



## Travis County Commissioners Court Agenda Request

**Meeting Date:** October 1, 2013

**Prepared By:** Anna Bowlin, Division Director of Development Service and Long Range Planning

Phone : (512) 854-7561

**Division Director/Manager:** Anna Bowlin, Division Director of Development Service and Long Range Planning

*Carol B. Jorgensen*  
**Department Head:** Steven M. Manilla, P.E., County Executive-TNR

**Sponsoring Court Member:** Commissioner Daugherty, Precinct Three

**AGENDA LANGUAGE:** Consider and take appropriate action on an Agreement Concerning Substitute Fiscal Posting-Estancia Hill Country with SLF III-Onion Creek, L.P in Precinct Three.

### **BACKGROUND/SUMMARY OF REQUEST:**

Under Title 30, the City of Austin/Travis County Subdivision Regulations, fiscal security to ensure road construction can take the form of a cash deposit. Typically, the cash is deposited with Travis County or the City of Austin. However, the regulations do not specify who the money must be deposited with. Road construction for this part of the Estancia Hill Country development is being paid for with the proceeds of Public Improvement District (PID) bonds issued by the City of Austin. The PID bond proceeds are not held by the city itself, but are held by a trustee. The trustee cannot disburse these funds unless the city approves it in advance.

The issue presented is whether PID bond proceeds held by a trustee qualifies as a "cash deposit" under Title 30. Since the city controls disbursement of the funds, staff is comfortable treating them as a "cash deposit" conditioned on the developer entering into the attached agreement, which provides the county with safeguards against the city disbursing the funds before the county has inspected the roads and determined they are constructed to county standards.

### **STAFF RECOMMENDATIONS:**

Staff recommends this item.

### **ISSUES AND OPPORTUNITIES:**

Using PIDs to finance road construction is becoming common in Travis County. This agreement will establish a standard practice for the posting of fiscal security where a PID is involved.

**FISCAL IMPACT AND SOURCE OF FUNDING:**

There is no fiscal impact to the county.

**ATTACHMENTS/EXHIBITS:**

Agreement Concerning Substitute Fiscal Posting Estancia Hill Country

**REQUIRED AUTHORIZATIONS:**

|                   |                           |                          |                |
|-------------------|---------------------------|--------------------------|----------------|
| Cynthia McDonald  | Financial Manager         | TNR                      | (512) 854-4239 |
| Steven M. Manilla | County Executive          | TNR                      | (512) 854-9429 |
| Tom Nuckols       | Assistant County Attorney | County Attorney's Office | (512) 854-9414 |
|                   |                           |                          |                |
|                   |                           |                          |                |
|                   |                           |                          |                |

**CC:**

|              |          |     |                |
|--------------|----------|-----|----------------|
| Sarah Sumner | Planner  | TNR | (512) 854-7687 |
| John Ellis   | Engineer | TNR | (512) 854-9805 |
|              |          |     |                |
|              |          |     |                |

**SM:ab:ab**

**1101 - Development Services Long Range Planning - Estancia**

**AGREEMENT CONCERNING SUBSTITUTE FISCAL POSTING**

**ESTANCIA HILL COUNTRY**

This Agreement Concerning Substitute Fiscal Posting (this “**Agreement**”), dated as of \_\_\_\_\_, 2013, (the “**Effective Date**”), is entered into between SLF III – ONION CREEK, L.P., a Texas limited partnership (the “**Owner**”), and Travis County (the “**County**”).

Recitals:

WHEREAS, Owner is the owner of land intended to be platted as Estancia Hill Country Subdivision, Phase I, containing approximately 38.998 acres, as described in the attached Exhibit “B” (the “**Property**”).

WHEREAS, Owner and the County have entered into that certain Subdivision Construction Agreement dated \_\_\_\_\_, 2013 (the “**Subdivision Construction Agreement**”) concerning construction of improvements within the Property that will be dedicated to the County (the “**Improvements**”);

WHEREAS, the City Council of the City of Austin, Texas (the “**City**”) authorized the formation of the Estancia Hill Country Public Improvement District on June 6, 2013 pursuant to Ordinance No. 20130606-054 (the “**District**”);

WHEREAS, in conjunction with the formation of the District, the City issued the PID Bonds.

WHEREAS, pursuant to the terms of the Indenture, a portion of the proceeds from the PID Bonds have been placed into a separate account held by U.S. Bank, as Trustee (the “**Project Fund**”) for the benefit of the City and the bondholders and are to be used to fund the construction of Public Improvements.

WHEREAS, pursuant to the PID Financing Agreement, the Improvements are Public Improvements to be constructed using proceeds of the PID Bonds.

WHEREAS, the County, subject to the terms and conditions contained herein, agrees to allow the proceeds of the PID Bonds deposited in the Project Fund to serve as substitute fiscal posting required pursuant to the Subdivision Construction Agreement for the Improvements.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained herein, and other good and valuable consideration, the parties hereto agree as follows:

1. Project Fund to Serve as Required Fiscal Posting. The Owner shall not be required to post separate fiscal security for the Improvements and the County hereby acknowledges and agrees that the funds deposited in the Project Fund shall serve as substitute fiscal posting required pursuant to County regulations and the Subdivision Construction Agreement for the Improvements.

2. County's Review of Certification for Payments.

- (a) Pursuant to the PID Financing Agreement, prior to any funds being released from the Project Fund, Owner is required to submit a Certification for Payment to the City Treasurer, who after verifying the information contained in said Certification for Payment is accurate, submits the Certification for Payment to the Trustee for payment. Owner hereby agrees that 10 calendar days before it submits any Certification for Payment to the City Treasurer that contains a payment request for all or a portion of the Improvements, Owner shall submit such Certification for Payment to the County for review.
- (b) Upon receipt of a Certification for Payment with respect to the Improvements (and any associated accompanying documentation), the County shall conduct a review in order to (i) confirm that the Improvements were constructed (or are being constructed) in accordance with applicable plans and specifications and (ii) verify the costs and expenditures expended to date for the Improvements specified in such Payment Request. The County agrees to conduct each such review in an expeditious manner and the Owner agrees to cooperate with the County in conducting each such review and to provide the County with any such additional information and documentation as is reasonably necessary for the County to conclude each such review. The County shall, at the earliest possible date, either inform the Owner in writing of any deficiencies or execute the Certification for Payment or otherwise evidence its approval of the Certification for Payment and forward the same to the City Treasurer and/or Owner. If the County does not identify deficiencies in writing or execute a Certificate for Payment within 10 calendar days of receipt, the Owner may submit the Certificate for Payment to the City. If the County timely identifies deficiencies, the Owner shall not submit the Certification for Payment to the City until the County executes a Certification for Payment reflecting correction of the deficiencies or otherwise evidences its approval of the corrections.

3. Maintenance of Project; Warranties. The Owner shall maintain the Improvements in good and safe condition until they are accepted by the County in accordance with the County's standard rules and procedures. Prior to such acceptance, the Owner shall be responsible for performing any required maintenance of the Improvements. Upon or before acceptance by the County, the Owner shall assign to the County all of the Owner's rights in any warranties, guarantees, maintenance obligations or other contingent obligations of third persons with respect to the Improvements.

4. Notices. Any notice, communication or disbursement required to be given or made hereunder shall be in writing and shall be given or made by facsimile, hand delivery, overnight courier, or by United States mail, certified or registered mail, return receipt requested, postage prepaid, at the addresses set forth below or at such other addresses as any be specified in writing by any Party hereto to the other parties hereto. Each notice which shall be mailed or delivered in the manner described above shall be deemed sufficiently given, served, sent and received for all purpose at such time as it is received by the addressee (with return receipt, the delivery receipt or the affidavit

of messenger being deemed conclusive evidence of such receipt) at the following addresses:

If to County:     Transportation & Natural Resources Department  
                          P.O. Box 1748  
                          Austin, Texas 78767  
                          Attn: County Executive

With copies to:   Travis County Attorney's Office  
                          P.O. Box 1748  
                          Austin, Texas 78767

If to Owner:       SLF III – ONION CREEK, L.P.  
                          c/o Stratford Land  
                          Attn: Asset Manager  
                          5949 Sherry Lane, Suite 1750  
                          Dallas, Texas 75225

With a copy to:   Metcalf Wolff Stuart & Williams, LLP  
                          Attn: Steven C. Metcalfe  
                          221 W. 6th, Suite 1300  
                          Austin, Texas 78701

5. Amendments. This Agreement may be amended, modified, revised or changed by written instrument executed by the County Executive-Transportation and Natural Resources and Owner or its Designated Successor and Assign.
6. Time. In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays, and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday, or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday, or legal holiday.
6. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument.
7. Severability; Waiver. If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid, or enforceable provision as is possible. Any failure by a Party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver or of any other provision, and such Party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.
8. Assignment. Owner may, in its sole and absolute discretion, assign this Agreement with respect to all or part of the Property from time to time to Designated Successors and Assigns. Owner shall provide the County with written notice of any such assignment. Upon such assignment or partial assignment, Owner shall be fully released from any and all obligations under this Agreement and shall have no further liability with respect to this Agreement for the part of the Property so assigned. A reference to any Party includes, with respect to Owner, its Designated Successors and Assigns, and reference to any Party in a particular capacity excludes such Party in any other capacity or individually.

[Signatures on Next Page]

**SLF III – ONION CREEK, L.P.,**  
a Texas limited partnership

By: SLF III Property GP, LLC,  
a Texas limited liability company,  
its General Partner

By: Stratford Land Fund III, L.P.,  
a Delaware limited partnership,  
its Sole and Managing Member

By: Stratford Fund III GP, LLC,  
a Texas limited liability company, its  
General Partner

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

**TRAVIS COUNTY, TEXAS**

By: \_\_\_\_\_  
Samuel T. Biscoe, County Judge

## Exhibit "A"

### DEFINITIONS

**"Assessment Plan"** means the Estancia Hill Country Public Improvement District Service and Assessment Plan (as such plan is amended from time to time).

**"Designated Successors and Assigns"** shall mean an entity to which Owner assigns (in writing) its rights and obligations contained in this Agreement related to all or a portion of the Property.

**"Indenture"** means that certain Indenture of Trust dated as of June 1, 2013 between the City and Trustee covering the PID Bonds, as it may be amended from time to time

**"Party"** means the Owner or the County, as parties to this Agreement, and **"Parties"** means collectively, the Owner and the County.

**"PID Bonds"** means the \$12,590,000.00 City of Austin Special Assessment Revenue Bonds, Series 2013 (Estancia Hill Country Public Improvement District) issued by the City of Austin, Texas on July 16, 2013.

**"PID Financing Agreement"** means the Estancia Hill Country Public Improvement District Financing Agreement, dated as of June 20, 2013 between the Owner and the City.

**"Public Improvements"** means collectively any and all improvements which are included in the Assessment Plan as such plan is amended and updated from time to time.



**Exhibit "B"**

PROPERTY DESCRIPTION FOR PROPERTY