the Developer to the City (based on the portion of the Maximum Reimbursement Amount delivered by the City to the Trustee or the WV Developer as of the then-current date) less the portion of the IH Repayment Amount, WV First Repayment Amount, and Alternative Line Repayment Amount repaid to the City by the Developer as of such date. The **“IH Current Outstanding Balance”** shall mean an amount equal to the then-current IH Repayment Amount due by the IH Developer to the City (based on the portion of the Maximum Reimbursement Amount related to the IH Developer’s share of Line 1 delivered by the City to the Trustee as of the then-current date) less the portion of the IH Repayment Amount repaid to the City by the IH Developer as of such date. The **“WV Current Outstanding Balance”** shall mean an amount equal to the then-current WV First Repayment Amount and Alternative Line Repayment Amount due by the WV Developer to the City (based on the portion of the Maximum Reimbursement Amount related to the CCN Release Fee, the WV Developer’s share of Line 1, Line 2, and Alternative Line delivered by the City to the Trustee or the WV Developer as of the then-current date) less the portion of the WV First Repayment Amount and Alternative Line Repayment Amount previously repaid to the City by the WV Developer as of such date.

**“Indenture”** shall mean any trust indenture by and between the City and the Trustee (as defined in the PID Finance Agreement) relating to the Senior Master PID Bonds, as it may be amended from time to time.

**“Maximum Outstanding Balance”** shall mean an amount equal to the difference between (1) the IH Repayment Amount, WV First Repayment Amount, and the Alternative Line Repayment Amount, and (2) the portion of the IH Repayment Amount, WV Repayment Amount, and Alternative Line Repayment Amount that has been repaid to the City by the Developer as of the then-current date. The **“IH Maximum Outstanding Balance”** shall mean an amount equal to the difference between the IH Repayment Amount and the portion of the IH Repayment Amount that has been repaid to the City by the IH Developer as of the then-current date. The **“WV Maximum Outstanding Balance”** shall mean an amount equal to the difference between the WV First Repayment Amount and Alternative Line Repayment Amount, and the portion of the WV First Repayment Amount and Alternative Line Repayment Amount that has been repaid to the City by the WV Developer as of the then-current date.

**“PID Bonds”** means collectively the Senior Master PID Bonds and the Subordinate Master PID Bonds.

**“PID Finance Agreements”** collectively means The Whisper Valley Public Improvement District Finance Agreement dated November 1, 2011 and the Indian Hills Public Improvement Finance Agreement dated November 1, 2011.

**“Project Fund”** has the meaning ascribed in the PID Finance Agreements.

**“Property Owner Delinquency”** shall mean the occurrence of the following events: (1) an owner of any portion of the Property fails to timely pay an assessment payment; and (2) the funds then held in the Cashflow Delinquency Reserve Account (defined in the Indenture) are insufficient to cure the assessment delinquency, so there is a potential need to draw on the Bond Reserve Fund (defined in the Indenture).

**“SSA”** (sales set aside) shall be an amount equal to:

1. the net proceeds received by the Developer on a Third Party Sale multiplied by fifteen percent (15%) (**“WV Bond Share”** for those Senior Master PID Bonds related to the WV Project, **“IH Bond Share”** for those Senior Master PID Bonds related to the IH Project, and collectively as the **“Bond Share”**) until the Senior Master PID Bonds for the applicable Project are no longer outstanding. When those Senior Master PID Bonds are no longer outstanding, any remaining amount of funds in the Bond Share shall be transferred to the City Share funds for repayments to the City; plus
2. the net proceeds received by the Developer on a Third Party Sale multiplied by twenty percent (20%) (**“WV City Share”** for those Third Party Sales related to the WV Project (which includes the CCN Release Fee), and **“IH City Share”** for those Third Party Sales related to the IH Project, and collectively as the **“City Share”**) until the WV First Repayment Amount and IH Repayment Amount for the Developer has been paid in full to the City or the Maximum Outstanding Balance, as defined herein (excluding the



Alternative Line portion of the WV Maximum Outstanding Balance) for the Developer is held in escrow by the Escrow Agent (as hereinafter defined) for the benefit of the City. Thereafter, the City Share shall be reduced to fifteen percent (15%) of the net proceeds received by the Developer on a Third Party Sale until the Alternative Line Repayment Amount is paid in full to the City or the WV Maximum Outstanding Balance related to the Alternative Line is held in escrow.

For example, initially, the SSA shall be equal to thirty five percent (35%). Once the Senior Master PID Bonds are no longer outstanding, then the SSA shall be reduced to 20%. At such time as the WV First Repayment Amount and the IH Repayment Amount are fully paid to the City or the Maximum Outstanding Balance (excluding the Alternative Line portion of the WV Maximum Outstanding Balance) is held in escrow, then the SSA shall equal 15%. **“Senior Master PID Bonds”** means collectively the City of Austin, Texas Special Assessment Revenue Bonds, Senior Series 2011 (Whisper Valley Public Improvement District) and the City of Austin, Texas Special Assessment Revenue Bonds, Senior Series 2011 (Indian Hills Public Improvement District).

**“Subordinate Master PID Bonds”** means collectively the City of Austin, Texas Special Assessment Revenue Bonds, Subordinate Series 2011 (Whisper Valley Public Improvement District) and the City of Austin, Texas Special Assessment Revenue Bonds, Subordinate Series 2011 (Indian Hills Public Improvement District).

**“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 of the remaining portion of the Property to (C) a Designated Successor or Assign (as defined in Section 7.16(c) below) shall not be considered a Third Party Sale. If the Developer has transferred or conveyed all of the 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.

**“Trustee”** has the meaning ascribed in the PID Finance Agreements.

#### List of Exhibits

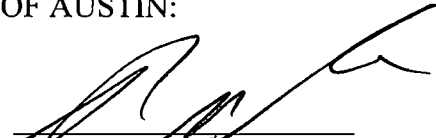
Exhibit A - Whisper Valley Property

- Exhibit A-1 - Indian Hills Property
- Exhibit B - Depiction of Water Project/Phasing Schedule
- Exhibit C - Form of Easement

[Signature Pages Follow]

CITY OF AUSTIN:

By:

  
Robert Goode, P.E.  
Assistant City Manager

Date:


10/22/15

STATE OF TEXAS )

COUNTY OF TRAVIS )

THIS INSTRUMENT was acknowledged before me on this 22<sup>nd</sup> day of October, 2015, 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 116 INDIAN HILLS TX, LIMITED  
PARTNERSHIP, a Delaware limited partnership  
qualified to do business in Texas

By: CD116 Indian Hills TX, LLC, a Delaware  
limited liability company

Its: General Partner

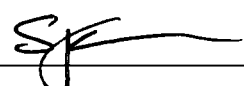
By:   
Douglas H. Gilliland, Manager

STATE OF TEXAS       )  
                                  )  
COUNTY OF TRAVIS    )

THIS INSTRUMENT was acknowledged before me on this 21<sup>st</sup> day of OCTOBER, 2015, by Douglas H. Gilliland, Manager of CD116 Indian Hills TX, LLC, a Delaware limited liability company, general partner of Club Deal 116 Indian Hills TX, Limited Partnership, a Delaware limited partnership, on behalf of that limited liability company and limited partnership.

(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

Its: General Partner


By:   
Douglas H. Gilliland, Manager

STATE OF TEXAS       )  
                                  )  
COUNTY OF TRAVIS    )

THIS INSTRUMENT was acknowledged before me on this 21<sup>st</sup> day of OCTOBER, 2015, 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 that limited liability company and limited partnership.

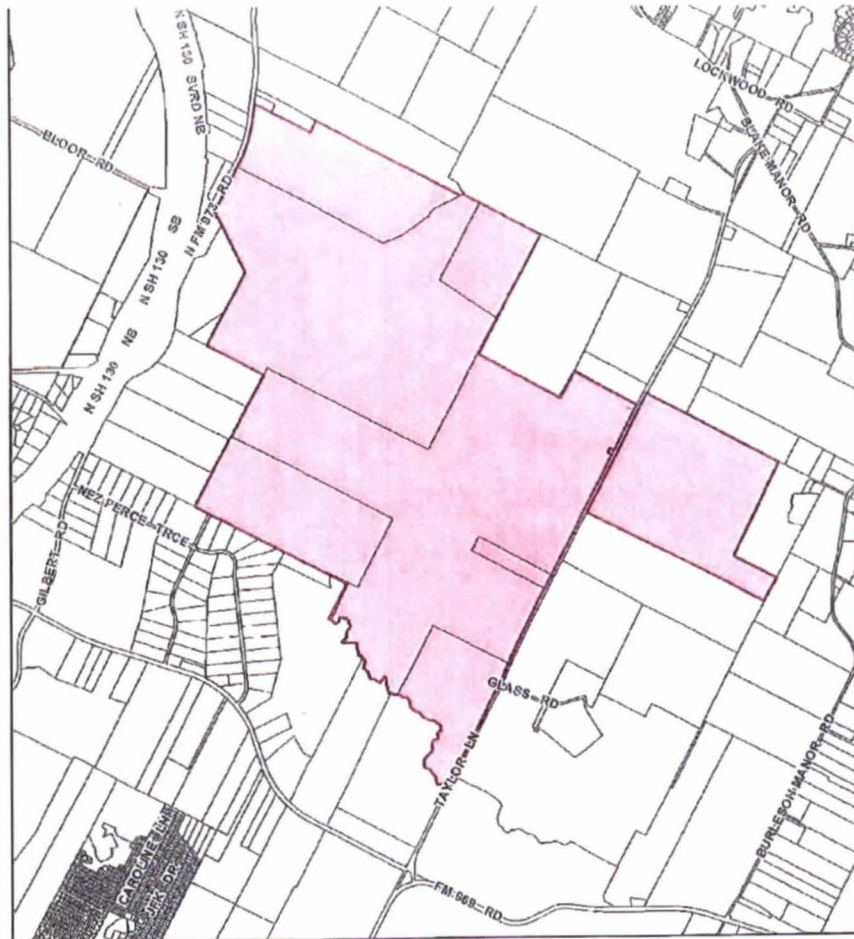
(SEAL)






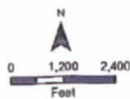
  
\_\_\_\_\_  
Notary Public, State of Texas

## EXHIBIT A

### Whisper Valley Property



-  Whisper Valley
-  Full-Purpose City Limit
-  City of Austin ETJ



City of Austin  
Austin Water Utility  
October 2010



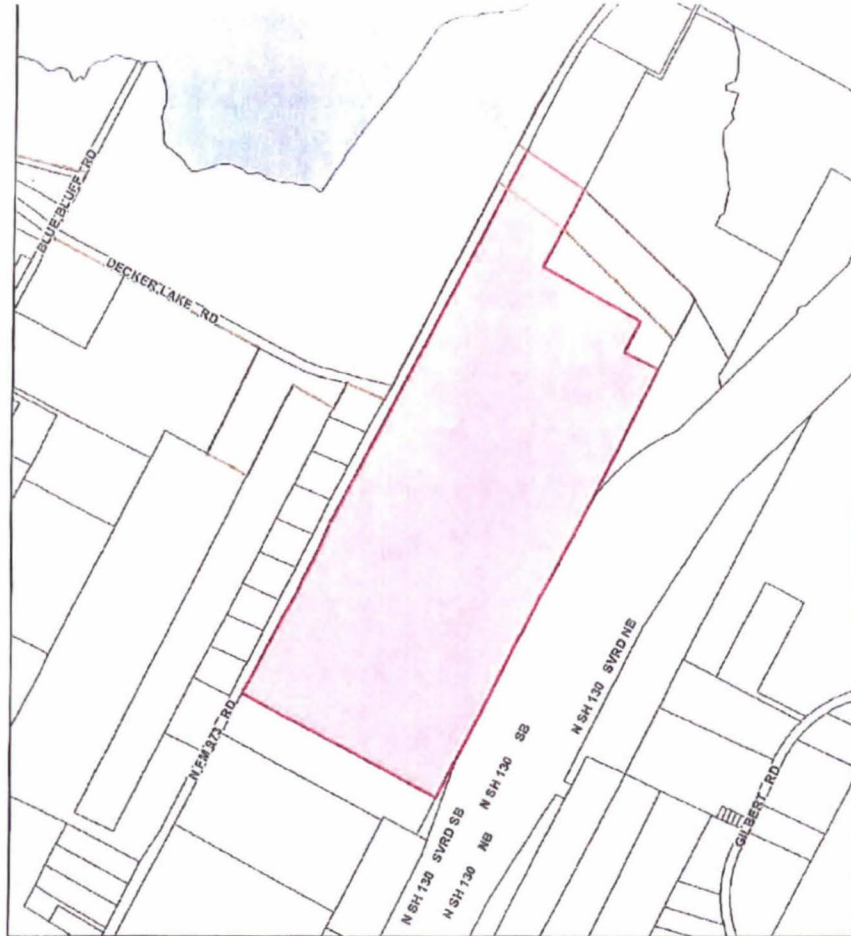
### Whisper Valley Properties




Produced by GIS Services

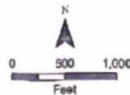
This map has been prepared for the City of Austin for its records and purposes and is not warranted for any other use. Its accuracy is made by the City regarding its accuracy or completeness.

## EXHIBIT A-2

### Indian Hills Property



-  Indian Hills
-  Full-Purpose City Limit
-  City of Austin ETJ



City of Austin  
Austin Water Utility  
October 2010



### Indian Hills Properties

Produced by GIS Services

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

## EXHIBIT B

### Depiction of Water Project/Phasing Schedule





## EXHIBIT C

### Form of Easement

MAPSCO Page \_\_\_\_\_  
Grid \_\_\_\_\_

#### WATER LINE EASEMENT

THE STATE OF TEXAS            )  
  )     **KNOW ALL BY THESE PRESENTS:**  
COUNTY OF TRAVIS            )

**THAT** \_\_\_\_\_, of \_\_\_\_\_, Travis County, Texas, "Grantor" whether one or more, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, to Grantor in hand paid by the CITY OF AUSTIN, TEXAS, the receipt and sufficiency of which is acknowledged and confessed and for which no lien, express or implied, is retained, does GRANT, SELL, and CONVEY to the CITY OF AUSTIN, a municipal corporation, situated in the Counties of Travis, Hays, and Williamson, State of Texas, and whose address is P.O. Box 1088, Austin, Texas 78767-8839, ATTN: Director, Austin Water Utility and its successors and assigns ("Grantee") an easement for the construction, operation, maintenance, repair, replacement, upgrade, decommissioning, and removal of water lines and associated appurtenances and making connections therewith in, upon, over, and across the following described land.

That tract, piece, or parcel of land, situated in Travis County, Texas, described in EXHIBIT A attached hereto and made a part hereof for all purposes ("Easement Tract").

**TO HAVE AND TO HOLD** the same perpetually to the City of Austin and its successors and assigns together with the right and privilege at all times to enter the Easement Tract, or any part thereof, for the purpose of construction, operation, maintenance, repair, replacement, upgrade, decommissioning and removal of water lines and associated appurtenances and making connections therewith provided, however, that Grantor reserves the right to enter upon and use the Easement Tract but in no event shall Grantor (i) use the Easement Tract in any manner that interferes in any material way or is inconsistent with the rights granted hereunder, or (ii) erect or permit to be erected a building, structure, or irrigation systems on any portion of the Easement Tract. Grantee shall be obligated to restore the surface of the easement at Grantee's sole cost and expense, including the restoration of any sidewalks, driveways, or similar surface improvements located upon or adjacent to the Easement Tract which have been removed, relocated, altered, damaged, or destroyed as a result of Grantee's use of the Easement granted hereunder. provided, however, that Grantee shall not be obligated to restore or replace irrigation systems or other improvements installed in violation of the provisions of this Easement

Grantor covenants and agrees to WARRANT AND FOREVER DEFEND title to the Easement granted to the Grantee and its successors and assigns against every person lawfully claiming or to claim the same or any part thereof subject to the matters set forth herein.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

**GRANTOR:**

By. \_\_\_\_\_  
Name  
Title

**CORPORATE ACKNOWLEDGEMENT**

**THE STATE OF TEXAS    )**  
**)**  
**COUNTY OF TRAVIS     )**

**THIS INSTRUMENT** was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_, in the capacity of \_\_\_\_\_ of \_\_\_\_\_, a Texas corporation, on  
behalf of that corporation

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

\_\_\_\_\_  
PRINTED/TYPED NAME OF NOTARY

MY COMMISSION EXPIRES \_\_\_\_\_

### AFFIDAVIT AS TO DEBTS AND LIENS

BEFORE ME, the undersigned authority personally appeared \_\_\_\_\_ (name of Affiant) known to me to be the person whose name is subscribed to this Affidavit, acting in the capacity of \_\_\_\_\_ for \_\_\_\_\_, a Texas corporation authorized to do business in the State of Texas, owner of the property that is the subject of the foregoing instrument (the "Property"), who being sworn, on oath, deposed and stated the following.

1. My name is \_\_\_\_\_. I am above the age of 18 years, of sound mind, have never been convicted of a felony or crime of moral turpitude, and am fully qualified to make this Affidavit.

2. I am authorized to make this Affidavit in the capacity of \_\_\_\_\_ (title), for \_\_\_\_\_, a Texas corporation authorized to do business in the State of Texas, owner of the Property that is described in the foregoing instrument ("Owner").

3. I have personal knowledge of the facts contained herein as an officer of \_\_\_\_\_ and I have recently reviewed the corporation's records concerning the Property. On the basis of my personal knowledge, after diligent inquiry, I attest that, as of the date of this Affidavit:

(a) All labor, services, and materials provided to the Property for improvements, fixtures, and furnishings, or otherwise, at the instance and request of the Owner, have been paid in full and no liens have been filed or exist with respect to the Property.

(b) There are no actions, proceedings, judgments, bankruptcies, liens, or executions filed or pending against the Owner that would affect the Property; and

(c) As of the date of this Affidavit, \_\_\_\_\_ is not a debtor in bankruptcy.

SIGNED, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

AFFIANT:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed/Typed Name of Affiant

STATE OF TEXAS

§

COUNTY OF TRAVIS

§

§

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me \_\_\_\_\_ (name of notary),  
Notary Public, personally appeared \_\_\_\_\_ (name of Affiant),  
\_\_\_\_\_ (title) of \_\_\_\_\_, personally known to me to be the  
person whose name is subscribed to the within instrument and acknowledged to me that he  
executed the same in his authorized capacity, and that by his signature on the instrument the  
person or the entity upon behalf of which the person acted, executed the instrument

WITNESS my hand and official seal

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_

**CONSENT OF LIEN HOLDER**

THE UNDERSIGNED, being the holder of \_\_\_\_\_ lien dated \_\_\_\_\_, 20\_\_\_\_, recorded at Volume \_\_\_\_\_, Page \_\_\_\_\_, Real Property Records of \_\_\_\_\_ County, Texas, securing the payment of an obligation in the amount of \$ \_\_\_\_\_, consents to the foregoing Water Line Easement and agrees that its \_\_\_\_\_ lien is subject to and subordinate to the Water Line Easement, and that the undersigned has authority to execute and deliver this Consent of Lien Holder, and that all necessary acts necessary to bind the Lien Holder have been taken

**NAME OF LIENHOLDER:**  
\_\_\_\_\_

By. \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

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

STATE OF TEXAS           §

§

COUNTY OF TRAVIS      §

§

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (name), \_\_\_\_\_ (title) of \_\_\_\_\_, a corporation of the State of \_\_\_\_\_, on behalf of that corporation.

WITNESS my hand and official seal

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_