

STATE OF TEXAS	§	WATER PROJECT
	§	COST REIMBURSEMENT AGREEMENT
COUNTY OF TRAVIS	§	(Goodnight Ranch Phase Two)

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

**I.  
RECITALS:**

**1.01.** Previous to the date of execution hereof, the Owner acquired and proposes to develop 445 acres of land commonly known as “Goodnight Ranch Phase Two” (the **“Property”**) located south of Slaughter Lane and north and east of Old Lockhart Road. The Property is entirely within the City of Austin’s Full-Purpose City Limits, the City’s Impact Fee Boundary, Austin Water’s service area, the Desired Development Zone, and the Onion and Marble Creek Watersheds, as more particularly shown on **Water Service Extension Request No. 4128 (“SER No. 4128”)** attached hereto as **Exhibit A** and incorporated by reference for all purposes.

**1.02.** In order to obtain approval for City water utility services for the Property, the Owner filed its written application with the Director of Austin Water (the **“Director”**) for approval of water utility service extensions necessary to connect the Property to existing City water facilities to service the proposed development.

**1.03.** In **SER No. 4128**, the Director determined that the requested extension of City water utility service to the Property will require the Owner to construct water improvements to provide service to the Property and additional properties within the South water pressure zone (the **“Water Project”**), as more particularly shown on Exhibit A to be constructed as follows:

**“16-inch Water Main Improvements”** consists of approximately 3,500 linear feet of **16-inch water main** from the existing 12-inch water main in Old Lockhart Road near Bradshaw Road and extending east along Old Lockhart Road.

**1.04.** By its approval on May 24, 2018, the Austin City Council authorized the City to enter into this Agreement with the Owner for the Owner to design and construct the Water Project as described in SER No. 4128, and for the City to reimburse the Owner for up to \$796,950.00 of actual construction costs (**“hard costs”**) incurred by the Owner and costs for engineering, design, and project management (**“soft costs”**) incurred by the Owner to complete the Water Project.

**1.05.** The Owner has agreed to construct the Water Project to service the needs of the proposed development for the Property and surrounding area, and to finance the design and construction of the Water Project in accordance with this Agreement, SER No. 4128, and City Council approval on May 24, 2018.

**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 Owner agree as follows:

## **II.**

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

**2.01. Description of the Water Project.** The Water Project required to provide City water utility service to the Property and surrounding areas shall consist of the construction of the **16-inch Water Main Improvements** as more particularly described in Section 1.03 of this Agreement and in accordance with the final construction plans approved by the Director, the general routing of the Water Project being as depicted on attached **Exhibit A**.

**2.02. Owner to Design the Water Project.** Subject to the terms and conditions of this Agreement, the Owner 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 (the **"Plans and Specifications"**) for the Water Project in conformance with the City of Austin design criteria and construction standards in effect at the time the Plans and Specifications are submitted to the City for approval. The City acknowledges that the Owner may retain a qualified third party to assist in the execution of its duties as Project Engineer for the Water Project, but the Owner shall be and remain responsible under this Agreement for the performance of same as between the Owner and the City. The Plans and Specifications will show the sizing and routing as approved by the Director, materials selection, cost estimates, proposed construction schedule, easements, and such other and further information as the Director deems necessary or advisable. The engineering design for the Water Project shall be procured by the Owner at the Owner's sole expense, subject to reimbursement by the City as hereinafter provided in this Agreement, and will be submitted to the Director for review and approval prior to the City advertising for bids for the construction work employing the City's procurement processes and the Plans and Specifications. The City agrees that the Director's approval of any Plans and Specifications under this Agreement will not be unreasonably withheld or delayed.

**2.03. Owner to Act as Project Manager for Construction.** Owner will serve as project manager for the construction of the Water Project (the **"Project Manager"**). The City acknowledges that the Owner may retain a qualified third party to assist in the execution of its duties as Project Manager for the Water Project, but the Owner shall be and remain responsible under this Agreement for the performance of same as between the Owner and the City.

**2.04. Construction of the Water Project.** Owner agrees to commence construction of the Water Project within ninety (90) days after the award of the approved construction contract and to exercise reasonable diligence to assure the substantial completion of the Water Project in conformance with the approved Plans and Specifications and this Agreement within the time periods set forth in Section 2.10 subject to extensions for Force Majeure, as defined in Section 6.11 below and for City Delays, as defined in Section 6.11 below, or approved by the Director. The Owner shall fund the construction of the Water Project at its sole expense, subject to cost reimbursement by the City for actual hard costs and soft costs for the Water Project in accordance with the terms of this Agreement. The completion date of the Water Project may be extended by the Director for good cause, as determined by the Director, and such determination shall not be unreasonably withheld, conditioned or delayed. All water facilities other than the Water Project that are required to provide City water utility service to the Property shall be designed and constructed at the sole expense of Owner, without reimbursement from the City, in accordance with an approved service extension request, if applicable. Upon the completion of construction of the Water Project by the Owner, and final acceptance thereof by the City, the Water Project will be owned, operated, and maintained by the City as part of the City's water utility system.

**2.05. Owner Responsible for Soft Costs.** Save and except for the reimbursable soft costs for engineering, design and project management of the Water Project to be paid by the City under this Agreement, the Owner shall be solely responsible for payment of all soft costs for financing, interest, fiscal security, permitting, accounting, insurance, City inspections, permits, the Owner's legal services, easements and all other soft costs incurred by Owner associated with the construction of the Water Project without reimbursement thereof by the City.

**2.06. Duties of Owner.** Owner agrees to:

(a) engage the services of the Project Engineer to prepare Plans and Specifications for the Water Project;

(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 Owner submits the Plans and Specifications to the Director for approval;

(2) are submitted to the Director for review and approval before the Owner requests the City to proceed with advertising for bids for construction of the Water Project; and

(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 reasonably necessary or advisable 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 Title 2 of the Austin City Code, as amended, and Chapters 212 and 252, Texas Local Government Code, as amended. The City agrees that it will advertise for bids within a reasonable time period upon receiving a written request to do so from the Owner;

(e) direct the Project Engineer to resubmit the Plans and Specifications to the Director for review and approval if more than twelve (12) months pass after the Director has approved the Plans and Specifications for Water Project, and before the Owner requests the City to proceed with bidding;

(f) direct the Project Engineer to prepare and submit to the Director for review and approval all construction contracts, proposed construction schedules, and all other construction related documents for the Water Project (the "**Construction Contract**") before execution; including general conditions no less stringent than those used by the City's Department of Public Works and Transportation including, without limitation:

(1) provisions that are related to warranties, insurance, and bonding requirements;

(2) provisions including the City as an approved future assignee of the Owner with the ability to complete the Water Project in the event the Owner fails to complete the Water Project covered by the Construction Contract and the City exercises its right to complete the Water Project upon default of the Owner;

(3) a requirement that a certificate of insurance be provided by the Construction Contractor (defined below) 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; and

(4) consultants shall not copyright plans, drawings or any documents that will be provided to the City related to the Water Project or otherwise claim ownership of any products provided pursuant to this Agreement.

(g) after approval by the Director, which approval will not be unreasonably withheld, conditioned, or delayed, the Owner can award the Construction Contract to a

qualified construction contractor (the “**Construction Contractor**”) in accordance with standard City construction contract procedures, including the minority-owned and women-owned business enterprise procurement program found in Title 2 of the Austin City Code, as amended;

(h) obtain all required permits, consents, variances, easements, inspections, tests, and authorizations necessary for construction of the Water Project (and the City agrees not to unreasonably withhold or delay its approval or issuance of any required permits, consents, variances, inspections, and authorizations for the Water Project);

(i) direct the Project Manager and/or the Project Engineer to submit all payment and performance bonds and other documents required for compliance with the Construction Contract and this Agreement to the Director and then arrange and attend a preconstruction meeting with the Construction Contractor, Project Engineer, Project Manager, and the City after the award of the Construction Contract and prior to commencing construction of the Water Project;

(j) monitor the Water Project costs, to effect the completion of construction according to the estimated construction costs and undertake such corrective action which the City and the Owner mutually agree is necessary to assist in controlling project costs;

(k) review all change orders to the Construction Contract, including any requested by the City, and submit said change orders along with the Project Engineer’s recommendations to the Director for review and approval; prohibit work on change orders that the Director has not approved unless required for an emergency; and ensure that change orders for the Water Project, either singly or in accumulation with others so approved, do not increase the Construction Contract costs by more than twenty percent (20%). The City agrees to timely review all change orders and agrees that the Director’s approval of any change orders will not be unreasonably withheld, or delayed;

(l) arrange for the Project Manager and/or Project Engineer to monitor activities of the Construction Contractor and the progress of construction to encourage the timely and efficient completion of the Water Project following the approved Plans and Specifications and construction schedule, subject to extensions for Force Majeure and City Delays or as otherwise approved by the Director;

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

(n) direct the Project Manager and/or Project Engineer to review inspection reports, conduct field inspections, and coordinate with approved inspectors and the Construction Contractor to cure defects and deficiencies in the construction before the Project Engineer’s issuance of a certificate of completion of the Water Project;

(o) provide monthly and final construction 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;

(p) direct the Project Manager and/or Project Engineer to 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 Owner and the City of work that the Project Engineer determines should be corrected or rejected or which requires special testing, adjustment, or inspection for approval. The Owner will also provide the testing information to the City. If the City reasonably determines that any work needs to be corrected or rejected or requires special testing, the City will notify the Owner and the Project Engineer, and the Owner will take timely action to remedy any problem identified by such special testing;

(q) direct the Project Manager and/or Project Engineer to coordinate and observe with the Construction Contractor and the City all acceptance testing (including, without limitation, pressure testing, infiltration/inflow, bacteriological testing, etc.);

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

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

(t) direct the Project Engineer to submit to the Construction Contractor a list of observed items requiring completion or correction;

(u) direct the Project Manager and/or the Project Engineer to coordinate final inspection of the Water Project with 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;

(v) arrange for the Project Engineer's preparation of a project construction summary and engineer's concurrence letter, and final cost and quantities by the Construction Contractor according to the Construction Contract documents and approved change orders, and submit it to the City inspector for review and issuance of a City acceptance letter, which issuance will not be unreasonably withheld, conditioned, or delayed;

(w) after substantial completion and before the City will issue an acceptance letter for the Water Project, the Project Engineer will provide to the City record drawings of the Water Project prepared and duly sealed by the Project Engineer;

(x) assign all warranties, guarantees, maintenance bonds, or like assurances of performance to the City before a final acceptance letter for the Water Project will be issued by the City;

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

(z) 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;

(aa) 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 and close out records for the Water Project; and deliver the originals or true and correct copies of all records and documentation to the City; and

(bb) secure easements, at the expense of the Owner, for those portions of the Water Project that will be constructed on property that is not owned by the Owner, in form and content acceptable by the City Attorney and the Director;

**2.07. Posting of Fiscal Security.** In regard to fiscal security for the Water Project, the parties agree as follows:

(a) the Owner 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;

(b) the Owner agrees to post Fiscal Security for the Water Project within ten (10) calendar days after execution of the Construction Contract;

(c) the City will accept Fiscal Security in the form of an irrevocable letter of credit, surety bond, cash deposit, or escrowed funds as described in Section 3.03 hereof. All of these forms of Fiscal Security must be sufficient to cover one hundred percent (100%) of the actual Construction Contract amount of the Water Project; and

(d) Fiscal Security posted by the Owner for the Water Project must comply with all applicable policies and requirements of the City and state law.

**2.08. Owner’s Responsibility for City Engineering Review and Inspection Fees.** The Owner is responsible for paying for all City engineering review and City inspection fees for the Water Project. The City’s Development Services Department, Public Works Department, and Austin Water will establish the estimated amount of City 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 the remaining balance of the deposited amount to the Owner after final acceptance of the Water Project. If the amount deposited is less than the actual cost of inspection, the Owner shall pay the City the remaining balance within thirty (30) days after being invoiced by the City.

**2.09. City Can Exercise the Option to Construct the Water Project Upon Default of Owner.** If the Owner commences construction of the Water Project but fails or refuses to complete construction in accordance with the Plans and Specifications within the time periods set forth in Section 2.10, subject to any extensions due to Force Majeure or City Delays, or as otherwise approved by the Director, such failure or refusal shall be considered an event of default and, after giving notice of such default and reasonable opportunity to cure to the Owner, as hereinafter provided, the City will have the right, but not the obligation, to draw on the Fiscal Security posted by the Owner and complete the Water Project. Reasonable delays in construction not reasonably within the control of the Owner and about which the Owner has notified the City in writing will not constitute default under this Agreement. If the City draws on any Fiscal Security posted by the Owner, the City will be obligated to use such Fiscal Security solely for the purpose of completing the Water Project.

In the event the City elects to complete the Water Project, the Owner grants the City the right to use the Plans and Specifications to complete the Water Project and the Owner also agrees that all designs, easements, real and personal property, and improvements acquired, produced or installed in aid of completing the Water Project by the Owner or its engineers or contractors before such default shall become the property of the City and, in such event, the Owner will provide all necessary documentation to the City within five (5) business days after the City's request. The City will nevertheless reimburse the Owner under this Agreement for (i) reimbursable hard costs and soft costs pursuant to the terms of this Agreement incurred by the Owner up to the point of Owner's default and (ii) hard costs and soft costs paid for with proceeds of the Fiscal Security that are reimbursable under this Agreement, except that the City may deduct from the reimbursement any reasonable and necessary out of pocket expenses incurred or paid by the City to third parties in connection with the completion of the remainder of the Water Project because of the Owner's default.

## **2.10. City's Option to Terminate.**

(a) Unless the City exercises its right under Section 2.09 hereof to draw on the Fiscal Surety in order to complete the Water Project, the City may, at its sole discretion, terminate this Agreement and withdraw its approval of SER No. 4128 relating to the Property if (i) the Owner does not award a Construction Contract within two years of the effective date of this Agreement, subject to events of Force Majeure and City Delays, or (ii) provided the Owner has timely awarded a Construction Contract for the Water Project, the Owner does not commence construction of the Water Project within one year from the date of the award of the Construction Contract, subject to events of Force Majeure



and City Delays, or (iii) provided the Owner has timely awarded and commenced construction of the Water Project, the Owner does not complete construction of the Water Project within the contract time allocated in the Construction Contract, subject to events of Force Majeure and City Delays; and

(b) If either the City or the Owner elects to terminate this Agreement because of a default by the other party that remains uncured after notice and opportunity to cure given in accordance with this Agreement, or if this Agreement expires of its own terms as described in Section 6.15, the City will have no obligation to provide water utility service to the Property unless an alternative project acceptable to the City is constructed and accepted. If the Water Project is not completed, the City will have no obligation to provide water or wastewater service to the Property. Except as provided in Section 2.09, the Owner shall not be entitled to reimbursement for any costs incurred in connection with the Water Project if the Agreement is terminated as a result of a default by the Owner. Except as provided in Section 2.09, both parties do, however, hereby acknowledge that the engineering plans for the Water Project are the property of the Owner and the City has no rights to the same under this Agreement unless the City purchases the engineering plans. Subject to any deductions by the City under Section 2.09, termination of this Agreement due to default under Section 2.09 will not terminate the obligation of the City to reimburse the Owner for reimbursable hard costs or soft costs incurred by the Owner prior to the date of termination at the City's sole discretion, with final acceptance by the City and that obligation will expressly survive any such termination.

**2.11. Release and Return of Fiscal Surety.** Except as provided in Section 3.03 the City agrees to promptly release the Fiscal Security for the Water Project in the following events:

(a) if either the City or Owner elects to terminate this Agreement (except that the Fiscal Security shall not be released in the event that the City elects to take over and complete the Water Project on the default of Owner, provided that the City will release such Fiscal Security not used by the City in completing the Water Project);

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

(c) upon the City's final acceptance of the Water Project.

### III.

## FUNDING AND REIMBURSEMENT OF PROJECT COSTS

**3.01. Estimated Project Costs.** The City has estimated the total hard costs for construction the Water Project to be approximately \$1,386,000.00, and has estimated the total soft costs for engineering, design and project management of the Water Project to

be approximately \$207,900.00, for a total cost not to exceed \$1,593,900.00 for the Water Project.

The parties acknowledge and agree that the actual costs for the Water Project may be greater or less than the estimated costs and that, subject to the terms of this Agreement the City will reimburse the Owner for eligible Water Project costs in the amounts set forth in Section 3.04.

**3.02. Owner to Fund Design and Construction of Water Project.** Subject to reimbursement in accordance with the terms and conditions of this Agreement, the Owner agrees to fund and timely pay all costs incurred by Owner 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. Upon issuance of a permit by the City for the construction of the Water Project, the Owner must have paid all costs related to engineering and design and all other costs (except for construction administration costs) associated with the engineering and design of the Water Project.

**3.03 Procedure for Deposit and Use of Funds Placed in Escrow for Construction.** For posting Fiscal Security, as referenced in Section 2.07 above, the City and the Owner may, as referenced in Section 2.07(c) above, establish an escrow account (the “**Escrow Account**”) as follows:

(a) an Escrow Account may be maintained for funds deposited by the Owner to pay the agreed costs for construction of the Water Project as described in Section 1.03 above and the funds so deposited shall not be commingled with other funds of the City or the Owner;

(b) if the Owner posts Fiscal Security in the form of escrowed funds, as referenced in Section 2.07, then on or before the time period described in Section 2.07(b), the Owner shall deposit the Fiscal Security for the Water Project into an Escrow Account with the City, and the City shall hold the same in trust in an interest-bearing Escrow Account for the purposes described in this Agreement or, alternatively, the City and the Owner may select a reputable third party financial institution acceptable to the City and the Owner to act as escrow agent (the “**Escrow Agent**”);

(c) if a third party Escrow Agent is selected, the City, the Owner and the Escrow Agent will execute one or more agreements (the “**Escrow Agreement**”) in a form acceptable to the City, the Owner and the Escrow Agent, to set out the purposes of the escrow, the terms and conditions of the escrow (which shall provide for deposit of the escrowed funds in an interest bearing account) and the conditions under which the City may draw from the Escrow Account to pay all costs for construction of the Water Project. The Owner will be entitled to receive all interest earned or accrued, if any, on the escrow funds after final acceptance of the Water Project if the escrowed funds are held by a third-party Escrow Agent. The Owner will also be responsible for the payment of all escrow

fees of the Escrow Agent. If the City holds the funds in trust, the City will retain all interest earned on the escrowed funds;

(d) notwithstanding, any provision in this Agreement to the contrary, if the Owner posts Fiscal Security in the form of funds to be placed in an Escrow Account, as described in this Section 3.03, the Fiscal Security posted will be reduced ratably as the construction of the Water Project progresses upon written request by the Owner. The amount of the reduction will be returned to the Owner within thirty (30) days after the owner's written request or paid as the Owner may direct in writing. The Owner may request a reduction not more than once per 30-day period; and

(e) all payments made from the Escrow Account to pay for construction of the 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. Accordingly, in accordance with Section 3.03(c) and (d), the Owner may make payments for the hard costs of the Water Project from the Escrow Account as incurred by the Owner.

#### **3.04. City to Reimburse Certain Costs Incurred for the Water Project.**

(a) Subject to completion of the Water Project by the Owner and final acceptance thereof by the City, the City agrees to reimburse the Owner for the **hard costs** incurred by the Owner for the Water Project in an amount not to exceed fifty percent (50%) of the hard costs or \$693,000.00, whichever is less;

(b) Subject to completion of the Water Project by the Owner and final acceptance thereof by the City, the City agrees to reimburse to the Owner for the **soft costs** incurred by the Owner for the Water Project in an amount not to exceed fifteen percent (15%) of the fifty percent (50%) of the hard costs or \$103,950.00, whichever is less;

(c) Although some of the Owner's soft costs for the Water Project are reimbursable by the City in accordance with the terms of this Agreement, the Owner will advance and pay all costs for engineering, design, as well as costs for financing, interest, accounting, inspections, fiscal security, insurance, permitting, project management, the Owner's legal expenses and all other soft costs incurred by the Owner in connection with the Water Project;

(d) The Owner will design, construct and dedicate to the City for ownership, operation and maintenance, and the City will accept for ownership, operation and maintenance, the Water Project, as well as all easements necessary for the City's ownership, operation, and maintenance of and access to the Water Project;

(e) If the Owner's actual hard costs or soft costs for the Water Project are less than the maximum reimbursable amounts set forth in Sections 3.04(a) and (b) above, the

City will only reimburse the Owner for actual costs incurred by the Owner that are eligible for reimbursement;

(f) If the Owner's actual hard costs or soft costs for the Water Project that are to be reimbursed by the City hereunder exceed the maximum reimbursable amounts set forth in Sections 3.04(a) and (b) above, the Owner agrees that it is solely responsible for those additional costs;

(g) If at any time prior to the commencement or completion of construction of the Water Project the Owner anticipates that any hard costs or soft costs that would otherwise be eligible for reimbursement from the City will exceed the maximum reimbursable amounts set forth in Sections 3.04(a) or (b) above, the Owner at its discretion, may make timely written request in advance of approving such excess cost to the Director for consideration and City Council approval for authorization of additional reimbursement. The City is not obligated to pay any additional amount unless the City Council approves such reimbursement and the City makes no representation or assurance that City Council approval or funding for additional amounts will be forthcoming or that the payment of such amounts will be recommended by the Director; and

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

(i) The City agrees that this Agreement shall constitute a contract for providing goods and services to the City, subject to the provisions of Subchapter I of Chapter 271, Texas Local Government Code.

**3.05. Payment Schedule.** The City and Owner agree that the cost reimbursement amounts described above shall be paid in accordance with the following:

(a) payment by City to the Owner for the actual reimbursable costs of the Water Project shall be paid to the Owner in one (1) lump sum payment ninety (90) calendar days after the City's final acceptance of the Water Project; and

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

**3.06. Report of Project Costs Required.** Within thirty (30) calendar days after final acceptance of the Water Project by the City, the Owner will submit a written report to the Director of the total costs incurred by the Owner for the Water Project that includes supporting information documenting all amounts paid for which reimbursement is claimed and confirming that Owner has complied with the City's procurement policies and other requirements of this Agreement in the construction 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 Owner for the Water Project under this Agreement. If the Director determines the Owner's report is incomplete or otherwise insufficient to determine the actual costs eligible for reimbursement, the Director will notify the Owner of the particulars in which its documentation is deficient within thirty (30) calendar days after the date the Owner submits its report of project costs and the Owner will timely provide all additional information reasonably required by the Director to determine the actual costs eligible for reimbursement.

**3.07. 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.

#### **IV. OWNERSHIP OF FACILITIES**

**4.01. City to Own, Operate and Maintain Water Project.** From and after the time of final completion of the Water Project by the Owner and the City's inspection and final acceptance of same, the City shall own, operate, and maintain the Water Project as part of the City's water system and shall be responsible for all costs associated with same.

**4.02. Owner's Delivery of Instruments of Transfer, Other Project Documentation.** Within thirty (30) calendar days after the time of the completion and the City's final acceptance of the Water Project, the Owner 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. Within said thirty (30) day period, the Owner will also deliver to the City all bonds, warranties, guarantees and other assurances of performance, record drawings, easements, project manuals and all other documentation related to the Water Project that is within the custody and control of the Owner. Owner's performance under this Section 4.02 and the conveyance of the Water Project to the City shall be subject to Owner's reimbursement rights provided in this Agreement, and such performance and conveyance shall not waive Owner's right to reimbursement as provided in this Agreement.

**4.03. No Liens Permitted.** So long as the respective payees are not in default of their respective contracts with the Owner, the Owner 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 (which work, materials and services (i) are provided or performed in compliance with the Construction Contract and the Plans and Specifications; (ii) are free of defects; and (iii) have been accepted by the Project Engineer); 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 Owner 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 Owner from withholding payment for any work that the Owner, as Project Manager, deems defective or unacceptable. In that event, the Owner 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 Owner, the Owner 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 Owner will secure the release of the lien or other encumbrance within sixty (60) calendar days after the filing or perfection thereof, unless the City and Owner mutually agree in writing to additional time. The Owner agrees that the City will not accept any improvement burdened by any lien or other encumbrance and the City will not be obligated to provide wastewater or water utility service to the Property until the lien or encumbrance is removed.

**4.04. Agreement May be Pledged as Collateral.** The Owner may pledge or assign its right to payment under this Agreement as collateral for purposes of securing financing from one or more lenders for the Water Project. The Owner or Owner's 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 its security interest in the collateral (as defined in the Texas Business & Commerce Code) provided such instruments do not amend, modify, diminish or prejudice the City's rights and interests under this Agreement or cause additional expense or detriment of any kind to the City.

**V.**  
**PROVISION OF UTILITY SERVICE FROM THE PROJECT**

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

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

(a) prior to execution of this Agreement, the Director has approved SER No. 4128 attached as Exhibit A for the Property;

(b) this Agreement will not be construed to guarantee water service if later proposed plans for development within the portions of the Property to be served by the Water Project will require greater water service capacity than was indicated by the Owner in its request for approval of the Water Project or the Owner's application for approval of SER No. 4128;

(c) this Agreement will not be construed to guarantee water service if later proposed development within the portions of the Property to be served by the Water Project requires approval of additional water facilities or additional water main extensions or other water facilities not addressed by this Agreement or SER No. 4128;

(d) this Agreement will not be construed to create or confer upon the Owner, 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;

(e) this Agreement in no way obligates the City to approve service extension requests or approach main facilities not conforming to the requirements of the City's policies and ordinances nor otherwise binds, restricts or limits the governmental powers of the City with respect to the approval or denial of the same;

(f) this Agreement does not exempt the Owner from the requirements of any ordinance applicable to development within the Property;

(g) this Agreement sets out terms and conditions for cost reimbursement for the water facilities described herein as the Water Project and does not address nor guarantee approval of any proposed land uses or any particular development density, intensity, level of build-out or percentage of impervious cover;

(h) this Agreement will not be construed to create or confer upon the Owner, 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, or any portion thereof, after final acceptance of the Water Project by the City;

(i) this Agreement will not be construed to guarantee any particular level of water service to the Property (as SER No. 4128 constitutes the City's commitment and statement of conditions for the extension of water utility service to the Property); and

(j) if either party terminates this Agreement for any reason, the City will have no obligation to provide water or wastewater service to the Property or proposed development within such Property, until the Water Project, or alternative water facilities acceptable to the City, are constructed and receive final acceptance from the City.

**5.03. Transfer of Service Commitment Prohibited.** This Agreement and the commitment for water service set forth in SER No. 4128 are for development of the Property only. The Owner may not assign or transfer, in whole or in part, the commitment for water service in SER No. 4128 or its rights and obligations under this Agreement to any other property or development. The Owner has no right to limit the City in its access to or use of the water mains or appurtenances constituting the Water Project nor in its provision of water service to other customers through any of the water facilities it constructs or acquires.

## VI. GENERAL PROVISIONS

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

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



**6.02. Notice of Default; Opportunity to Cure; Termination for Failure to Cure Default.** Should either party allege that the other has defaulted in the performance of any obligation, the non-defaulting party will provide at least thirty (30) calendar days written notice to the other party specifying the nature of the alleged default and provide the other party a reasonable opportunity to cure the default before exercising any legal or equitable remedy related to the alleged default, said 30-day cure period being subject to Force Majeure (not to exceed 60 calendar days) and subject to delays caused by the non-defaulting party. If the default is not cured within the reasonable period specified to cure the default, the non-defaulting party may terminate this Agreement, SER No. 4128, or any other utility service commitment for the Property, upon written notice to the defaulting party and pursue such legal remedies as are available to the non-defaulting party, whether at law or in equity.

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

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

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

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

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

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

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

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

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

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

(a) 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.

(b) The term "**City Delays**" as used in this Agreement means any delay by the City, which is not the result of any act or omission of Owner, in issuing any permit or other approval necessary for the permitting, construction, and acceptance of the Water Project beyond the City's time schedules and deadlines for review and approval of any such permit.

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

**6.13. Duplicate Originals.** The parties may execute this Agreement in one or more duplicate originals each of equal dignity.

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

(a) delivering it in person;

- (b) depositing it in the United States Mail, first class mail, postage prepaid;
- (c) depositing it with a nationally recognized courier service; or
- (d) by sending it by telefax (subject to electronic confirmation) with confirming copy sent by mail. For the purposes of notice, the addresses of the parties will, until changed as provided below, be as follows:

**CITY OF AUSTIN:**

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

**IF TO OWNER:**

Austin Goodnight Ranch, L.P.  
610 W. 5th street  
Austin, Texas 78701  
Attn: Myra Goepp  
Tel.: 512-472-7455  
Fax: 512-472-7499

**WITH A COPY TO:**

DuBois, Bryant & Campbell, LLP  
303 Colorado Street, Suite 2300  
Austin, Texas 78701  
Attn: Bill Bryant  
Tel.: 512-457-8000  
Fax: 512-457-8008

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

**6.15. Expiration of Agreement.** Unless sooner terminated under the provisions of this Agreement, this Agreement shall expire of its own terms and without further notice at 12:00 o'clock a.m. on the next business day following the second anniversary of the

effective date of this Agreement if actual construction of the Water Project has not commenced.

**6.16. Assignment.** Neither party may assign its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the other party provided; however, the Owner may assign its rights and obligations under this Agreement to an affiliate of the Owner by giving written notice to the City in accordance with the procedures set forth in this Agreement; provided, however, the Owner's assignee assumes all of the rights and obligations under this Agreement without amendment or modifications of same. The City hereby represents and warrants that the Assistant City Manager and the Director have the requisite authority to consent to any such assignment of this Agreement.

**6.17. Effective Date.** This Agreement will be effective upon due execution by all parties.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGES FOLLOW.]

APPROVED AS TO FORM:

CITY OF AUSTIN:

Maria Sanchez  
Assistant City Attorney

By: [Signature]  
Robert Goode  
Assistant City Manager

Date: 8/28/18

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

**THIS INSTRUMENT** was acknowledged before me on this 28 day of August, 2018, by Robert Goode, Assistant City Manager of the City of Austin, a Texas municipal corporation, on behalf of said municipal corporation.

(SEAL)

[Signature]  
Notary Public, State of Texas



**APPROVED AS TO FORM:**

Amal Bagan  
Attorney for Owner

Date: 8/22/2018

**OWNER:**

Austin Goodnight Ranch, L.P., a Texas limited partnership

By: Austin Goodnight Ranch GP, LLC, a Texas limited liability company, its general partner

By: Benchmark Land & Exploration, Inc., a Texas corporation, its member

By: Myra J. Goepf  
Myra J. Goepf, Vice President

Date: 8.22.18

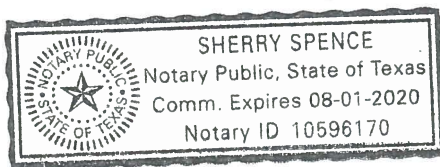
STATE OF TEXAS

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COUNTY OF TRAVIS

August, 2018, by David C. Mahn, Vice President of Benchmark Land & Exploration, Inc., a Texas corporation, a member of Austin Goodnight Ranch GP, LLC, a Texas limited liability company, the general partner of Austin Goodnight Ranch, L.P., a Texas limited partnership, on behalf of said entities.

(SEAL)



Sherry Spence  
Notary Public, State of Texas

**EXHIBIT A**  
**WATER SERVICE EXTENSION NO. 4128**

# WATER AND WASTEWATER SERVICE EXTENSION REQUEST FOR CONSIDERATION

Name: Goodnight Ranch Phase Two		Service Requested: <b>Water</b>
<b>SER-4128</b>	Hansen Service Request Number 720827	Date Received: 11/01/2017
Location: 10221 OLD LOCKHART RD AUSTIN TX 78747 Goodnight Ranch Phase Two		
Acres: 445.00	Land Use: MIXED	LUE: 3424
Alt. Utility Service or S.E.R. Number: City of Austin Wastewater SER-4129		
Quad(s): H11 H12 J12	Reclaimed Pressure Zone: CENTRAL SERVICE AREA	DDZ: YES
Drainage Basin: ONION	Pressure Zone: SOUTH	DWPZ: NO
Demand (Estimated Peak Hour): 7,490 GPM		FIRE FLOW: 1,500 GPM
Cost Participation: \$796,950.00	% Within City Limits: 100	% Within Limited Purpose: 0

**Description of Improvements:**

Applicant shall construct approximately 3,500 feet of oversized 16-inch water main from the 12-inch water main (Project No. 2006-0812) in Old Lockhart Rd and extend east along Old Lockhart Rd to the subject tract and across the future AISD school site, as approximately shown on the attached map. The proposed oversized 16-inch water main shall replace the existing 2-inch water main along its path. Applicant shall connect all existing water services and water mains along this path to the proposed oversized 16-inch water main.




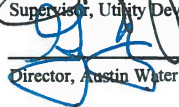
Applicant shall construct appropriately sized water main extensions from the existing 12-inch water main (Project No. 2009-0074) in E Slaughter Ln at Alderman Dr, the existing 12-inch water main (Project No. 2009-0045) in E Slaughter Ln at Goodnight Ranch Blvd, and the existing 12-inch water main (Project No. 2014-0573) in E Slaughter Ln at Vertex Blvd and extend south through the subject tract. The appropriately sized "looped" water distribution system within the subject tract shall include at least two 12-inch (minimum) water mains interconnected within the subject tract and extending between the existing 48-inch water transmission main (Project Nos. 2009-0074 and 2009-0045) in E Slaughter Ln and the proposed oversized 16-inch water main in Old Lockhart Rd, as approximately shown on the attached map.

To serve the portion of the subject tract along Old Lockhart Rd and generally west of Cheryl Lynn Rd, Applicant shall construct approximately 800 feet of 12-inch water main from the existing 24-inch water main in Old Lockhart Rd near Raines Pass and extend south along Old Lockhart Rd and connect back to the existing 24-inch water main. A portion of this proposed 12-inch water main is also include in SER-4074 (Goodnight Ranch Phase Two Section 1).

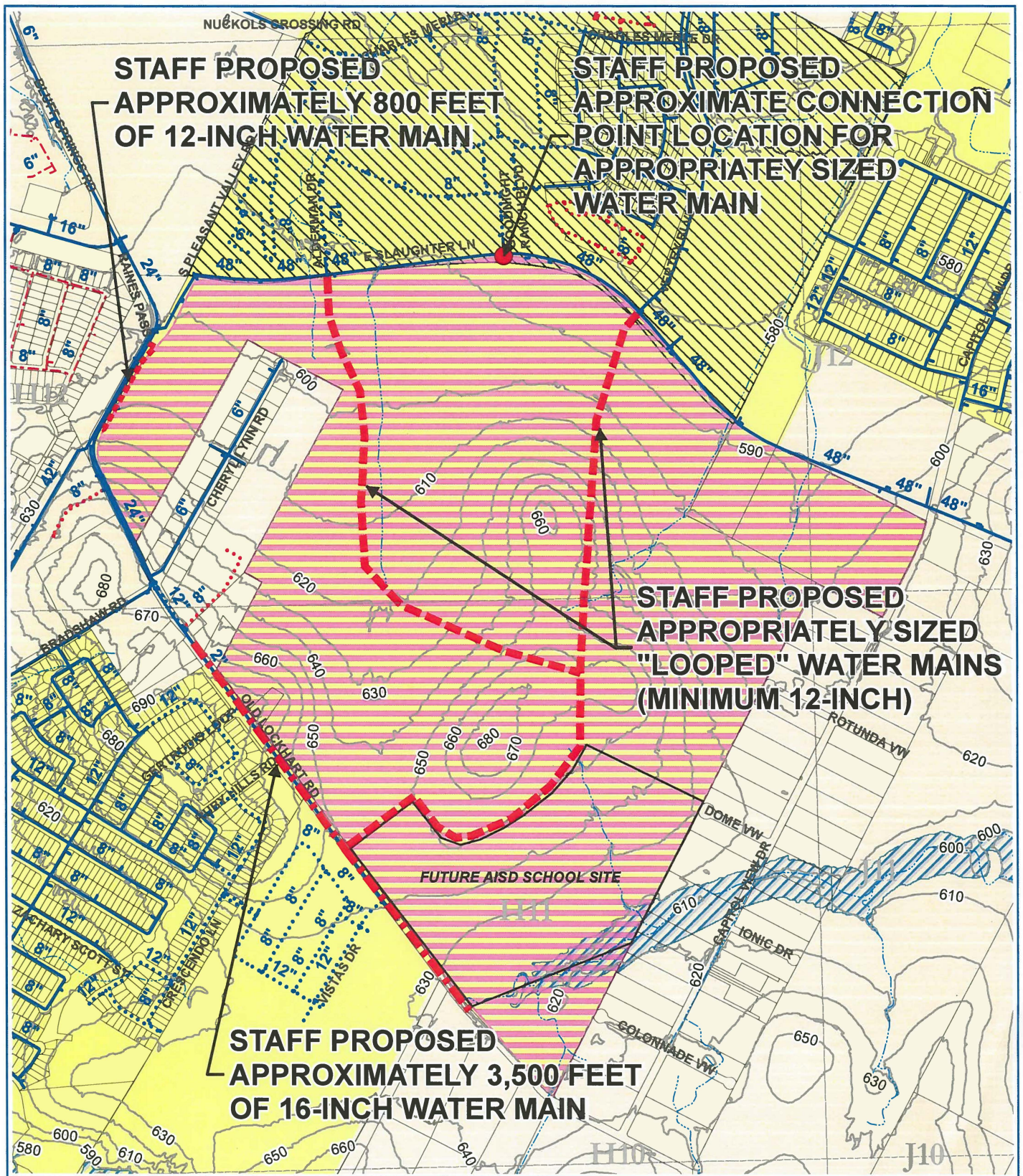
NOTES: 1) Water demand and sprinkled fire flow requirement based on engineering calculations received from Lawrence M. Hanrahan, P.E. of CIVILE LLC on 11/01/2017. 2) The proposed water improvements may be constructed in phases as development progresses as long as adequate looping is established within each phase.

**Approval of this Service Extension Request is subject to completion and acceptance of the improvements described above and the conditions set forth below:**

- 1) Construction of all Service Extensions is subject to all environmental and planning ordinances.
- 2) Service Extensions are subject to the guidelines established in the Land Development Code, Chapter 25-9, Water and Wastewater Utility Service.
- 3) An approved Service Extension is not a reservation of capacity in the system, but is an acknowledgment of the intent to serve. Available capacity shall be confirmed at the time a development application is submitted.
- 4) The level of service approved by this document does not imply commitment for land use.
- 5) Public utility mains must meet City of Austin design and construction criteria and must be approved by Austin Water Engineering Review.
- 6) Approval of a site plan that meets the Fire Department requirements for fire control.
- 7) Proposed public water improvements will be dedicated to the City of Austin for ownership, operation, and maintenance.
- 8) Proposed public water improvements must be placed in the public right-of-way or approved utility easements. Utility easements must be approved by Austin Water Engineering Review and must be in place prior to construction plan approval.
- 9) The approved Service Extension will automatically expire 180 days after date of approval unless a development application has been accepted by the Development Services Department. The Service Extension expires on the date the development expires, or if approved, on the date the development application approval expires.
- 10) Approval by the City Council will be required should the applicant seek cost participation for oversized water improvements.

 Project Manager, Utility Development Services Date: 5/24/18	 Supervisor, Utility Development Services Date: 5/25/18	5-23-2018 Date
 Division Manager, Utility Development Services Date	 Director, Austin Water Date	
Council Approval Date: 5/24/18		





**W. S.E.R. Name: Goodnight Ranch Phase Two**

**W. S.E.R. Number: 4128**

Utility Development Services Plotted 04/13/2018

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of the property boundaries. This product has been produced by the City of Austin for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



THE STATE OF TEXAS §  
§  
COUNTY OF TRAVIS §

**FIRST AMENDMENT TO COST  
REIMBURSEMENT AGREEMENT  
(Goodnight Ranch Phase Two)**

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

**I.  
RECITALS:**

**1.01. WHEREAS**, on May 24, 2018 the Austin City Council authorized the City to enter into an Agreement with the Owner for the Owner to design and construct the Goodnight Ranch Phase Two Project in SER No. 4128, and for the City to reimburse the Owner for costs associated with the Water Project.

**1.02. WHEREAS**, on August 28, 2018, the City and the Owner entered into a Cost Reimbursement Agreement (the “Water Project Cost Reimbursement Agreement”) that set forth agreed terms for the design and construction of certain utility improvements that were determined to be necessary to serve the needs of the proposed development, as more particularly described in the Water Project Cost Reimbursement Agreement.

**1.03. WHEREAS**, on September 23, 2019, the City approved a revised service extension request, SER No. 4128R.

**1.04. WHEREAS**, the City and the Owner now desire to enter into this First Amendment to (1) modify the terms to allow the project to be considered in phases for the purpose of reimbursing the Owner for the City's participation to the Water Project's costs eligible for reimbursement, and (2) to conform the Water Project to the approved revised SER No. 4128R by incorporating a revised Exhibit A to the Water Project Cost Reimbursement Agreement.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual agreements and covenants set forth below, the **City** and the **Owner** amend the Water Project Cost Reimbursement Agreement as follows:

**II.  
AMENDMENTS TO THE WATER PROJECT  
COST REIMBURSEMENT AGREEMENT**

**2.01.** From and after the date of this First Amendment, all references in the Water Project Cost Reimbursement Agreement to the “Agreement” shall mean and refer to the Water Project Cost Reimbursement Agreement as amended by this First Amendment.

**2.02. Section 1.03** is amended to read as follows:

“**1.03.** In SER No. 4128R, the Director determined that the requested extension of City water utility service to the Property will require the Owner to construct water improvements to provide service to the Property and additional properties within the South water pressure zone (the “Water Project”), as more particularly shown on **Exhibit A**, to be constructed in phases:

“**Phase 1**” being a length of 16-inch water main beginning at the 12-inch water main in Gertrudis Loop at Old Lockhart Road and extending approximately 1,300 linear feet to the southeast along Old Lockhart Road; and

“**Phase 2**” being a length of 16-inch water main beginning at the terminus of Phase 1 and extending approximately 1,600 linear feet to the southeast along Old Lockhart Road.”

**2.03. Section 2.01** is amended to read as follows:

“**2.01. Description of the Water Project.** The Water Project required to provide City water utility service to the Property and surrounding areas shall consist of construction of **Phase 1** and **Phase 2** as more particularly described in Section 1.03 of this Agreement and in accordance with the final construction plans approved by the Director, the general routing of the Water Project being as depicted on attached **Exhibit A**.

**2.04. Subsections (a) and (b) of Section 3.04** are amended to read as follows:

“(a) Subject to Owner’s completion of each phase of the Water Project and final acceptance thereof by the City, the City agrees to reimburse the Owner for an amount equal to fifty percent (50%) of the Owner’s hard costs for each phase, provided that the amount for hard cost reimbursement for all phases does not exceed \$693,000.00.

(b) Subject to Owner’s completion of each phase of the Water Project and final acceptance thereof by the City, for Owner’s Water Project soft costs, the City agrees to reimburse to the Owner fifteen percent (15%) of the hard cost reimbursement amount for each phase determined under the preceding subsection 3.04(a), provided that the amount for soft cost reimbursement for all phases does not exceed \$103,950.00.”

**2.05. Exhibit A** to the Water Project Cost Reimbursement Agreement is revised and replaced by Attachment 1 to this First Amendment.

**III.  
GENERAL CONDITIONS**

**3.01. Effect of This Amendment.** The terms and conditions of the Water Project Cost Reimbursement Agreement are incorporated by reference for all purposes. Except as specifically amended and modified by this First Amendment, the parties hereby agree that the terms and conditions of the Water Project Cost Reimbursement Agreement are in full force and effect as written.

**3.02. Resolution of Conflicts.** If there is any conflict or inconsistency between the provisions of this First Amendment and the Water Project Cost Reimbursement Agreement, the provisions of this First Amendment will control.

**3.03. Defined Terms.** All terms delineated with initial capital letters in this First Amendment that are defined in the Water Project Cost Reimbursement Agreement shall have the same meanings in this First Amendment as in the Water Project Cost Reimbursement Agreement. Other terms have the meanings commonly ascribed to them.

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

**3.05. Effective Date.** This First Amendment will be effective from and after the date of execution by the City and Owner,

**IN WITNESS WHEREOF,** the authorized representatives of the City and Owner, have executed this First Amendment, as of the date(s) indicated below.



Approved as to form:

Clark Cornwell

Assistant City Attorney

**CITY OF AUSTIN:**

By:

Greg Meszaros

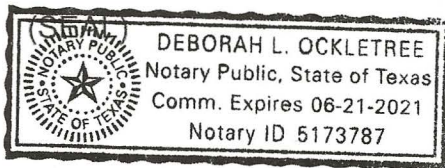
Greg Meszaros, Director  
Austin Water

THE STATE OF TEXAS §

§

COUNTY OF TRAVIS §

**THIS INSTRUMENT** was acknowledged before me on this 8th day of March, 2021, by Greg Meszaros, Director of Austin Water, City of Austin, Texas, a municipal corporation, on behalf of said municipal corporation.



Deborah L. Ockletree

Notary Public, State of Texas

[Signatures continued on following page]

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Attorney for Owner

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

**OWNER:**

Austin Goodnight Ranch, L.P., a Texas limited partnership

By: Austin Goodnight Ranch GP, LLC, a Texas limited liability company, its general partner

By: Benchmark Land & Exploration, Inc., a Texas corporation, its member

By: Myra J. Goepp  
Myra Goepp, Vice President

Date: 03-01-2021

STATE OF TEXAS

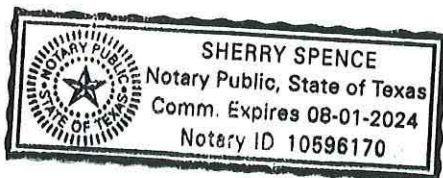
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COUNTY OF TRAVIS

THIS INSTRUMENT was acknowledged before me on this 15<sup>th</sup> day of March, 2021, by Myra Goepp, Vice President of Benchmark Land & Exploration, Inc., a Texas corporation, a member of Austin Goodnight Ranch GP, LLC, a Texas limited liability company, the general partner of Austin Goodnight Ranch, L.P., a Texas limited partnership, on behalf of said entities.

(SEAL)

[Signature]  
Notary Public, State of Texas



**Attachment 1**  
**Revised Exhibit A**

# WATER AND WASTEWATER SERVICE EXTENSION REQUEST FOR CONSIDERATION

Name: Goodnight Ranch Phase Two (Revised)		Service Requested: Water
SER-4128R	Hansen Service Request Number 817061	Date Received: 09/17/2019
Location: 10221 OLD LOCKHART RD AUSTIN TX 78747		
Acres: 445.00	Land Use: MIXED	LUE: 3,424
Alt. Utility Service or S.E.R. Number: City of Austin Wastewater SER-4129		
Quad(s): H11 H12 J12	Reclaimed Pressure Zone: CENTRAL SERVICE AREA	DDZ: YES
Drainage Basin: ONION	Pressure Zone: SOUTH	DWPZ: NO
Demand (Estimated Peak Hour): 7,490 GPM		FIRE FLOW: 1,500 GPM
Cost Participation: \$796,950.00	% Within City Limits: 100	% Within Limited Purpose: 0

## Description of Improvements:

Applicant shall construct approximately 225 feet of 12-inch water main from the existing 12-inch water main (Project No. 2015-0749) in Deer Chase Trl and extend northeast along Gertrudis Loop to Old Lockhart Rd, as approximately shown on the attached map. The proposed 12-inch water main shall replace the existing 8-inch water main along its path. Applicant shall connect all existing water services and water mains along this path to the proposed 12-inch water main.

Applicant shall construct approximately 2,900 feet of oversized 16-inch water main from the proposed 12-inch water main described above in Gertrudis Loop at Old Lockhart Rd and extend southeast along Old Lockhart Rd to the subject tract and across the future AISD school site, as approximately shown on the attached map. The proposed oversized 16-inch water main shall replace the existing 2-inch water main along its path. Applicant shall connect all existing water services and water mains along this path to the proposed oversized 16-inch water main.

Applicant shall construct appropriately sized water main extensions from the existing 12-inch water main (Project No. 2009-0074) in E Slaughter Ln at Alderman Dr, the existing 12-inch water main (Project No. 2009-0045) in E Slaughter Ln at Goodnight Ranch Blvd, and the existing 12-inch water main (Project No. 2014-0573) in E Slaughter Ln at Vertex Blvd and extend south through the subject tract. The appropriately sized "looped" water distribution system within the subject tract shall include at least two 12-inch (minimum) water mains interconnected within the subject tract and extending between the existing 48-inch water transmission main (Project Nos. 2009-0074 and 2009-0045) in E Slaughter Ln and the proposed oversized 16-inch water main in Old Lockhart Rd, as approximately shown on the attached map.

To serve the portion of the subject tract along Old Lockhart Rd and generally west of Cheryl Lynn Rd, Applicant shall construct approximately 800 feet of 12-inch water main from the existing 24-inch water main in Old Lockhart Rd near Raines Pass and extend south along Old Lockhart Rd and connect back to the existing 24-inch water main. A portion of this proposed 12-inch water main is also include in SER-4074 (Goodnight Ranch Phase Two Section 1).

NOTES: 1) Water demand and sprinkled fire flow requirement based on engineering calculations received from Lawrence M. Hanrahan, P.E. of Civile LLC on 11/01/2017. 2) The proposed water improvements may be constructed in phases as development progresses as long as adequate looping is established within each phase.

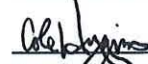
## Approval of this Service Extension Request is subject to completion and acceptance of the improvements described above and the conditions set forth below:


- 1) Construction of all Service Extensions is subject to all environmental and planning ordinances.
- 2) Service Extensions are subject to the guidelines established in the Land Development Code, Chapter 25-9, Water and Wastewater Utility Service.
- 3) An approved Service Extension is not a reservation of capacity in the system, but is an acknowledgment of the intent to serve. Available capacity shall be confirmed at the time a development application is submitted.
- 4) The level of service approved by this document does not imply commitment for land use.
- 5) Public utility mains must meet City of Austin design and construction criteria and must be approved by Austin Water Engineering Review.
- 6) Approval of a site plan that meets the Fire Department requirements for fire control.
- 7) Proposed public water improvements will be dedicated to the City of Austin for ownership, operation, and maintenance.
- 8) Proposed public water improvements must be placed in the public right-of-way or approved utility easements. Utility easements must be approved by Austin Water Engineering Review and must be in place prior to construction plan approval.
- 9) The approved Service Extension will automatically expire 180 days after date of approval unless a development application has been accepted by the Development Services Department. The Service Extension expires on the date the development expires, or if approved, on the date the development application approval expires.
- 10) City Council approved cost participation for oversized water improvements on 05/24/2018 and the associated Cost Reimbursement Agreement was executed between the City of Austin and the Applicant on 08/28/2018.

  
 Project Manager, Utility Development Services  
 Date: 9/18/19

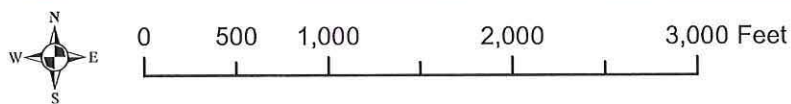
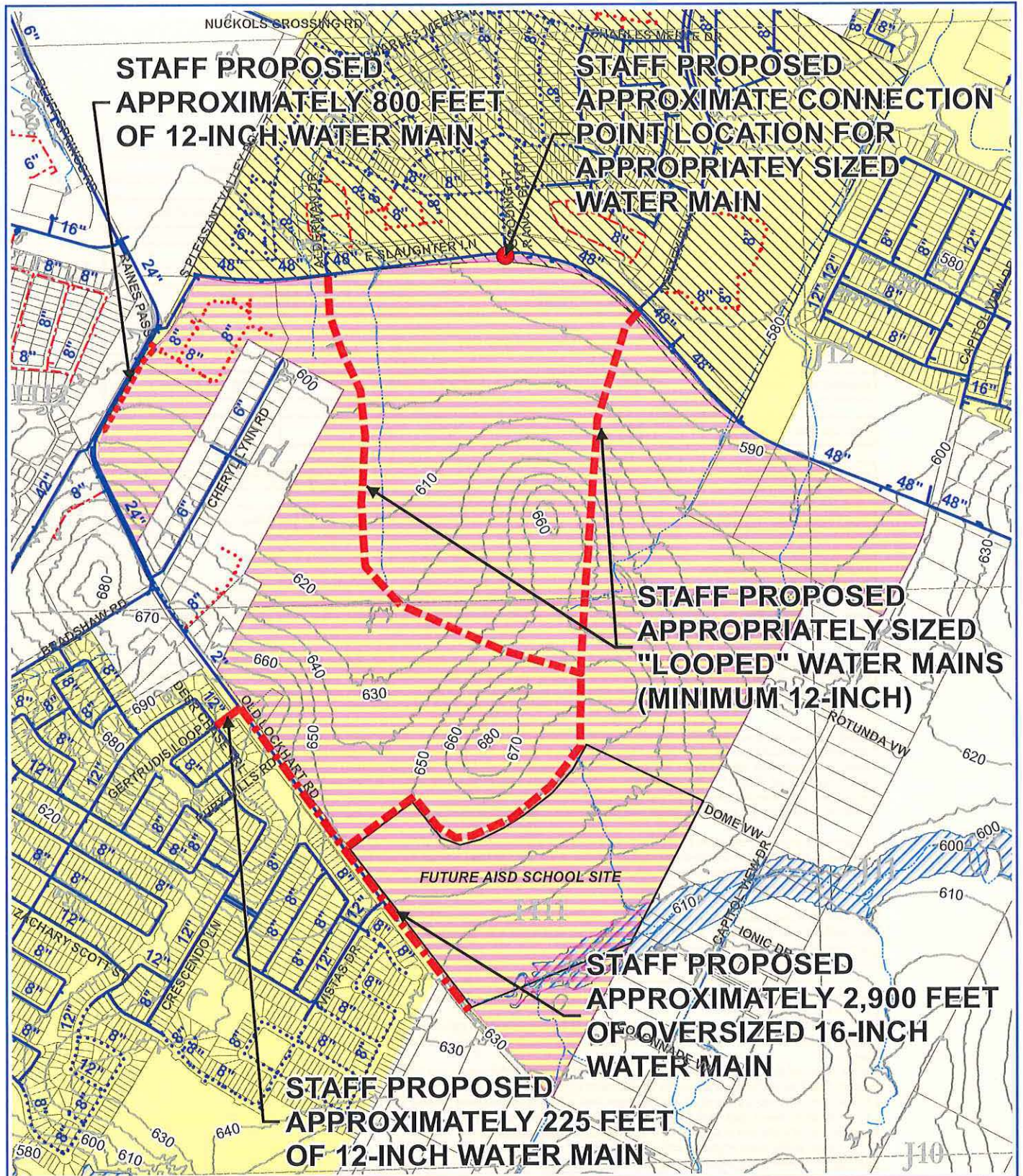
  
 Division Manager, Utility Development Services  
 Date: 9/18/19

  
 Assistant Director

  
 Supervisor, Utility Development Services  
 Date: 9/19/19

  
 Director, Austin Water  
 Date: 9/23/19








**W. S.E.R. Name: Goodnight Ranch Phase Two (Revised)**

**W. S.E.R. Number: 4128R**

Utility Development Services Plotted 09/18/2019

-  Subject Tract
-  Goodnight Ranch Phase One
-  100-yr FEMA Floodplain
-  Full-Purpose City Limit
-  2-Mile ETJ

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of the property boundaries. This product has been produced by the City of Austin for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.





**Recommendation for  
Water & Wastewater Commission**

<b>Commission Meeting Date:</b>	May 9, 2018
<b>Council Meeting Date:</b>	May 24, 2018
<b>Department:</b>	Austin Water
<b>SUBJECT</b>	
<p>Authorize the negotiation and execution of an agreement with Austin Goodnight Ranch, L.P. for the City to reimburse the developer for an amount not to exceed \$796,950.00 for costs associated with the design and construction of an oversized water main and appurtenances related to Service Extension Request No. 4128 that will provide water service to a proposed mixed use development located at Slaughter Lane and Old Lockhart Road.</p>	
<b>AMOUNT AND SOURCE OF FUNDING</b>	
<p>Funding is available in the Fiscal Year 2017-2018 Capital Budget of the Austin Water Utility. A fiscal note is attached.</p>	
<b>Purchasing Language:</b>	
<b>Prior Council Action:</b>	N/A
<b>For More Information:</b>	Phillip Jaeger, 972-0232 and Denise Avery, 972-0104
<b>Boards and Commission Action:</b>	To be reviewed by the Water and Wastewater Commission on May 9, 2018.
<b>MBE/WBE:</b>	

The Goodnight Ranch Phase Two project consists of approximately 445 acres of land located at south of Slaughter Lane and north and east of Old Lockhart Road (the "Property"). The Property is located entirely within the City of Austin's (the "City") 2-mile Extra-Territorial Jurisdiction, Impact Fee Boundary, Austin Water's service area for water, the Desired Development Zone, and the Onion and Marble Creek Watersheds. A map of the property location is attached.

Austin Goodnight Ranch, L.P. (the "Applicant") is proposing to develop approximately 1,037 single-family homes, 3,674 multi-family units, 275,000 sq. ft. retail space, 32,000 sq. ft. restaurant space and a 2,405 student high school. The Applicant requested that the City provide water utility service to the Property as proposed in Service Extension Request (SER) No. 4128. Austin Water will provide retail wastewater service to the Property.

In accordance with Chapter 25-9 of the City Code, the City has asked the Applicant to oversize the water main in order to serve additional properties within the South water pressure zone consistent with the City's long range planning goals for this area. If approved by City Council, the City will cost participate in this construction project only to the extent of the City's proportionate share of the oversized main.

The proposed oversized improvements include construction of approximately 3,500 feet of 16-inch water main along Old Lockhart Road approximately between Bradshaw Road and Vistas Drive.

The City will reimburse the Applicant for an overall total amount not to exceed \$796,950.00 for hard costs and soft costs. Hard costs include, but are not limited to, construction and materials. Soft costs include, but are not limited to, preliminary engineering reports, surveying, geotechnical studies, design, and project management. The City's cost participation by project component is as follows:

- For costs of the 16-inch water main (the minimum pipe diameter of 8-inches required to serve the Property to an oversized 16-inch) and appurtenances, the City's maximum participation consists of: (1) hard costs, in an amount not to exceed 50% of the hard costs of the 16-inch water main and appurtenances, and (2) soft costs, in an amount not to exceed 15% of the City's hard cost participation amount.

To serve the Property, the Applicant will additionally be required to construct, at their own cost:

- approximately 800 feet of 12-inch water main extending along Old Lockhart Road south of Raines Pass,
- appropriate length of 12-inch water mains within the Property between E Slaughter Lane and Old Lockhart Road, and
- appropriate length of appropriately sized water mains within the Property.

Other terms of the agreement will require that the Applicant:

- Pay all costs for financing, interest, fiscal security, accounting, insurance, inspections, permitting, easement acquisition, legal services, and other non-reimbursable soft costs associated with the project;

- Conform to the City's design criteria and construction standards;
- Construct all improvements at their cost and, after the City's final approval of the construction, dedicate the facilities to the City for ownership, operation, and maintenance;
- Allow the City to use the project plans and specifications approved by the City to solicit and publish invitations for bids for the construction of the improvements; and
- Follow the City's standard bidding practices and procedures, including the minority-owned business enterprise procurement program found in Title 2 of the City Code, and Texas Local Government Code Chapters 212 and 252.

The proposed project will be managed through Austin Water staff and is located in zip code 78747, in City Council District 2.