



Travis County Commissioners Court Agenda Request

Meeting Date: July 17, 2012

Prepared By: Steve Sun Phone #: 854-4660

Division Director/Manager: Steve Sun, P.E., Acting Director

Department Head: Steven M. Manilla, P.E., County Executive-TNR

Sponsoring Court Member: Commissioner Davis, Precinct One

AGENDA LANGUAGE: Consider and take appropriate action to approve the Amended and Restated Decker Lake Road Participation Agreement with Club Deal 116 Indian Hills TX, L.P. in Precinct One.

BACKGROUND/SUMMARY OF REQUEST:

Travis County and the Club Deal 116 Indian Hills TX, L.P. (the "Developer") entered into the Decker Lake Road Participation Agreement dated November 30, 2006 and Amendment Number One to Decker Lake Road Participation Agreement dated November 5, 2010 pertaining to the proposed design and construction of Decker Lake Road from FM 973 to SH 130. The proposed Decker Lake Road is a 4-lane divided arterial included in the CAMPO 2035 Plan. Since the execution of the Participation Agreement and the introduction of additional work tasks to be performed by the Developer, include certain TxDOT improvements described under Issues and Opportunities, the parties seek to amend and replace the Decker Lake Road Participation Agreement with this proposed agreement. This proposed agreement further defines the cost obligations of certain improvements of the respective parties, revises the construction cost estimate, requires the deposit of fiscal in escrow account for the construction costs, establishes new scheduling milestones, approves the construction manager, and provides for the possible termination of the agreement by the County if certain conditions are not met by the Developer.

STAFF RECOMMENDATIONS:

TNR recommends approval of this agreement.

ISSUES AND OPPORTUNITIES:

As Decker Lake Road will be extended from FM 973 to SH 130, permits from TxDOT are required for tying to FM 973 and SH 130. Certain intersection improvements such as left and right turn lanes, transitions and geometry reconfiguration are required per TxDOT design criteria. These are in addition to original project scope of work and are now added to this agreement. The original estimated project construction cost of three million dollars is also increased to four million dollars due

to the added project scope of work. The original construction schedule is amended in this agreement as well. The new schedule calls for the construction start by August 31, 2012 and completion by August 31, 2013. The Developer will be required to deposit its share of construction costs in cash into the County escrow account. The County will use the funds from the escrow account to pay for contraction cost.

FISCAL IMPACT AND SOURCE OF FUNDING:

The construction costs, shared by the Developer and the City of Austin, will be deposited into project escrow accounts before construction start. The County’s estimated share of construction cost is \$1.34M (1/3 of the estimated \$4M construction costs). Funding information is listed below:

Fund Center - 1490190000

Fund - 4058

G/L Account - 521040

WBS Element - RDCN.149.000001

Fund Reservation Number - To be set up once WBS elements are released in SAP

ATTACHMENTS/EXHIBITS:

Amended and Restated Decker Lake Road Participation Agreement

REQUIRED AUTHORIZATIONS:

Cynthia McDonald	Financial Manager	TNR	854-4239
Steve Manilla	County Executive	TNR	854-9429
Tom Nuckols	Assistant County Attorney	County Attorney's Office	854-9513

CC:

Steve Sun		TNR	854-4660
Tony Valdez		TNR	854-7567
Donna Williams-Jones		TNR	854-7677

: :
3101 - Public Works/CIP -

DECKER LAKE ROAD

AMENDED AND RESTATED PARTICIPATION AGREEMENT

This Decker Lake Road Amended and Restated Agreement ("**Agreement**") is entered into between Travis County, Texas (the "**County**"), and Club Deal 116 Indian Hills TX, L.P., a Delaware limited partnership (the "**Developer**"). The County and Developer are sometimes hereinafter individually referred to as a "**Party**" and collectively referred to as the "**Parties**." Each of the Parties confirms that it has the authority and ability to enter into this Agreement, and to perform its obligations under this Agreement, without the further approval or consent of any other person or entity.

Recitals

WHEREAS, the Developer owns land in the unincorporated area that the Developer intends to develop for residential, commercial, or other uses, as those tracts are generally described or depicted on **Exhibit A** ("**Developer's Land**");

WHEREAS, Developer's Land is adjacent to a portion of the proposed Decker Lake Road, which in this area is specified in the Capital Area Metropolitan Planning Organization ("**CAMPO**") 2035 Plan to be a four (4) lane divided arterial;

WHEREAS, the County desires that Decker Lake Road be extended from Farm to Marker 973 ("**FM 973**") to State Highway 130 ("**SH 130**") to include capacity to handle both present development needs and future traffic loads (the "**Project**"), and the Developer is willing to construct the Project if the County reimburses the Developer for the costs of including capacity for future traffic; and

WHEREAS, funding for the Project was provided for in Proposition 1 of the 2005 Travis County bond election; and

WHEREAS, Section 232.105 of the Texas Local Government Code provides that a commissioners court may contract with a developer of land in the unincorporated area to construct public improvements, and this Agreement is being entered into pursuant to, and is in compliance with, Section 232.105 since the County's costs are attributable to the oversizing of the road and to less than thirty percent of any component of the Project that does not constitute such oversizing ; and

WHEREAS, the County and the Developer entered into that certain Participation Agreement dated November 30, 2006, and Amendment Number One to Decker Lake Road Participation Agreement dated November 5, 2010 (collectively "Decker Lake Road Participation Agreement") pertaining to the proposed construction of Decker Lake Road from Farm to Market 973 ("**FM 973**") to State Highway 130 ("**SH 130**"), specified in the Capital Area Metropolitan Planning Organization 2030 Plan to be a 4-lane divided arterial (as described in the Decker Lake Road Participation Agreement as the "**Project**"); and

WHEREAS, the Decker Lake Road Participation Agreement establishes the nature and extent of improvements to be constructed, the cost obligations of the respective Parties for the Project, and further provides for the possible termination of the agreement by the County if certain conditions are not met by the dates specified in the agreement; and

WHEREAS, as a result of the passage of time since the Parties' execution of the Decker Lake Road Participation Agreement and the introduction of additional work tasks to be performed by the Developer, including certain TxDOT improvements described below, the Parties' seek to amend and replace the Decker Lake Road Participation Agreement with this Agreement;

NOW, THEREFORE, in consideration of the mutual promises, covenants, obligations and benefits set forth in this Agreement, the Parties agree as follows:

Section 1. The Project.

(a) The Project shall be designed with the following features ("Project Design Features") as shown on Exhibit B.

(i) New four (4) lane divided road beginning at FM 973 and running east to SH 130 approximately three thousand five hundred fifty feet (3550') with:

(A) right-of-way width depending on design requirements, but no less than one hundred fourteen feet (114'), plus slope and drainage easements;

(B) road consisting of two (2) asphalt pavement sections thirty-two feet (32') wide from face of curb to face of curb ("FOC"), each section including:

(1) two (2) twelve feet (12') wide travel lanes;

(2) one and a half feet (1.5') wide Portland cement concrete curb and gutter along both edges of each section;

(3) a five feet (5') wide bicycle lane abutting the concrete gutter on each outside lane of the road; and

(C) number, design, and location of median breaks to be proposed by the Developer, but finally determined by the County based on applicable public safety standards.

(ii) Pavement structure with a design life of twenty (20) years based on geotechnical engineering produced by the Project Engineer.

(iii) Design speed of forty-five (45) miles per hour.

- (iv) Any bridges are to be designed according to minimum applicable Texas Department of Transportation (TxDOT) standards.
 - (v) Twenty-three feet (23') wide landscaped medians FOC.
 - (vi) Six feet (6') wide sidewalks on both sides of the road certified to meet all applicable accessibility standards.
 - (vii) Mitigation for environmental impacts as, and to the extent, required by applicable law based on the environmental, archeological, endangered species, and other studies by the Project Engineer.
 - (viii) Erosion/sedimentation/water quality controls, revegetation, stormwater management during construction, and permanent stormwater management and water quality controls as required by Chapter 30, Austin/Travis County Subdivision Regulations.
 - (ix) Guardrails and traffic control devices and markings, both during construction and permanent, as required by TxDOT's Manual of Uniform Traffic Control Devices and sound engineering principles and practices.
 - (x) All necessary relocations or adjustments of utilities or other infrastructure, subject to payment or reimbursement by any person legally obligated to bear the cost of such costs relocations or adjustments.
 - (xi) Compliance with any applicable County policies, procedures, and requirements for acceptance of the Project for maintenance.
 - (xii) Graded to accommodate an at-grade crossing at the intersection of the Project with the frontage road of SH 130 with signage and conduit installed for a future traffic signal.
- (b) The Project shall also include the TxDOT Improvements consisting of the addition of dedicated right and left turn lanes in both the northbound and southbound directions along FM 973, such TxDOT improvements depicted in **Exhibit B-1** appended hereto.
- (c) In addition, the Project shall include the Transition Improvements on the west side of FM 973 to improve the intersection and geometry of the roadway through the intersection. The Transition Improvements are depicted as "Option B Tie in" in **Exhibit B-2** appended hereto.
- (d) It is anticipated that the Developer will construct the entire Project at once. However, subject to prior approval by the County, the Developer may divide the Project into two or more phases and construct different phases of the Project at different times.

- (e) If the permanent stormwater management controls will be used to manage any stormwater from the Developer's Land in addition to the stormwater from the Project, the Developer shall maintain the permanent stormwater management controls pursuant to the agreement attached as **Exhibit C**, which shall be executed and recorded in the Travis County real property records before construction of the Project begins.
- (f) Subject to the terms of this Agreement, the Developer shall:
- (i) cause the Project Engineer, as defined below, to provide and deliver the Developer and the County all necessary Engineering Services and Deliverables, as defined below, that are necessary to design the Project as required by this Agreement; and
 - (ii) cause the Construction Contractor, as defined below, to construct the Project as required by this Agreement.
- (g) In consideration of Developer's performance under Subsection (d), the County will pay or reimburse the Developer as follows.
- (i) The County will pay or reimburse the Developer fifty percent (50%) of actual costs incurred for all necessary Engineering Services and Deliverables for design of the Project.
 - (ii) The County will pay or reimburse the Developer thirty three and one-third percent (33 1/3%) of actual costs incurred under the Construction Contract and for inspections, testing, and all other approved construction costs for the Project.
- (h) For Project Manager Services, as defined below, the Project Manager will be paid or receive four percent (4%) of the approved actual costs incurred under the Construction Contract ("**Project Management Fee**") and the County will pay or reimburse the Developer fifty percent (50%) of the Project Management Fee. Except as expressly provided otherwise in this Agreement, each Party shall bear one hundred per cent (100%) of the costs of performing its obligations under this Agreement, including overhead, contract procurement or review, reviewing Engineering Services and Deliverables, and any other costs incurred by a Party under this Agreement.
- (i) The County has executed an interlocal agreement with the City of Austin ("**City**") under which, in addition to the County's reimbursement under Section 1(g)(ii), the City would provide funds to reimburse the Developer an additional thirty three and one third percent (33 1/3%) of the Developer's actual costs incurred under the Construction Contract and for inspections, testing, and all other approved construction costs for the Project ("**Interlocal Agreement**"). The City will pay or reimburse the Developer 100% for any add on items requested by the City. Project shall comply with and be designed and constructed according to the

City/County requirements for design standards, permit reviews, review time periods, and permitting fee requirements, and the Developer acknowledges that County approval of Engineering Services and Deliverables may be delayed if necessary due to pending City reviews.

Section 2. Project Management.

- (a) The Developer shall be responsible for managing development of the Project. The person providing project management services ("Project Manager") may be the Developer or the Developer may contract with the Project Engineer or another person to serve as Developer's agent for providing such services. The County has approved Sheffield Asset Management Company as Project Manager. The Developer shall submit copies of any proposed contract with the Project Manager to the County for approval. The Developer shall obtain from the Project Manager and provide to the County a collateral assignment of the Developer's rights under the contract with the Project Manager in the form attached as **Exhibit D**, which authorizes the County to utilize the services of the Project Manager to complete the Project if the Developer fails to do so as provided in this Agreement.
- (b) The Project Manager will ensure timely and satisfactory completion of the Project, including performing construction administration services listed in **Exhibit E**; assuring the project scope is accurately defined and adhered to; identifying and planning for all obstacles to the completion of the project; planning and conducting design and preconstruction conferences; monitoring and reporting on the design and construction schedules and budgets; monitoring and reporting on the design and construction quality; providing the County with prior notice of major items of work during construction, otherwise coordinating among the Parties and other persons and entities involved in the Project on an ongoing basis; and, generally ensuring that the Project is satisfactorily completed on time and within budget (collectively, "**Project Manager Services**"). The Project Manager shall provide all files for the Project to the County within thirty (30) days after completion of the construction of the Project, including all addenda and change orders, record drawings, pay requests, and payment records. The County may require the Developer to replace the Project Manager if it does not satisfactorily perform its responsibilities related to the Project.

Section 3. Project Engineering Services.

- (a) The Developer will contract with an engineering firm acceptable to the County to assist and serve as Developer's agent in performing all necessary engineering, including design, surveying, geotechnical, and traffic analysis services, utility relocation coordination, and other engineering services for the Project (the "**Project Engineer**"), as required by this section and **Exhibits F and G**. The Developer shall submit copies of the proposed contract with the Project Engineer to the County for approval. The County shall have ten (10) business days after such submission within which to make any comments to the form of the contract,

and if no such comments are received by Developer within said ten (10) day period, the County shall be deemed to have approved the form of contract. In their contract, the Project Engineer must acknowledge that the Project is a public works project on public property. Developer shall in a timely manner pay all amounts due to the Project Engineer for the engineering services rendered in association with this Agreement. The County may require the Developer to replace Project Engineer if Project Engineer does not satisfactorily perform any and all responsibilities related to the Project. The design of the Project will be subject to approval by the County, and all other governmental agencies with jurisdiction. The Developer shall cause the Project Engineer to produce and provide to Developers and the County all engineering services and deliverables to the extent necessary to complete the Project with the required Project Design Features, including:

- (i) completed specific work product/plan stage documents for review;
- (ii) final bid-ready plan sets and project manual with specifications ("**Final Plans and Specifications**");
- (iii) geotechnical report;
- (iv) engineer's opinion of construction costs, project schedule, and critical path method, updated and submitted with each submittal;
- (v) record drawings (as-builts) for the final project within thirty (30) working days after completion of the construction of the Project or the Project Engineer's contract;
- (vi) all required permits to start and complete Project;
- (vii) required tracts' schematic, and parcel drawings and right-of-way strip map for right of way and easement acquisitions;
- (viii) survey services with electronic and soft copy of survey on NAD 83 or as determined by the County;
- (ix) environmental report(s), and copies of all such reports used in the design of the Project shall be submitted to the County;
- (x) engineering and drainage study report;
- (xi) design calculations;
- (xii) electronic copy of above deliverables, where applicable (all drawings and e-files must be in a format compatible with County CADD applications and text documents must be in Microsoft Word format);
- (xiii) complete project file within thirty (30) working days after completion of the construction of the project or the Project Engineer's contract; and
- (xv) any other service or producing any other deliverable necessary to complete the Project with the required Project Design Features, taking into consideration the customary requirements for projects of a similar nature as the Project or special requirements based on any unique aspects of the Project (collectively, "**Engineering Services and Deliverables**").

(b) All Engineering Services and Deliverables shall meet customary professional standards applicable to the service or deliverable or the Project, based on the

Project's nature and location and participants, and are subject to approval by the County based on compliance with this Agreement, cost effectiveness, sound engineering principles and practices, and applicable legal requirements, which approval shall not be unreasonably denied, delayed, or conditioned. The County shall use reasonable efforts to respond to a request for approval within ten (10) working days after any Engineering Services and Deliverables are submitted and shall notify the other Party in writing if an Engineering Service and Deliverable is not satisfactory. All Engineering Services and Deliverables shall become the property of the County.

- (c) Developer shall cause the Project Engineer and any subcontractor of the Project Engineer performing work on the Project to purchase professional errors and omissions liability insurance (contractual liability included) with a limit of at least Five Hundred Thousand Dollars (\$500,000) including the cost of claims and that covers claims arising from errors and omissions in the design and engineering of the Project for claims asserted within a period of five (5) years of the completion of the Project. Developer shall provide a copy of the insurance policy upon Developer's execution of this Agreement. Except for (i) Developer's obligation to provide the errors and omissions liability insurance required by this Section 3(c), and (ii) Developer's liability [in the event and to the extent that the cost of damage or loss is not covered by liability insurance otherwise required by this Section 3(c)] for the below specified percentage ("**Developer's Liability Percentage**") for the costs, damages, or losses (a) that are caused by the Project Engineer with respect to Engineering Services and Deliverables including, but limited to, surveying and/or the Final Plans and Specifications including, but not limited to, the negligence of the Project Engineer and/or surveyors retained by the Project Engineer, and (b) that are the result of deficiencies, errors and/or omissions and/or negligence of the Project Engineer and/or surveyors retained by the Project Engineer discovered within two (2) years of the acceptance of the Project by the County, Developer will have no liability to the County and/or its successors for costs, damages, or losses caused by the Project Engineer with respect to Engineering Services and Deliverables including, but not limited to surveying, and/or the Final Plans and Specifications including, but not limited to, the negligence of the Project Engineer, and the County and its successors shall otherwise look solely to the Project Engineer and/or the errors and omissions liability insurance for any such costs, damages, or losses excluded from Developer's responsibility hereby.

The Developer Liability Percentage for the purposes of this Section 3(c) is Thirty Three and One-Third percent (33 1/3%).

- (d) The Developer shall submit invoices for Engineering Services and Deliverables as provided in Section 8(g) and the County shall reimburse the Developer as provided in Section 8(h).
- (e) By June 30, 2012, the Developer must submit to the County for approval three (3) copies of the Final Plans and Specifications for the Project and a detailed

summary of the work completed and sums paid by the Developer for the Engineering Services and Deliverables. Notwithstanding anything to the contrary, if the Developer fails to comply with the deadline set forth in this Section 3(e), the County may terminate this Agreement and reallocate any bond funding for the Project to other County projects. If the County terminates this Agreement pursuant to this Section 3(e), the County shall be deemed to have elected not to complete the Project and the County will have no obligation to pay any amount under this Agreement; provided, however, the County will release any remaining Fiscal Security to the Developer, less any amounts owed by the Developer to the County under this Agreement

- (f) The County hereby waives all review, permit and inspection fees in connection with the Project.

Section 4. Designated Representatives.

- (a) The County and Developer each designate the individual specified below ("**Designated Representative**") to represent them and to act on their behalf with respect to the subject matter of this Agreement. Each Designated Representative will have authority to determine and interpret the policies and exercise the discretion of the Party it represents, and a Party may rely on the decisions and representations made by the other Party's Designated Representative with respect to the subject matter of this Agreement, except as provided by Section 14(d), below. Each Designated Representative may further designate other representatives to transmit instructions and receive information on the Designated Representative's behalf.

County: Steven Manilla, P.E. (or successor), County Executive,
Transportation and Natural Resources Department.

Developer: Douglas Gilliland

- (b) The Developer will require its agents to report regularly to, and to cooperate and coordinate with, the County's Designated Representatives. Each Party will require its Designated Representative and agents to cooperate and coordinate with one another, including but not limited to meeting with and or reporting information to one another regarding any aspect of the Project, either at regular intervals or at other times determined by the County, and reviewing and commenting in a timely manner on work products associated with the Project.

Section 5. Real Property Interests.

- (a) The Project shall be constructed in public rights-of-way and/or easements ("**Real Property Interests**") conveyed to the County, or to another public entity acceptable to the County with a right of entry or license to allow construction of the Project. The Real Property Interests include the stormwater management

agreement required under Section 1(e). If the County determines that construction of utilities needs to commence before construction of the remainder of the Project commences, the Developer shall convey the Real Property interests when utility construction is ready to commence. Otherwise, the Developer shall convey the Real Property interests when construction of the Project is ready to commence.

- (b) The Developer shall convey or cause to be conveyed to the County all Real Property Interests. The Developer shall bear all costs of conveying or acquiring the Real Property Interests that this Agreement obligates it to secure, including but not limited to closing costs, costs of document preparation, surveying, appraisals, title insurance premiums, title curative work, closing costs, and litigation costs.
- (c) The Developer shall cause the Real Property Interests to be conveyed to the County free of all liens, encumbrances, and title defects unacceptable to the County, by deeds or other instruments acceptable to the County, and with title insurance issued by a title company acceptable to the County. Any title insurance policy shall list the County as insured party, and shall be for an amount based upon the fair market value of the interests conveyed, as reasonably determined by the County.

Section 6. Construction Contract Procurement.

- (a) The Developer shall solicit bids for a contract to construct the Project, or any phase of the project approved by the County under Section 1(d), in substantial conformance with the standard competitive bidding requirements of the County. The invitation for bids shall include the Final Plans and Specifications and written notice of the requirements of Section 7. The Developer shall submit the invitation for bid and a list of proposed bidders to the County for approval in advance. The Developer shall provide the County with all responses to the bid solicitation. The invitation for bids shall be solicited within thirty (30) days of County approval of the Final Plans and Specifications.
- (b) If the bid determined by the Developer to be the lowest responsive and responsible bid exceeds Four Million Dollars (\$4,000,000) for the Project, or any amount approved by the County for a phase of the Project under Section 1(d), (the "Agreed Limit"), the County may require the Developer to reject all bids as excessive and solicit bids a second time. If bids are rejected as excessive, the Developer shall require the Project Engineer, in consultation with the Developer and the County, to modify the Final Plans and Specifications employing value engineering principles in a manner designed to secure a lower bid, while still meeting applicable standards without impairing the functionality of the Project or violating sound engineering principles or practices or applicable legal requirements. The modified Final Plans and Specifications shall be subject to approval by the County and Developer, which approval shall not be unreasonably

denied, delayed, or conditioned. Based on the modified Final Plans and Specifications, the Developer shall repeat the bid solicitation in an effort to secure a lower acceptable bid. If the second bid solicitation fails to produce an acceptable bid not exceeding the Agreed Limit, either the Parties may mutually agree to repeat the bid solicitation and value engineering process until an acceptable bid is received, or Developer may choose to pay one hundred percent (100%) of the amount by which the lowest responsive and responsible bid exceeds the Agreed Limit without reimbursement by the County by giving written notice thereof to the County. If Developer does not give such notice within thirty (30) days after receipt of bids exceeding the Agreed Limit, and the Parties have not mutually agreed to re-bid after further value engineering, any of the Parties may elect to terminate this Agreement without further recourse. Any deadline in this Agreement affected by a value engineering and rebidding process shall be extended by the amount of time required for that process. Payment to the Project Engineer, if any, for value engineering and resulting changes to the construction documents, shall be subject to approval by the County and the Developer, which approval shall not be unreasonably denied, delayed, or conditioned.

- (c) The Developer shall select the lowest responsive and responsible bidder and submit copies of the proposed construction contract to the County for approval. The County shall have ten (10) business days after such submission within which to make any comments on the contract, and if no such comments are received by Developer within said ten (10) day period, the County shall be deemed to have approved the contract. The Developer shall execute the approved contract, which shall be referred to herein as the "**Construction Contract.**" The contractor under the Construction Contract shall be referred to herein as the "**Construction Contractor.**"
- (d) Within ten (10) days after execution of the Construction Contract, the Developer will provide to the County a copy of the executed Construction Contract and any related documents, including any assignment, certificate, or other documents required under Section 7. The Developer will also provide copies of any subsequent documents amending or otherwise relating to the Construction Contract; however, no amendments or change orders to the Construction Contract as approved by the County may be made without the County's approval.

Section 7. Special Provisions Applicable to Construction Contract.

- (a) The Developer will also obtain from the Construction Contractor and provide to the County a collateral assignment of the Developer's rights under the Construction Contract, in the form attached as **Exhibit D**, which authorizes the County to exercise the Developer's rights under the Construction Contract and to complete the Project if the Developer fails to do so as provided in this Agreement.

- (b) The Parties acknowledge and agree that the Project is a County road project and involves construction of public improvements. Accordingly, the Project will be constructed and all right-of-way, easements, equipment, materials and supplies will be acquired in the name of or on behalf of the County. However, the Developer shall ensure that all construction contracts and other agreements contain a provision that each contractor, materialman or supplier will look solely to the Developer for payment of all sums coming due thereunder and that the County will have no obligation to any such party, but will only be obligated to reimburse the Developer in the time and manner required under this Agreement.
- (c) The Developer shall include the County's Historically Underutilized Businesses Program goals with the invitation for bid and Final Plans and Specifications and ensure that they are part of the bids.
- (d) The Developer shall ensure that payment and performance bonds are obtained and kept in place for the Project in compliance with Chapter 2253, Texas Government Code.
- (e) All tangible personal property to be purchased for use in construction of the Project and all taxable services to be performed for the design, management and construction of the Project are subject to the sales tax provisions of Section 151.311, Texas Tax Code. The County will provide its employer identification number and any other information reasonably required to obtain an exemption of sales tax for the Project and the labor and materials incorporated into the Project upon the Developer's request.
- (f) The Developer acknowledges that the County is a political subdivision of the State of Texas and is subject to the provisions of Chapter 2258, Subchapter B, Texas Government Code, pertaining to prevailing wage rates. The Developer will ensure that the Construction Contractor pays not less than the prevailing wage rates established by the County to workers employed on the Project and complies with all applicable provisions of Chapter 2258, Subchapter B, Texas Government Code, including the recordkeeping required therein.
- (g) The Developer will ensure that the Construction Contractor provides worker's compensation insurance coverage for workers employed on the Project and obtains a certificate from each subcontractor, relating to the coverage of the subcontractor's employees, in accordance with Section 406.096, Texas Labor Code. The Developer will ensure that the Construction Contractor maintains a comprehensive general liability and automobile liability insurance policy naming the County as additional insureds, with a waiver of subrogation in favor of the County, and with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate. The Developer shall cause the Construction Contractor to provide the County with written certificates of compliance with the foregoing requirements.

- (h) The Construction Contractor will be required to implement and maintain all applicable or customary safety precautions and programs in connection with the construction of the Project.

Section 8. Construction of Project.

- (a) Before the Construction Start Date in Subsection (d), the Developer will:

- (i) cause to be conveyed or dedicated all the Real Property interests owned or controlled by the Developer, including, if necessary, the stormwater management agreement under Section 1(e);
- (ii) provided all Real Property Interests have first been acquired by the County, execute the Construction Contract;
- (iii) submit to the County payment and performance bonds, insurance certificates, collateral assignments, and all other documents required to be submitted under this Agreement;
- (iv) deposit with the County cash for the Developer's non-reimbursable costs under Section 1(g) in a form acceptable to the County in an initial amount equal to the County's estimate of the Developer's non-reimbursable costs under Section 1(g) ("Fiscal Security") to secure completion of the Project as provided in Section 13. Such funds ("Developer Project Funds") shall be deposited into the Project Escrow Account defined in section 8(b) for purposes of paying the Developer's non-reimbursable share of costs under Section 1(g); and provided all Real Property Interests have first been acquired by the County, issue notice to proceed with construction of the Project to the Construction Contractor.

- (b) Before the Construction Start Date in Subsection (d) for beginning construction of the Project, the County will estimate the City's share of costs under the Interlocal Agreement and require the City to deposit with the County cash in that amount ("City Construction Funds"). The City Construction Funds, shall be deposited in an escrow account ("Project Escrow Account") maintained by the County. The County shall use the City Construction Funds, the County Project Funds along with the Developer Project Funds to pay to the Developer and its general contractor or other assignees designated by the Developer, the Developer's contractual obligations incurred in connection with the Project as set forth herein, or to complete construction of the Project under Section 13. An assignment of payment agreement for the general contractor or other assignees must be executed by the Developer in a format acceptable to the Travis County Auditor's Office prior to any assignment payments being made.

- (c) If the requirements of Subsection (a) are not met, the County may terminate this Agreement and be relieved of any obligation to pay any amount under this Agreement. If the City does not deposit the City Construction Funds into the Project Escrow Account under Subsection (b) and the Developer is not in default,

the Developer may elect to post an additional amount equal to the City Construction Funds into the Project Escrow Account and proceed with construction of the Project without reimbursement by the City and bear the full share of the costs of the Construction Contract, inspections, testing, and other costs as specified under Section 1(g)(ii). If the Developer does not deposit such City Construction Funds into the Project Escrow Account within thirty (30) days after written notice from the County of County's intent to terminate this Agreement for failure to deposit an amount equal to the City Construction Funds, the County may terminate this Agreement, reallocate any bond funding for the Project to other County projects, and be relieved of any obligation to pay any amount under this Agreement; provided, however, the County will release any remaining Fiscal Security to the Developer, less any amounts owed by the Developer to the County under this Agreement.

- (d) Construction of the Project must commence on or before August 31, 2012 (the "Construction Start Date"). The Developer must cause the Project to be complete and accepted by the County by August 31, 2013. However, the Developer may amend the commencement and/or completion dates set forth herein for any Phase if agreed in writing by the County Executive of the County Transportation and Natural Resources Department. Notwithstanding anything to the contrary, if the Developer fails to comply with the commencement and completion dates set forth herein in this Section 8(d) (and such failure is not the result of the County's failure to timely approve plans, permits or perform inspections), the County may terminate this Agreement and reallocate any bond funding for the Project to other County projects. If the County terminates this Agreement pursuant to this Section 8(d), the County shall be deemed to have elected not to complete the Project and the County will have no obligation to pay any amount under this Agreement; provided, however, the County will release any remaining Fiscal Security to the Developer, less any amounts owed by the Developer to the County under this Agreement.
- (e) Subject to its rights to be reimbursed as provided in this Agreement, the Developer will:
 - (i) construct, and require its Construction Contractor and subcontractors to diligently pursue construction of, the Project in a good and workmanlike manner and, in all material respects, in accordance with this Agreement and the approved Final Plans and Specifications and all applicable laws, regulations, and ordinances; and
 - (ii) promptly seek payment from County for all costs of the Project as they become due, including all costs of design, engineering, materials, labor, construction, project management and inspection arising in connection with the Project and all payments arising under any contracts entered into for the construction of the Project, subject to any applicable retainage requirements and amounts withheld due to improper work or punch list items. Such payments will be made by the County to the Developer and its general

contractor or other assignees designated by the Developer from funds in the Project Escrow Account on Developer's behalf. Should County fail to timely make any undisputed payment from the Project Escrow Account on Developer's behalf, Developer shall have the right to make such payment from Developer's other funds and shall thereafter be entitled to reimbursement from the Project Escrow Account of the portion of such payment that otherwise would have been paid from the City Construction Funds and the County Project Funds.

- (f) The Developer assumes the risk for design and construction of the Project in a good and workmanlike manner for the amount of the Construction Contract and all work and material used in the construction must be free from defects and fit for its intended purpose. Any modifications that would materially change the Final Plans and Specifications or the amount of the Construction Contract will be subject to the Developer's and County's approval within ten (10) business days after receipt of notice of the proposed changes, which approval will not be unreasonably denied, delayed, or conditioned. If the County and Developer determine that, through no fault of the Developer and based on cost effectiveness, sound engineering principles and practices, or applicable legal requirements, it is not possible to complete the Project as described in Section 1, without modifications to the approved Final Plans and Specifications or the amount of the Construction Contract, the Developer will, in coordination with the County, cause to be prepared any required changes to the Final Plans and Specifications and any required change orders to the Construction Contract, and the County will: (i) reimburse the Developer and its general contractor or other assignees designated by the Developer from the County Project Funds in an amount equal to the actual costs of any required changes to the Final Plans and Specifications and required change orders to the Construction Contract should the Developer initially incur such costs; or (ii) pay from the Project Escrow Account the actual costs of any required changes to the Final Plans and Specifications and required change orders to the Construction Contract as provided in Section 1(e).
- (g) The Developer will timely submit invoices to the County which detail the costs incurred by the Developer and due to be paid from the Project Escrow Account for engineering, construction, and other services and work performed, including:
 - (i) copies of all draw requests from contractors included in the invoice and an affidavit of bills paid and partial lien waiver;
 - (ii) the cumulative amount of all draw requests to date; (iii) the Developer's and the County's respective portions of the current draw requests in accordance with Section 1(g) and the calculations used to arrive at that allocation; and
 - (iii) the cumulative amounts paid by the County on the Developer's behalf from the Project Escrow Account under this Agreement through the date of the accounting.

- (h) If the services and work described in the invoice were rendered in compliance with this Agreement, the County will make payment to the Developer within thirty (30) days of receipt of each invoice, subject to Section 11. In the event changes or corrections are required to any invoice prior to payment, a request for additional information will be made by the County within ten (10) days of receipt of the invoice. All past due invoices shall be subject to the Texas Prompt Payment Act, Section 2251.021, Texas Government Code.

Section 9. County Inspection. The County may observe or inspect all work done and materials furnished at times and places and using procedures determined by the County. The County will notify the Developer and Project Manager if any observation reveals that any part of the Project is not constructed or completed in accordance with the final approved Final Plans and Specifications or this Agreement or is otherwise materially defective. This notice will specifically detail any deficiencies. If such notice indicates that work or material may not comply with the final approved Final Plans and Specifications or the requirements of this Agreement, the County may require the Developer to require the Construction Contractor to suspend work until the County is satisfied any defect is or will be remedied, which suspension and remedial work will be without delay damages, remobilization costs, or other additional costs to the Developer or the County.

Section 10. Completion of Project.

- (a) The Project Manager will prepare a written notice of substantial completion and certify that the Project, or any phase of the Project approved by the County under Section 1(d), has been constructed in accordance with the approved construction documents and forward the notice to the Developer and County. The County will conduct a final inspection of the Project or phase within ten (10) business days after receiving the written notice of substantial completion. If completed in accordance with the terms of the final approved Final Plans and Specifications and this Agreement in all material respects, the County will certify the Project or phase as being in compliance and issue a notice of final acceptance to the Developer.
- (b) Upon final acceptance of the Project or phase by the County, all warranties for the Project or phase will be transferred to the County and the Developer will execute any documents reasonably required to evidence such assignment. The Construction Contractor will be responsible for any defects in workmanship or materials (ordinary wear and tear excepted) in the Project or phase for one year following acceptance by the County. The Developer must provide or cause the Construction contractor to provide the County with a one (1) year Construction Contractor's warranty and maintenance bond as a condition to final acceptance of the Project or phase, which will be in a form approved by the County, such approval not to be unreasonably denied, delayed, or conditioned.
- (c) Within thirty (30) days of final acceptance of the Project of phase by the County, the Developer and the Project Manager will deliver all plans including as built plans, specifications, and files pertaining to the Project or phase, which materials will be the

property of the County, and the Developer shall submit to County a final statement of any and all claims for payment or credit the Developer desires to have taken into account in the final accounting under Section 11.

Section 11. Retainage and Final Accounting.

- (a) Until completion of the final accounting under Subsections (b) and (c), the County will withhold five percent (5%) retainage on payments attributable to the Construction Contract and fifteen percent (15%) of the Project Manager's fee. The retained amounts will be released and paid by the County upon completion of the final accounting, resolution of any pending claims or contingent liabilities arising from the Project or phase, and delivery to the County of the warranty documentation, construction files, as built, affidavit of bills paid and final lien waivers, and other documents required to be submitted under this Agreement.
- (b) Within thirty (30) days after the Project or phase is complete or this Agreement is terminated, the Developer shall render a final written accounting of any and all costs to be paid or born by, or credited or refunded to, any Party under this Agreement, taking into account any amount the County has previously paid as provided herein and subject to adjustment after resolution of any pending claims or contingent liabilities arising from the Project or phase. The Developer shall send a copy of such accounting to the County. The County shall have the right to audit the Developer's records and shall request any such audit, or any adjustments or corrections, within thirty (30) days of receipt of the accounting.
- (c) After the Developer has sent any corrected or adjusted final accounting to the County, the County shall pay any amount it owes no later than thirty (30) days after receipt of such final accounting. The Developer shall refund any amounts due the County within twenty (20) days after delivery of the adjusted final accounting.

Section 12. Correction of Defects; Claims.

Conveyance of the Project to the County will not relieve the Developer of liability for satisfaction of any unpaid claim for materials or labor. The County will be under no obligation to challenge any claim for unpaid labor or materials; however, if the Developer fails to promptly resolve any claim, the County may elect to do so and, in this event, will have full rights of subrogation.

Section 13. County Completion of Project.

- (a) If the Developer begins, but does not diligently pursue timely completion of, construction of the Project materially in accordance with this Agreement for any reason, the County has the right, but not the obligation, to draw on the Fiscal Security and complete the construction of the Project, or any phase of the Project approved by the County under Section 1(d), either pursuant to the Construction

Contract and the collateral assignments or otherwise. Before exercising this right, the County will send the Developer written notice specifying the deficiency in the Developer's performance and the actions required to cure the deficiency. If the Developer does not cure the deficiency within ten (10) days (or such time as reasonably may be required to cure the deficiency provided the Developer promptly begins, and diligently pursues, such cure), the County may proceed with construction of the Project or phase.

- (b) If the County elects to complete the Project or phase, all plans, designs, rights-of-way, easements, real and personal property conveyed, produced, or installed within the public right-of-way prior to the take-over of construction of the Project or phase by the County, will become the property of the County to the reasonable extent necessary to allow the County to complete and maintain the Project or phase.
- (c) The Developer hereby grants to the County a nonexclusive right and easement to enter the property of the Developer to the reasonable extent necessary for construction of the Project or phase under this Agreement in accordance with its terms and provisions and in accordance with the notice and cure periods contained in this Agreement.

Section 14. Miscellaneous.

- (a) Any notice given hereunder by any Party to another must be in writing and may be effected by personal delivery or by certified mail, return receipt requested, when mailed to the appropriate Party's Designated Representative, at the addresses specified with copies as noted below:

County: Steven Manilla, P.E. (or successor)
County Executive, TNR
P.O. Box 1748
Austin, Texas 78767

With a copy to:

David Escamilla (or successor)
Travis County Attorney
P.O. Box 1748
Austin, Texas 78767
Attn: File No. 163.1969

Developer: Club Deal 116 Indian Hills TX, L.P.
9285 Huntington Square
North Richland Hills, Texas 76180
Attn: Douglas Gilliland

With a copy to:

Greg Hudson
Hudson & O'Leary LLP
1010 MoPac Circle, Suite 201
Austin, Texas 78746

The Parties may change their respective addresses for purposes of notice by giving at least five days written notice of the new address to the other Party. If any date or any period provided in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period will be extended to the next business day.

- (b) As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular or plural number will each be deemed to include the others.
- (c) This Agreement contains the complete and entire Agreement between the Parties respecting the Project, and supersedes all prior negotiations, agreements, representations, and understandings, if any, between the Parties. This Agreement may not be modified, discharged, or changed except by a further written agreement, duly executed by the Parties. However, any consent, waiver, approval or other authorization will be effective if signed by the Party granting or making such consent, waiver, approval, or authorization.
- (d) No official, representative, agent, or employee of the County has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the governing body of the County, or as is expressly set forth herein.
- (e) The Parties agree to execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the purposes of this Agreement.
- (f) If performance by any Party of any obligation under this Agreement is interrupted or delayed by reason of unforeseeable event beyond its control, whether such event is an act of God or the common enemy, or the result of war, riot, civil commotion, sovereign conduct other than acts of the County or City under this Agreement (but not including delays caused by the City or County in connection with approvals, permits or inspections), or the act of conduct of any person or persons not a party or privy hereto, then such Party will be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.
- (g) To the extent allowed by law, each Party will be responsible for, and will indemnify and hold harmless the other Parties, their officers, agents, and employees, from any and all claims, losses, damages, causes of action, lawsuits or liability resulting from, the indemnifying Party's acts or omissions of negligence or misconduct or in breach of this Agreement, including but not limited to claims for liquidated damages, delay

damages, demobilization or remobilization costs, or claims arising from inadequacies, insufficiencies, or mistakes in the Final Plans and Specifications and other work products or any other materials or services a Party provides under this Agreement. Each Party will promptly notify the others of any claim asserted by or against it for damages or other relief in connection with this Agreement.

- (h) Before attempting to terminate this Agreement for default, the Party alleging the default shall notify the other Parties in writing of the nature of and the means of curing the default. No party may terminate this Agreement without providing the defaulting Party a reasonable amount of time to cure the default (which shall not be less than 60 days). The Parties acknowledge that in the event of default on any obligation under this Agreement, remedies at law will be inadequate and that, in addition to any other remedy at law or in equity, each Party will be entitled to seek specific performance of this Agreement.
- (i) This Agreement will be construed under the laws of the State of Texas and all obligations of the Parties hereunder are performable in Travis County, Texas. Any suits pursued relating to this Agreement will be filed in a court of Travis County, Texas.
- (j) Any clause, sentence, provision, paragraph, or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective will not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof will be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.
- (k) This Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and assigns and shall be a covenant running with the Property. No Party may assign its rights or obligations under this Agreement without the written consent of the other Party; however, the Developer may grant a security interest in and collaterally assign all sums to be paid to the Developer under this Agreement to any lending institution making a loan to the Developer for purposes of payment of the costs of the Project, and the County expressly consents to any such security interest or collateral assignment. Any Party may record in the Official Public Records of Travis County a memorandum of this Agreement.
- (l) Except as otherwise expressly provided herein, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto, any benefits, rights or remedies under or by reason of this Agreement.
- (m) This Agreement is effective upon execution by all the Parties. This Agreement may be executed simultaneously in one or several counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument. The terms of this Agreement will become binding upon each Party from and after the time that it executes a copy hereof. In like manner, from and after the

time it executes a consent or other document authorized or required by the terms of this Agreement, such consent or other document will be binding upon such Party.

(n) As required by Chapter 32, Travis County Code, simultaneously with execution of this Agreement the Developer shall execute the ethics affidavit attached hereto as **Exhibit H**. In addition, the Developer hereby certifies that the Developer is not in violation of Section 176.006, Local Government Code.

(o) The following exhibits are attached to and incorporated into this Agreement for all purposes:

Exhibit A:	The Property
Exhibit B:	The Project
Exhibit B-1:	TxDOT Improvements
Exhibit B-2:	Transition Improvements
Exhibit C:	Stormwater Management Agreement
Exhibit D:	Collateral Assignment
Exhibit E:	Construction Administration Services
Exhibits F and G:	Engineering Services and Deliverables
Exhibit H:	Ethics Affidavit

(p) Disbursements to Persons with Outstanding Debts Prohibited.

(1) In accordance with Section 154.045 of the Local Government Code, if notice of indebtedness has been filed with the County Auditor or County Treasurer evidencing the indebtedness of the Developer to the State, the County, or a salary fund, a warrant may not be drawn on a County fund in favor of the Developer, or an agent or assignee of the Developer until:

(A) the County Treasurer notifies the Developer in writing that the debt is outstanding; and

(B) the debt is paid.

(2) "Debt" includes delinquent taxes, fines, fees, and indebtedness arising from written agreements with the County.

(3) The County may apply any funds the County owes the Developer to the outstanding balance of debt for which notice is made under section 14(q)(1) above if the notice includes a statement that the amount owed by the County to the Developer may be applied to reduce the outstanding debt.

(q) This Agreement replaces and extinguishes the Decker Lake Road Participation Agreement in its entirety.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity.

COUNTY:

Samuel T. Biscoe, County Judge

Date: _____

DEVELOPER:

Club Deal 116 Indian Hills TX, L.P.
a Delaware limited partnership

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

By: _____
Douglas H. Gilliland,
Managing Member

Date: _____

EXHIBIT A
THE PROPERTY

EXHIBIT B
THE PROJECT

EXHIBIT B-1
TxDOT IMPROVEMENTS

EXHIBIT B-2

TRANSITION IMPROVEMENTS

EXHIBIT C

STORMWATER MANAGEMENT AGREEMENT

DECLARATION OF EASEMENTS AND RESTRICTIVE COVENANTS REGARDING THE MAINTENANCE OF DRAINAGE FACILITIES

This Declaration of Easements and Restrictive Covenants Regarding the Maintenance of Drainage Facilities (the "Declaration"), is executed this ____ day of _____, 2006, by ____ ("**Declarant**").

GENERAL RECITALS:

A. Declarant is the owner of land (the "Property") in Travis County, Texas, described in **EXHIBIT A** attached and incorporated by reference.

B. Definitions.

1. Owners. The term "Owner" means, individually, and the term "Owners" means, collectively, Declarant and all future owners of the fee interest of any portion of the Property (whether such fee interest is obtained through a purchase from Declarant or through a purchase at a foreclosure sale or trustee's sale or through a deed in lieu of foreclosure) and their successors and assigns.

Facilities. The term "Facilities" means those drainage facilities that convey and receive stormwater runoff from the Property and ___ Street and that are more particularly described on **EXHIBIT A** attached and incorporated by reference.

C. Declarant has agreed to impose upon the Property these covenants and conditions for the benefit of the Property and ___ Street and has agreed to accept the responsibility for maintenance of the Facilities in accordance with the terms hereof.

NOW, THEREFORE, it is hereby declared that the Property be subject to the following covenants, conditions and restrictions which shall run with the Property and shall be binding upon all parties having right, title, or interest in or to such portion of the Property or any part, their heirs, successors, and assigns and shall inure to the benefit of each owner. Each contract, deed or conveyance of any kind conveying those portions of such Property shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract, deed or conveyance.

SPECIFIC AGREEMENTS AND RESTRICTIONS:

1. Recitals Incorporated. The above Recitals and all terms defined therein are incorporated into this Declaration for all purposes.

2. Maintenance. The Owners shall maintain the Facilities in a good and functioning condition in accordance with the requirements of the City of ____ and/or Travis County (the “City and/or County”), including standards specified in the regulations of the City and/or County, as amended from time to time. The portion of the Property on which the Facilities are located may not be used for any purpose inconsistent with or detrimental to the proper operation of the Facilities. Each Owner shall be jointly and severally liable for the maintenance of the Facilities.
3. Easement to the Owners. Each individual Declarant hereby grants and conveys and by these presents does GRANT AND CONVEY unto the other individual Declarant and all Owners, a non-exclusive easement for the inspection, monitoring, operation, maintenance, replacement, upgrade and repair, as applicable, of the Facilities in, upon and across portions of the Property as more particularly described in **EXHIBIT B** attached hereto and incorporated by reference (the “Easement Tract”).

TO HAVE AND TO HOLD the same perpetually to the Owners and its successors and assigns, together with the privilege at any and all times to enter the Easement Tract for the purpose of operating, inspecting, monitoring, maintaining, replacing, upgrading and repairing, as applicable, the Facilities. This easement is made and accepted subject to all easements, covenants, restrictions, liens, and other encumbrances of record in Travis County, Texas affecting the Easement Tract.

4. Easement to Travis County. Declarant hereby grants and conveys and by these presents does GRANT AND CONVEY unto Travis County, whose address is P.O. Box 1748, Austin Texas 78767, Attn: Transportation and Natural Resources Department, a non-exclusive easement for the inspection, monitoring, operation, maintenance, replacement, upgrade and repair, as applicable, of the Facilities in, upon and across the Easement Tract.

TO HAVE AND TO HOLD the same perpetually to Travis County and its successors and assigns, together with the privilege at any and all times to enter the Easement Tract for the purpose of operating, inspecting, monitoring, maintaining, replacing, upgrading and repairing, as applicable, the Facilities. This easement is made and accepted subject to all easements, covenants, restrictions, liens, and other encumbrances of record in Travis County, Texas affecting the Easement.

5. Notice. The City and/or County shall give the Owners thirty (30) days’ prior written notice of the City and/or County’s intent to enter any of the above described easement areas for the purpose of operating, maintaining, replacing, upgrading or repairing, as applicable, the Facilities; provided, however, that in the event of an emergency, the City and/or County shall be required to give prior notice within a reasonable period of time. Reasonableness shall be determined in accordance with the nature of circumstances of the emergency. The City and/or County shall have the right to enter any of the above described easement areas

without prior written notification for the purposes of monitoring and inspection only.

6. Breach Shall Not Permit Termination. Notwithstanding anything to the contrary contained herein, no breach of this Declaration shall entitle the Owners to cancel, rescind or otherwise terminate this Declaration, but such limitations shall not affect in any manner any other rights or remedies which the Owners may have hereunder by reason of any breach of this Declaration.
7. Excusable Delays. Whenever performance is required of the Owners, the Owners shall use all due diligence to perform and take all reasonable and necessary measures in good faith to perform; provided, however, that if completion of performance is delayed at any time by reasons of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or material, damage to work in progress by reason of fire or other casualty, or any other cause beyond the reasonable control of the Owner (financial inability, imprudent management or negligence excepted), then the time for performance as herein specified will be extended by the amount of delay actually so caused.
8. Existing Encumbrances. The easement and other rights granted or created by this Declaration are subject to any and all matters of record affecting the Property.
9. General Provisions.
 - A. Inurement. This Declaration and the restrictions created hereby shall inure to the benefit of and be binding upon the Owners, and their successors and assigns. If the Declarant conveys all or any portion of the Property, the Declarant shall thereupon be released and discharged from any and all further obligations, if any, under this Declaration that it had in connection with the property conveyed by it from and after the date of recording of such conveyance, but no such sale shall release the Declarant from any liabilities, if any, actual or contingent, existing as of the time of such conveyance.
 - B. Duration. This Declaration takes effect upon County acceptance of the part of ___ Street within the property. Unless terminated in accordance with Paragraph 9(K) below, this Declaration shall remain in effect in perpetuity.
 - C. Non-Merger. This Declaration shall not be subject to the doctrine of merger, even though the underlying fee ownership of the Property, or any parts thereof, is vested in one party or entity.
 - D. Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any

provision or portion hereof shall not affect the validity or enforceability of any other provision.

- E. Entire Agreement. This Declaration and the exhibits attached hereto contain all the representations and the entire agreement between the parties to this Declaration with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Declaration and the exhibits attached hereto. The provisions of this Declaration shall be construed as a whole according to their common meaning and not strictly for or against any Owner.
- F. Captions. The captions preceding the text of each section and subsection hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Declaration.
- G. Governing Law; Place of Performance. This Declaration and all rights and obligations created hereby shall be governed by the laws of the State of Texas. This Declaration is performable only in the county in Texas where the Property is located.
- H. Notices. Any Notice to the Owners or the City and/or County shall be in writing and given by delivering the same to such party in person, by expedited, private carrier services (such as Federal Express) or by sending the same by registered or certified mail, return receipt requested, with postage prepaid to the intended recipient's last known mailing address. All notices under this Declaration shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.
- I. Negation of Partnership. None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Declarant, any Owner, or the City and/or County in their respective businesses or otherwise; nor shall it cause them to be considered joint ventures or members of any joint enterprise.
- J. Enforcement. If any person, persons, corporation, or entity of any other character shall violate or attempt to violate this Declaration, it shall be lawful for the City and/or County, its successors and assigns, to prosecute proceedings at law, or in equity, against said person, or entity violating or attempting to violate such covenant and to prevent said person or entity from violating or attempting to violate such covenant. The failure at any time to enforce this Declaration by the City and/or County, its successors and assigns, whether any violations hereof are known or not, shall not constitute a waiver or estoppel of the right to do so.

K. Modification and Amendment. This Declaration may only be modified, amended or terminated upon the filing of such modification, amendment or termination in the Official Records of Travis County, Texas, executed, acknowledged and approved by the County Executive of the Travis County Transportation and Natural Resources Department; and (c) the Owners of the Property.

Executed to be effective this ____ day of _____, 2006.

DECLARANT:

By: _____
Printed Name: _____
Title: _____
Date: _____

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on this the ____ day of _____, 2012, by _____ in his capacity as _____ of _____ and on behalf of same.

Notary Signature

EXHIBIT D

COLLATERAL ASSIGNMENT

COLLATERAL ASSIGNMENT OF CONTRACT AND CONTRACT RIGHTS

DATE: _____, 2012

ASSIGNOR:

ASSIGNOR'S ADDRESS:

BENEFICIARY: Travis County, Texas

BENEFICIARY'S ADDRESS: P.O. Box 1748, 411 West 13th Street, Austin, Texas 78767

PARTICIPATION AGREEMENT: The ___ Participation Agreement between Assignor and Assignee dated _____, 200__.

CONTRACT: All of Assignor's right, title, and interest (but not Assignor's duties or obligations) in and to the following described contracts (collectively, the "Contracts"):

- (a) The Construction Contract between _____ and Assignor dated as of _____, 200__, a copy of which is attached hereto as Exhibit "A";
- (b) The Engineering Contract between _____ and Assignor dated as of _____, 200__, a copy of which is attached as Exhibit "B"; and
- (c) The Project Management Contract between _____ and Assignor dated as of _____, 200__, a copy of which is attached as Exhibit "C";

1. **Agreement.** Subject to the terms and conditions of this Collateral Assignment of Contract and Contract Rights (this "Assignment"), in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which Assignor acknowledges, Assignor hereby grants, assigns, transfers, and conveys to Beneficiary the Contracts, and all powers, benefits, right, title, and interest accruing and to accrue to Assignor and to which Assignor is or may hereafter become entitled to by virtue of the Contracts.
2. **Secured Obligations.** This assignment is made to Beneficiary to secure the performance by Assignor of all of Assignor's duties and obligations under the Participation Agreement.
3. **License.** Beneficiary hereby grants to Assignor a limited license (the "License") to exercise and enjoy all of Assignor's rights and benefits under the Contracts. Upon the occurrence of an Event of Default (as defined below), Beneficiary will have the complete right, power and authority hereunder, then or thereafter, to

terminate the License in its own name or in the name of Assignor, to exercise and enjoy all of Assignor's rights and benefits under the Contracts.

4. **Assumption Date.** Upon the occurrence of an Event of Default, as defined below, Secured Party may, at its option, assume Assignor's rights under the Contracts, subject to the terms and conditions of this Assignment, as of the date of such default or at any time thereafter while such default continues (the "Assumption Date").
 - (a) After the Assumption Date, all of Assignor's rights and benefits under the Contracts will terminate without notice of any kind to Assignor, and Beneficiary will succeed to all of Assignor's rights, benefits, duties and obligations under the Contracts.
 - (b) The other parties to the Contracts will recognize and attorn to Beneficiary as if Beneficiary had originally been a party to such Contracts. In the event of a conflict between the terms of the Contracts and the terms of the Participation Agreement, the terms of the Participation Agreement will control.

5. **Assignor's Representations and Warranties and Related Covenants.** Assignor represents and warrants to Beneficiary as follows:
 - (a) Assignor's execution, delivery and performance of this Assignment does not require the consent or approval of any governmental body or other regulatory authority and are not in contravention of, or in conflict with, any law or regulation or any term or provision of the Contracts. This Assignment is a valid, binding and legally enforceable obligation of Assignor in accordance with its terms, except to the extent, if any, that enforceability may be affected or limited by creditors' rights, legislation and court decisions of general application.
 - (b) The execution and delivery of this Assignment is not, and the performance of this Assignment will not be, in contravention of, or in conflict with, any agreement, indenture or undertaking to which Assignor is a party or by which Assignor or any of its property is or may be bound or affected, and do not and will not cause any security interest, lien or other encumbrance to be created or imposed or accelerated upon or in connection with any such property.
 - (c) To the Assignor's current actual knowledge, there is no litigation or other proceeding pending against or affecting Assignor or its properties which, if determined adversely to Assignor, would have a materially adverse effect on Assignor's financial condition, properties or operations. Assignor is not in default in any materially adverse manner with respect to any law, restriction, order, writ, injunction, decree or demand of any court or other governmental or regulatory authority or with respect to any

agreement, indenture or undertaking to which it or any of its property is bound or affected.

- (d) Except for this Assignment (which Assignor has authority to grant): Assignor has not previously assigned, transferred, conveyed, sold, pledged or hypothecated any of the Contracts.

6. **Assignor's Agreements.** Assignor agrees as follows:

- (a) To perform all of its obligations under the Participation Agreement.
- (b) To perform or cause to be performed each and every obligation and duty imposed upon Assignor by the Contracts and to not do any act or not omit to do any act which would constitute a breach of, default under or noncompliance with the Contracts.
- (j) Not to execute any amendment or modification of the Contracts or otherwise change or alter any of the terms and provisions of the Contracts without Beneficiary's prior written consent.
- (l) To promptly notify Beneficiary of the occurrence of any event which constitutes a breach of, default under, or noncompliance with, or which with the passage of time, notice, or both, will constitute a breach of, default under, or noncompliance with any of the terms and provisions of the Contracts.
- (m) To send, with reasonable promptness, to Beneficiary copies of any and all notices of default, breach or material alteration sent or received by Assignor under the Contracts or in connection with Assignor's interest in the Contracts.

7. **Events of Default.** Assignor will be in default under this Assignment upon the happening of any one or more of the following events or conditions (an "Event of Default"):

- (a) Any event of default which occurs under the Participation Agreement which is not cured within any applicable grace or notice and opportunity to cure period.
- (b) Breach of, noncompliance with, or default by Assignor in any of its agreements under this Assignment which is not cured within 15 days after notice of such breach, noncompliance or default, provided that such 15-day cure period will be extended if such breach, noncompliance or default cannot be reasonably cured within 15 days, provided that Assignor commences to cure such breach, noncompliance or default within the 15-day period and thereafter diligently prosecutes such cure to completion.

- (c) Material breach of, noncompliance with, or default under any of the terms and provisions of the Contracts which is not cured within any applicable grace or notice and opportunity to cure period.

8. **Beneficiary's Rights and Remedies.**

- (a) Assignor hereby irrevocably appoints Beneficiary as Assignor's true and lawful agent and attorney-in-fact, with full power of substitution, in Beneficiary's own name or in the name of Assignor, for Beneficiary's sole use and benefit, but at Assignor's cost and expense, to exercise, upon the occurrence of an Event of Default, all or any of the following powers and rights with respect to the Contracts (without any obligation on the part of Beneficiary to exercise any of the following powers and rights): (1) to demand, receive, collect, sue and give acquittance for, settle, compromise, compound, prosecute or defend any action or proceeding with respect to the Contracts; (2) to exercise, enforce, enjoy, carry out, receive, and/or perform any and all rights, powers, duties, benefits, obligations and remedies of Assignor with respect to and arising under the Contracts; provided, however, Beneficiary's exercise of or Beneficiary's failure to exercise any such authority will in no manner affect Assignor's liability hereunder or under the Participation Agreement, and provided, further, that Beneficiary will be under no obligation or duty to exercise any of the powers hereby conferred upon it and will be without liability for any act or failure to act in connection with the preservation of any rights under, any of the Contracts. The agency and authority hereby granted and created is an agency coupled with an interest.
- (b) Upon the occurrence of an Event of Default and at any time thereafter, Beneficiary will have the rights and remedies provided by law.
- (c) All recitals in any instrument of assignment or any other instrument executed by Beneficiary incident to the Contracts or any part thereof will be full proof of the matters stated therein and no other proof will be requisite to establish full legal propriety of the action taken by Beneficiary or of any fact, condition or thing incident thereto, and all prerequisites of such action will be presumed conclusively to have been performed or to have occurred.
- (d) Assignor waives demand, notice, protest, and all demands and notices of any action taken by Beneficiary under this Assignment.

10. **General.** Assignor and Beneficiary agree as follows:

- (a) Upon the full performance of Assignor's obligations under the Participation Agreement, this Assignment and the interests created hereby will terminate. Upon termination of this Assignment, Beneficiary will, at Assignor's

sole cost and expense, execute and deliver to Assignor such documents as Assignor will reasonably request to evidence such termination.

- (b) Beneficiary is not, by entering into this Assignment or accepting the assignment of and security interest in the Contracts, assuming or agreeing to assume any obligation or liabilities on the part of Assignor under the Contracts.
- (c) Beneficiary's remedies hereunder are cumulative, and the exercise of any one or more of the remedies provided for herein will not be construed as a waiver of any of Beneficiary's other remedies.
- (d) Notice mailed to Assignor's address as reflected above, or to Assignor's most recent changed address on file with Beneficiary, at least ten (10) days prior to the related action, will be deemed reasonable.
- (e) THIS ASSIGNMENT HAS BEEN MADE IN, AND THE INTEREST GRANTED HEREBY IS GRANTED IN, AND BOTH Will BE GOVERNED BY, THE LAWS OF THE STATE OF TEXAS IN ALL RESPECTS, INCLUDING WITHOUT LIMITATION MATTERS OF CONSTRUCTION, VALIDITY, ENFORCEMENT AND PERFORMANCE. This Assignment may not be modified, altered or amended except in writing duly signed by an authorized representative of Beneficiary and by Assignor. If any provision of this Assignment is rendered or declared illegal or unenforceable by reason of any existing or subsequently enacted statute, rule or regulation, or by order of or judgment of a court, any and all other terms and provisions of this Assignment will remain in full force and effect as stated and set forth herein.
- (1) All notices, demands, requests and other communications required or permitted hereunder will be in writing and may be personally served or sent by mail, and if given by personal service, it will be deemed to have been given upon receipt, and if sent by mail, it will be deemed to have been given upon its deposit in the mail, postage prepaid, registered or certified, return receipt requested, addressed to Assignor or Beneficiary, as the case may be. The addresses of the parties to this Assignment are set forth on page I of this Assignment. Any of the parties to this Assignment will have the right to change their respective addresses by designating a new address in a written notice to the other parties as herein required.
- (m) This Assignment may be executed in multiple original counterparts.

EXECUTED this ____ day of _____, 2012.

BENEFICIARY:

TRAVIS COUNTY, TEXAS

By: _____
Samuel T. Biscoe, County Judge

Date: _____

ASSIGNOR:

CONSENTED TO BY:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT E

CONSTRUCTION ADMINISTRATION SERVICES

1. Coordination and Pre-Construction Meeting Services

(a) Technical Submittals and Samples

Prepares for the coordination meeting with the County and the Developer a list of all technical submittals required by the Construction Contractor. This list shall be distributed at the pre-construction meeting.

(b) Permits

Prepares for the coordination meeting, a list of all permits to be obtained by the Construction Contractor. This list shall be distributed at the pre-construction meeting.

(c) Material Testing and Inspections

Prepares for the coordination meeting recommendations for the project construction and material testing protocols.

(d) Pre-construction Submittals

Provides review comments on Construction Contractors' pre-construction submittals to the Construction Contractor at the pre-construction meeting. Pre-construction submittals include the Construction Contractor's construction schedule, division of contract, subcontractor list, material supplier list, or any special submittals requested of the Construction Contractor prior to the pre-construction meeting.

2. Administrative Tasks

- (a) Prepares draft agenda for pre-construction meeting.**
- (b) Determines the project communication, reporting, submittal approval/rejection protocol, and documentation requirements.**
- (c) Conducts weekly job site meetings. Determines the format for scheduling and conducting, and recording construction meeting minutes.**
- (d) Reviews and becomes knowledgeable of any required Developer or County construction administration processes.**
- (e) Records meeting minutes.**
- (f) Maintains Project construction records consisting of all correspondence related to the construction of the project including but not limited to:
 - (i) all approved technical submittals and a technical submittal checklist;**
 - (ii) all approved field orders and change orders;**
 - (iii) contract specifications and drawings;**
 - (iv) daily log ;****

- (v) job meeting minutes;
- (vi) clarifications drawings;
- (vii) daily progress reports; and,
- (viii) processed pay requests

- (g) The daily log, as a minimum, shall contain information regarding weather conditions, ambient temperatures, Construction Contractor manpower levels, sub-Construction Contractors manpower levels, daily hours of inspection, travel time, conversations, work items being performed, material delivery information and other observations.
- (h) Daily logs must be completed and include a statement as to whether or not the Construction Contractor is behind schedule or delaying the progress of the work and, if so, the steps the Construction Contractor should take to get back on schedule. Copies of daily logs shall be made available to the County upon request.
- (i) Maintain complete files of all Project-related documents at the Project site.
- (j) Upon the completion of each calendar month, furnish the County and the Developer with a typed statement summarizing the status of the work. In the event the work is behind schedule, the statement shall also delineate what efforts the Construction Contractor must take to get back on schedule. A copy of this statement shall also be delivered to the Construction Contractor.
- (k) After the Project has been completed, submit the Project files, along with the original daily logs to TNR.

3. Construction Phase Services

(a) Submittals

Process submittals, including receipt, review of, and appropriate action on shop drawings, samples and other submittals. Provide recommendations for the County and Developer approvals of "or equal" substitutions along with any recommended cost adjustments.

(b) Contract Modifications

For modifications required by the County and/or the Developer to resolve design errors or omissions, the Project Manager shall coordinate with the Project Engineer to provide the following services: Provide recommendations to the County and/or the Developer concerning potential changes and modifications to the project, which are encountered during construction. Identify and investigate feasible alternatives, to the extent practical, and prepare necessary plans, details, etc. required to obtain firm cost and schedule

impact statements from the Construction Contractor. Evaluate the Construction Contractor's impact statements and in conjunction with the Developer and the County negotiate costs for any contemplated changes with the Construction Contractor. The Project Manager shall prepare and distribute change orders and jointly sign all Change Orders with the County and the Developer

(c) Construction Contractor Pay Requests

Upon receipt of a pay request from a Construction Contractor, jointly review each line item with the Construction Contractor and advise the Construction Contractor's representative of any discrepancies or conflicts in the pay requests. Verify the accuracy of quantities of installed, delivered, and stored materials. Advise the County and the Developer of any issues that may warrant withholding, reducing, or delaying payment to the Construction Contractor and provide supporting documentation.

(d) Interpretation of the Contract Documents

Upon request, provide interpretation or clarification of the construction documents to the County, the Developer, or the Construction Contractor. Determine an acceptable method for communicating interpretations and clarifications directly to the Construction Contractor beforehand.

(e) Observation

Site visits are to be performed to the extent necessary to:

- (i) Observe, document, and report to the County, the Developer, and the Construction Contractor whether the project is being constructed in accordance with the contract documents.
- (ii) Observe, document, and report to the County, the Developer, and the Construction Contractor whether the proper measure of unit price bid quantities is being implemented, and confirm percentage completion of lump sum items.
- (iii) Observe, document, and report to the County and the Developer the progress of the Construction Contractor and resources committed to the project by the Construction Contractor.

(f) Materials Testing and Inspections

- (i) Establish and administer a materials sampling and testing program to provide quality control and compliance with the construction plans and specifications. Utilizing the list of required testing developed from the construction documents, jointly develop with the Project Engineer and the Construction Contractor a testing program for the project. The testing

program must designate what services are to be provided by the Project Engineer and the Construction Contractor. Compensation for testing services provided by the Project Engineer is to be included in the Project Engineer's fees for Construction Administration services. Services shall include, but not be limited to soils compaction testing, concrete cylinder compression strength tests, gradation analysis, miscellaneous shop inspection, and other testing required by the construction contract documents, or as specifically requested by the County and the Developer. A copy of the proposed testing program shall be prepared for review by the County and the Developer prior to beginning work.

(ii) Review all laboratory and field-testing results to determine whether results are in compliance with the construction contract documents and provide recommendations for correction of substandard materials and workmanship revealed during testing.

(g) Claims

Assist TNR and the Developer with claim reviews and negotiations upon request and with the preparation of related correspondence and documentation.

(h) Contract Enforcement

Examine Construction Contractor workmanship, materials, progress, and overall compliance with requirements of the contract documents and immediately report any observed deficiencies to the Construction Contractor, the County, and the Developer. Communicate to the Construction Contractor, the County, and the Developer what may be necessary to effect corrective action. Document deficiencies and actions taken by Construction Contractor to correct them. Assist the County and the Developer with evaluating impacts of potential contract termination upon project costs and schedule.

(i) Contract Termination

Upon request, assist the County and the Developer with completion of an assessment of the status of the Construction Contractor's contract, the development of an agreement with the Construction Contractor's Surety to complete the work, and preparing and holding a pre-construction meeting with the replacement Construction Contractor. Unless otherwise specified in the contract, these services shall be considered additional scope of work for which the scope, methodology, and fee must be negotiated with the County and the Developer before proceeding.

(j) Project Acceptance and Close-out

- (i) Jointly perform with the County the Developer, and the Construction Contractor substantial completion and final inspections and compile and distribute related punch requiring correction. When properly completed, submit O&M manuals to lists.
- (ii) Compile and review for completeness all Operation and Maintenance Manuals to be submitted by the Construction Contractor and inform Construction Contractor of any deficiencies .
- (iii) Review and comment on final pay request and supporting close-out documents, and provide recommendation for approval or rejection to the County and the Developer
- (iv) Upon Project completion, obtain the original drawings from the Project Engineer, incorporate all as-built conditions on the original drawings and provide a copies to the County and the Developer at project close-out.

4. Post Construction Services

(a) Warranty Period Services

- (i) Meet with County and the Developer upon request during the warranty period to investigate problems with material, equipment, and/or workmanship that may arise. Determine whether or not such problems are warranty issues or design issues and recommend solutions.
- (ii) Coordinate and attend with the County and the Developer a final warranty inspection no less than sixty days prior to expiration of Construction Contractor warranty period. Develop list of deficiencies, if any, and determine if deficiencies are caused by inferior workmanship, equipment, and/or materials or caused by other reasons. Provide recommendations for resolving each deficiency. Complete a follow-up inspection with the County to determine whether deficiencies have been corrected by the Construction Contractor prior to expiration of the warranty period.

EXHIBIT F

ENGINEERING SERVICES & DELIVERABLES:

PROJECT DESIGN

1. The Project Engineer shall provide professional services to produce both Preliminary Plan Documents and final plans, specifications and estimates for construction documents for the Project. These services generally will include, but are not limited to the following; storm water drainage system analysis and design (may include water quality and detention); preparing schematic and final right-of-way and easement parcel exhibits; preparing construction documents; completing land surveys, geotechnical investigations and reports with analysis needed for pavement design, structure foundation design, and evaluating slope stability; completing alignment and intersection plans and analysis; developing roadway signage and pavement marking plans, traffic control plans, and plans for utility relocation and landscaping; completing environmental assessments and mitigation plans; monitoring project cost and applying cost recovery methodologies such as value engineering; attending and leading public meetings; and, acquiring all appropriate regulatory permits and clearances.
 - a) The Project Engineer will perform the following services:
 - (i) Develop all Plans, Specifications, and Estimates (PS&E documents) within the project's allotted budget, to standards stipulated by Travis County.
 - (ii) Develop and submit a construction cost estimate at each phase of the design project.
 - (iii) Use generally recognized engineering methodology and standards of care
 - (iv) For each required permit, either obtain the permit or identify the permit for the Construction Contractor and direct the Construction Contractor to obtain it.
 - (v) Conduct and provide reports for all applicable environmental studies, evaluations, assessments, and calculation/negotiations for mitigation.
 - (vi) Establish and provide a detailed project design task completion. Monitor and provide task completion report to the Developer and the County.
 - (vii) Produce a utility relocation plan and coordinate ALL utility relocation efforts with the appropriate utility company.
 - (viii) Provide on call or total technical assistance during the bidding and construction periods.
 - (ix) Prepare appropriate displays and attend meetings with Travis County staff, regulatory agencies, and public groups, both as a technical advisor and as a project presenter.
 - (x) Provide all geotechnical reports and analysis
 - (xi) Provide required services, as determined by the County and the Developer, for construction administration.
 - b) The Project Engineer will provide six specific work products with each requiring a separate "Notice to Proceed" under the same contract. Authorization to proceed to the next work product or phase must be in writing in the form of a "Notice to Proceed".

The required work products include Work Product 1, 30% complete design documents; Work Product 2, 60% complete design documents; Work Product 3, 90% complete construction documents; Work Product 4, the 100% bid-ready set of construction documents; Work Product 5, Construction bidding and award services; and Work Product 6: Construction Administration Services. Work Product 6 shall be optional and included at the discretion of the Developer and the County. Work Products 1 through 4 shall be submitted for review and written notice-to-proceed must be issued before proceeding to the next Work Product. The review process shall consist of submitting two sets of the plans 22" by 34", specifications, and estimates of probable construction costs to the Developer and TNR when the design and construction documents are 30%, 60%, 90% and 100% completed. Allow two weeks for the Developer and TNR to review and provide written comments and/or approval for each submittal. Submit two sets final check sets and allow one week for the Developer and TNR to review and provide written comments and/or approval.

(i) Work Product 1: 30% complete design documents.

The 30% submittal should be presented in two phases if alternative analyses are included in the scope of work. The first phase will be the results of the analyses and the Project Engineer's recommendations. The second phase will be the 30% complete design documents for the selected alternative. Public meetings may be required in the development of Work Product 1. The 30% design submittal is to include preliminary engineering for the design elements required to fully address the project scope. The requirements for the 30% design submittals shall as a minimum include the following:

- A. Cover sheet indicating project name and #; site location; design speed; project limits with beginning and ending stations; names and signature blocks for the project owners/partners; symbology legend; and the proposed index of drawings to be included in the plan set.
- B. Site layout drawing;
- C. Typical sections showing proposed and existing conditions.
- D. Plan and profile sheets showing existing conditions and how design speed, site distance, drainage, and environmental requirements are planned to be met as well as the proposed type and location of any significant structures to be included;
- E. Cross-sections for roadways showing existing ground conditions and depicting proposed conditions based upon preliminary alignments and typical sections;
- F. Identification of limits of construction and properties that could be affected by the proposed construction;
- G. Identification of existing easements and utilities that could be affected by the proposed construction;
- H. Engineer's estimate of costs along with an explanation of the method used and any assumptions that were made. Recommended changes for the parties to consider if a problem has been identified that could adversely affect the project schedule or budget

- I. Preliminary list of required regulatory approvals and right-of-way takings
- J. Updated project schedule with status tracking

Total projected time for completion of Work Product 1 is sixty (60) calendar days.

- (ii) Work Product 2: 60% complete design documents:
The 60% complete documents should address *all* major design issues and set direction for completion of the construction documents. A public meeting may be required. The requirements for the 60% design submittals shall as a minimum include the following:
 - A. Completed site layout drawings
 - B. Drawings that represent all items of work in the scope of services for the project including coordinates for proposed alignment (no blank pages or missing pages). Revised typical sections and cross sections to reflect more complete design
 - C. Draft specifications;
 - D. Proposed construction schedule and sequence of work
 - E. list of permits required and schedule for obtaining all permits/approvals/utility coordination required prior to bidding
 - F. Engineering calculations, studies, and reports used in design (drainage report, geotechnical report, environmental studies & reports, slope stability analysis, preliminary quantities, structural design, etc.)
 - G. Drawings should demonstrate coordination between prime consultant and sub-consultants (no missing design components to be provided by sub-consultants)
 - H. Engineer's estimate of costs along with an explanation of the method used and any assumptions that were made. Recommended changes for the parties to consider if a problem has been identified that could adversely affect the project schedule or budget
 - I. Draft ROW strip maps, sketches, & field notes. Final ROW documents to be submitted within 30 days of receiving review comments from Travis County, if required.
 - J. Updated project schedule with status tracking.

Total projected time for completion of Work Product 2 is sixty (60) calendar days.

- (iii) Work Product 3: 90% complete construction documents:
Provide construction documents that are virtually "ready to bid" with minor revisions, no outstanding design issues, all work coordinated and illustrated on the drawing. A public meeting may be required. The requirements for the 90% design submittals shall as a minimum include the following:
 - A. Complete set of construction drawings with all details, cross-sections, profiles, quantities, and title sheet
 - B. Full set of detailed specifications and index in bid-ready format (Microsoft Word format)

- C. Detailed breakdown cost estimate and associated bid schedule in County format
- D. Calculations for unit price quantities and final engineering design calculations
- E. List of permits secured and any permits/approvals pending.
- F. Final utility company costs and documentation from each utility contacted
- G. Final construction schedule/sequence of work.

Total projected time for completion of Work Product 3 is thirty (30) calendar days.

- (iv) Work Product 4: 100% complete construction documents:
Provide final plans, specifications, estimates, quantities, bid schedule, permits, and verification of property acquisitions and/or right-of-entries for the construction contract, and a list of any outstanding issues to be resolved before or during project bidding process (total projected time is 165 calendar day after notice to proceed date)

Total projected time for completion of Work Product 4 is fifteen (15) calendar days.

- (v) Work Product 5: Construction Contract bidding and award services:
Provide assistance with responding to bidder questions, preparing addenda, tabulating and evaluating bids, and providing recommendation for award.

Total projected time for completion of Work Product 5 is to be determined at the time the project is approved for bidding.

- (vi) Work Product 6: Construction Phase Services:
Construction phase services are to be provided in accordance with **Exhibit E** throughout the period of construction to provide technical interpretations and clarifications of the contract documents; to provide technical reviews and approvals of construction submittals; to observe that the work is proceeding in accordance with the contract documents and to document the progress and effort; to prepare, reproduce, and distribute supplemental drawings and specifications in response to requests for information by the Construction Contractor; to inform the Construction Contractor, the County and the Developer immediately upon identifying unacceptable deviations from the contract documents and document such deviations; to resolve problems which arise during performance of the work by the Construction Contractor; and, to perform all other duties that are included in the contract. Construction phase services shall extend through the Construction Contractor's warranty of construction, starting after the County and the Developer issue the project Completion Certificate or from the date of the notice of Substantial Completion. The

warranty period during which the Project Engineer's services shall be provided shall not exceed one year unless otherwise specified herein.

EXHIBIT G

ENGINEERING SERVICES & DELIVERABLES: UTILITY RELOCATION SERVICES

1. Research records of properties within project limits of construction
 - a) identify all utility companies that serve the properties
 - b) identify easements on the property and obtain descriptions and copies of any dedication instruments and plats
 - c) identify owners of utilities and contact information
2. Obtain existing condition and proposed improvement information from utility companies
 - a) determine type, size, and approximate location of existing utilities.
 - (i) interview appropriate utility company representatives
 - (ii) obtain as-built drawings if available
 - b) determine future plans for utility work within the limits of construction
 - (i) interview appropriate utility company representatives
 - (ii) if available, obtain preliminary utility engineering plans and schedule for future improvements
 - (iii) If no engineering plans are available, obtain description of proposed improvements including design criteria that will be used including but not limited to:
 - A) utility assignment
 - B) depth requirements
 - C) design requirements for separation from other utilities, structures, or activities
3. Review project design information for existing and potential conflicts
 - a) plan sheets showing existing and proposed conditions for roadways, bridges, buildings, utilities, topography, fences, walls, storm sewer systems, etc.
 - b) profile sheets showing existing and proposed conditions
 - c) detail sheets for foundations showing size and depth requirements
 - d) cross sections showing existing ground and proposed improvement including excavations, embankments, drainage channels, etc
4. Coordinate the relocation, protection, upgrading or abandonment of utilities
 - a) Identify with the County's Project Managers apparent conflicts between existing or proposed utilities and the project improvements shown in the design documents.
 - b) Provide copies of design documents to all utility service providers along with list of conflicts identified.
 - i) maintain database of utility companies provided with design information, contact persons and numbers, information transmittals, written and verbal communications, and any other pertinent information showing who was involved in the coordination, the decisions made, and the time taken to complete the process
 - ii) meet with utility company representatives to determine their proposed method for reconciling conflicts and communicate the information to the County
 - iii) meet with the County and County Attorneys and/or the utility company representatives and other public entities as needed to assist with reconciling conflicts between utilities and the proposed improvements, and record and distribute minutes of such meetings

- iv) prepare draft of elements to be included in any utility agreements or memorandum of understandings to be developed between the County and utility service providers. Include responsibilities for relocation, upgrading, or protection; specifics related to costs, scheduling, sizes and types, vertical and horizontal locations; and, any special construction and/or protection requirements.
- v) provide documentation of correspondence and coordination effort to the County upon completion of assignment

5. Additional Services, if approved by the County:

- a) field check locations of above ground utilities and visible components of below ground utilities and mark locations relative to existing topographic features on mapping to be provided by the County.
- c) provide, or contract with companies that can provide, underground utility locating services.
- d) hand excavate to verify location of utilities
- e) represent the County at Austin Area Utility Coordinating Committee meetings
- f) attend pre-construction and construction meetings
- g) provide documentation and testimony as needed to help resolve claims related to utility work or property condemnation cases.

EXHIBIT H

ETHICS AFFIDAVIT

Date: _____
Name of Affiant: _____
Title of Affiant: _____
Business Name of Contractor: _____
County of Contractor: _____

Affiant on oath swears that the following statements are true:

1. Affiant is authorized by Contractor to make this affidavit for Contractor.
2. Affiant is fully aware of the facts stated in this affidavit.
3. Affiant can read the English language.
4. Contractor has received the list of key contracting persons associated with this invitation for bids which is attached to this affidavit as Exhibit "A".
5. Affiant has personally read Exhibit "A" to this Affidavit.
6. Affiant has no knowledge of any key contracting person on Exhibit "A" with whom Contractor is doing business or has done business during the 365 day period immediately before the date of this affidavit whose name is not disclosed in the Invitation for Bids.

Signature of Affiant

Address

SUBSCRIBED AND SWORN TO before me by _____ on _____, 2012.

Notary Public, State of Texas

Typed or printed name of notary

EXHIBIT A
TO ETHICS AFFIDAVIT

LIST OF KEY CONTRACTING PERSONS
July 5, 2012

CURRENT

<u>Position Held</u> <u>Associated</u>	<u>Name of Individual</u> <u>Holding Office/Position</u>	<u>Name of Business</u> <u>Individual is</u>
County Judge	Samuel T. Biscoe	
County Judge (Spouse)	Donalyn Thompson-Biscoe	MHMR
Executive Assistant	Cheryl Brown	
Executive Assistant	Dan Smith	
Executive Assistant	Melissa Velasquez*	
Commissioner, Precinct 1	Ron Davis	
Commissioner, Precinct 1 (Spouse)	Annie Davis	Seton Hospital
Executive Assistant	Chris Fanuel	
Executive Assistant	Felicitas Chavez	
Commissioner, Precinct 2	Karen Sonleitner	
Executive Assistant	Gretchen Vaden	
Executive Assistant	Ann Denkler	
Commissioner, Precinct 3	Gerald Daugherty	
Commissioner, Precinct 3 (Spouse)	Charlyn Daugherty	Commemorative Brands, Inc.
Executive Assistant	Robert Moore	
Executive Assistant	Martin Zamzow*	
Commissioner, Precinct 4	Margaret Gomez	
Executive Assistant	Edith Moreida	
Executive Assistant	Joe Vela	
County Treasurer	Dolores Ortega-Carter	
County Auditor	Susan Spataro	
Executive Manager, Administrative	Alicia Perez	
Executive Manager, Budget & Planning	Christian Smith	
Exec. Manager, Health/Human Services	Sherri E. Fleming	
Executive Manager, TNR	Joseph Gieselman	
Travis County Attorney	David Escamilla	
First Assistant County Attorney	Randy Leavitt	
Executive Assistant, Civil Division	Jim Collins	
Director, Transactions Division	John Hille	
Attorney, Transactions Division	Tamara Armstrong	
Attorney, Transactions Division	Tom Nuckols	
Attorney, Transactions Division	Mary Etta Gerhardt	
Attorney, Transactions Division	Barbara Wilson	
Attorney, Transactions Division	Jim Connolly	
Attorney, Transactions Division	Tenley Aldredge	

Attorney, Transactions DivisionJulie Joe
 Attorney, Transactions DivisionStacy Wilson*
 Purchasing AgentCyd Grimes, C.P.M.
 Assistant Purchasing AgentMarvin Brice, CPPB*
 Assistant Purchasing AgentBonnie Floyd, CPPB
 Purchasing Agent Assistant IVDiana Gonzalez*
 Purchasing Agent Assistant IVLee Perry*
 Purchasing Agent Assistant IVJason Walker*
 Purchasing Agent Assistant IVRichard Villareal
 Purchasing Agent Assistant IIIVacant
 Purchasing Agent Assistant IIIMichael Long, CPPB
 Purchasing Agent Assistant IIIRebecca Gardner
 Purchasing Agent Assistant III.....Oralia Jones, CPPB
 Purchasing Agent Assistant III.....Lori Clyde, CPPB
 Purchasing Agent Assistant III.....Rosalinda Garcia
 Purchasing Agent Assistant III.....Loren Breland
 Purchasing Agent Assistant III.....Jorge Talavera
 Purchasing Agent Assistant IIDonald E. Rollack
 Purchasing Agent Assistant IIVacant
 Purchasing Agent Assistant IINancy Barchus*
 HUB CoordinatorSylvia Lopez
 HUB SpecialistBetty Chapa
 HUB SpecialistJerome Guerrero
 Business Analyst II Scott Worthington

FORMER EMPLOYEES

	Name of Individual Holding Office/Position	Date of Expiration
Purchasing Agent Assistant IV	Jerry Raisch, CPPB	03/04/06
Executive Assistant.....	Barbara Cilley	05/02/06
Executive Assistant.....	Cheryl Aker.....	07/27/06
Purchasing Agent Assistant II.....	Manuel Perez	07/29/06
Purchasing Agent Assistant IV	Sylvia Gonzalez	08/12/06
Assistant Purchasing Agent	Frank Holder	01/31/07

* - Identifies employees who have been in that position less than a year.