

## TERMINATION AGREEMENT AND RELEASE

This Termination Agreement and Release (this “Agreement”) is entered into and effective as of February 4, 2016 (“Effective Date”) by and between Onion Creek Golf Group, LP, a Texas limited partnership (“OCGG”) and the City of Austin, a Texas home-rule municipality (the “City”). Collectively, OCGG and the City shall be referred to as the “Parties”.

### BACKGROUND

- A. The City, Onion Creek Wastewater Corporation (“OCWC”), Onion Creek Club, and Lumbermen’s Investment Corporation (“LIC”) entered into that one certain “Agreement for Conveyance of Interests in Wastewater Facilities and Settlement of all Claims Regarding Wastewater Service to the Onion Creek Subdivision Area” executed on October 22, 2002, as amended on the same date (“Sales Agreement”).
- B. In accordance with the Original Sales Agreement, the City acquired title to the Onion Creek Wastewater Treatment Plant and executed that one certain “Agreement for Potable Water and Treated Wastewater Sales and Assignment and Use of Irrigation Facilities” executed on October 22, 2002, as amended on the same date (“Water Agreement”).
- C. In accordance with the Water Agreement, the City agreed to provide to OCWC the treated effluent output of the Onion Creek Wastewater Treatment Plant (up to 48 million gallons a year) at no cost for twenty years and at a discounted rate for an additional five years.
- D. OCGG is the successor and assignee of all rights of OCWC, LIC and Onion Creek Club under the Sales Agreement and Water Agreement by that one certain “Assignment Agreement” between Lumberman’s, LIC investment, Inc., and Onion Creek Golf Group, L.P. dated March 31, 2006.
- E. On October 31, 2013, a flood severely damaged the Onion Creek Wastewater Treatment Plant rendering it inoperable.
- F. OCGG has since constructed a well into the Trinity Aquifer as a new source of irrigation water.
- G. The City and OCGG desire to terminate the Water Agreement and any remaining obligations the Parties may have to one another under the Sales Agreement, mutually releasing one another from both the Water Agreement and Sales Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, OCGG and City hereby agree as follows:

### AGREED TERMS

1. Payment by City. City will pay OCGG the total sum of Nine Hundred Twenty Thousand Eight Hundred Thirty Seven dollars and no cents (US\$920,837.20) (the “Termination Payment”), less the amount withheld and applied in accordance with paragraph 8(a) below, not later than 30 days after

the Effective Date. City shall provide a fully executed copy of this Agreement to counsel for OCGG not later than the date that City must pay the Termination Payment.

The Parties acknowledge and agree that they are solely responsible for paying any attorneys' fees and costs they incurred and that neither Party nor its attorney(s) will seek any award of attorneys' fees or costs from the other Party.

2. Taxes. OCGG shall be solely responsible for, and is legally bound to make payment of, any taxes determined to be due and owing by it to any federal, state, local, or regional taxing authority as a result of the Termination Payment. OCGG understands that City has not made, and it does not rely upon, any representations regarding the tax treatment of the sums paid pursuant to this Agreement. Moreover, OCGG agrees to indemnify and hold City harmless in the event that any governmental taxing authority asserts against City any claim for unpaid taxes, failure to withhold taxes, penalties, or interest based upon the payment of the Termination Payment.

3. Mutual Release. The Parties, on behalf of themselves, their predecessors, successors, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates and assigns, and its and their past, present, and future officers, directors, shareholders, interest holders, members, partners, attorneys, agents, employees, managers, representatives, assigns, and successors in interest, and all persons acting by, through, under, or in concert with them, and each of them, hereby release and discharge the other Party, together with their predecessors, successors, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates and assigns and its and their past, present, and future officers, directors, shareholders, interest holders, members, partners, attorneys, agents, employees, managers, representatives, assigns and successors in interest, and all persons acting by, through, under, or in concert with them, and each of them, from all known and unknown charges, complaints, claims, grievances, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties, fees, wages, expenses (including attorneys' fees and costs actually incurred), and punitive damages, of any nature whatsoever, known or unknown, which either Party has, or may have had, against the other Party, whether or not apparent or yet to be discovered, or which may hereafter develop, for any acts or omissions related to or arising from the Sales Agreement or the Water Agreement.

This Agreement resolves any claim for relief that could have been alleged, no matter how characterized, including, without limitation, compensatory damages, damages for breach of contract, bad faith damages, reliance damages, liquidated damages, damages for humiliation and embarrassment, punitive damages, costs and attorneys' fees related to or arising from the Sales Agreement or the Water Agreement.

4. No Outstanding or Known Future Claims/Causes of Action. Each Party affirms that it has not filed with any governmental agency or court any type of action or report against the other Party, and currently knows of no existing act or omission by the other Party that may constitute a claim or liability excluded from the release in paragraph 3 above.

5. Acknowledgment of Settlement. The Parties acknowledge that (i) the consideration set forth in this Agreement, which includes, but is not limited to, the Termination Payment, is in full settlement of all claims or losses of whatsoever kind or character that they have, or may ever have had, against

the other Party as broadly described in paragraph 3 above, and (ii) by signing this Agreement, and accepting the consideration provided herein and the benefits of it, they are giving up forever any right to seek further monetary or other relief from the other Party for any acts or omissions relating to any right duty or obligation under the Sales Agreement or Water Agreement.

6. No Admission of Liability. The Parties acknowledge that the Termination Payment was agreed upon as a compromise and final settlement of disputed claims and that payment of the Termination Payment is not, and may not be construed as, an admission of liability by City and is not to be construed as an admission that City engaged in any wrongful, tortious or unlawful activity, or that City breached any term or obligation under the Sales Agreement or Water Agreement. City specifically disclaims and denies (a) any liability to OCGG and (b) engaging in any wrongful, tortious or unlawful activity.

7. Funding Limitations. OCGG acknowledges that the City has provided notice of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person who is in arrears to City of Austin for taxes, and of § 2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City. OCGG acknowledges that the City has provided notice that the City's payment obligations to OCGG are payable only from funds appropriated or available for the purpose of this Agreement. If the City does not appropriate funds for this Agreement, or if there are no other lawfully available funds for this Agreement, or if the City Council does not authorize execution of this Agreement within 30 days of the Effective Date, this Agreement is void. Further, if the City fails to deliver the Termination Payment in accordance with paragraph 1, OCGG has the option to terminate this Agreement by timely written notice to the City and in the event of such termination by OCGG, this Agreement shall be deemed void *ab initio* in all respects. City shall provide OCGG notice of the failure of City to make an adequate appropriation for any fiscal year to pay the amounts due under this Agreement, the reduction of any appropriation to an amount insufficient to permit City to pay its obligations under this Agreement and any offset against the Termination Payment that is in addition to the amount withheld and applied in accordance with paragraph 8(a) below.

8. Special Provisions. The Parties agree to the following:

a. Payment Net. The Parties agree that, if on the date the City receives this Agreement executed by OCGG the City's utility account records indicate that an amount is due and owing for utility services provided to OCGG by the City, the City will withhold that amount from the amount of the Termination Payment and apply it toward the past due account balance(s). OCGG agrees and acknowledges that the City will reduce the amount of the Termination Payment set forth in paragraph 1 above in accordance with this paragraph 8(a) and that the balance paid (\$920,837.20 less amount of utility account(s) balance in arrears) will be full satisfaction of the Termination Payment.

b. Groundwater Permit Reduction. OCGG will take all reasonable and necessary action to reduce its permitted groundwater withdrawals from the Barton Springs segment of the Edwards Aquifer and file an administratively complete application with the Barton Springs Edwards Aquifer Conservation District ("District") requesting that the permitted withdrawals from said wells be limited by the District to 47.5 million gallons per year. OCGG will submit to the District an application for said reduction no later than 10 days after the City wire transfers to OCGG's bank account the Termination Payment.

c. Termination of Prior Agreements. Upon the delivery to OCGG of the Termination Payment less the amount withheld and applied in accordance with paragraph 8(a) above, the Water

Agreement and any remaining obligations the Parties may have to one another under the Sales Agreement, including the City's "irrevocable contract right" to access and use the irrigation facilities as described in Section 1.06 of the Water Agreement, shall be terminated.

9. Agreement is Legally Binding. The Parties intend this Agreement to be legally binding upon and shall inure to the benefit of each of them and their respective successors, assigns, executors, administrators, heirs and estates. Moreover, the persons and entities referred to in paragraph 3 above, but not a Party, are third-party beneficiaries of this Agreement.

10. Entire Agreement. The recitals set forth at the beginning of this Agreement are incorporated by reference and made a part of this Agreement. This Agreement constitutes the entire agreement and understanding of the Parties and supersedes all prior negotiations and agreements, proposed or otherwise, written or oral, concerning the subject matter hereof. Furthermore, no modification of this Agreement shall be binding unless in writing and signed by each of the parties hereto.

11. New or Different Facts: No Effect. Except as provided herein, this Agreement shall be, and remain, in effect despite any alleged breach of this Agreement or the discovery or existence of any new or additional fact, or any fact different from that which either Party now knows or believes to be true. Notwithstanding the foregoing, nothing in this Agreement shall be construed as, or constitute, a release of any Party's rights to enforce the terms of this Agreement.

12. Interpretation. Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement. The headings within this Agreement are purely for convenience and are not to be used as an aid in interpretation. Moreover, this Agreement shall not be construed against either Party as the author or drafter of this Agreement.

13. Governing Law and Choice of Forum. This Agreement is made and entered into within and shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of Texas, without regard to the principles of conflicts of laws. Any action to enforce this Agreement shall be brought only in Travis County, Texas.

14. Reliance on Own Counsel. In entering into this Agreement, the Parties acknowledge that they have relied upon the legal advice of their respective attorneys, who are the attorneys of their own choosing, that such terms are fully understood and voluntarily accepted by them, and that, other than the consideration set forth herein, no promises or representations of any kind have been made to them by the other Party. The Parties represent and acknowledge that in executing this Agreement they did not rely, and have not relied, upon any representation or statement, whether oral or written, made by the other Party or by that other Party's agents, representatives or attorneys with regard to the subject matter, basis or effect of this Agreement or otherwise.

15. Counterparts. This Agreement may be executed by the Parties in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. Authority to Execute Agreement. By signing below, each Party warrants and represents that the person signing this Agreement on its behalf has authority to bind that Party and that the Party's execution of this Agreement is not in violation of any By-law, Covenants and other restrictions placed upon them by their respective entities.

**IN WITNESS WHEREOF**, and intending to be legally bound, each of the Parties hereto has caused this Agreement to be executed as of the date(s) set forth below.

**OCGG**

Onion Creek Golf Group, LP, a Texas limited partnership

By: Onion Creek Golf Group GP, Inc.,  
its general partner

By: \_\_\_\_\_  
Name: Steven Held  
Title: President

**CITY**

The City of Austin, Texas  
A Texas home-rule municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_