

AGENDA



Thursday, May 27, 2010

**Austin Water Utility
RECOMMENDATION FOR COUNCIL ACTION**

Item No. 6

Subject: Approve an ordinance authorizing the City Manager to negotiate and execute a cost reimbursement agreement with Club Deal 120 Whisper Valley, Limited Partnership and Club Deal 116 Indian Hills TX, Limited Partnership for design of 48 inch and 24 inch water mains, and for the payment of a Certificate of Convenience and Necessity release fee, for a total reimbursement cost not to exceed \$2,000,000; waiving the requirements of Sections 25-9-33, 25-9-63, and 25-9-64 of the City Code relating to cost participation and cost reimbursement; and waiving the Service Extension application fee in an amount not to exceed \$6,595 established in Ordinance 20090916-004.

Amount and Source of Funding: Funding is available in the amount of \$2,000,000 in the Fiscal Year 2009-2010 Capital Improvement Budget of the Austin Water Utility, pending action to amend the capital budget on May 27, 2010.

Fiscal Note: A fiscal note is attached.

For More Information: Bart Jennings, 972-0118; Denise Avery, 972-0104

Boards and Commission Action: Recommended by the Water and Wastewater Commission. Related to Item #5.

Club Deal 120 Whisper Valley, Limited Partnership owns approximately 2,066 acres ("Whisper Valley") and Club Deal 116 Whisper Valley, Limited Partnership owns approximately 240 acres ("Indian Hills") (collectively, "Developer" and the "Property") generally located south of the City of Manor and north of FM 969 within the City's extraterritorial jurisdiction and the City's Desired Development Zone as shown on the attached map. Developer plans to construct single-family, multi-family, and commercial development within the Property that will require an estimated 9,900 units of water service ("LUEs"). Whisper Valley is located in Manville Water Supply Corporation's ("Manville") certificated water service area while Indian Hills is located in the City's service area. At the Developer's request, Manville has agreed to decertify Whisper Valley from its Certificate of Convenience and Necessity ("CCN"), for a one-time fee ("CCN Fee"), which would facilitate the City in providing retail water service to the area as part of a public improvement district ("PID").

In June 2009, the City and the Developer entered into a development agreement authorized by City Council. The agreement contemplates the creation of PIDs, in accordance with the City Council's adoption of its PID policy of December 2008, for the Indian Hills property and the Whisper Valley property. The PIDs are intended to assist in the financing of public improvements such as utilities, roads, and parks. The Developer believes that the proposed PIDs will be ready for City Council review by the Fall of 2010.

The Developer wishes to execute a cost reimbursement agreement with the City for the design of necessary water infrastructure at this time instead of waiting until the Fall of 2010 because Manville has agreed to release the Property from its CCN only if agreements and CCN amendment applications are completed in June 2010. The proposed water mains to be designed will also serve existing undeveloped City service area. The major points of the cost reimbursement agreement include:

1. Until such time that the City Council approves the formation of the PIDs:

a. Developer will design 19,700 linear feet of 48 inch water main ("Line 1") and 17,620 linear feet of 24 inch water main ("Line 2").

b. The City will reimburse the Developer for the PID eligible engineering design costs associated with these projects within 90 days of the City's final acceptance of plans, and pay the Developer for the CCN Fee (PID eligible expense) within 30 days of Manville's submittal to the Texas Commission on Environmental Quality to decertify Whisper Valley.

c. The total amount of City reimbursement to the Developer shall not exceed \$2 million.

The City will be repaid the CCN Fee by the developer if Council decides not to approve the formation of the PIDs. If Council decides in the future to approve the formation of the PIDs, the City will be fully repaid by the PIDs the design costs and the CCN Fee that the City has paid to the developer

Because the City requested that the Developer design water improvements beyond those needed only to serve the proposed development, and the potential creation of a PID using PID bond proceeds to repay the City, the Developer is requesting a waiver from City Ordinance requirements of: Section 25-9-33 relating to the requirement of filing a service extension application; Section 25-9-63 relating to the amount of cost reimbursement for soft costs; Section 25-9-64 relating to the requirement of filing an application for cost participation and cost reimbursement; and the application fee of \$6,595 for certain Service Extension Requests (City Ordinance 20090916-004).