

(2) If the County determines, after having sent notice to the Managing Developer, that the Project Engineer's performance of its obligations continues to be deficient, the County may require the Managing Developer to replace the Project Engineer, and the Managing Developer must thereafter replace the Project Engineer no later than 60 days after the County's notice requiring replacement of the Project Engineer or such other time-frame specified in that notice.

Section 3.05. Real Property Interests

(a) For each Improvement Area, the Authorized Improvements shall be constructed in public rights-of-way and/or easements ("**Real Property Interests**") conveyed to an Applicable Entity. The Managing Developer hereby grants the County and the TCDA the right to enter the Property for purposes of implementing this Agreement. The Managing Developer must cause the Real Property Interests to be conveyed as soon as reasonably practicable after the execution of this Agreement, but no later than 30 days before commencement of construction within the applicable Improvement Area; provided, however, notwithstanding the foregoing, even though all of the Real Property Interests may not have been conveyed, the Managing Developer may commence construction of an Authorized Improvement, or portion thereof, so long as all Real Property Interests relating to that Authorized Improvement, or portion thereof, have been conveyed to the Applicable Entity prior to the commencement of construction of that phase of the applicable Authorized Improvements. Under no circumstances will Managing Developer be reimbursed for construction performed on property that has not been conveyed to the Applicable Entity until such time as the conveyance of such property to the Applicable Entity has been completed.

(b) The Managing Developer shall cause all Real Property Interests necessary to construct each phase of the Authorized Improvements to be conveyed free of all liens, encumbrances, and title defects unacceptable to County in its reasonable discretion and at no cost to the County, the TCDA, or the Applicable Entity. All Real Property Interests shall be conveyed by deeds or other instruments acceptable to the Applicable Entity in its reasonable discretion, or by plat (if plat dedication is required by the Applicable Entity). Conveyances by deed or other instruments shall be accompanied by an owner's policy of title insurance, the cost of which shall be borne by the Managing Developer, issued by a title company selected by the Managing Developer and acceptable to the Applicable Entity in its reasonable discretion. The form of deed to convey the Real Property Interests shall be in a form that is acceptable to the Applicable Entity. The policy shall list the Applicable Entity as an insured party and shall be for an amount based upon the fair market value of the interests conveyed as reasonably determined by the Applicable Entity. The Managing Developer shall pay the cost of owner's title policy premium and any endorsements requested by the Applicable Entity), and the Managing Developer shall pay the cost to change the language in Item 2 of Schedule B of the Owner Policy to read "shortages in area" only.

(c) All title insurance premium fees, costs to cure title defects, closing costs, and other acquisition costs shall be borne solely by the Managing Developer.

(d) If a Real Property Interest is subordinate to existing easements for utilities or other facilities, the Managing Developer shall, in addition to conveying the Real Property Interests, coordinate the execution of a joint use agreement between the Applicable Entity and the owner of the existing easement in a form that is acceptable to the Applicable Entity.

Section 3.06. Procurement of Construction Contracts; Change Orders

(a) For each Authorized Improvement, the Managing Developer will obtain from the Project Engineer an estimate of the total construction costs necessary to complete that Authorized Improvement, and if approved by the County (and the Applicable Entity if the Applicable Entity is not the County and that Applicable Entity requires that the Managing Developer obtain approval), this estimate will be the agreed limit for construction costs for that Authorized Improvement (the "**Agreed Limit**"). For each construction contract for Authorized Improvements, the Managing Developer shall solicit bids for the contract in compliance with the standard competitive bidding requirements of the County for construction projects, all applicable rules and policies of the Applicable Entity, and this Agreement.

(b) Each invitation for bids shall include the Final Plans and Specifications approved by the Applicable Entity and written notice of the requirements of Section 3.07. The Managing Developer shall submit the invitation for bids and a list of proposed bidders to the County for approval in advance. The invitation for bids shall be solicited within the latest to occur of 30 days after the Applicable Entity's approval of the Final Plans and Specifications unless the Parties agree in writing, or the County determines (solely in its discretion), that market forces or other factors warrant a delay in soliciting bids, in which case the solicitation will be delayed until such time agreed to by the Parties or determined by the County, respectively. The Managing Developer shall provide the County with all responses to the bid solicitation.

(c) If the bid determined by the Managing Developer and the County to be acceptable as the lowest responsive and responsible bid exceeds the Agreed Limit for the applicable Authorized Improvements, either the County or the Managing Developer may reject all bids as excessive and require the Construction Manager to cause to employ value engineering (as defined below) principles to modify the Final Plans and Specifications, in consultation with the County and the Managing Developer, to secure a lower bid; provided, however, that notwithstanding the foregoing, at the Managing Developer's election, such bid will be accepted and the Managing Developer may award a bidder a construction contract that exceeds the Agreed Limit if the Managing Developer:

(1) agrees to pay one hundred percent (100%) of the amount by which the bid exceeds the Agreed Limit without reimbursement from the County, the TCDA, Assessment Revenues, Contract Assessment Revenues, or PID Bonds, and

(2) posts fiscal security with the Applicable Entity, in a form acceptable to the Applicable Entity, for the amount the winning bid exceeds the Agreed Limit.

(d) **"Value engineering"** means:

- (1) to analyze the applicable Authorized Improvements features and material selections for the purpose of achieving essential functions at the lowest life cycle cost consistent with required performance, quality, reliability, safety, and applicable regulatory and legal requirements, and
- (2) to modify the applicable Authorized Improvements while maintaining its functionality and adhering to sound engineering principles and practices.

(e) The modified Final Plans and Specifications shall be subject to approval by the City or County, as applicable, and Managing Developer, which approval shall not be unreasonably denied, delayed, or conditioned. Based on the modified Final Plans and Specifications, the Managing 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 the Managing Developer may choose to pay one hundred percent of the amount by which the lowest responsive and responsible bid exceeds the Agreed Limit without reimbursement from the County, the TCDA, Assessment Revenues, Contract Assessment Revenues, or PID Bonds by giving written notice thereof to the County and the TCDA and posting fiscal security with the Applicable Entity for the amount the winning bid exceeds the Agreed Limit.

(f) 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. The Managing Developer is responsible for payment to the Project Engineer for value engineering, without reimbursement from the County, the TCDA, Assessment Revenues, Contract Assessment Revenues, or from PID Bonds, and resulting changes to the construction documents, shall be subject to approval by the Applicable Entity and Managing Developer, which approval shall not be unreasonably denied, delayed, or conditioned.

(g) The Managing 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 business days after such submission within which to make any comments on the contract, and if no such comments are received by Managing Developer within said ten-day period, the County shall be deemed to have approved the contract. The Managing Developer shall execute the approved contract, which shall be referred to herein as the **"Construction Contract."** The amount of the Construction Contract is referred to herein as the **"Construction Contract Amount."** The contractor under the Construction Contract shall be referred to herein as the **"Construction Contractor."**

(h) No later than five business days after execution of the Construction Contract, the Managing 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 this Article III. The Managing Developer will also provide the

County copies of any subsequent documents amending or otherwise relating to the Construction Contract no later than five business days after execution; provided however, the Managing Developer must obtain County approval, which approval shall not be unreasonably denied, delayed, or conditioned, with respect to all amendments to the Construction Contract and those change orders to which the provisions of Section 3.06(l) are applicable.

(i) **Change Orders.** Whether capitalized or not:

(1) The words "**change order**" and "**Change Order**" mean a written agreement entered into between the Construction Contractor and the Managing Developer that authorizes an addition, deletion, or revision to a Construction Contract, issued on or after the Construction Contract is executed.

(2) The words "**Contract Time**" mean the number of calendar days allowed for completion of an Authorized Improvement as set forth in the Construction Contract. When any period is referred to in days, it will be computed to exclude the first and include the last day of such period.

(j) In addition to the requirements set forth in this Agreement, the Managing Developer must comply with all change order procedures and requirements of the Applicable Entity.

(k) **Notice of Proposed Change Orders.** The Managing Developer must provide the Applicable Entity, the County, and the TCDA Construction Administrator a copy of each proposed change order that relates to an Authorized Improvement no later than one business day after the Managing Developer receives the proposed change order. If not already specified in the proposed change order, the Managing Developer must provide the County and the TCDA Construction Administrator information that: (1) describes the reason for the proposed change order, (2) specifies whether the proposed change order has been requested or is required by the Applicable Entity, and (3) specifies any proposed changes to the plans and specifications for the Project, including information as to any changes to (A) the design, (B) quantity of bid items, (C) Construction Contract Amount (including the change in cost resulting from the change order and the cumulative cost of the proposed change order and previous approved change orders), and (D) Contract Time (including the number of days by which the Contract Time would be changed by the proposed change order and the aggregate number of days by which the Contract Time has been changed by previous change orders) for completion of the Authorized Improvements.

(l) The Managing Developer is not required to obtain approval from the County and the TCDA of a change order that relates to an Authorized Improvement unless:

(1) the proposed change order relates to an Authorized Improvement that the Managing Developer intends to dedicate or convey to the County, in which case,

the Managing Developer must obtain approval of the proposed change order from the County's Transportation and Natural Resources Department; or

(2) the proposed change order would, in the opinion of the Managing Developer, the County, or the TCDA affect, with respect to a Community Benefit listed in Exhibit "E-2":

(A) the ability of the Managing Developer to provide one or more of the listed Community Benefits;

(B) the quantity or quality of a listed Community Benefit; or

(C) the timing for the Managing Developer to provide a Community Benefit.

(m) **County and TCDA Response to Proposed Change Orders.** If the Managing Developer is required to obtain County and TCDA approval of a proposed change order described in Subsection (l)(2) above, the TCDA Construction Administrator will respond to the Managing Developer no later than **10** business days after the TCDA Construction Administrator's receipt of the proposed change order as to whether the County and the TCDA will approve or deny the proposed change order or whether the County and the TCDA will require additional time to act on the proposed change order, in which case the TCDA Construction Administrator will notify the Managing Developer no later than **12** business days after the TCDA Representative's receipt of the proposed change order of the County and the TCDA's approval or denial of the proposed change order. If the County and the TCDA do not respond by the **12th** business day after receiving notice of a proposed change order that relates to a Community Benefit, the change order is presumed to be approved by the County and TCDA with respect to any change order for which the County is not the Applicable Entity. Notwithstanding any provision to the contrary, if a proposed change order pertains to an Authorized Improvement that the Managing Developer intends to dedicate or convey to the County, the Managing Developer must also obtain approval from the County's Transportation and Natural Resources Department if such approval is required by the Travis County Code or a separate written agreement between the County and the Managing Developer.

(n) The Managing Developer shall not receive any payments pursuant to this Agreement for, and shall bear 100% of costs resulting from, any change order that:

(1) arises due to errors or omissions by the Managing Developer's Project Engineer, Construction Manager, or Construction Manager Subcontractor,

(2) relates to an Authorized Improvement that will be dedicated or conveyed to an Applicable Entity but has not been approved by that Applicable Entity, or

(3) would affect a Community Benefit but has not been approved by the County and the TCDA.

(o) If a change order would cause the amount for which the Managing Developer is financially obligated under this Agreement to exceed any fiscal security deposited with

the Applicable Entity. the Managing Developer shall, no later than 20 business days after the change order is approved by the Parties, or within the time-frame required by the Applicable Entity's rules and regulations, whichever period is shorter, deposit with the Applicable Entity additional fiscal security in an amount equal to the amount of the change order, and the Managing Developer will simultaneously notify the County and the TCDA that the Managing Developer has posted the additional fiscal security.

(p) The Managing Developer shall provide copies of all approved change orders to the County, the TCDA Construction Administrator, the Applicable Entity (if the Applicable Entity is not the County), the Underwriter, and the Bond Trustee no later than five business days after approval.

(q) The approval of a change order by either the County or the TCDA:

(1) Is not intended to be and is not to be construed to be the County or TCDA's approval of any part of a request for reimbursement or progress payment;

(2) Does not relieve the Managing Developer of any obligation to seek approval of the change order from any Applicable Entity, including those instances where the County is the Applicable Entity; and

(3) Does not relieve the Managing Developer of any obligation to comply with all applicable governmental policies, codes, regulations, and statutes.

(r) Each Construction Contract for Authorized Improvements that is executed after the effective date of this Agreement must include a provision that requires 10% retainage to be disbursed only upon completion and acceptance of the Authorized Improvements by the Applicable Entity, subject, however, to early disbursement for subcontractors whose work has been completed.

Section 3.07. Special County Provisions Applicable to Construction Contracts

(a) For each Construction Contract, the Managing Developer will obtain from the Construction Contractor and provide to the County a collateral assignment of the Managing Developer's rights under the Construction Contract, in the form attached as Exhibit "G-1", which authorizes the County to exercise the Managing Developer's rights under the Construction Contract and to complete the applicable Authorized Improvements if the Managing Developer fails to do so as provided in this Agreement.

(b) The Parties acknowledge and agree that the applicable Authorized Improvements involves construction of public improvements. Accordingly, the applicable Authorized Improvements will be constructed, and all rights-of-way, easements, equipment, materials, and supplies will be acquired, in the name of or on behalf of the Applicable Entity. However, the Managing Developer shall ensure that all construction contracts and other agreements contain a provision that each contractor, materialman, or supplier will look solely to the Managing Developer for payment of all sums coming due thereunder

and that neither the Applicable Entity, the County, or the TCDA will have any obligation to any such party, but will only be obligated to reimburse the Managing Developer in the time and manner required under this Agreement.

(c) The Managing Developer shall include the HUB Program goals with the invitation for bid and Final Plans and Specifications and ensure that they are part of the bids. The Managing Developer must make a "good faith effort" to achieve the County's HUB Program goals and comply with the other HUB Program requirements described in Exhibit "K".

(d) The Managing Developer shall ensure that payment and performance bonds are obtained and kept in place for the applicable Authorized Improvements in compliance with Chapter 2253, Texas Government Code.

(e) The Managing 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 Managing Developer will ensure that the Construction Contractor pays not less than the prevailing wage rates established by the County to workers employed on the applicable Authorized Improvements and complies with all applicable provisions of Chapter 2258, Subchapter B, Texas Government Code, including the recordkeeping required therein.

(f) The Managing Developer will ensure that the Construction Contractor provides worker's compensation insurance coverage for workers employed on the applicable Authorized Improvements 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 Managing Developer will ensure that the Construction Contractor maintains a comprehensive general liability and automobile liability insurance policy naming the County, TCDA, and the Applicable Entity as additional insureds, with a waiver of subrogation in favor of the County, TCDA, and the Applicable Entity, and with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars in the aggregate. Notwithstanding any provision to the contrary, the County has discretion to require different levels of insurance as long as the requirements are similar to the insurance requirements for similar County public works projects. The Managing Developer shall cause the Construction Contractor to provide the TCDA Construction Administrator with written certificates of compliance with the foregoing requirements.

(g) The Managing Developer shall require the Construction Contractor to implement and maintain all applicable or customary safety precautions and programs in connection with the construction of the applicable Authorized Improvements.

(h) The Managing Developer shall require the Construction Contractor to immediately take any appropriate remedial action to correct any deficiencies identified by the Applicable Entity or the TCDA Construction Administrator during construction or during any applicable warranty period.

Section 3.08. Construction of Authorized Improvements

(a) Before beginning construction on an applicable Authorized Improvements, the Managing Developer will:

(1) except as otherwise provided in one or more Acquisition and Reimbursement Agreements, cause to be conveyed or dedicated to County or the City, as applicable, all the Real Property Interests necessary to the applicable Authorized Improvements;

(2) submit to the Applicable Entity payment and performance bonds, insurance certificates, collateral assignments, and all other documents required to be submitted under this Agreement; and

(3) deposit with the Applicable Entity any fiscal security required for construction of the applicable Authorized Improvements.

(b) Subject to its rights to be reimbursed as provided in this Agreement, the Managing Developer will construct, and require its Construction Contractor and subcontractors to diligently pursue construction of, all applicable Authorized Improvements 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, orders, and ordinances.

(c) The Managing Developer assumes the risk for design and construction of the applicable Authorized Improvements in a good and workmanlike manner for the amount of the Construction Contract, unless otherwise provided in a separate cost-sharing agreement between the Managing Developer, the County, and the Applicable Entity (if the Applicable Entity is not the County), and all work and material used in the construction must be free from defects and fit for its intended purpose. Any modifications that would substantially change (as defined in this Subsection) the Final Plans and Specifications or the amount of the Construction Contract will be subject to the Managing Developer's, County's, and the Applicable Entity's (if the Applicable Entity is not the County) approval within ten business days after receipt of notice of the proposed changes, which approval will not be unreasonably denied, delayed, or conditioned. If the County and Managing Developer determine that, through no fault of the Managing Developer and based on cost effectiveness, sound engineering principles and practices, or applicable legal requirements, it is not possible to complete the applicable Authorized Improvement without modifications to the approved Final Plans and Specifications or the amount of the Construction Contract, the Managing Developer will, in coordination with the County and the Applicable Entity's (if the Applicable Entity is not the County), cause to be prepared any required changes to the Final Plans and Specifications and any required change orders to the Construction Contract. In this subsection, "substantially change" means to modify the Final Plans and Specifications for an Authorized Improvement such that the Authorized Improvement would constitute a new Authorized Improvement beyond the scope of this Agreement. All applicable change orders must be included with a Certification for Payment. Payment of the costs of a change order not required by the

County or an Applicable Entity may be disapproved if the change order substantially changes an Authorized Improvement.

Section 3.09. Inspections/Monitoring

(a) **Inspections of Authorized Improvements that will be conveyed or dedicated to the County.** Inspection of the construction of Authorized Improvements that will be conveyed or dedicated to the County (i.e., where the County is the Applicable Entity) will be conducted by the County in accordance with all applicable County rules, procedures, and regulations.

(b) Inspection of the construction of an Authorized Improvement that will be conveyed to an Applicable Entity other than the County will be conducted in accordance with the requirements of that Applicable Entity.

(c) **Monitoring by TCDA Construction Administrator.** In addition to inspections by Applicable Entity representatives, a construction representative designated by the TCDA (the "**TCDA Construction Administrator**") may observe or inspect all work done and materials furnished for compliance with the terms of this Agreement. Each entry and inspection by the TCDA Construction Administrator must be at a reasonable time and will usually be no more frequently than once a week unless the TCDA Construction Administrator notifies the Construction Manager otherwise. While on-site, the TCDA Construction Administrator must bear credentials and wear clothing that clearly identifies the individual as the TCDA Construction Administrator, and the TCDA Construction Administrator may communicate only with the Construction Manager or designee of the Construction Manager.

(d) The Managing Developer must:

(1) invite the TCDA Construction Administrator to attend preconstruction conference for an Authorized Improvement by providing the TCDA Construction Administrator at least five business days' notice of the time and place for preconstruction conference;

(2) provide the TCDA Construction Administrator a copy of the minutes of any preconstruction conference and any exceptions to the minutes of the preconstruction conference at the same time the Project Engineer distributes those minutes and exceptions to the conference participants;

(3) copy the TCDA Construction Administrator on any communication from the Managing Developer to the Applicable Entity that an Authorized Improvement is substantially complete;

(4) notify the TCDA Construction Administrator of any final acceptance meetings relating to an Authorized Improvement; and

(5) provide the TCDA Construction Administrator a copy of any final acceptance letters from the Applicable Entity.

(e) The Managing Developer agrees to copy the TCDA Construction Administrator on all inspection requests relating to Authorized Improvements. The Managing Developer further agrees to notify the TCDA Construction Administrator no later than 72 hours after being notified of a scheduled inspection of an Authorized Improvement, and the Managing Developer's notice to the TCDA Construction Administrator must include any design or construction-related documents to be used as part of the inspection. The Managing Developer agrees that the TCDA Construction Administrator has the right to be present at any Applicable Entity's inspection of an Authorized Improvement, and the Managing Developer will ensure that the TCDA Construction Administrator is informed of the date, time, and location of each Applicable Entity inspection. The TCDA Construction Administrator will communicate any issues to the Construction Manager only, and the Construction Manager must in turn communicate those issues to the Applicable Entity and copy the TCDA Construction Administrator with respect to each such communication.

Section 3.10. Managing Developer Completion of Authorized Improvements

(a) The Construction Manager will prepare a written notice of substantial completion and certify that the applicable Authorized Improvement has been constructed in accordance with the approved construction documents and forward the notice to the Managing Developer, the Applicable Entity, the County, and the TCDA Construction Administrator. The TCDA Construction Administrator will conduct a final inspection of the applicable Authorized Improvements no later than ten business days after receiving the written notice of substantial completion. No later than seven days after the Managing Developer receives notice from an Applicable Entity of the Applicable Entity's acceptance of an Authorized Improvement for operation and maintenance, the Managing Developer must provide a copy of the final acceptance notice to the County and the TCDA Construction Administrator.

(b) Upon final acceptance of the applicable Authorized Improvements by the Applicable Entity, all warranties for the applicable Authorized Improvements will be transferred to the Applicable Entity, and the Managing Developer will execute any documents reasonably required to evidence such assignment.

(c) The Construction Contractor will be responsible for any defects in workmanship or materials (ordinary wear and tear excepted) in the applicable Authorized Improvements for one year following acceptance by the Applicable Entity. The Managing Developer must provide or cause the Construction Contractor to provide the Applicable Entity with a one-year Construction Contractor's warranty and maintenance bond as a condition to final acceptance of the applicable Authorized Improvements, which will be in a form approved by the Applicable Entity, such approval not to be unreasonably denied, delayed, or conditioned.

(d) Within 30 days of final acceptance of the applicable Authorized Improvements by the Applicable Entity, the Managing Developer and the Construction Manager will deliver all plans including as-built plans, specifications, and files pertaining to the applicable

Authorized Improvements, which materials will be the property of the Applicable Entity (with a copy to the County if the County is not the Applicable Entity)

(e) Conveyance of the applicable Authorized Improvements to the Applicable Entity will not relieve the Managing Developer of liability for satisfaction of any claim for unpaid materials or labor. Neither the County nor the TCDA will be under any obligation to challenge any claim for unpaid labor or materials; however, if the Managing 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 3.11. Construction Worker Protection Standards

(a) PID Policy. The Managing Developer and its contractors and subcontractors must comply with the construction worker protection standards set forth in the County's PID Policy, including the following:

- (1) Payment of the prevailing wage to construction workers; provided that the Travis County living wage is preferred when it is the higher of the two.
- (2) Providing OSHA-10 training for construction workers and OSHA-30 for construction safety managers.
- (3) Providing workers compensation insurance for construction workers.
- (4) Allowing independent monitoring of the construction sites by on-site monitors approved by the County.
- (5) Recruiting 30% of the construction workforce from local, Department of Labor-certified apprenticeship programs that provide bilingual instruction or other training programs that provide bilingual instruction approved by the County.

(b) Managing Developer's Certifications. The Managing Developer must complete the following certifications and submit them to the County Purchasing Office's Contract Compliance Program as set forth in Exhibit "H-1":

- (1) The Living Wage Certification, attached as Exhibit "H-2", which must be submitted before construction commences on any Authorized Improvement for which the Managing Developer will seek reimbursement; and
- (2) The Workforce Training Program Certification, attached as Exhibit "H-3", which must be submitted before construction commences on any Authorized Improvement for which the Managing Developer will seek reimbursement.

(c) Contractor Certifications. The Managing Developer must cause its contractors to complete the following certifications and submit them to the County Purchasing Office's Contract Compliance Program before construction commences on any Authorized Improvement for which the Managing Developer will seek reimbursement:

- (1) The Workforce Training Program Certification, attached as Exhibit "H-3";
 - (2) The Employee Classification Certification, attached as Exhibit "H-4";
 - (3) The Apprentice Designation Certification, attached as Exhibit "H-5";
 - (4) An OSHA Training Certification, attached as Exhibit "H-6";
 - (5) A site-specific OSHA-compliant safety and health plan for the Project; and
 - (6) Either:
 - (A) All OSHA 300 and 300A Logs and Summaries for the previous three years for all of the contractor's jobsites; or
 - (B) The OSHA 300/300A Certification, attached as Exhibit "H-7", if the contractor has been in existence for three years or less.
- (d) Subcontractor Certifications. The Managing Developer must cause its contractors to require their subcontractors to complete the following certifications and submit them to the County Purchasing Office's Contract Compliance Program before construction commences on any Authorized Improvement for which the Managing Developer will seek reimbursement in accordance with Exhibit "H-8":
- (1) The Employee Classification Certification, attached as Exhibit "H-9";
 - (2) The Apprentice Designation Certification, attached as Exhibit "H-10";
 - (3) An OSHA Training Certification, attached as Exhibit "H-11";
 - (4) A site-specific OSHA compliant safety and health plan for the Project; and
 - (5) Either:
 - (A) All OSHA 300 and 300A Logs and Summaries for the previous three years for all of the subcontractor's jobsites; or
 - (B) The OSHA 300/300A Certification, attached as Exhibit "H-12", if the subcontractor has been in existence for three years or less.
- (e) Notwithstanding any provision to the contrary in this Agreement, the certification forms referenced in this Section 3.11 will be provided by the County and may be revised and updated periodically by the County.

Section 3.12. Project Funding and Completion

- (a) If prior to commencement of construction of a given Authorized Improvement, there are funds within the Project Fund of the Indenture sufficient to pay for completion of that Authorized Improvement, the Managing Developer will not be required to post fiscal

security for the applicable Authorized Improvement. If at any time there are not sufficient funds in the Project Fund to complete the Authorized Improvement, the Managing Developer will post fiscal security for the incremental cost difference between the budgeted cost to complete the Authorized Improvement assumed to be complete in the Appraisal and the proceeds of the PID Bonds on deposit in the Project Fund. With respect to each Authorized Improvement for which the County is the Applicable Entity, the County acknowledges that it will accept fiscal security, if required, for the Authorized Improvements in the form of an irrevocable letter of credit, surety bond, cash deposit, or other security acceptable to the County. If no such account exists or such account is not appropriately funded, then the Managing Developer shall be required to post fiscal security for Authorized Improvements in accordance with the Applicable Entity's regulations. Notwithstanding any provision to the contrary, the Managing Developer is not relieved of its obligation to construct or cause to be constructed each Authorized improvement listed in Exhibit "E-1," and upon completion, inspection, and acceptance, to convey each Authorized Improvement to the Applicable Entity even if there are insufficient funds in the Project Fund.

(b) If subcontractors providing labor or materials for the Authorized Improvements file claims or otherwise give notice asserting failure to receive payment for such labor or materials, the Managing Developer shall post a payment bond for the estimated cost of constructing the Authorized Improvements unless the claims or notices described above are for costs for which a Payment Request has been submitted to the TCDA and approval is pending. The Managing Developer shall give the County a copy of any such claims within three business days of receipt of the claim.

(c) County Completion of Authorized Improvements.

(1) If the Managing Developer commences construction but fails or refuses to diligently pursue timely completion of the construction of a particular Authorized Improvement in accordance with the terms and conditions set forth in this Agreement, such failure or refusal will be considered an event of default and, after giving notice of default and reasonable opportunity to cure as herein provided, the County will have the right, but not the obligation, to instruct the TCDA to draw on funds within the Project Fund and/or any fiscal security posted by the Managing Developer and complete (or cause the completion of) the applicable Authorized Improvement either pursuant to the Construction Contract and the collateral assignments or otherwise.

(2) If the County elects to complete an Authorized Improvement, all plans and specifications, designs, easements, real and personal property, and improvements acquired, produced, or installed in aid of completing such component of the Authorized Improvement by the Managing Developer or its engineers or contractors before such default described in paragraph (1) above, will become the property of the County. In such event, the Managing Developer will provide, no later than five (5) business days after the County's request, documentation to the County that the above-listed items have been conveyed and have become the property of the County. Notwithstanding anything to the contrary contained herein

if the Managing Developer fails or refuses to timely complete the construction of an Authorized Improvement and such default cannot reasonably be cured in 30 days, Managing Developer will have such additional time as the County determines is reasonably necessary to cure as long as the Managing Developer commences the cure within 30 days and diligently pursues the same to completion. If Managing Developer has still not completed the applicable component of the Authorized Improvement after the notice and cure periods provided for above, the County may:

- (A) Assume the construction management role and direct the completion of the applicable Authorized Improvement;
 - (B) Assume the construction management role and direct the closeout of the applicable Authorized Improvement; or
 - (C) Institute an action or proceeding at law or in equity to secure the specific performance of the covenants and agreements herein contained and/or an action for mandamus as and if appropriate.
- (3) In the event the County assumes the construction management role for a given Authorized Improvement (as provided above) then the Managing Developer agrees as follows:
- (A) The County may draw on funds within the Project Fund and/or any fiscal security posted by the Managing Developer to complete the Authorized Improvement in question;
 - (B) All construction contracts, related completion bonds, payment bonds, warranties, plans and specifications, designs, easements, and improvements acquired, produced, or installed in connection with completing such Authorized Improvement by the Managing Developer or its engineers, contractors, or other consultants, and all other personal property and rights associated with the applicable component of the Authorized Improvement, will automatically become the property of the County, and in such event, the Managing Developer will provide, no later than five (5) business days after the County's request, documentation to the County that the above-listed items have been conveyed and have become the property of the County; and
 - (C) The Managing Developer will automatically forgo and release any claims or rights to those items listed in (B) above.

Section 3.13. Maintenance of Project, Warranties

Unless otherwise provided for, the Managing Developer shall maintain each Authorized Improvement in good and safe condition until such Authorized Improvement is accepted by the Applicable Entity. The Applicable Entity's acceptance of Authorized Improvements shall be in accordance with the Applicable Entity's standard rules and procedures for the

type of improvements being constructed. Prior to such acceptance, the Managing Developer shall be responsible for performing any required maintenance on such Authorized Improvement. On or before the acceptance by the Applicable Entity of an Authorized Improvement, the Managing Developer shall assign to the Applicable Entity all of the Managing Developer's rights in any warranties, guarantees, maintenance obligations, or other evidences of contingent obligations of third persons with respect to such Authorized Improvement. Prior to or concurrently with the Applicable Entity's acceptance of an Authorized Improvement, Managing Developer shall provide a two-year maintenance bond (which must be in a form approved by the Applicable Entity, such approval not to be unreasonably denied, delayed, or conditioned) for that Authorized Improvement. If the City and/or County is co-funding an Authorized Improvement, the Managing Developer must still post the full bond amount but will be reimbursed for its pro rata share of the costs of the Authorized Improvement.

Section 3.14. Sales and Use Tax Exemptions

(a) The Parties agree that, as the Authorized Improvements will be acquired by the County or the City, as applicable, all costs of materials, other properties, and services used in constructing the Authorized Improvements to be acquired by the Applicable Entity are exempt under the Texas Tax Code from sales and use taxes levied by the State of Texas, or by any city, county, special district, or other political subdivision of the State, as set forth in Texas Tax Code Section 151.309.

(b) The Managing Developer will obtain any such certifications from the Applicable Entity to assure the exemptions claimed herein.

(c) The County and the Managing Developer shall cooperate in structuring the construction contracts for the Authorized Improvements to comply with requirements (including those set forth in Texas Tax Code Section 151.309) for exemption from sales and use taxes.

Section 3.15. Public Bidding Requirements/County Cooperation in Plan Review

The County and the TCDA Construction Administrator agree to cooperate with the Managing Developer to the extent reasonably possible without detriment to proper engineering review, comment, and revision on the review and approval of the final engineering, design, plans, and specifications of all Authorized Improvements submitted by the Managing Developer.

Section 3.16. Additional Requirements for Authorized Improvements Funded with Progress Payments

The following additional requirements are applicable to Authorized Improvements funded in accordance with the procedures set forth in Section 4.02:

(a) Project Engineer's Certification of Sufficient Fiscal Security. Prior to the later to occur of (1) the Effective Date, or (2) the date construction commences for any Authorized

Improvements, the Project Engineer shall review all plans and specifications, construction contracts, and related materials for the applicable Authorized Improvements, and, upon the County and the TCDA Construction Administrator's approval of the costs of the Authorized Improvements, the Project Engineer shall certify to the Managing Developer, the County, the TCDA, and the Bond Trustee that the amount of fiscal security referenced in Section 3.12 (which is titled "**Project Funding and Completion**") above is sufficient to fund the full cost of design and construction of the applicable Authorized Improvements (but excluding any Construction Management Fees as set forth in the Service and Assessment Plan). If the Project Engineer determines that additional fiscal security is required, the Managing Developer must provide the additional fiscal security no later than 30 days after the Project Engineer's determination.

(b) **Monthly Accounting.** The Construction Manager will maintain an ongoing monthly updated accounting of funds disbursed, work progress, and remaining funding needed to complete each applicable Authorized Improvement. Such accounting will include a reconciliation of any unadvanced amounts out of the segregated accounts in the Project Fund under the applicable Indenture and/or private funding as compared to the remaining costs to complete each applicable Authorized Improvements. The Construction Manager will provide such monthly reports on or before the twentieth day of each month to the Managing Developer, the County, the TCDA Construction Administrator, and the Bond Trustee.

ARTICLE IV PAYMENT FOR AUTHORIZED IMPROVEMENTS

Section 4.01. Overall Requirements

(a) Any payment obligation of the County or the TCDA hereunder shall be payable solely from Assessment Revenues or Contract Assessment Revenues, respectively, or, if PID Bonds are issued, the proceeds of such bonds. Unless approved by the County or the TCDA, no other funds, revenues, taxes, or income of any kind other than the Assessment Revenues or Contract Assessment Revenues, respectively, or, if PID Bonds are issued, the proceeds of such bonds, shall be used to pay the County or the TCDA's obligations hereunder. The obligations of the County and the TCDA under this Agreement shall not, under any circumstances, give rise to or create a charge against the general credit or taxing power of the County or the City or constitute a debt or other obligation of the County, the TCDA, or the City payable from any source other than the Assessment Revenues or Contract Assessment Revenues, as applicable or, if PID Bonds are issued, the proceeds of such bonds. None of the County, the TCDA, the City, or any of their elected or appointed officials or any of their respective officers, employees, consultants, or representatives shall incur any liability hereunder to the Managing Developer or any other party in their individual capacities by reason of this Agreement or their acts or omissions under this Agreement.

(b) Neither the County nor the TCDA warranties, either express or implied, that the proceeds of the PID Bonds and the Assessment Revenues or Contract Assessment

Revenues available for the payment of the Actual Cost of the Authorized Improvements to be constructed for or acquired by the County or the City, as applicable, will be sufficient for the construction or acquisition of all of those particular Authorized Improvements. The Parties anticipate that the Actual Cost to construct the Authorized Improvements may be greater than the net proceeds of the PID Bonds or the Contract Assessment Revenues, as applicable, available for Authorized Improvements. The Managing Developer shall bear one hundred percent (100%) of the Actual Costs of constructing the Authorized Improvements not paid from the proceeds of the PID Bonds, Assessment Revenues, or Contract Assessment Revenues.

(c) Upon written acceptance of an Authorized Improvement, and subject to any applicable maintenance-bond period, the Applicable Entity shall be responsible for all operation and maintenance of such Authorized Improvement, including all costs thereof and relating thereto.

(d) The procedures set forth in Section 4.02 below shall apply to all Certifications for Payment regardless of which account within the applicable Project Fund the actual funds are being paid from.

(e) The procedures provided below in Section 4.02 shall apply to each Improvement Area on a stand-alone basis. The procedures therein shall be read to apply independently to each Improvement Area (e.g., if reference is made to an Acquisition and Reimbursement Agreement, to Assessment Revenues, or to PID Bonds, such reference applies only to an Acquisition and Reimbursement Agreement, to Assessment Revenues, or to PID Bonds applicable to that Improvement Area).

Section 4.02. Payment for Authorized Improvements

(a) Upon completion of an Authorized Improvement, the Managing Developer shall dedicate or convey, and the Applicable Entity shall accept or acquire, as more particularly described in Article III above, the given Authorized Improvement for the Actual Cost. The general process for funding of Authorized Improvements is detailed in this Section 4.02.

(b) Collection of Initial Assessment. Unless specified otherwise in an Assessment Order, once levied, Assessments shall be collected in annual installments, with the initial collection of the annual installment determined as follows:

(1) If the Commissioners Court adopts an Assessment Order and levies an Assessment on or before June 30, the first installment of the Assessment shall be due upon receipt in the then-current year and delinquent if not paid by January 31 of the first year following the levy of the Assessment in that Improvement Area.

(2) If the Commissioners Court adopts an Assessment Order and levies an Assessment after June 30, then the first installment of the Assessments shall be due upon receipt in the following year and delinquent if not paid by January 31 of the second year following the initial sale of a home to a homeowner in that Improvement Area.

(3) The Managing Developer shall provide the anticipated date of the initial sale to a homeowner in that Improvement Area in its Assessment Levy Request.

(c) Payment Pursuant to Acquisition and Reimbursement Agreement

(1) Subject to Section 2.02(b) above, the costs of the Authorized Improvements will be initially financed through the applicable Acquisition and Reimbursement Agreement. Pursuant to the terms of such Acquisition and Reimbursement Agreement, the Managing Developer shall dedicate or convey, and the Applicable Entity shall accept or acquire, as more particularly described in Article III of the Agreement, the Authorized Improvement for the Actual Cost thereof. The general process for funding the Authorized Improvements before the issuance of PID Bonds is described in this Section 4.02(c), and more specifically described in the Acquisition and Reimbursement Agreement.

(2) Pursuant to an Acquisition and Reimbursement Agreement, the TCDA will reimburse the Managing Developer for Actual Costs incurred in connection with the applicable Authorized Improvements until PID Bonds (including Parity Bonds if necessary), are issued in an amount necessary to reimburse Managing Developer for the Actual Costs of the applicable Authorized Improvements less any amounts already reimbursed to Managing Developer pursuant to the Acquisition and Reimbursement Agreement. The Managing Developer will be reimbursed for only those Actual Costs for which Contract Assessment Revenues or PID Bond proceeds are available.

(3) If the Commissioners Court adopts an Assessment Order, the County will collect the Assessments in accordance with Sections 2.03 and this Section 4.02. Upon collection of such Assessments and in accordance with the applicable Funding Agreement, the County will transfer or cause to be transferred the Assessment Revenues to the TCDA to be held in a designated account separate from the TCDA's other accounts (the "Operating Account"), such funds to be used to reimburse the Managing Developer for the Actual Costs of the applicable Authorized Improvements pursuant to the terms of the Acquisition and Reimbursement Agreement.

(4) Pursuant to the Acquisition and Reimbursement Agreement, and as more fully described therein, the Managing Developer may submit a Certification for Payment, substantially in the form provided in Exhibit "C," to the TCDA for payment of the Actual Costs of an Authorized Improvement from funds then available in the appropriate subaccount of the Operating Account held by the TCDA Depository Bank. The Managing Developer may submit no more than one Certification for Payment per month; however, the Managing Developer must submit a Certification for Payment at least once per quarter.

(d) PID Bond Issuance; Payment from PID Bonds Proceeds at Issuance

(1) Upon completion of some or all of the Authorized Improvements, the Managing Developer may submit to the County and the TCDA a written request to issue PID Bonds (a "**Bond Issuance Request**"). Subject to meeting the requirements and conditions stated in Article II and Article V of this Agreement, the County will consider the adoption of a resolution consenting to the issuance of PID Bonds by the TCDA. Upon consent by the County, the TCDA will consider the adoption of a resolution authorizing the issuance of such PID Bonds, the proceeds of such PID Bonds to be used to reimburse the Managing Developer for the Actual Costs of the Authorized Improvements, less any amounts already reimbursed to Managing Developer pursuant to the Acquisition and Reimbursement Agreement, if any. Following consent by the County, the TCDA shall commence the documentation and preparation for sale of the PID Bonds in accordance with the Bond Issuance Request from the Managing Developer and Section 5.01 hereof.

(2) At least 30 days prior to the closing of a series of PID Bonds, the Managing Developer may submit a Closing Disbursement Request, substantially in the form provided in Exhibit "D" to this Agreement, to the TCDA to be reimbursed for those Managing Developer-Expended Funds accrued to date and not previously reimbursed pursuant to the Acquisition and Reimbursement Agreement, if any. Prior to disbursement of proceeds, the TCDA shall review the Closing Disbursement Request, and if Managing Developer's expenses are qualifying expenses, sign the Closing Disbursement Request and deliver that Closing Disbursement Request to the Bond Trustee. At the closing of the applicable PID Bonds, Managing Developer shall be reimbursed an amount equal to the applicable Managing Developer-Expended Funds and such amount shall be distributed by the Bond Trustee to the Managing Developer or the Managing Developer's designee. If payment of all or a portion of the Managing Developer-Expended Funds is to be paid to the Managing Developer's designee, the Managing Developer shall provide written notice thereof in the Closing Disbursement Request.

(3) At least 45 days prior to the closing of a series of PID Bonds, the Managing Developer may submit a Certification for Payment, substantially in the form provided in Exhibit "C" (as well as the other items described in Section 4.02(c)(4) above) to this Agreement, to the TCDA to be reimbursed at the time of PID Bond issuance for those Actual Costs incurred to date and not previously reimbursed pursuant to the Acquisition and Reimbursement Agreement.

(e) Progress Payments Following PID Bond Issuance

(1) If any of the Authorized Improvements have not been completed by Managing Developer and accepted by the Applicable Entity by the time the PID Bonds are issued, then payments will be made to Managing Developer, periodically, but no more than one (1) per month as construction progresses. The procedures for such progress payments are contained in this Section 4.02(e) and the Indenture.

(2) The proceeds from the issuance of the PID Bonds remaining after payment of amounts under Section 4.02(d) of this Agreement will be held by the Bond Trustee in various segregated accounts under the Project Fund established pursuant to the Indenture. Those sums held in the various segregated accounts will be advanced to the Managing Developer by the Bond Trustee to fund the Actual Costs of the Authorized Improvements (as more particularly specified herein and in the Service and Assessment Plan) upon receipt of a completed Certification for Payment substantially in the form as attached hereto in Exhibit "C".

(A) Except as provided for in subsections (3) and (4) below, and as will be set forth in the Indenture, progress payments shall be made by the Bond Trustee on a monthly basis within five (5) business days after receiving a signed Certification for Payment. Upon receipt of a Certification for Payment and required submittal items from the Managing Developer pursuant to this Section 4.02(e), the TCDA Representative shall sign the Certification for Payment and forward the same to the Bond Trustee within fifteen (15) calendar days after receiving a signed Certification for Payment. If TCDA disapproves any Certification for Payment, TCDA shall provide a written explanation of the reasons for such disapproval so that if the Certification for Payment is revised in accordance with TCDA's comments, the Certification for Payment can be approved. Upon receipt of such revised Certification for Payment, the TCDA shall thereafter have an additional ten (10) calendar days to forward the executed, revised Certification for Payment to the Bond Trustee for payment. The Parties agree that if said disapproval represents only a portion of the amount sought under a Certification for Payment, the Managing Developer may submit a revised Certification for Payment for that amount not in controversy so that the Certification for Payment can be approved and promptly forwarded to the Bond Trustee for Payment.

(B) For any Authorized Improvement to be funded by PID Bonds under this Section 4.02(e), Managing Developer shall be entitled to receive draws from the available proceeds of such PID Bond (not to exceed one (1) per month) based on the Actual Cost of the construction completed. The TCDA is not obligated to authorize a construction payment until such time that the Applicable Entity has approved the plans and specifications for the applicable Authorized Improvement (if such approval is required pursuant to this Agreement).

(3) Final Payment for Authorized Improvements Accepted by County. In addition to the submitted items required in Section 4.02(e)(2), to obtain the final payment for an Authorized Improvement funded by the PID Bonds pursuant to this Section 4.02, the following are required:

(A) The Managing Developer shall have provided to the County or the Applicable Entity an assignment of the warranties and guaranties, if applicable, for the Authorized Improvement.

(B) Final Certification for Payment. Before the final Certification for Payment is submitted to the County and the TCDA, the Project Engineer shall conduct a review for the County, the Applicable Entity, and the TCDA Construction Administrator to confirm that such Authorized Improvement was constructed in accordance with the plans therefor, and the Project Engineer will verify and approve the Actual Cost of such Authorized Improvement specified in such Certification for Payment. The Managing Developer shall require each such review be completed by the Project Engineer before the Managing Developer submits the final Certification for Payment to the TCDA.

(C) Upon confirmation by the Project Engineer to the Managing Developer, the County, and the TCDA Construction Administrator and the Managing Developer's submission of the final Certification for Payment indicating that such Authorized Improvement has been constructed in accordance with the plans therefor (including evidence that the Authorized Improvement has been accepted by the Applicable Entity), and verification and approval of the Actual Cost of such Authorized Improvement and concurrence by the TCDA Construction Administrator of such Actual Costs, the TCDA Construction Administrator shall within ten (10) business days thereafter conduct a final inspection of the Authorized Improvement, and if the TCDA Construction Administrator finds that the Authorized Improvement has been completed in accordance with the terms of the final approved Final Plans and Specifications and this Agreement in all material respects, the TCDA Construction Administrator shall sign the Certification for Payment and forward the same to the TCDA Representative; and

(D) The Managing Developer shall not be delinquent on any Assessments or County ad valorem taxes due and payable with respect to land owned by the Managing Developer within the County.

(4) Final Payment for Authorized Improvements accepted by Non-County Entity. With respect to the Authorized Improvements that are to be dedicated to and accepted by the Applicable Entity other than the County, the terms, conditions, and procedures set forth in Article III of this Agreement shall apply except as set forth below:

(A) The Applicable Entity (not the County) will be accepting such Authorized Improvements;

(B) The Applicable Entity (not the County) will be approving the plans and specifications for such Authorized Improvements;

(C) The Applicable Entity (not the County) will be inspecting such Authorized Improvements subject to County and/or TCDA participation as described in Section 3.09 of this Agreement; and

(D) In order to obtain the final payment for such Authorized Improvements, the Managing Developer will obtain from the Applicable Entity, and provide to the TCDA Construction Administrator, a written acknowledgement that all requirements for acceptance of such Authorized Improvements (save and except any applicable maintenance-bond period) have been complied with. Upon receipt of such written acknowledgment of the Applicable Entity, the TCDA Construction Administrator, within 15 business days thereafter, shall sign the Certification for Payment and forward the same to the County and the TCDA Representative. The TCDA Representative shall then have up to 5 business days to forward the executed Certification for Payment to the Bond Trustee for payment.

(f) Parity Bonds

(1) Any Actual Costs of the Authorized Improvements not paid or reimbursed from the proceeds of the initial series of PID Bonds may be paid or reimbursed from the proceeds of Parity Bonds. The County or TCDA, in its sole discretion, may determine whether to issue Parity Bonds.

(2) If the initial series of PID Bonds and the Parity Bonds, if issued, are sufficient to fully reimburse Managing Developer for the unreimbursed Actual Costs, then Managing Developer's right under the Acquisition and Reimbursement Agreement to receive any portion of the Contract Assessment Revenues for such purposes shall automatically terminate. However, if the aggregate proceeds of the initial series of PID Bonds and the Parity Bonds, if issued, are not sufficient to reimburse Managing Developer for the unreimbursed Actual Costs eligible to be paid from Contract Assessment Revenues available after the payment of debt service on the initial series of PID Bonds and the Parity Bonds, if issued, the Managing Developer shall continue to be paid the unreimbursed Actual Costs from Contract Assessment Revenues on a cash-flow basis under the Acquisition and Reimbursement Agreement.

**ARTICLE V
PID BONDS**

Section 5.01. Issuance of PID Bonds

(a) Subject to the terms and conditions set forth in this Article V, for each Improvement Area, the County intends to pay for the Authorized Improvements by PID Bonds issued by the TCDA in one or more series.

(b) Procedure. Upon the receipt of a Bond Issuance Request and the County's confirmation that the Managing Developer has complied with the requirements set forth in Section 2.02 for a given Improvement Area, the County will consider a resolution consenting to the issuance of PID Bonds for that Improvement Area by the TCDA and TCDA will consider authorizing the issuance of the PID Bonds within six months after

receiving a Bond Issuance Request to finance the Actual Costs of the Authorized Improvements for that Improvement Area subject to the following conditions:

(1) Managing Developer can reasonably demonstrate to the County, the TCDA, and the County and the TCDA's respective financial advisors the following:

(A) The Managing Developer has met or will meet the requirements of the County's PID Policy, except as modified by this Agreement.

(B) There is sufficient security for the PID Bonds, based upon the bond market conditions existing at the time of such proposed sale.

(C) Solely for the purposes of Parity Bonds, the applicable Additional Bonds Test, if any, has been satisfied.

(D) Solely for the purposes of Future Improvement Area Bonds, the applicable Future Improvement Area Bonds Test, if any, has been satisfied.

(E) In addition to the criteria outlined in any applicable Additional Bonds Test or Future Improvement Area Bonds Test, the County may consider additional requirements prior to authorizing the issuance of any PID Bonds, including but not limited to a market condition assessment (including market study update), development of the District, the current status of Managing Developer, and related builder positions.

(F) The TCDA may require a recommendation from County staff, advisors, and consultants.

(G) The Managing Developer is not delinquent on any County assessments or ad valorem taxes due and payable due and payable with respect to land owned by the Managing Developer within the County.

(2) Notwithstanding any provision to the contrary, the failure of the County to consider a resolution consenting to the issuance of PID Bonds by the TCDA for an Improvement Area shall not be considered to be a default under this Agreement. The failure of the TCDA to issue the PID Bonds within six months after receiving a Bond Issuance Request shall not be considered to be a default under this Agreement.

(c) For each Improvement Area, aggregate principal amount of PID Bonds required to be issued hereunder shall not exceed an amount sufficient to fund: (i) the Actual Costs of the Authorized Improvements, (ii) required reserves and capitalized interest during the period of construction and not more than 12 months after the completion of construction of the applicable Authorized Improvements funded by the PID Bond issue in question and in no event for a period greater than 24 months from the date of the initial delivery of the applicable PID Bonds, and (iii) District Formation and Bond Issuance Costs. Notwithstanding any provision to the contrary, to the extent the law(s) which limit the period of capitalized interest to 12 months after completion of construction change, the

foregoing limitation may be adjusted to reflect the law(s) in effect at the time of future PID Bond issuances and be applicable to such future bond issuances.

(d) The final maturity for any series of PID Bonds (including Parity Bonds) shall not exceed 30 years from the date of issuance of the respective series of PID Bonds.

(e) The minimum appraised value to lien ratio of any series of PID Bonds shall be at least 3 to 1 as measured by an independent Appraisal prepared by an appraiser selected by the TCDA and provided no earlier than four months prior to the Issue Date.

(f) Notwithstanding any provision in this Agreement to the contrary, in connection with the issuance of PID Bonds, the Managing Developer shall execute and deliver any documents, agreements, or certificates requested by the TCDA, counsel to the TCDA, the Underwriter, or Underwriter's counsel to order to demonstrate that the PID Bonds will be issued in compliance with State and federal law.

Section 5.02. Project Fund

For each Improvement Area, the County and the TCDA hereby covenant and agree that if PID Bonds are issued, the Indenture will establish a Project Fund as a separate fund to be held by the Bond Trustee under the applicable Indenture. The portion of the proceeds of the PID Bonds issued to pay Actual Costs of Authorized Improvements and District Formation and Bond Issuance Costs shall be deposited as described in the applicable Indenture.

Section 5.03. Denomination, Maturity, Interest, and Security for Bonds

(a) Each series of PID Bonds, including Parity Bonds, shall be finally authorized by the TCDA and shall be issued in the denominations, mature and be prepaid, bear interest, and be secured by and payable solely from the applicable PID Bond Security, all to be as described and provided in the applicable PID Bond Resolution or Indenture.

(b) The final and adopted versions of each PID Bond Resolution and Indenture (and all documents incorporated or approved therein) will contain provisions relating to the withdrawal, application, and uses of the proceeds of such PID Bonds when and as issued and delivered and otherwise contain such terms and provisions approved by the TCDA.

Section 5.04. Sale of PID Bonds.

The PID Bonds, if issued by the TCDA, shall be marketed and sold by an Underwriter from the TCDA's approved Underwriter pool, selected by the TCDA with the cooperation and assistance of the Managing Developer and the County, or such other method of sale mutually agreed upon by the TCDA, the County, and the Managing Developer. In the event that the Parties cannot mutually agree to the method of sale, the TCDA shall designate the method of sale. The Managing Developer agrees to fully cooperate with the TCDA and the County with respect to the preparation of marketing/offering documents, such as preliminary and final official statements.

ARTICLE VI ADDITIONAL COUNTY REQUIREMENTS

Section 6.01. Affordable Housing

(a) Initial Affordability Analysis; Subsequent Affordability Analyses.

(1) In accordance with the PID Policy, the Travis County Affordable Housing Policy Committee (the "**Committee**"), conducted an affordability, opportunity, and fair housing analysis (an "**Affordability Analysis**") of the District before the Commissioners Court approved the creation of the District.

(2) In its initial Affordability Analysis, the Committee concluded that the District is located in a Low Opportunity Area of the County and recommended that the development of affordable multi-family housing in the District despite the District's low opportunity designation.

(3) Initial Opportunity Area Designation. The Commissioners Court agrees with:

(A) the Committee's conclusion, that as of the Effective Date of this Agreement, the District is located in a Low Opportunity Area and

(B) the Committee's recommendation that affordable multi-family housing be developed in the District despite the District's location in a Low Opportunity Area.

(4) Notification of Subsequent Phases/Subsequent Affordability Analyses.

(A) At least 90 days before beginning construction on a new phase in the District, the Managing Developer will notify the County and the TCDA of the anticipated home prices for that new phase. If those home prices for that subsequent phase increase by 10% or more of the Managing Developer's previously designated sales prices for those homes, the County may conduct a new Affordability Analysis or update the current Affordability Analysis in accordance with Section 6.01(c) to determine if the housing affordability or the opportunity level for the District has changed.

(B) If, after the first Assessments have been levied, the Managing Developer submits a subsequent Assessment Levy Request or subsequent Bond Issuance Request, the County may conduct another affordability analysis or update the current Affordability Analysis to determine the opportunity level in the District and, unless and until the County determines that the opportunity level in the District has changed such that the District is in a Moderate to High Opportunity Area or High Opportunity Area rather than in a Low Opportunity Area, or, if the Commissioners Court determines that it would be appropriate to require the Managing Developer to provide on-site Affordable Housing or other on-site community benefit, the

Managing Developer agrees to pay a PID Community Benefit Fee with respect to that subsequent Assessment Levy Request or subsequent Bond Issuance Request in accordance with this Section 6.01 and the procedure set forth in Section 2.02(b).

(5) Designated Affordable Housing Process. To recognize and accommodate the facts and circumstances unique to the District, the Parties have agreed to comply with the terms and conditions set forth in Exhibit "M" attached hereto.

(b) PID Community Benefit Fee. If the Commissioners Court determines that, as of the date an Assessment Levy Request or a Bond Issuance Request is received by the County, the area in which the District is located is still a Very Low or Low Opportunity Area, the Managing Developer is required to pay, and the Managing Developer agrees to pay to the Capital Economic Progress Corporation, a PID Community Benefit Fee, in accordance with the procedure set forth in Section 2.02(b), that is equal to 10% of the Assessments levied less the value of any on-site Affordable Housing that the Managing Developer is required to contribute or 10% of Net PID Bond Proceeds being issued less the value of any on-site Affordable Housing that the Managing Developer is required to contribute. If the Managing Developer is seeking reimbursement pursuant to an Acquisition and Reimbursement Agreement:

(1) The Managing Developer must pay a PID Community Fee that is equal to 10% of the principal of the reimbursement amount approved by the TCDA Administrator with respect to that Certification for Payment, and the Managing Developer must escrow the PID Community Benefit Fee via ACH or check to the TCDA Depository Bank no later than three business days after receiving written notice of the TCDA Administrator's approval.

(2) If the TCDA does not make payment of the approved reimbursement amount to the Managing Developer on or before 10 business days after the date the Managing Developer escrows the PID Community Benefit Fee, the TCDA shall direct the TCDA Depository Bank to return the PID Community Benefit Fee to the Managing Developer. On or before three business days after disbursement of the approved reimbursement amount to the Managing Developer, the escrowed PID Community Benefit Fee will be paid to the Capital Economic Progress Corporation via ACH or cashier's check.

(c) Subsequent Affordability Analyses with Subsequent Phases and with Each Bond Issuance Request

(1) Because opportunity levels in the District may change based on new investments in public improvements or changes in market conditions, the Committee may conduct a new Affordability Analysis or update the current Affordability Analysis each time the County receives an Assessment Levy Request or a Bond Issuance Request and each time the Managing Developer notifies the County and the TCDA that the housing prices for the next phase of construction

will be 10% or more of the previous estimated home prices provided by the Managing Developer for that phase.

(2) The Committee will complete its new Affordability Analysis or update the current Affordability Analysis no later than 60 days after the County's receipt of a Bond Issuance Request or notification of home price change as described in Section 6.01(d) above.

(3) If the Committee determines that the opportunity level in the District has changed so that the District is in a Moderate to High Opportunity Area or High Opportunity Area and the Commissioners Court agrees with the Committee's determination, the Commissioners Court may require the Managing Developer and the Consenting Parties to:

(A) Provide on-site Affordable Housing in a subsequent phase of the Project development, and the Managing Developer and the Consenting Parties agree to execute binding legal agreements with all subdevelopers to provide the Affordable Housing in accordance with the schedule set forth by the Commissioners Court, or

(B) Convey one or more parcels (which will be identified by TCDA to the Capital Economic Progress Corporation no later than 90 days after completion of the water and wastewater improvements that will serve the parcel(s). The value of the parcel(s) will be calculated in accordance with the PID Policy.

(d) Designated Affordable Housing Process. To recognize and accommodate the facts and circumstances unique to the District, the terms and conditions set forth in Exhibit "M" attached hereto shall apply with respect to the levy of Assessments and the issuance of PID Bonds under this Agreement.

(e) Valuation of on-site Affordable Housing. If the Commissioners Court determines that the Managing Developer and the Consenting Parties must provide on-site Affordable Housing, the value of on-site Affordable Housing to be contributed by the Managing Developer and the Consenting Parties will be calculated in accordance with the PID Policy and shall equal at least 10% of the Net PID Bond Proceeds at each issuance.

(f) Affirmative Marketing. If the Commissioners Court, after considering an Affordability Analysis, determines that the Managing Developer should engage in Affirmative Marketing to inform targeted communities regarding housing opportunities in the District, the Managing Developer must create an Affirmative Marketing plan, and then implement the Affirmative Marketing plan after obtaining the County's written approval of the Affirmative Marketing Plan.

(1) The County will provide a standard form for the Affirmative Marketing plan and will make it available to the Managing Developer electronically.

(2) The County will evaluate each Affirmative Marketing plan on an annual basis to determine whether the property is affirmatively furthering fair housing. The Managing Developer must implement any changes the County recommends regarding the Affirmative Marketing plan.

(3) The Managing Developer must continue to implement the Affirmative Marketing plan during each year this Agreement is effective until the Managing Developer receives written notice from the County that an Affirmative Marketing plan is no longer necessary.

(g) Limitations on Use of Assessment Revenues, Contract Assessment Revenues, and Proceeds of PID Bonds.

(1) The payment of a PID Community Benefit Fee is not considered an Authorized Improvement as defined in Section 372.003(15) of the PID Act.

(2) Assessment Revenues, Contract Assessment Revenues, and proceeds of PID Bonds are not allowed to be used to pay for:

(A) A PID Community Benefit Fee or

(B) On-site Affordable Housing; or

(C) Any highly desirable community benefit recommended by the Committee to be paid by the Managing Developer pursuant to Section 481.103(b)(4)(A) of the PID Policy.

(h) Affordable Housing Development Agreement. (If the Managing Developer or the Consenting Parties are required to provide on-site Affordable Housing).

(1) Neither the County nor TCDA will approve payment of any Assessment Revenues, Contract Assessment Revenues, or proceeds of PID Bonds, to the Managing Developer or the Managing Developer's successors or assigns, for Actual Costs until after each Landowner has entered into an Affordable Housing development agreement with the County and the TCDA, in a form provided by the County, that sets forth the terms and conditions relating to the Affordable Housing requirement.

(2) Each Affordable Housing development agreement will include a provision that requires that the respective Landowner execute any and all documents deemed necessary by the County and in a form established by the County, including, without limitation, deed restrictions, and related instruments to ensure the Long-Term Affordability of Affordable Housing products within the District, including, if required by the TCDA, an agreement to transfer or donate one or more of the Landowner's parcels in the District at market value (as determined by an independent real estate appraiser selected by the TCDA) that the Capital Economic Progress Corporation will develop for affordable housing purposes or other purposes that support programs and projects that provide Affordable

Housing and/or Affirmatively Further Fair Housing in Travis County, as approved by the Commissioners Court and the Capital Economic Progress Corporation's board of directors. The Capital Economic Progress Corporation is permitted to record any Purchase Option Agreement or a memorandum thereof in the public records of any public office without notifying or obtaining consent from Managing Developer or the Landowners.

(3) Among other things, the County may require that the Affordable Housing development agreement include:

- (A) Standards for determining affordable rent or affordable ownership cost;
- (B) The location, unit size in square feet, and number of bedrooms for Affordable Housing types to ensure affordable units are not isolated from market rate units and affordable units include a mix of sizes that can accommodate families with children, or senior citizens or single persons, or persons with disabilities, as appropriate.
- (C) A schedule for completion and occupancy of Affordable Housing units in relation to construction of market rate units;
- (D) A description of remedies for breach of the development agreement;
- (E) Provisions that require the Managing Developer to maintain an inventory of Affordable Housing in the District;
- (F) Provisions requiring that the Managing Developer maintain records to demonstrate compliance with this Subchapter and to allow the County or someone designated by the County, to audit the Managing Developer's records; and
- (G) Any other provisions to ensure implementation and compliance with the County's PID Policy.

Section 6.02. Homebuyer Disclosure

(a) The Managing Developer shall comply with, and shall contractually obligate (and promptly provide written evidence of such contractual provisions to the County) any party who purchases any Assessed Property owned by such Managing Developer, or any portion thereof, for the purpose of constructing residential properties that are eligible for "homestead" designations under State law, to comply with, the Homebuyer Education Program described on Exhibit "F". Such compliance obligation shall terminate as to each Lot (as defined in the Service and Assessment Plan) if, and when there is a sale of a Lot to an individual homebuyer, it being the intent of the undersigned that the Homebuyer Education Program shall apply only to a commercial builder who is in the business of

constructing and/or selling residences to individual home buyers (a "**Builder**") but not to subsequent sales of such residence and Lot by an individual home buyer after the initial sale by a Builder.

(b) The Managing Developer shall contractually obligate each Builder who purchases any Assessed Property owned by the Managing Developer, or any portion thereof, for the purpose of constructing residential properties that are eligible for "homestead" designations under State law, to provide individual home buyers written notice, at or before closing, that the home buyer may ask the home buyer's mortgage company to include the Annual Installments in the home buyer's monthly escrow payment. The notice that must be provided to individual home buyers is attached as Exhibit "F-1".

Section 6.03. Community Benefits

(a) As required by the County's PID Policy, attached hereto as Exhibit "E-2" is a list of community benefits to be provided by the Project.

(b) The Managing Developer acknowledges that the Commissioners Court was willing to create the District because the petitioners for creation of the District had represented to the County that the District would provide for community benefits to a degree that is superior to the level of community benefits typically generated by real estate development projects that do not involve PID financing.

(c) The Managing Developer represents and warrants that it will act in good faith to expeditiously provide the community benefits listed in Exhibit "E-2".

(d) By March 31 of each year following the levy of Assessments or the issuance of any PID Bonds, the Managing Developer will provide a written report to the Commissioners Court as to whether the community benefits listed in Exhibit "E-2" have been achieved during the calendar year preceding that March 31. Notwithstanding the foregoing, the Managing Developer agrees to provide information relating to the status of the District's community benefits, including, if requested, supporting information relating to the written report, no later than ten business days after receiving a written request from the Commissioners Court or the TCDA. This obligation shall terminate when all community benefits have been achieved, as determined by mutual agreement of the County and Managing Developer, such agreement to not be unreasonably withheld or conditioned. This obligation shall also terminate if it is reasonably determined by the County and Managing Developer that a particular community benefit is no longer reasonably attainable.

ARTICLE VII REPRESENTATIONS, WARRANTIES, AND INDEMNIFICATION

Section 7.01. Representations and Warranties of County and TCDA

The County and the TCDA make the following covenants, representations, and warranties for the benefit of the Managing Developer:

(a) The TCDA will deliver, prior to the issuance of any PID Bonds, a certificate relating to the PID Bonds (such certificate, as it may be amended and supplemented from time to time, being referred to herein as the "**Tax Certificate**") containing covenants and agreements designed to satisfy the requirements of Sections 103 and 141 through 150, inclusive, of the Tax Code and the income tax regulations issued thereunder relating to the use of the proceeds of the PID Bonds or of any monies, securities or other obligations on deposit to the credit of any of the funds and accounts created by the Indenture or this Agreement or otherwise that may be deemed to be proceeds of the PID Bonds within the meaning of Section 148 of the Tax Code.

(b) The County represents and warrants that the County is a political subdivision of the State of Texas and has full legal right, power, and authority under the PID Act and other applicable law (i) to enter into, execute, and deliver this Agreement, (ii) to adopt each Assessment Order, and (iii) to carry out and consummate the transactions contemplated by this Agreement.

(c) The TCDA represents and warrants that the TCDA is nonprofit corporation created by the County pursuant to the LGC Act, incorporated, organized, and existing under the general laws of the State, and has full legal right, power, and authority under the LGC Act to:

(1) enter into, execute, and deliver this Agreement; and

(2) carry out and consummate the transactions contemplated by this Agreement.

Section 7.02. Covenants, Representations, and Warranties of Managing Developer

The Managing Developer makes the following representations, warranties, and covenants for the benefit of the County and the TCDA:

(a) The Managing Developer represents and warrants that the Managing Developer is a limited liability company duly organized and validly existing under the laws of the State of Arizona, is authorized to conduct business and enter into and perform under this Agreement in compliance pursuant to the laws of the State of Texas, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

(b) The Managing Developer represents and warrants that the Managing Developer has the power and authority to enter into this Agreement and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered on behalf of the Managing Developer.

(c) The Managing Developer represents and warrants that this Agreement is valid and enforceable obligation of the Managing Developer and is enforceable against the Managing Developer in accordance with its terms, subject to bankruptcy, insolvency,

reorganization, or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles.

(d) The Managing Developer covenants that once it commences construction of an Authorized Improvement it will use its diligent, good faith efforts to do all things which may be lawfully required of it in order to cause such Authorized Improvements to be completed in accordance with this Agreement.

(e) The Managing Developer covenants that it will not commit or knowingly permit any act in, upon, or to the Property or the Project in violation of any law, order, ordinance, rule, regulation, or order of any governmental authority or any covenant, condition, or restriction now or hereafter affecting the Property or the Project.

(f) The Managing Developer covenants that it will not commit or knowingly permit any act in, upon, or to the Property or the Project in violation of any law, order, ordinance, rule, regulation, or order of any governmental authority or any covenant, condition, or restriction now or hereafter materially affecting the Property or the Project.

(g) For a period of four (4) years after (i) the final Acceptance Date of each applicable Authorized Improvement, or (ii) claims filed upon completion, whichever is later, the Managing Developer covenants to maintain proper books of record and account for the Authorized Improvements and all costs related thereto. The Managing Developer shall provide copies (including electronic copies in a form acceptable to the County and the TCDA if electronic copies are requested) of such records to the County and the TCDA upon written request to the Managing Developer, and those copies shall be provided no later than ten (10) business days after receipt of a written request from the County or the TCDA at a cost that is no more than the rates applicable to copies provided pursuant to the Texas Public Information Act.

(h) The Managing Developer agrees to provide the information required pursuant to the Managing Developer Continuing Disclosure Agreement executed by the Managing Developer in connection with the public issuance of PID Bonds.

(i) The Managing Developer covenants to provide, or cause to be provided, such facts and estimates as the County or the TCDA reasonably considers necessary to enable it to execute and deliver its Tax Certificate. The Managing Developer further covenants that (i) such facts and estimates will be based on its reasonable expectations on the date of issuance of PID Bonds and will be, to the best of the knowledge of the officers of the Managing Developer providing such facts and estimates, true, correct and complete as of that date, and (ii) the Managing Developer will make reasonable inquiries to ensure such truth, correctness and completeness. The Managing Developer covenants that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use or investment of the bond proceeds that would cause any of the covenants or agreements of the TCDA contained in the Tax Certificate to be violated or that would otherwise have an adverse effect on the tax-exempt status of the interest payable on the PID Bonds for federal income tax purposes.

(j) The Managing Developer certifies that (i) it is not in receivership and does not contemplate same, (ii) it has not filed for bankruptcy, and (iii) is not currently delinquent with respect to payment of property taxes within Travis County.

Section 7.03. Indemnification

(a) The Managing Developer will (without using any Assessment Revenues, Contract Assessment Revenues, or PID Bond Proceeds) defend, indemnify, and hold harmless the County, the TCDA, and their officials, employees, officers, representatives, and agents (individually, an "Indemnified Party," and collectively, the "Indemnified Parties") against and from, and will pay to the Indemnified Parties, all without waiving any sovereign or governmental immunity available to any Indemnified Party under Texas or federal law, and without waiving any defenses or remedies under Texas or federal law, the amount of, all actions, damages, claims, losses, fees, fines, penalties, or expense of any type, whether or not involving a third-party claim (collectively, "Damages"), arising directly or indirectly, from:

(1) the breach of any provision of this Agreement by the Managing Developer;

(2) the Managing Developer's nonpayment under contracts with the general contractor or subcontractors for any Authorized Improvement under this Agreement; or

(3) any third-party claims relating to events occurring during the construction of any Authorized Improvement acquired under this Agreement.

(b) The Managing Developer will defend the Indemnified Parties against all claims described in this section, and the Indemnified Parties will reasonably cooperate and assist in providing such defense.

(c) The Indemnified Parties will have the right to approve or select defense counsel to be retained by the Managing Developer in fulfilling its obligations hereunder.

(d) The Indemnified Parties reserve the right, but are not required, to provide a portion or all of their own defense at their own expense.

(e) The Managing Developer shall retain Indemnified Party-approved defense counsel within 10 business days of written notice that the County or the TCDA is invoking its right to indemnification, and if the Managing Developer does not do so, the Indemnified Party may retain its own defense counsel and the Managing Developer will be liable for all such costs.

(f) This section survives the termination of this Agreement indefinitely, subject to appropriate statutes of limitations, as they may be tolled or extended by agreement or operation of law.

ARTICLE VIII

DEFAULT AND REMEDIES

Section 8.01. Default

A Party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such Party fails to materially perform, observe, or comply with any of its covenants, agreements, or obligations hereunder or breaches or violates any of its representations contained in this Agreement. **Notwithstanding any provision to the contrary, neither the failure of the County to levy Assessments nor the failure of the TCDA to issue PID Bonds shall constitute a default or a breach under this Agreement.**

Section 8.02. Breach

Before any failure of any Party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the Party claiming such failure shall notify, in writing, the Party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining Party within thirty (30) days of the receipt of such notice (or five (5) days in the case of a monetary default). Upon a breach of this Agreement, the non-defaulting Party in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained (and/or an action for mandamus as and if appropriate). Except as otherwise set forth herein, no action taken by a Party pursuant to the provisions of this Article VIII or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and nonexclusive of any other remedy either set forth herein or available to any Party at law or in equity. Each of the Parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other Party. Notwithstanding any provision contained herein to the contrary, the Managing Developer shall not be required to construct any portion of the Authorized Improvements (or take any other action related to or in furtherance of same) while the County or the TCDA is in default under this Agreement).

Section 8.03. Force Majeure

Notwithstanding any provision in this Agreement to the contrary, if the performance of any covenant or obligation to be performed hereunder by any Party is delayed as a result of (a) circumstances which are beyond the reasonable control of such Party (which circumstances may include, without limitation, pending litigation (but not pending litigation between the Parties), acts of God, war, acts of civil disobedience, widespread pestilence, fire or other casualty, shortage of materials, adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or tornadoes, labor action, strikes, changes in the law affecting the obligations of the Parties hereunder, or similar acts), or (b) COVID-19 or any pandemic or other event declared a disaster (including a disaster declared by the County Judge, the time for such performance shall be extended by the amount of time of the delay directly caused by and relating to such uncontrolled

circumstances. The Party claiming delay of performance as a result of any of the foregoing "force majeure" events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of the occurrence of a "force majeure" event causing such delay, the claiming Party shall not be entitled to avail itself of the provisions for the extension of performance contained in this Article. Notwithstanding any provision to the contrary, Force Majeure will not excuse any obligation to make payment under this Agreement unless the event of Force Majeure affects the ability of financial institutions generally to transfer funds in the normal course of business.

Section 8.04. No Waiver

No provision of this Agreement shall affect or waive any sovereign or governmental immunity available to the County or the TCDA and/or its elected officials, officers, employees and agents under Federal or Texas law not waive any defenses or remedies at law available to the County or the TCDA and/or its elected officials, employees and agents under Federal or Texas law.

**ARTICLE IX
GENERAL PROVISIONS**

Section 9.01. 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:	Andy Brown, Travis County Judge
Street Address:	700 Lavaca, Suite 2.300 Austin, Texas 78701
Mailing Address:	PO Box 1748 Austin, Texas 78767 Email: andy.brown@traviscountytexas.gov Facsimile: (512) 854-9535
With a Copy to:	Travis County, Texas Attn: Christy Moffett,

Economic & Strategic Managing Director
700 Lavaca, Suite 1560
Austin, Texas 78701
Email: Christy.Moffett@traviscountytx.gov
Facsimile: (512) 854-4210

With a Copy to:

Office of the Travis County Attorney
Attn: Tom Nuckols, Assistant County Attorney
314 W. 11th St., Suite 500
Austin, Texas 78701
Email: tom.nuckols@traviscountytx.gov
Facsimile: (512) 854-4808

If to TCDA:

Travis County Corporations
Attn: Andrea Shields, Managing Director
700 Lavaca Street, Suite 1560
Austin, Texas 78701
Email:
Facsimile: (512) 854-4210

With a Copy to:

TCDA Construction Administrator
Attn: _____

Austin, Texas _____
Email: _____

If to Managing
Developer:

Meritage Homes of Texas, LLC

Attn: Elliot Jones
8920 Business Park Dr.,
Suite 350
Austin, TX 78759
Email: elliott.jones@meritagehomes.com

With a copy to:

Metcalf Wolff Stuart & Williams, LLP
Attn: Steve Metcalfe
221 W. 6th, Suite 1300
Austin, Texas 78701
Email: smetcalfe@mwswtexas.com

With a copy to:

Taylor Morrison of Texas, Inc
Attn: Michael Lack, VP Land Resources
11200 Lakeline Boulevard, Suite 150A
Austin, Texas 78717

Email: mslack@taylormossison.com

With a copy to:

Tri Pointe Homes, Inc
Attn: John Stanley
13640 Briarwick Dr., Suite 170
Austin, Texas 78729
Email: john.stanley@tripointehomes.com

Section 9.02. Fee Arrangement /Administration of District

(a) Payment of County and TCDA's Expenses.

(1) The Managing Developer agrees that it will pay all of the County's and the TCDA's costs and expenses (including the County's and the TCDA's respective third party advisors, attorneys, and consultants) related to the creation and administration of the District, as well as costs and expenses relating to the development and review of the Service and Assessment Plan, each Acquisition and Reimbursement Agreement, and this Agreement ("**County and TCDA PID Costs**") pursuant to the terms of that certain Escrow Agreement Regarding Payment of Expenses Related to the Turner's Crossing Public Improvement District, dated June 1, 2018, and any subsequent amendments to that agreement.

(2) Prior to the Effective Date hereof, the Managing Developer established an escrow account with the TCDA Depository Bank as "Escrow Agent".

(3) The Managing Developer, the County, and the TCDA will make best efforts to agree to a budget for the County and the TCDA's costs and expenses, which amount the Managing Developer shall fund into the escrow account.

(4) Prior to the issuance of PID Bonds and pursuant to the terms of the applicable escrow agreement, the TCDA shall:

(A) submit to the Escrow Agent (with copies to Managing Developer) invoices and other supporting documentation evidencing County and TCDA PID Costs, and

(B) direct the Escrow Agent to pay these fees, as applicable, to the County and the TCDA or on behalf of the County and the TCDA, from funds on deposit in the escrow account, subject to review and approval by Managing Developer.

(5) In addition to any County and TCDA PID Costs pursuant to the preceding sentences, all fees of the County and the TCDA financial advisory and legal counsel related to the issuance of the PID Bonds, including fees for the preparation of the offering document and the customary bond documents and the obtaining of

Attorney General approval for the PID Bonds, will be paid at closing from proceeds of the PID Bonds subject to review and approval by Managing Developer.

(6) Notwithstanding any provision to the contrary, if the amount of proceeds of the PID Bonds that can be used by the TCDA to pay the costs of issuance of the PID Bonds may be limited under the Internal Revenue Code, or the regulations relating thereto, the costs of issuance not paid from the proceeds of the PID Bonds (the "**Remaining Costs of Issuance**") shall be paid by the Managing Developer.

(7) On or before the closing date of a series of PID Bonds, the Managing Developer shall deposit funds in the escrow account with the TCDA Depository Bank in an amount sufficient to pay the Remaining Costs of Issuance.

(8) The Managing Developer agrees that it will be responsible for paying the Annual Collection Costs not paid through the District.

(9) Annual Collection Costs collected but not expended in any year shall be carried forward and applied to reduce Annual Collection Costs for subsequent years.

(b) The County and the TCDA may enter into a separate agreement with an Administrator to administer the District. The Annual Collection Costs shall be collected as part of and in the same manner as Annual Installments in the amounts set forth in the Service and Assessment Plan.

Section 9.03. Assignment

(a) Managing Developer may, in its sole and absolute discretion, assign this Agreement with respect to all or part of the Project from time to time so long as the assigned rights and obligations are assumed without modifications to this Agreement. Managing Developer shall provide the County and the TCDA thirty (30) days prior written notice of any such assignment, which notice must include the name, address, and facsimile number for the Designated Successor or Assign or assignee. Upon such assignment or partial assignment, Managing Developer will be fully released from any and all obligations under this Agreement and will have no further liability with respect to this Agreement for the part of the Project so assigned, subject to Section 9.03(d) below.

(b) The County and the TCDA hereby acknowledge and agree that Managing Developer shall have the right to make a collateral assignment of any reimbursements and/or proceeds under this Agreement to any lender on the Project and the County and the TCDA shall execute any documentation reasonably requested by such lender evidencing such fact.

(c) Any sale of a portion of the Property or assignment of any right hereunder shall not be deemed a sale or assignment to a Designated Successor or Assign unless the conveyance or transfer instrument effecting such sale or assignment expressly states that the sale or assignment is to a Designated Successor or Assign.

(d) Upon a sale of a portion of the Property or assignment of any right hereunder, the TCDA shall not be required to release fiscal security to the Managing Developer until the assignee provides the TCDA replacement fiscal security in the form and amount required by the Applicable Entity to secure the completion of Authorized Improvements.

(e) Any transfer of Managing Developer's rights to receive PID Bond proceeds or Contract Assessment Revenues (not involving an assignment of this Agreement) are addressed in the applicable Acquisition and Reimbursement Agreement.

Section 9.04. Term of Agreement

This Agreement will terminate on the date on which the County, the TCDA, and Managing Developer discharge all of their obligations hereunder. In the case of any termination of this Agreement and/or dissolution of the District, the obligation of any Party to pay any Project Costs expended prior to the termination of this Agreement and/or dissolution of the District and remaining unpaid will survive such termination and/or dissolution; provided however, that any payment obligation of the County or the TCDA shall be payable solely from Assessment Revenues or Contract Assessment Revenues, respectively, or, if PID Bonds are issued, the proceeds of such bonds.

Section 9.05. Property Taxes and Assessments

Notwithstanding anything to the contrary in this Agreement, if any Managing Developer is delinquent in the payment of property taxes or assessments at the time payment is to be made to Managing Developer pursuant to this Agreement, the Managing Developer assigns any payments to be made hereunder to the Travis County Tax Assessor-Collector for the payment of the delinquent taxes or assessments. The Managing Developer certifies that it is not in receivership and does not contemplate same, and it has not filed for bankruptcy and is not currently delinquent with respect to payment of property taxes within Travis County.

Section 9.06. Construction of Certain Terms

(a) For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction shall apply:

- (1) Words importing a gender include either gender.
- (2) Words importing the singular include the plural and vice versa.
- (3) A reference to a document includes an amendment, supplement, or addition to, or replacement, substitution, or novation of, that document but, if applicable, only if such amendment, supplement, addition, replacement, substitution, or novation is permitted by and in accordance with that applicable document.
- (4) Any term defined herein by reference to another instrument or document shall continue to have the meaning ascribed thereto whether or not such other instrument or document remains in effect.

- (5) A reference to any Party includes, with respect to Managing Developer, its Designated Successors and Assigns, and reference to any Party in a particular capacity excludes such Party in any other capacity or individually.
 - (6) All references in this Agreement to designated "Articles," "Sections," and other subdivisions are to the designated Articles, Sections, and other subdivisions of this Agreement. All references in this Agreement to "Exhibits" are to the designated Exhibits to this Agreement.
 - (7) The words "herein," "hereof," "hereto," "hereby," "hereunder," and other words of similar import refer to this Agreement as a whole and not to the specific Section or provision where such word appears.
 - (8) The words "including" and "includes," and words of similar import, are deemed to be followed by the phrase "without limitation."
 - (9) Unless the context otherwise requires, a reference to the "Property," the "Authorized Improvements," or the "District" is deemed to be followed by the phrase "or a portion thereof."
 - (10) Every "request," "order," "demand," "direction," "application," "appointment," "notice," "statement," "certificate," "consent," "approval," "waiver," "identification," or similar action under this Agreement by any Party shall, unless the form of such instrument is specifically provided, be in writing duly signed by a duly authorized representative of such Party.
- (b) The Parties hereto acknowledge that each such party and their respective counsel have participated in the drafting and revision of this Agreement. Accordingly, the Parties agree that any rule of construction that disfavors the drafting party shall not apply in the interpretation of this Agreement.

Section 9.07. Table of Contents; Titles and Headings

The titles of the articles and the headings of the sections of this Agreement are solely for convenience of reference, are not a part of this Agreement, and shall not be deemed to affect the meaning, construction, or effect of any of its provisions.

Section 9.08. Amendments

This Agreement may be amended, modified, revised, or changed by written instrument executed by the Parties and approved by the Commissioners Court and the board of directors of the TCDA. THE MANAGING DEVELOPER AND THE CONSENTING PARTIES ACKNOWLEDGE THAT NO OFFICER, AGENT, EMPLOYEE, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY TO CHANGE THE TERMS OF THIS AGREEMENT UNLESS EXPRESSLY GRANTED THAT AUTHORITY BY THE TRAVIS COUNTY COMMISSIONERS COURT.

Section 9.09. Time

In computing the number of days for purposes of this Agreement, if a final day falls on a day that has been designated as a holiday by the Commissioners Court, the final day will be deemed to be the next day that is not a Saturday, Sunday, or a day designated as a holiday by the Commissioners Court. "Business day" does not include Saturdays, Sundays, or any day that has been designated as a holiday by the Commissioners Court.

Section 9.10. 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. Signatures transmitted electronically by e-mail in a "PDF" format, by DocuSign or similar e-signature service shall have the same force and effect as original signatures in this Agreement.

Section 9.11. Entire Agreement

This Agreement contains the entire agreement of the Parties.

Section 9.12. Severability; Waiver

(a) 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.

(b) 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.

Section 9.13. Managing Developer as Independent Contractor

In performing under this Agreement, it is mutually understood that the Managing Developer is acting as an independent contractor, and not an agent of the County or the TCDA.

Section 9.14. Supplemental Agreements

Other agreements and details concerning the obligations of the Parties under and with respect to this Agreement are or will be included in the Service and Assessment Plan, Assessment Order, PID Bond Resolution, and/or Indenture. The Managing Developer will provide any continuing disclosures required under an Indenture and will execute a separate agreement outlining Managing Developer's continuing disclosure obligations, if required.

Section 9.15. County's Acceptance of Authorized Improvements

The County hereby agrees that it will not unreasonably withhold the final acceptance of any of the Authorized Improvements that are to be conveyed to the County and will work with the Managing Developer to expedite review and acceptance of such Authorized Improvements.

Section 9.16. Audit

The County and the TCDA will have the right, during normal business hours and upon the giving of three (3) business days' prior written notice to the Managing Developer, to review and make copies of all books and records of the Managing Developer pertaining to costs and expenses incurred by the Managing Developer with respect to any of the Authorized Improvements and any bids taken or received for the construction thereof or materials therefor.

Section 9.17. Governing Law; Jurisdiction and Venue

This Agreement shall be construed under and in accordance with the laws of the State of Texas. All obligations of the Parties created hereunder are performable in Travis County, Texas and venue for any action arising hereunder shall be in Travis County, Texas.

Section 9.18. No Third-Party Beneficiary

This Agreement is solely for the benefit of the Parties, and neither the TCDA, the County, nor Managing Developer intends by any provision of this Agreement to create any rights in any third-party beneficiaries or to confer any benefit upon or enforceable rights under this Agreement or otherwise upon anyone other than the County, the TCDA, and Managing Developer.

Section 9.19. Boycotts and Foreign Business Engagements

(a) The Managing Developer and the Consenting Parties each hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable State or federal law. As used in the foregoing verification, 'boycott Israel' means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Managing Developer and the Consenting Parties each understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the Managing Developer or the Consenting Parties, respectively, and exists to make a profit.

(b) The Managing Developer and the Consenting Parties each represents that neither it nor any of its respective parent companies, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website: <https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>, <https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or <https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Managing Developer and each of the Consenting Parties and each of their respective parent companies, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Managing Developer and the Consenting Parties each understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Managing Developer and the Consenting Parties, respectively, and exists to make a profit.

Section 9.20. Claims Notification

If any Party receives notice or becomes aware of any claim or other action, including proceedings before an administrative agency, which is made or brought by any person, firm, corporation, or other entity against a Party in relation to this Agreement, the Party receiving such notice must give written notice to the other Parties of the claim or other action within three business days after being notified of it or the threat of it; the name and address of the person, firm, corporation or other entity that made or threatened to make a claim or that instituted or threatened to institute any type of action or proceeding; the basis of the claim, action, or proceeding; the court or administrative tribunal, if any, where the claim, action, or proceeding was instituted; and the name or names of any person against whom this claim is being made or threatened. This written notice must be given in the manner provided in this Agreement. Except as otherwise directed, the notifying Party must furnish to the other Parties copies of all pertinent papers received by that Party with respect to these claims or actions.

Section 9.21. Texas Public Information Act

The Parties agree that this Agreement, all performance under this Agreement, and all information obtained by County in connection with this Agreement is subject to applicable provisions of the Texas Public Information Act, Texas Government Code Chapter 552, and all legal authorities relating to the Texas Public Information Act, including decisions and letter rulings issued by the Texas Attorney General's Office; and Managing Developer agrees to provide County, citizens, public agencies, and other interested parties with reasonable access to all records pertaining to this Agreement subject to and in accordance with the Texas Public Information Act. Notwithstanding any provision to the contrary, nothing in this Agreement requires a Party to waive any applicable exceptions to disclosure under the Texas Public Information Act.

Section 9.22. Correction of Technical Errors

If, by reason of inadvertence, and contrary to the intention of the Parties, errors are made in this Agreement in the legal descriptions or the references thereto or within any exhibit with respect to the legal descriptions, in the boundaries of any parcel in any map or drawing which is an exhibit, or in the typing of this Agreement or any of its exhibits or any other similar matters, the Parties by mutual agreement may correct such error by memorandum executed by them without the necessity of amendment of this Agreement.

Section 9.23. Exhibits

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

Exhibit "A"	-	Definitions
Exhibit "B"	-	Map and Legal Description of the District
Exhibit "B-1"	-	Map and Legal Description of Improvement Area #1
Exhibit "B-2"	-	Map and Legal Description of Improvement Area #2
Exhibit "B-3"	-	Map and Legal Description of Improvement Area #3
Exhibit "B-4"	-	Map and Legal Description of Improvement Area #4
Exhibit "C"	-	Form of Certification for Payment
Exhibit "D"	-	Form of Closing Disbursement Request
Exhibit "E-1"	-	Table of Authorized Improvements
Exhibit "E-2"	-	Community Benefits
Exhibit "F"	-	Homebuyer Disclosure Program
Exhibit "F-1"	-	Homebuyer Disclosure
Exhibits "G-1" to "G-3"	-	County's Procurement Requirements
Exhibits "H-1" to "H-12"	-	County's Worker Protection Requirements
Exhibit "I"	-	Form of Acquisition and Reimbursement Agreement
Exhibit "J"	-	Form of Landowner Agreement
Exhibit "K"	-	HUB Requirements
Exhibit "L"	-	CBF Escrow Agreement
Exhibit "M"	-	Designated Affordable Housing Process

[Signature Pages to Follow]

COUNTY:

Travis County, Texas,
a political subdivision of the State of Texas

DocuSigned by:
By: Andy Brown
Name: Andy Brown
Title: Travis County Judge

TCDA:

Travis County Development Authority,
a Texas local government corporation

DocuSigned by:
By: Andrea Shields
Name: Andrea Shields
Title: Managing Director

MANAGING DEVELOPER:

Meritage Homes of Texas, LLC
an Arizona limited liability company

DocuSigned by:
By: Elliot Jones
Elliot Jones, Vice President of Land
Acquisition

It is hereby acknowledged that the Consenting Parties are executing this Agreement solely due to the fact that they, together with Meritage, jointly own the Property, and, except for their obligations expressly set forth under the Landowner Agreement, the Consenting Parties have no rights, duties, or obligations under this Agreement.

CONSENTING PARTIES:

Taylor Morrison of Texas, Inc.
a Texas corporation

By: Michael Slack
Name: Michael Slack
Title: Vice President

Tri Pointe Homes of Texas, Inc.
a Texas corporation

By: Bryan Havel
Name: Bryan R Havel
Title: Division President

Exhibit "A" to Financing Agreement

DEFINITIONS

Unless the context requires otherwise, and in addition to the terms defined above, each of the following terms and phrases used in this Agreement has the meaning ascribed thereto below:

"Acceptance Date" means, with respect to an Authorized Improvement, the date that the Actual Cost thereof is paid to the Managing Developer pursuant to the terms hereof.

"Acquisition and Reimbursement Agreement" means, individually or collectively, each of the Turner's Crossing Public Improvement District Acquisition and Reimbursement Agreement applicable to a given Improvement Area, the form of which is provided in Exhibit "I" attached hereto, whereby the Actual Costs will be paid to the Managing Developer from Contract Assessment Revenues from the Improvement Area to reimburse the Managing Developer for Actual Costs paid by the Managing Developer, plus interest until PID Bonds for that Improvement Area are issued, and thereafter will pay for the portion of the Actual Costs not paid for from such PID Bond proceeds.

"Actual Cost(s)" means, with respect to each Authorized Improvement, the Managing Developer's demonstrated, reasonable, allocable, and allowable costs of constructing the Authorized Improvement, as specified in a payment request in a form that has been reviewed and approved by the County or the TCDA and:

- (a) in an amount not to exceed the amount for the Authorized Improvement as set forth in the Service and Assessment Plan;
- (b) do not include the costs for any change orders that affect a Community Benefit listed in Exhibit I that have not been approved by either the County and the TCDA or by an Applicable Entity, but may include the following costs incurred by or on behalf of the Managing Developer (either directly or through affiliates):
 - (1) the cost to plan, design, acquire, construct, install, and dedicate such improvements to the Applicable Entity;
 - (2) the cost to prepare plans, specifications (including bid packages), contracts, and as-built drawings;
 - (3) the cost to obtain zoning, licenses, plan approvals, permits, inspections, and other governmental approvals;
 - (4) the cost to acquire easements and other right-of-way;
 - (5) the cost to relocate a utility when the relocation costs are not the responsibility of the utility owner;

(6) the costs for third-party professional consulting services including, but not limited to, engineering, surveying, geotechnical, land planning, architectural, landscaping, legal, accounting, and appraisal services;

(7) the costs of labor, materials, equipment, fixtures, payment and performance bonds and other construction security, and insurance premiums;

(8) fees charged by an Applicable Entity or any other political subdivision or governmental authority; and

(9) a Construction Management Fee to implement, administer, and manage the activities described in Paragraphs (1) through (8) above and equal to 4% of the costs incurred by or on behalf of the Managing Developer for the construction of such Authorized Improvement, but excluding:

(A) the costs described in Paragraphs (3), (6), and (8), and

(B) taxes, insurance premiums, and financing costs

“Additional Bonds Test” means the conditions that must be met prior to the County considering to consent to the issuance of a Parity Bond, with such conditions to be described in an Indenture for the initial PID Bonds for an Improvement Area.

“Administrator” means an employee or designee of the County who shall have the responsibilities provided in the Service and Assessment Plan, the applicable Indenture, or any other agreement or document approved by the County related to the duties and responsibilities of the administration of the District.

“Affordable Housing” means, in general, housing for which the occupant is paying no more than 30 percent of his or her gross income for housing costs, including utilities, as established by the United States Department of Housing and Urban Development.

“Agreed Limit” has the meaning given in Section 3.06(a) of this Agreement.

“Agreement” has the meaning given in the recitals to this Agreement.

“Annual Collection Costs” means the actual or budgeted costs and expenses related to the creation and operation of the District, the issuance and sale of PID Bonds, and the construction, operation, and maintenance of the Authorized Improvements, including, but not limited to costs and expenses for:

(1) the Administrator;

(2) County staff;

(3) TCDA staff;

- (4) legal counsel, engineers, accountants, financial advisors, and other consultants engaged by the County and the TCDA;
- (5) calculating, collecting, and maintaining records with respect to Assessments and Annual Installments;
- (6) preparing and maintaining records with respect to Assessment Rolls and Annual Service Plan Updates;
- (7) issuing, paying, and redeeming PID Bonds;
- (8) investing or depositing Assessments, Contract Assessment Revenues, and Annual Installments;
- (9) complying with the Service and Assessment Plan and the PID Act with respect to the issuance and sale of PID Bonds, including continuing disclosure requirements;
- (10) the paying agent/registrar and Bond Trustee in connection with PID Bonds, including their respective legal counsel; and
- (11) administering the construction of the Authorized Improvements.

“Annual Installment” means the annual installment payment on the Assessment as calculated pursuant to the Service and Assessment Plan and approved by the Commissioners Court, that includes: (1) principal; (2) interest; and (3) Annual Collection Costs.

“Applicable Entity” has the meaning given in the Recitals to this Agreement.

“Appraisal” means an appraisal of the Property, or a portion thereof, as may be required by Section 2.02(b) hereof.

“Assessed Property” means any Parcel within the District against which an Assessment is levied.

“Assessment Levy Request” has the meaning given in Section 2.02(a) of this Agreement.

“Assessment Order” means an order adopted by the Commissioners Court in accordance with the PID Act that levies Assessments on benefited property in a particular Improvement Area.

“Assessment Revenues” means money collected by or on behalf of the County from any one or more of the following:

- (1) an Assessment levied against the Assessed Property as defined in the Service and Assessment Plan, or Annual Installment payment thereof, including any interest on such Assessment or Annual Installment thereof during any period of delinquency,
- (2) a Prepayment,
- (3) Delinquent Collection Costs (as defined in the Indenture), and

(4) Foreclosure Proceeds (as defined in the Indenture).

“Assessments” means the assessments levied against properties in the District, as provided for in the applicable Assessment Order and in the Service and Assessment Plan, including any supplemental assessments or reallocation of assessments levied in accordance with Sections 372.019 and 372.020 of the PID Act.

“Attorney General” means the Texas Attorney General’s Office.

“Authorized Improvements” shall mean those improvements authorized by Section 372.003 of the PID Act, specifically the improvements identified in the Service and Assessment Plan, including any Segment thereof.

“Bond Counsel” means Orrick, Herrington & Sutcliffe LLP or a successor bond counsel firm selected by the TCDA.

“Bond Issuance Request” has the meaning given in Section 4.02(d) of this Agreement.

“Bond Trustee” means the trustee (or successor trustee) under the Indenture.

“Capital Economic Progress Corporation” means the Texas nonprofit corporation formed by the Commissioners Court.

“Certification for Payment” means the certificate (whether one or more) in substantially the same form as Exhibit “C” attached hereto.

“City” means the City of Austin, Texas.

“City Construction Representative” means the person selected by the City to oversee the construction of the Authorized Improvements on behalf of the City.

“Change Order” has the meaning given in Section 3.06(i) of this Agreement.

“Closing Disbursement Request” means the request (whether one or more) in substantially the same form as Exhibit “D” attached hereto.

“Commissioners Court” means the Commissioners Court of Travis County, Texas.

“Consenting Party” has the meaning given in the preamble of this Agreement.

“Contract Assessment Revenue” means the Assessment Revenues required to be paid by the County to the TCDA pursuant to the provisions of the applicable Funding Agreement for deposit into a segregated account held by the TCDA Depository Bank for the payment of Actual Costs of the Authorized Improvements, or if PID Bonds are issued, for deposit into a segregated fund held by the Bond Trustee for the payment of PID Bonds under the applicable Indenture.

“Construction Contract” means the approved contract described in Section 3.06(g).

“Construction Contractor” has the meaning given in Section 3.06(g).

“Construction Management Services” has the meaning given in Section 3.03(f).

“Construction Costs” means the actual cost for a selected construction contractor to construct an Authorized Improvement, excluding Preconstruction Costs, Construction Management Fees, and Non-Eligible Costs.

“Construction Management Fee” means the costs, incurred by or on behalf of the Managing Developer or a third party construction manager, for general oversight of preconstruction and construction of an Authorized Improvement, including testing and materials, inspection, quality assurance/quality control, permitting, change order and claim investigations and resolutions, warranty period monitoring and reporting of deficiencies, and other construction management services and is equal to no more than four percent of Construction Costs.

“Construction Manager” means initially the Managing Developer, and thereafter subject to change in accordance with Section 3.03 of this Agreement. The County acknowledges and agrees that (i) the Managing Developer intends to subcontract out the duties of Construction Manager to a third party and (ii) Managing Developer’s hiring of the initial subcontractor to serve as the Construction Manager shall not be deemed a change in the Construction Manager pursuant to the terms and conditions of Section 3.03.

“Construction Manager Subcontractor” means an unrelated or unaffiliated third party to whom some or all of the duties of the Construction Manager have been subcontracted to pursuant to Section 3.03.

“Construction Costs” means the actual cost for a selected construction contractor to construct an Authorized Improvement, excluding Preconstruction Costs, Construction Management Fees, and Non-Eligible Costs.

“Cost of Issuance Account” shall have the meaning given in the applicable Indenture.

“County” means Travis County, Texas.

“County and TCDA PID Costs” shall have the meaning given in Section 9.02 of this Agreement.

“Delivery Date Expenses” means the sum of the cost of issuance and underwriter’s discount, except for capitalized interest or reserve funds.

“Designated Affordable Housing Process” shall have the meaning given in Section 6.01 of this Agreement.

“Designated Successors and Assigns” means (i) any entity which is the successor by merger or otherwise to all or substantially all of Managing Developer’s assets and liabilities including, but not limited to, any merger or acquisition pursuant to any public offering or reorganization to obtain financing and/or growth capital; or (ii) any entity which may have acquired all of the outstanding stock or ownership of assets of The Managing Developer.

“District” has the meaning given in the recitals to this Agreement.

“District Formation and Bond Issuance Costs” means the costs associated with forming the District and issuing PID Bonds, including but not limited to attorney fees, financial advisory fees, consultant fees, appraisal fees, printing costs, publication costs, County costs, capitalized interest, reserve fund requirements, first-year District administration reserves, underwriter discount, fees charged by the Texas Attorney General, and any other cost or expense directly associated with the establishment of the District and/or the issuance of PID Bonds.

“Effective Date” has the meaning given in the recitals to this Agreement.

“Engineering Services and Deliverables” has the meaning given in Section 3.04(g).

“Final Plans and Specifications” has the meaning given in Section 3.04(g).

“Force Majeure” means

(1) circumstances which are beyond the reasonable control of the performing Party (which circumstances may include, without limitation, pending litigation (but not pending litigation between the Parties), acts of God, war, acts of civil disobedience, widespread pestilence, fire or other casualty, shortage of materials, adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or tornadoes, labor action, strikes, changes in the law affecting the obligations of the Parties hereunder, or similar acts), or

(2) COVID-19 or any pandemic or other event declared a disaster (including a disaster declared by the County Judge).

“Funding Agreement” means a funding agreement by and between the County and TCDA and relating to an Improvement Area under which the County will make or cause to be made payments of Contract Assessment Revenues to TCDA.

“Future Improvement Area Bonds Test” means the conditions that must be met prior to the County considering to consent to the issuance of Future Improvement Area Bonds, with such conditions to be described in an Indenture for the PID Bonds relating to a preceding Improvement Area. By way of example, the Indenture relating to PID Bonds issued to finance the Actual Costs of Authorized Improvements benefiting the property in Improvement Area #1, may contain a Future Improvement Area Bonds Test containing conditions that must be met prior to the County considering to consent to the Issuance of PID Bonds issued to finance the Actual Costs of Authorized Improvements benefiting the property in Improvement Area #2, Improvement Area #3 and/or Improvement Area #4.

“Future Improvement Area Bonds” mean PID Bonds issued to finance the Actual Costs of Authorized Improvements benefiting property in the next succeeding Improvement Area or Improvement Areas. By way of example, upon the issuance of PID Bonds issued to finance the Actual Costs of Authorized Improvements benefiting the property in Improvement Area #1, the next succeeding Improvement Areas will include Improvement Area #2, Improvement Area #3 and Improvement Area #4.

“HUB Program” has the meaning given in Section 3.03(d).

“Improvement Area” has the meaning given in the Recitals to this Agreement.

“Improvement Area #1” has the meaning given in the Recitals to this Agreement.

“Improvement Area #2” has the meaning given in the Recitals to this Agreement.

“Improvement Area #3” has the meaning given in the Recitals to this Agreement.

“Improvement Area #4” has the meaning given in the Recitals to this Agreement.

“Indenture” means any Indenture of Trust entered into in connection with the issuance of PID Bonds for an Improvement Area, as amended from time to time, between the TCDA and the Bond Trustee setting forth terms and conditions related to such PID Bonds.

“Issue Date” means the date of the initial delivery of any of the PID Bonds.

“Land Development Code” means the joint land development code of the County and the City, Title 30 of the County Code and Title 30 of the City Code, as amended, governing development of land within the County and the extraterritorial jurisdiction of the City.

“Landowner Agreement” shall mean an agreement by the landowners within the Project, generally in the form attached hereto as Exhibit “J”.

“LGC Act” means subchapter D of Chapter 431 of the Texas Transportation Code, as amended.

“Management Contract” means the Contract for Management and Administrative Services between Travis County and the TCDA entered into dated April 24, 2018 pursuant to which the TCDA agrees to manage and administer public improvement districts established by the County.

“Managing Developer Expended Funds” means any qualified District Formation and Bond Issuance Costs approved by the County and TCDA, which costs may be paid pursuant to a Closing Disbursement Request.

“Net PID Bond Proceeds” means the par amount of the PID Bonds less Delivery Date Expenses.

“Non-Benefited Property” means Parcels within the boundaries of the District that accrue no special benefit from the Authorized Improvements. Property identified as Non-Benefited Property at the time the Special Assessments (i) are imposed or (ii) are reallocated pursuant to a subdivision of a Parcel is not assessed.

“Non-Eligible Costs” means the cost of improvements that are not Authorized Improvements.

“Operating Account” shall have the meaning given in Section 4.02(c) of this Agreement.

“Owner” has the meaning given in the recitals to this Agreement.

“Owner Continuing Disclosure Agreement” shall have the meaning given in any purchase agreement relating to the sale of PID Bonds.

“Owners’ Association” means a homeowner’s association or property owner’s association.

“Parcel” means a property identified by either a tax map identification number assigned by the Travis Central Appraisal District for real property tax purpose, by metes and bounds description, by lot and block number in a final subdivision plat recorded in the Official Public Records of Travis County, or by any other means determined by the County.

“Parity Bonds” shall mean bonds issued to reimburse The Managing Developer for any Actual Costs of the Authorized Improvements that remain unreimbursed after issuance of the initial series of PID Bonds for the applicable Improvement Area.

“Parties” means collectively the Managing Developer, the TCDA, and the County.

“Party” means the Managing Developer, the TCDA, or the County, as parties to this Agreement.

“PID” means Public Improvement District.

“PID Act” means Chapter 372, Texas Local Government Code, as amended.

“PID Bond Proceeds” means the par amount of a series of PID Bonds less Delivery Date Expenses.

“PID Bond Resolution” means and refers to the resolution(s) of the Board of Directors of the TCDA that will authorize and approve the issuance and sale of the PID Bonds and provide for their security and payment, either under the terms of the bond resolution or a trust indenture related to the PID Bonds.

“PID Bond Security” means the funds that are to be pledged in or pursuant to a PID Bond Resolution or Indenture to the payment of the debt service requirements on the applicable PID Bonds, consisting of all or a portion of the Contract Assessment Revenues, including earnings and income derived from the investment or deposit of Contract Assessment Revenues in the special funds or accounts created and established for the payment and security of such PID Bonds, unless such earnings are required to be deposited into a rebate fund for payment to the federal government.

“PID Bonds” means the bonds expected to be issued by the TCDA, including any Parity Bonds, and to be secured by Contract Assessment Revenue received by the TCDA pursuant to a Funding Agreement.

“PID Community Benefit Fee” means a fee paid by the Managing Developer in lieu of providing on-site Affordable Housing.

“Prepayment” means the payment of all or a portion of an Assessment before the due date thereof. Amounts received at the time of a Prepayment that represent a payment of principal, interest, or penalties on a delinquent installment of an Assessment are not to be considered a Prepayment, but rather are to be treated as the payment of the regularly scheduled Assessment.

“Project” has the meaning given in the recitals to this Agreement.

“Project Costs” means the total of all Actual Costs.

“Project Engineer” means the civil engineer or firm of civil engineers selected by the Managing Developer to perform the duties set forth herein.

“Project Fund” means the separate and unique fund established by the County under such name pursuant to an Indenture as described in Section 5.02 hereof.

“Property” has the meaning given in the recitals to this Agreement.

“Real Property Interests” has the meaning given in Section 3.05(a).

“Reimbursement Obligation” means the amount to be paid to Managing Developer pursuant to an Acquisition and Reimbursement Agreement.

“Remaining Costs of Issuance” shall have the meaning given in Section 9.02(a)(6) of this Agreement.

“Segment” means an identifiable portion of an Authorized Improvement.

“Service and Assessment Plan” means the Service and Assessment Plan (as such plan is amended, supplemented and updated from time to time), to be approved by the County.

“State” means the State of Texas.

“Tax Certificate” shall have the meaning given in Section 7.01(a) of this Agreement.

“Tax Code” means the Internal Revenue Code of 1986, as amended, including applicable regulations, published rulings and court decisions.

“TCDA” means the Travis County Development Authority, a Texas local government corporation organized under the LGC Act, its successors, and assigns.

“TCDA Depository Bank” means the depository bank selected by the TCDA.

“TCDA Representative” means the person selected by the TCDA to oversee the issuance of PID Bonds and the use of Contract Assessment Revenues or the proceeds of PID Bonds to pay the Actual Costs of the Authorized Improvements on behalf of the County.

“Underwriter” means a duly qualified bond underwriter selected by the County and/or TCDA.

Exhibit "B" to Financing Agreement
PROPERTY DESCRIPTION OF THE DISTRICT

Kimley-Horn and Associates, Inc.
TBPLS Firm No. 10193973
601 NW Loop 410, Suite 350
San Antonio, Texas 78216

**A METES AND BOUNDS
DESCRIPTION OF A
231.969 ACRE TRACT OF LAND**

BEING a 231.969 acre (10,104,569 square feet) tract of land situated in the Elijah Caples Survey, Abstract No. 155, Travis County, Texas; and being a portion of a called 529.31 acre tract of land described in instrument to Harriet "Hatsy" Heep Shaffer in Document No. 2000089761 of the Official Public Records of Travis County, Texas; and being more particularly described as follows:

BEGINNING at a TXDOT monument found marking the westerly southwest corner of the herein described tract, at the intersection of the northerly right-of-way line of State Highway No. 45 (variable width) with the easterly right-of-way line of North Turnersville Road (variable width);

THENCE, departing the northerly right-of-way line of said State Highway No. 45 and along the easterly right-of-way line of said North Turnersville Road, the following two (2) courses and distances:

1. North 2°40'43" West, 535.14 feet to a 1/2-inch iron rod found for corner;
2. North 2°14'27" West, 2442.36 feet to a 1/2-inch iron rod with a plastic cap stamped "KHA" set at the intersection of the easterly right-of-way line of said North Turnersville Road with the southerly right-of-way line of F.M. 1327 (80 feet wide);

THENCE, departing the easterly right-of-way line of said North Turnersville Road and along the southerly right-of-way line of said F.M. 1327, the following two (2) courses and distances:

1. In a southeasterly direction, along a non-tangent curve to the right having a central angle of 14°41'53", a radius of 676.20 feet, a chord bearing and distance of South 69°45'52" East, 172.99 feet, and a total arc length of 173.47 feet to a 1/2-inch iron rod with a plastic cap stamped "KHA" set at a point of tangency;
2. South 62°24'54" East, 3836.98 feet to a 1/2-inch iron rod with a plastic cap stamped "KHA" set marking the northwesterly corner of a called 100.278 acre tract of land described in instrument to Melis Capital, LLC in Document No. 2012215596 of the Official Public Records of Travis County, Texas;

THENCE, South 11°53'06" West, 3056.34 feet departing the southerly right-of-way line of said F.M. 1327 and along the westerly line of said 100.278 acre tract to a 1/2-inch iron rod with a plastic cap stamped "LANDMARK" found on the northerly right-of-way line of aforesaid State Highway No. 45;

THENCE, along the northerly right-of-way line of said State Highway No. 45, the following five (5) courses and distances:

1. North 69°52'23" West, 811.43 feet to a TXDOT monument found for corner;
2. in a northwesterly direction, along a non-tangent curve to the right having a central angle of 1°10'19", a radius of 14618.20 feet, a chord bearing and distance of North 67°22'47" West, 299.01 feet, and a total arc length of 299.01 feet to a TXDOT monument found for corner;
3. North 43°45'32" West, 107.80 feet to a TXDOT monument found for corner;
4. North 65°21'56" West, 180.55 feet to a TXDOT monument found for corner;
5. North 57°18'33" West, 52.16 feet to a point for corner;

THENCE, into and across the aforesaid 529.31 acre tract the following eleven (11) courses and distances:

1. North 40°29'41" East, 281.37 feet to a point for corner;
2. North 16°55'01" East, 414.84 feet to a point for corner;
3. North 89°24'16" West, 120.16 feet to a point for corner;
4. North 78°31'45" West, 201.20 feet to a point of for corner;

JGM
10/18/2018

Kimley-Horn and Associates, Inc.
TBPLS Firm No. 10193973
601 NW Loop 410, Suite 350
San Antonio, Texas 78216

5. in a northwesterly direction, along a non-tangent curve to the right, a central angle of 33°02'49", a radius of 919.75 feet, a chord bearing and distance of North 73°50'02" West, 523.17 feet, and a total arc length of 530.49 feet to a point of tangency;
6. North 57°18'46" West, 390.77 feet to a point for corner;
7. North 32°41'14" East, 120.00 feet to a point for corner;
8. North 56°05'44" West, 61.37 feet to a point for corner;
9. South 37°56'52" West, 289.95 feet to a point for corner;
10. South 57°18'46" East, 152.95 feet to a point for corner;
11. South 32°41'14" West, 225.06 feet to a point for corner on the northeasterly right-of-way line of aforesaid State Highway No. 45;

THENCE, along the northeasterly right-of-way line of said State Highway No. 45, the following five (5) courses and distances:

1. North 57°18'33" West, 97.88 feet to a point for corner;
2. North 81°04'19" West, 270.74 feet to a point for corner;
3. North 44°08'40" West, 45.40 feet to a point for corner;
4. North 2°57'59" West, 510.90 feet to a point for corner;
5. South 87°04'31" West, 82.40 feet to the POINT OF BEGINNING and containing 231.969 acres of land in Travis County, Texas. The basis of bearing for this description is the Texas State Plane Coordinate System Grid, Central Zone (FIPS 4203) (NAD'83). All distances are on the Grid and shown in U.S. Survey Feet. This document was prepared in the office of Kimley-Horn and Associates, Inc. in San Antonio, Texas.



John G. Mosier 10/18/2018

John G. Mosier
Registered Professional Land Surveyor No. 6330
Kimley-Horn and Associates, Inc.
601 NW Loop 410, Suite 350
San Antonio, Texas 78216
Ph. 210-541-9166
greg.mosier@kimley-horn.com

Kimley-Horn and Associates, Inc.
TBPLS Firm No. 10193973
601 NW Loop 410, Suite 350
San Antonio, Texas 78216

**A METES AND BOUNDS
DESCRIPTION OF A
213.421 ACRE TRACT OF LAND**

BEING a 213.421 acre (9,296,611 square feet) tract of land situated in the William P. Corben Survey, Abstract No. 159, Travis County, Texas; and being a portion of a called 529.31 acre tract of land described in instrument to Harriet "Hatsy" Heep Shaffer in Document No. 2000089761 of the Official Public Records of Travis County, Texas; and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod with a plastic cap stamped "LANDMARK" found marking the easterly, northeast corner of the herein described tract, at the intersection of the southerly right-of-way line of State Highway No. 45 (variable width) with the easterly right-of-way line of North Turnersville Road (variable width);

THENCE, departing the easterly right-of-way line of said North Turnersville Road and along the southerly right-of-way line of said State Highway No. 45, the following fourteen (14) courses and distances:

1. North 87°09'52" East, 78.16 feet to a TXDOT monument found for corner;
2. North 3°02'16" West, 155.83 feet to a TXDOT monument found for corner;
3. North 62°09'44" East, 94.12 feet to a TXDOT monument found for corner;
4. South 62°37'49" East, 204.30 feet to a TXDOT monument found for corner;
5. South 53°55'35" East, 517.98 feet to a TXDOT monument found for corner;
6. South 67°52'36" East, 212.44 feet to a TXDOT monument found for corner;
7. South 43°50'02" East, 106.62 feet to a TXDOT monument found for corner;
8. South 65°18'54" East, 121.55 feet to a TXDOT monument found for corner;
9. South 88°23'42" East, 139.54 feet to a TXDOT monument found for corner;
10. South 67°53'17" East, 715.52 feet to a TXDOT monument found for corner;
11. South 86°10'11" East, 215.41 feet to a TXDOT monument found for corner;
12. South 70°03'00" East, 973.87 feet to a TXDOT monument found for corner;
13. South 69°45'00" East, 754.88 feet to a TXDOT monument found for corner;
14. South 72°28'08" East, 185.43 feet to a TXDOT monument found for corner marking the northwesterly corner of a called 115.77 acre tract of land described in instrument to BGICO, LLC in Document No. 2008058832 of the Official Public Records of Travis County, Texas;

THENCE, departing the southerly right-of-way line of said State Highway No. 45 and along the westerly line of said 115.77 acre tract, the following two (2) courses and distances:

1. South 27°17'46" West, 1976.88 feet to a 3/4-inch iron pipe found for corner;
2. South 62°47'41" East, 136.86 feet to a 1-inch iron pipe found marking the northerly corner of Lot 1 of Turnersville Estates, recorded in Volume 84, Pages 123B-213C of the Plat Records of Travis County, Texas;

THENCE, South 27°27'17" West, 1004.58 feet along the westerly line of said Lot 1 to a 1/2-inch iron rod found on the northeasterly right-of-way line of Turnersville Road (variable width);

JG/M
10/18/2018

Kimley-Horn and Associates, Inc.
TBPLS Firm No. 10193973
601 NW Loop 410, Suite 350
San Antonio, Texas 78216

THENCE, North 62°31'08" West, 2904.05 feet along the northeasterly right-of-way line of said Turnersville Road to a 1/2-inch iron rod with a plastic cap stamped "LANDMARK" found at the intersection of the northeasterly right-of-way line of said Turnersville Road with the easterly right-of-way line of aforesaid North Turnersville Road;

THENCE, North 2°41'42" West, 1933.97 feet along the said easterly right-of-way line of North Turnersville Road to a point for corner;

THENCE, into and across the aforesaid 529.31 the following six (6) courses and distances:

1. South 87°52'59" East, 533.80 feet to a point for corner;
2. North 35°58'41" East, 631.16 feet to a point for corner;
3. North 67°52'36" West, 210.62 feet to a point for corner;
4. North 53°55'35" West, 107.59 feet to a point for corner;
5. South 63°41'27" West, 303.45 feet to a point for corner;
6. South 86°56'45" West, 373.23 feet to a point for corner on the said easterly right-of-way line of North Turnersville Road to a point for corner;

THENCE, North 2°41'42" West, 300.05 feet along the said easterly right-of-way line of North Turnersville Road to the **POINT OF BEGINNING** and containing 213.421 acres of land in Travis County, Texas. The basis of bearing for this description is the Texas State Plane Coordinate System Grid, Central Zone (FIPS 4203) (NAD'83). All distances are on the Grid and shown in U.S. Survey Feet. This document was prepared in the office of Kimley-Horn and Associates, Inc. in San Antonio, Texas.



John G. Mosier 10/18/2018
John G. Mosier
Registered Professional Land Surveyor No. 6330
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greg.mosier@kimley-horn.com

Exhibit "C" to Financing Agreement

FORM OF CERTIFICATION FOR PAYMENT

[Note: this form and the spreadsheets that comprise the attachments referenced in this form will be provided by the Administrator and may be revised and updated periodically by the Administrator]

(TURNER'S CROSSING PUBLIC IMPROVEMENT DISTRICT)

Certification No. _____

_____ ("**Construction Manager**") hereby requests payment (a) for the percentage of design costs completed (the "**Design Actual Costs**"), as further described in Attachment A-1 attached hereto and (b) of the Actual Cost of the work (the "**Construction Draw Actual Costs**"), as further described in Attachment A-2 attached hereto. Capitalized undefined terms shall have the meanings ascribed thereto in Turner's Crossing Public Improvement District Financing Agreement between Meritage Homes of Texas, LLC, Travis County, Texas (the "**County**") and the Travis County Development Authority, a Texas local government corporation (the "**TCDA**"), dated as of _____. In connection with this Certification for Payment, the undersigned, in his or her capacity as the _____ of Construction Manager, to his or her knowledge, hereby represents and warrants to the County and the TCDA as follows:

The undersigned is an authorized representative of Construction Manager, is qualified to execute this request for payment on behalf of the Construction Manager and any co-owners pursuant to the Joint Ownership and Development Agreement, if applicable, and is knowledgeable as to the matters forth herein.

The true and correct (a) Design Actual Costs for which payment is requested is set forth in Attachment A-1 and (b) Construction Draw Actual Costs for which payment is requested is set forth in Attachment A-2, and payment for such requested amounts and purposes has not been subject to any previously submitted request for payment.

The amount listed for the Authorized Improvements below is a true and accurate representation of the Actual Costs associated with the creation, acquisition, or construction of those Authorized Improvements and such costs are in compliance with (a) the PID Financing Agreement, and (b) the Service and Assessment Plan.

The Managing Developer is in compliance with the terms and provisions of the PID Financing Agreement and the Service and Assessment Plan.

The Managing Developer has timely paid all ad valorem taxes and Annual Installments of Assessments it owes, or that entity under common control with the Managing Developer owes, located in Travis County and has no outstanding delinquencies for such assessments.

The work with respect to the Authorized Improvements referenced below has been completed in accordance with the plans therefor, and the City of Austin, Texas (the "**City**") or the

County, as applicable has inspected such Authorized Improvements. The design work described in Attachment A-1 has been completed in the percentages stated therein.

No more than ninety-five percent (95%) of the budgeted or contracted hard costs for the Authorized Improvements identified may be paid until the work with respect to such Authorized Improvements has been completed and the City or the County, as applicable, has accepted such Authorized Improvements. One hundred percent (100%) of soft costs (e.g. engineering costs, inspection fees, and the like) may be paid prior to the City or County acceptance of such Authorized Improvement.

Attached hereto as Attachment B is a true and correct copy of a bills paid affidavit evidencing that any contractor or subcontractor having performed (a) design work described in Attachment A-1 and/or (b) work on an Authorized Improvement described in Attachment A-2 has been paid in full for all work completed through the previous Certification for Payment.

Attached hereto as Attachment C are invoices, receipts, worksheets and other evidence of costs which are in sufficient detail to allow the County to verify the (a) Construction Draw Costs of each Authorized Improvement and/or (b) Design Costs for which payment is requested.

Attached hereto as Attachment D is proof of Managing Developer's compliance with Section 3.07 (Special County Provisions Applicable to Construction Contracts).

Attached hereto as Attachment E is documentation that proves Managing Developer's compliance with Section 3.12 (Construction Worker Protection Standards).

Attached hereto as Attachment F is documentation that proves Managing Developer's compliance with the County's HUB Program goals.

Payments previously requested and paid under prior Certifications for Payment are as follows:

Certification No.	Date by TCDA Representative	Approved	Amount Requested	Amount Paid
----------------------	--------------------------------	----------	------------------	-------------

[Signature Page Follows]

SIGNATURE PAGE TO
FORM OF CERTIFICATION FOR PAYMENT
Certification No. _____

Date: _____

[Construction Manager Signature Block to be
added]

JOINDER OF PROJECT ENGINEER

The undersigned Project Engineer joins this Certification for Payment solely for the purposes of certifying that the representations made by Construction Manager in Paragraph 2 above are true and correct in all material respects.

Name of Project Engineer

[Signature of Person Signing on Behalf of Project Engineer]

Name of Individual Signing on Behalf of Project Engineer: _____

Title of Individual Signing on Behalf of Project Engineer: _____

Date: _____

ATTACHMENT A-1 TO CERTIFICATION FOR PAYMENT (DESIGN)

Jurisdiction - PID Name - Improvement Area									
Certificate for Payment Line Items									
Invoice #	Invoice Date	Invoice #	Invoice Date	Invoice #	Invoice Date	Invoice #	Invoice Date	Invoice #	Invoice Date
1		2		3		4		5	
6		7		8		9		10	
11		12		13		14		15	
16		17		18		19		20	
21		22		23		24		25	
26		27		28		29		30	
31		32		33		34		35	
36		37		38		39		40	
41		42		43		44		45	
46		47		48		49		50	
51		52		53		54		55	
56		57		58		59		60	
61		62		63		64		65	
66		67		68		69		70	
71		72		73		74		75	
76		77		78		79		80	
81		82		83		84		85	
86		87		88		89		90	
91		92		93		94		95	
96		97		98		99		100	
101		102		103		104		105	
106		107		108		109		110	
111		112		113		114		115	
116		117		118		119		120	
121		122		123		124		125	
126		127		128		129		130	
131		132		133		134		135	
136		137		138		139		140	
141		142		143		144		145	
146		147		148		149		150	
151		152		153		154		155	
156		157		158		159		160	
161		162		163		164		165	
166		167		168		169		170	
171		172		173		174		175	
176		177		178		179		180	
181		182		183		184		185	
186		187		188		189		190	
191		192		193		194		195	
196		197		198		199		200	
201		202		203		204		205	
206		207		208		209		210	
211		212		213		214		215	
216		217		218		219		220	
221		222		223		224		225	
226		227		228		229		230	
231		232		233		234		235	
236		237		238		239		240	
241		242		243		244		245	
246		247		248		249		250	
251		252		253		254		255	
256		257		258		259		260	
261		262		263		264		265	
266		267		268		269		270	
271		272		273		274		275	
276		277		278		279		280	
281		282		283		284		285	
286		287		288		289		290	
291		292		293		294		295	
296		297		298		299		300	
301		302		303		304		305	
306		307		308		309		310	
311		312		313		314		315	
316		317		318		319		320	
321		322		323		324		325	
326		327		328		329		330	
331		332		333		334		335	
336		337		338		339		340	
341		342		343		344		345	
346		347		348		349		350	
351		352		353		354		355	
356		357		358		359		360	
361		362		363		364		365	
366		367		368		369		370	
371		372		373		374		375	
376		377		378		379		380	
381		382		383		384		385	
386		387		388		389		390	
391		392		393		394		395	
396		397		398		399		400	
401		402		403		404		405	
406		407		408		409		410	
411		412		413		414		415	
416		417		418		419		420	
421		422		423		424		425	
426		427		428		429		430	
431		432		433		434		435	
436		437		438		439		440	
441		442		443		444		445	
446		447		448		449		450	
451		452		453		454		455	
456		457		458		459		460	
461		462		463		464		465	
466		467		468		469		470	
471		472		473		474		475	
476		477		478		479		480	
481		482		483		484		485	
486		487		488		489		490	
491		492		493		494		495	
496		497		498		499		500	
501		502		503		504		505	
506		507		508		509		510	
511		512		513		514		515	
516		517		518		519		520	
521		522		523		524		525	
526		527		528		529		530	
531		532		533		534		535	
536		537		538		539		540	
541		542		543		544		545	
546		547		548		549		550	
551		552		553		554		555	
556		557		558		559		560	
561		562		563		564		565	
566		567		568		569		570	
571		572		573		574		575	
576		577		578		579		580	
581		582		583		584		585	
586		587		588		589		590	
591		592		593		594		595	
596		597		598		599		600	
601		602		603		604		605	
606		607		608		609		610	
611		612		613		614		615	
616		617		618		619		620	
621		622		623		624		625	
626		627		628		629		630	
631		632		633		634		635	
636		637		638		639		640	
641		642		643		644		645	
646		647		648		649		650	
651		652		653		654		655	
656		657		658		659		660	
661		662		663		664		665	
666		667		668		669		670	
671		672		673		674		675	
676		677		678		679		680	
681		682		683		684		685	
686		687		688		689		690	
691		692		693		694		695	
696		697		698		699		700	
701		702		703		704		705	
706		707		708		709		710	
711		712		713		714		715	
716		717		718		719		720	
721		722		723		724		725	
726		727		728		729		730	
731		732		733		734		735	
736		737		738		739		740	
741		742		743		744		745	
746		747		748		749		750	
751		752		753		754		755	
756		757		758		759		760	
761		762		763		764		765	
766		767		768		769		770	
771		772		773		774		775	
776		777		778		779		780	
781		782		783		784		785	
786		787		788		789		790	
791		792		793		794		795	
796		797		798		799		800	
801		802		803		804		805	
806		807		808		809		810	
811		812		813		814		815	
816		817		818		819		820	
821		822		823		824		825	
826		827		828		829		830	
831		832		833		834		835	
836		837		838		839		840	
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846		847		848		849		850	
851		852		853		854		855	
856		857		858		859		860	
861		862		863		864		865	
866		867		868		869		870	
871		872		873		874		875	
876		877		878		879		880	
881		882		883		884		885	
886		887		888		889		890	
891		892		893		894		895	
896		897		898		899		900	
901		902		903		904		905	
906		907		908		909		910	
911		912		913		914		915	
916		917		918		919		920	
921		922		923		924		925	
926		927		928		929		930	
931		932		933		934		935	
936		937		938		939		940	
941		942		943		944		945	
946		947		948		949		950	
951		952		953		954		955	
956		957		958		959		960	
961		962		963		964		965	
966		967							

ATTACHMENT A-2 TO CERTIFICATION FOR PAYMENT (CONSTRUCTION)

Jurisdiction - PID Name - Improvement Area Certificate for Payment Line Items										
Invoice #	Invoice #	Vehicle Name	Auto Policy Company	Invoice #	Owner / Title	Check #	Proof of Payment (see serial#)	Loan Reference?	All Other Paid Amount?	Owner Address
					55					
					56					
					57					
					58					
					59					
					60					
					61					
					62					
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					99					
					100					

ATTACHMENT B TO CERTIFICATION FOR PAYMENT

[attached – bills paid affidavit]

ATTACHMENT C TO CERTIFICATION FOR PAYMENT

[attached – receipts]

ATTACHMENT D TO CERTIFICATION FOR PAYMENT

[attached – documentation proving Managing Developer’s compliance with Section 3.07
(Special County Provisions Applicable to Construction Contracts)]

ATTACHMENT E TO CERTIFICATION FOR PAYMENT

[attached – documentation proving Managing Developer’s compliance with Section 3.11
(Construction Worker Protection Standards)]

The Contract Compliance Program has confirmed the Managing Developer’s compliance with all
worker protection standards for the period of construction covered by the Managing Developer’s
Certification for Payment.

Travis County Purchasing Office Contract Compliance Program

Printed Name: _____

Title: _____

E-mail Address: _____

Signature: _____

Date: _____

ATTACHMENT F TO CERTIFICATION FOR PAYMENT

The HUB Program has confirmed the Managing Developer's compliance with all HUB requirements for the period covered by the Managing Developer's Certification for Payment.

Travis County Purchasing Office HUB Program

Printed Name: _____

Title: _____

E-mail Address: _____

Signature: _____

Date: _____

APPROVAL BY THE COUNTY

The Design Costs described in Attachment A-1 have been reviewed, verified and approved by the County. Payment of the Design Costs is hereby approved.

The Construction Draw Costs of each Authorized Improvement described in Attachment A-2 have been reviewed, verified and approved by the County. Payment of the Construction Draw Costs of each such Authorized Improvement is hereby approved.

Date: _____

TRAVIS COUNTY, TEXAS
a political subdivision of the State of Texas

By: _____
Name: _____
Title: _____

APPROVAL FOR PAYMENT BY TCDA REPRESENTATIVE

The TCDA is in receipt of the attached Certification for Payment, acknowledges such Certification for Payment that the Authorized Improvements (or completed portion thereof) covered by such Certification for Payment have been inspected by the Applicable Entity, and the County finds such Certification for Payment to be in order. After reviewing such Certification for Payment, the TCDA approves the attached Certification for Payment and directs payments to be made from the Authorized Improvement Account of the Project Fund to the Managing Developer or payee(s) set forth in such Certification for Payment.

Date: _____

**TRAVIS COUNTY DEVELOPMENT
AUTHORITY**, a local government corporation

By: _____
Name: _____
Title: _____

Exhibit "D" to Financing Agreement

[Note: this form will be provided by the Administrator and may be revised and updated periodically by the Administrator]

FORM OF CLOSING DISBURSEMENT REQUEST

The undersigned is a lawfully authorized representative for Meritage Homes of Texas, LLC (the "**Managing Developer**") and requests payment from the Costs of Issuance Account of the Project Fund (as defined in Turner's Crossing Public Improvement District Financing Agreement) from _____ (the "**Bond Trustee**") in the amount of _____ (\$ _____) to be transferred from the [Cost of Issuance Account of the Project Fund] upon the delivery of the [title of bonds] (the "**Bonds**") for costs incurred relating to the issuance and sale of the Bonds for the Turner's Crossing Public Improvement District (the "**District**"), as follows.

In connection to the above referenced payment, the Managing Developer represents and warrants to the County as follows:

1. The undersigned is a duly authorized officer of the Managing Developer and any co-owners pursuant to the Joint Ownership and Development Agreement, if applicable, is qualified to execute this Closing Disbursement Request on behalf of the Managing Developer, and is knowledgeable as to the matters set forth herein.

The payment requested for the below referenced costs of issuance at the time of the delivery of the Bonds has not been the subject of any prior payment request submitted to the County.

The amount listed for the below itemized costs is a true and accurate representation of the Costs of Issuance incurred by Managing Developer at the time of the delivery of the Bonds, and such costs are in compliance with the Service and Assessment Plan. The itemized costs are as follows:

[insert itemized list of costs here]

TOTAL REQUESTED: \$ _____

The Managing Developer is in compliance with the terms and provisions of Turner's Crossing Public Improvement District Financing Agreement, the applicable Indenture, and the Service and Assessment Plan.

All conditions set forth in the applicable Indenture and [the Acquisition and Reimbursement Agreement for _____] for the payment hereby requested have been satisfied.

The Managing Developer agrees to cooperate with the TCDA and/or the County in conducting its review of the requested payment and agrees to provide additional information and documentation as is reasonably necessary for the County and/or the TCDA to complete its review.

Payments requested hereunder shall be made as directed below:

[Information regarding Payee, amount, and deposit instructions]

I hereby declare that the above representations and warranties are true and correct.

Meritage Homes of Texas, LLC
an Arizona limited liability company

By: _____
Elliot Jones, Vice President of Land Acquisition

APPROVAL OF REQUEST BY TCDA

The TCDA is in receipt of the attached Closing Disbursement Request. After reviewing the Closing Disbursement Request, the TCDA approves the Closing Disbursement Request and shall include said payments in the TCDA Certificate submitted to the Bond Trustee directing payments to be made from Costs Issuance Account of the Project Fund upon delivery of the Bonds.

**TRAVIS COUNTY DEVELOPMENT
AUTHORITY, a Texas local government
corporation**

By: _____
Name: _____
Title: _____

Date: _____

Exhibit "E-1" to Financing Agreement**Authorized Improvement**

General Description of Authorized Improvement	Entity to which Authorized Improvement will be conveyed or dedicated	Type of Interest that Owner will convey (e.g., fee simple, easement, etc.)	Maintenance Responsibility	Estimated Cost of Design and Construction of Authorized Improvement	Estimated Date of Completion
Roadway Improvements	Travis County	Fee Simple, easement, and/or other interest, all as determined by the County	Travis County	\$3,414,174	Second Quarter 2021
Water Distribution system Improvements	City of Austin	Easement and/or other interest, all as determined by the City of Austin	City of Austin	\$1,653,085	Second Quarter 2021
Sanitary sewer collection system improvements	City of Austin	Easement and/or other interest, all as determined by the City of Austin	City of Austin	\$3,469,275	Second Quarter 2021
Water quality and drainage ponds	City of Austin	Fee Simple or Easement, as determined by the City of Austin	City of Austin	\$4,606,710	Second Quarter 2021
Recreational parks and trails	City of Austin	Fee Simple or Easement, all as determined by the City of Austin	Homeowners Association	\$338,565	Fourth Quarter 2021
Entryway/ Landscaping	Travis County	Dedicated ROW with license agreement with Homeowners Association	Homeowners Association	\$1,244,103	Third Quarter 2021

Exhibit "E-2" to Financing Agreement

COMMUNITY BENEFITS

The Managing Developer represents and warrants that it will act in good faith to expeditiously provide the following community benefits that are superior to the level of community benefits typically generated by real estate development projects that do not involve public improvement district financing:

Payment of an affordable housing fee-in-lieu in accordance with Travis County Code Chapter 481.

The Travis County Development Authority will have a right of first refusal to purchase an approximately 14.124 acre multi-family tract located just outside the boundaries of the Turner's Crossing Public Improvement District for a future Low Income Housing Tax Credit community. Under the right-of-first refusal agreement, the Travis County Development Authority may opt to waive its right of first refusal if the Managing Developer sells the 14.124 acre tract to a national developer of affordable housing properties pursuant to a sale that is subject to the approval of the Travis County Development Authority and the waiver is specifically limited to and for the sole purpose of allowing the sale to the national developer for a transaction that will include the Travis County Housing Finance Corporation ("TCHFC") or TCHFC affiliates owning the 14.124 acre tract and acting as general partner or managing member of the entity that will construct and operate the multifamily housing development on that 14.124 acre tract.

Although the Managing Developer and the Consenting Parties are not required to comply with the County's Atlas 14 floodplain requirements with respect to Phase One of the Project, the Managing Developer and the Consenting Parties have nonetheless agreed to comply with the County's Atlas 14 requirements for Phase One. The Managing Developer and the Consenting Parties are required to comply with the County's Atlas 14 floodplain requirements for subsequent phases of the Project.

The Managing Developer and the Consenting Parties have committed to constructing each of their single family detached homes so that they will be Energy Star certified, and they will provide Energy Star certificates for completed homes prior to each bond sale.

Exhibit "F" to Financing Agreement

**TURNER'S CROSSING PUBLIC IMPROVEMENT DISTRICT
IMPROVEMENT AREA #___ - LOT TYPE ____
HOMEBUYER DISCLOSURE**

HOMEBUYER DISCLOSURE PROGRAM

A Builder¹ for an Assessed Property shall provide each residential homebuyer with the "Notice of Obligation to Pay Public Improvement District Assessment to Travis County", the form of which is attached hereto as Exhibit "F-1".

A Builder for an Assessed Property shall provide evidence of compliance with 1 above, signed by such residential homebuyer, to the County upon receipt of written request by the County or the Builder which sets forth the County's mailing address and other contact information.

A Builder for an Assessed Property shall prominently display signage utilizing language and information provided by the Administrator in the Builder's model homes, if any, located within the Property.

If prepared and provided by the County and approved by Managing Developer (such approval not to be unreasonably withheld), a Builder for an Assessed Property shall distribute informational brochures about the existence and effect of the District in prospective homebuyer sales packets.

A Builder shall include Assessments in estimated property taxes, if such Builder estimates monthly ownership costs for prospective homebuyers for an Assessed Property.

The Managing Developer must post signage along the main entry/exits located at the boundaries of the District that identifies the area as a public improvement district. All signage shall be clearly visible to all motorists entering and exiting the District.

¹ Builder" means a commercial builder who is in the business of constructing and/or selling residences to individual home buyers.

Exhibit "F-1" to Financing Agreement

TURNER'S CROSSING PID – LOT TYPE []: HOMEBUYER DISCLOSURE

**NOTICE OF OBLIGATION TO PAY
PUBLIC IMPROVEMENT DISTRICT ASSESSMENTS
TO TRAVIS COUNTY, TEXAS**

CONCERNING THE PROPERTY AT:

STREET ADDRESS

**OUTSTANDING PRINCIPAL OF ASSESSMENT FOR AUTHORIZED
IMPROVEMENT: \$[]**

As the purchaser of the real property located at the street address set forth above, you are obligated to pay assessments to Travis County, Texas, for the costs of a portion of Authorized Improvements (the "**Authorized Improvements**"), undertaken for the benefit of the property within the Turner's Crossing Public Improvement District (the "**District**"), also known as "Turner's Crossing", a public improvement district created under Subchapter A, Chapter 372, Local Government Code, as amended.

**THE OUTSTANDING PRINCIPAL OF THE ASSESSMENT AGAINST YOUR
PROPERTY FOR THE AUTHORIZED IMPROVEMENTS IS [\$], WHICH MAY
BE PAID IN FULL AT ANY TIME; HOWEVER, IF NOT PAID IN FULL, IT WILL BE
DUE AND PAYABLE IN ANNUAL INSTALLMENTS WHICH MAY VARY FROM
YEAR TO YEAR DEPENDING ON THE AMOUNT OF INTEREST PAID,
COLLECTION COSTS, ADMINISTRATIVE COSTS, AND DELINQUENCY COSTS.**

An estimate of the annual installments is attached; **however, it is only an estimate and is subject to change.** The exact amount of the annual installments, including the annual installments thereof, will be approved each year by the Travis County Commissioners Court in the Annual Service Plan Update for the District. More information about the assessments, including the amounts and due dates, may be obtained from Travis County.

You may ask your mortgage company to include the Annual Installments in your monthly escrow payment.

Your failure to pay any assessment, or any annual installment thereof, may result in penalties and interest being added to what you owe and could result in a lien on and the foreclosure of your property.

The undersigned purchaser acknowledges receipt of the foregoing notice prior to the effective date of a binding contract for the purchase of the real property at the street address set forth above.

IN WITNESS WHEREOF, I have signed this certificate on the date specified below my signature.

PURCHASER:

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

STATE OF TEXAS §
 §
TRAVIS COUNTY §

The foregoing instrument was acknowledged before me by _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he or she executed the same for the purposes therein expressed, in the capacity stated and as the act and deed of the above-referenced entities as an authorized signatory of said entities.

Given under my hand and seal of office on this _____, 20__.

Notary Public, State of Texas

STATE OF TEXAS §
 §
TRAVIS COUNTY §

The foregoing instrument was acknowledged before me by _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he or she executed the same for the purposes therein expressed, in the capacity stated and as the act and deed of the above-referenced entities as an authorized signatory of said entities.

Given under my hand and seal of office on this _____, 20__.

Notary Public, State of Texas

PROJECTED ANNUAL INSTALLMENTS – LOT TYPE ☐

[WILL INSERT SCHEDULE OF PROJECTED ANNUAL INSTALLMENTS ONCE
FINALIZED]

Exhibit "G-1" to Financing Agreement

**COLLATERAL ASSIGNMENT
COLLATERAL ASSIGNMENT OF CONTRACT AND CONTRACT RIGHTS**

DATE: _____, 20__

ASSIGNOR: _____

ASSIGNOR'S ADDRESS: _____

BENEFICIARY: Travis County, Texas

BENEFICIARY'S ADDRESS: P.O. Box 1748, Austin, Texas 78767

FINANCING AGREEMENT: The Financing Agreement between Assignor and Beneficiary dated _____, 20__.

CONTRACT: One or more of the following described contracts (collectively, the "Contracts"):

- (a) The Construction Contract between _____ and Assignor dated as of _____, 20__, a copy of which is attached hereto as Exhibit 1;
- (b) The Engineering Contract between _____ and Assignor dated as of _____, 20__, a copy of which is attached as Exhibit 2; and
- (c) The Project Construction Management Contract between _____ and Assignor dated as of _____, 20__, a copy of which is attached as Exhibit 3.

Agreement. To the extent authorized by law and 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.

Secured Obligations. This assignment is made to Beneficiary to secure the performance by Assignor of all of Assignor's duties and obligations under the Financing Agreement.

License. Assignor hereby grants to Beneficiary 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 this License, in its own name or in the name of Assignor, and to exercise, assume, and enjoy all of Assignor's rights, title, interest, and benefits under the Contracts.

Assumption Date. Upon the occurrence of an Event of Default, as defined below, Beneficiary may, at its option, given written notice to Assignor and assume Assignor's rights, duties and obligations under the Contracts, subject to the terms

and conditions of this Assignment, as of the date of such notice (the “**Assumption Date**”).

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 EXCEPT THAT ASSIGNOR SHALL REMAIN RESPONSIBLE FOR ALL COSTS, CLAIMS, LIABILITIES, AND EXPENSES THAT AROSE ON OR BEFORE THE ASSUMPTION DATE.

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 Financing Agreement, the terms of the Financing Agreement will control.

Assignor’s Representations and Warranties and Related Covenants. Assignor represents and warrants to Beneficiary as follows:

Assignor’s execution, delivery and performance of this Assignment does not require the consent or approval of any governmental body 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.

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.

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.

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.

Assignor's Agreements. Assignor agrees as follows:

To perform all of its obligations under the Financing Agreement.

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.

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.

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.

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.

Events of Default. Any one or more of the following events or conditions constitutes an "Event of Default" for purposes of this Assignment:

Any event of default which occurs under the Financing Agreement which is not cured within any applicable grace or notice and opportunity to cure period;

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.

Beneficiary's Rights and Remedies.

To the extent authorized by law and subject to the terms and conditions set forth herein, 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 Financing 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. . To the extent authorized by law, the agency and authority hereby granted and created is an agency coupled with an interest.

Upon the occurrence of an Event of Default and at any time thereafter, Beneficiary will have the rights and remedies provided by law. After the Assumption Date, Assignor shall be without further duty, obligation, or liability of any kind with respect to the Contracts, including any costs arising thereunder except that Assignor shall remain liable for those obligations, liabilities, and costs incurred on or before the Assumption Date. After the Assumption Date, Beneficiary shall assume sole and absolute responsibility for performance of Assignor's obligations under the Contracts, and Assignor shall have no duty, liability or responsibility for any costs, claims, or expenses arising out of or related to the Contracts, including payment to any other parties to the Contracts, except for those costs, claims, and expenses incurred on or before the Assumption Date, or for personal injury or property damage arising out of the services that are the subject of the Contracts, except for personal injury or property damage arising out of services that were rendered on or before the Assumption Date.

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.

Assignor waives demand, notice, protest, and all demands and notices of any action taken by Beneficiary under this Assignment. The provisions of this section shall survive termination of the Contracts and Financing Agreement.

General. Assignor and Beneficiary agree as follows:

Upon the full performance of Assignor's obligations under the Financing Agreement, this Assignment and the interests created hereby will automatically terminate. Upon termination of this Assignment, Beneficiary will, at Assignor's sole cost and expense, execute and deliver to Assignor such documents as Assignor may reasonably request to evidence such termination.

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.

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.

Notice mailed to Assignor's address as reflected above, or to Assignor's most recent changed address on file with Beneficiary, at least ten days prior to the related action, will be deemed reasonable.

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.

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 1 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.

This Assignment may be executed in multiple original counterparts.

In the event of a conflict between the terms of this Assignment and the Financing Agreement, the Financing Agreement shall control.

In Witness Whereof, the Beneficiary and the Assignor have executed this Assignment effective as of the later date of signing as indicated below.

BENEFICIARY:

TRAVIS COUNTY, TEXAS

By: _____
Andy Brown, County Judge

Date: _____

ASSIGNOR:

By: _____
Name: _____
Title: _____

**BY ITS SIGNATURE BELOW, THE UNDERSIGNED SIGNIFIES ITS CONSENT TO
AND APPROVAL OF THIS ASSIGNMENT FROM _____ TO
TRAVIS COUNTY:**

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

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

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

Exhibit "G-2" to Financing Agreement

ENGINEERING SERVICES AND DELIVERABLES

PROJECT DESIGN

The Project Engineer shall provide professional services to produce both Preliminary Plan Documents and final plans, specifications and estimates for construction documents for the applicable Authorized Improvements. 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.

1. The Project Engineer will perform the following services:
 - a. Develop all Plans, Specifications, and Estimates (PS&E documents) within the project's allotted budget, to standards stipulated by Travis County.
 - b. Develop and submit a construction cost estimate at each phase of the design project.
 - c. Use generally recognized engineering methodology and standards of care.
 - d. For each required permit or approval, either obtain the permit or approval or identify the permit or approval for the Construction Contractor and direct the Construction Contractor to obtain it.
 - e. Conduct and provide reports for all applicable environmental studies, evaluations, assessments, and calculation/negotiations for mitigation.
 - f. Establish and provide a detailed project design task completion report. Monitor and provide task completion report to the Managing Developer and the County.
 - g. Produce a utility relocation plan and coordinate ALL utility relocation efforts with the appropriate utility company.

h. Provide on call or total technical assistance during the bidding and construction periods.

i. 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.

j. Provide all geotechnical reports and analyses.

k. Provide required services, as determined by the County and the Managing Developer, for construction administration.

2. The Project Engineer will provide six (6) 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" from the County. The required work products include:

a. Work Product 1: Design Summary Report, including a conceptual design.

b. Work Product 2: 30% complete design documents.

c. Work Product 3: 60% complete design documents.

d. Work Product 4: 100% bid-ready set of construction documents.

e. Work Product 5: Construction bidding and award services.

f. Work Product 6: Construction Management Services. Work Product 6 shall be optional and included at the discretion of the Managing Developer and the County.

Managing Developer and County may mutually agree to combine all or a few of Work Products 1, 2, 3 and 4 above to help reduce engineering cost and review time.

3. Subject to Article III of the Agreement, 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 24" by 36" (or at such other dimensions as is otherwise agreed), specifications, and estimates of probable construction costs to the Managing Developer and the County when the design and construction documents are 30%, 60% and 100% completed. Allow two weeks for the Managing Developer and the County to review and provide written comments

and/or approval for each submittal. Submit two sets final check sets and allow one week for the Managing Developer and the County to review and provide written comments and/or approval.

4. Work Product 1: Design Schematic Report (DSR).

2. The DSR shall summarize basic project information and include a schematic design for the Project. The conceptual level design of the ultimate six-lane section is to be prepared to approximate the future alignment, right-of-way and detention and water quality ponds.

5. Work Product 2: 30% Complete Design Documents.

3. 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 2. 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 number; 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; and
 - j. Updated project schedule with status tracking.
- 4. Total projected time for completion of Work Product 2 is sixty (60) calendar days.
- 6. Work Product 3: 60% complete design documents:
- 5. 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 and

j. Updated project schedule with status tracking.

6. Total projected time for completion of Work Product 3 is sixty (60) calendar days.

7. Work Product 4: 100% complete construction documents:

7. 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)

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

8. Work Product 5: Construction Contract bidding and award services:

9. Provide assistance with responding to bidder questions, preparing addenda, tabulating and evaluating bids, and providing recommendation for award.

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

9. Work Product 6: Construction Phase Services:

11. Construction phase services are to be provided in accordance with Exhibit "G-3" 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 Managing 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 Managing 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.

UTILITY RELOCATION SERVICES

Research records of properties within project limits of construction

10. identify all utility companies that serve the properties;
11. identify easements on the property and obtain descriptions and copies of any dedication instruments and plats; and
12. identify owners of utilities and contact information

Obtain existing condition and proposed improvement information from utility companies

13. determine type, size, and approximate location of existing utilities.

a. interview appropriate utility company
representatives

b. obtain as-built drawings if available

14. determine future plans for utility work within the limits of construction

a. interview appropriate utility company
representatives

b. if available, obtain preliminary utility
engineering plans and schedule for future improvements

c. If no engineering plans are available, obtain
description of proposed improvements including design criteria that will be
used including but not limited to:

- (i) utility assignment
- (ii) depth requirements
- (iii) design requirements for separation from other utilities, structures, or
activities

Review project design information for existing and potential conflicts

15. plan sheets showing existing and proposed conditions for roadways, bridges, buildings, utilities, topography, fences, walls, storm sewer systems, etc.

16. profile sheets showing existing and proposed conditions

17. detail sheets for foundations showing size and depth requirements

18. cross sections showing existing ground and proposed improvement including excavations, embankments, drainage channels, etc.

Coordinate the relocation, protection, upgrading, or abandonment of utilities

19. Identify with the County Contract Representative apparent conflicts between existing or proposed utilities and the project improvements shown in the design documents.

20. Provide copies of design documents to all utility service providers along with list of conflicts identified.

21. 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.

22. Meet with utility company representatives to determine their proposed method for reconciling conflicts and communicate the information to the County.

23. Meet with the County and Assistant 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;

24. 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.

25. Provide documentation of correspondence and coordination effort to the County upon completion of assignment

Additional Services, if approved by the County:

26. 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.

27. Provide, or contract with companies that can provide, underground utility locating services.

28. Hand excavate to verify location of utilities.

29. Represent the County at Austin Area Utility Coordinating Committee meetings.

30. Attend pre-construction and construction meetings.

31. Provide documentation and testimony as needed to help resolve claims related to utility work or property condemnation cases.

Exhibit "G-3" to Financing Agreement

CONSTRUCTION MANAGEMENT SERVICES

The items below marked with an asterisk (*) shall be performed or provided by a Texas Licensed Professional Engineer.

1. Coordination and Pre-Construction Meeting Services

32. Technical Submittals and Samples Prepares for the coordination meeting with the County and the Managing Developer a list of all technical submittals required by the Construction Contractor. This list shall be distributed at the pre-construction meeting among the Project Engineer and the Construction Contractor and others.

33. 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.

(a)* Material Testing and Inspections Prepares for the coordination meeting recommendations for the project construction and material testing protocols and oversees Project testing and inspection.

(b)* Pre-construction Submittals Provides review comments on Construction Contractor's 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.

Administrative Tasks

34. Prepares draft agenda for pre-construction meeting;

35. Determines the project communication, reporting, submittal approval/rejection protocol, and documentation requirements;

36. Conducts weekly job site meetings; determines the format for scheduling and conducting, and recording construction meeting minutes;

37. Reviews and becomes knowledgeable of any required Managing Developer or County construction administration processes;

38. Records meeting minutes;

39. Maintains Project construction records consisting of all correspondence related to the construction of the project including but not limited to;

- a. all approved technical submittals and a technical submittal checklist;
- b. all approved field orders and change orders;
- c. contract specifications and drawings;
- d. daily log;
- e. job meeting minutes;
- f. clarifications drawings;
- g. daily progress reports; and
- h. processed pay requests

40. 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.

41. 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.

42. Maintain complete files of all Project-related documents at the Project site.

43. Upon the completion of each calendar month, furnish the County and the Managing 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.

44. After the Project has been completed, submit the Project files, along with the original daily logs to the County.

Construction Phase Services

(c)* Submittals

12. Process submittals, including receipt, review of, and appropriate action on shop drawings, samples and other submittals. Provide recommendations for the

County and Managing Developer approvals of "or equal" substitutions along with any recommended cost adjustments.

(d)* Contract Modifications

13. For modifications required by the County and/or the Managing Developer to resolve design errors or omissions, the Project Construction Manager shall coordinate with the Project Engineer to provide the following services: Provide recommendations to the County and/or the Managing 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 Managing Developer and the County negotiate costs for any contemplated changes with the Construction Contractor. The Project Construction Manager shall prepare and distribute change orders and jointly sign all Change Orders with the County and the Managing Developer

(e)* Construction Contractor Pay Requests

14. 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 Managing Developer of any issues that may warrant withholding, reducing, or delaying payment to the Construction Contractor and provide supporting documentation.

(f)* Interpretation of the Contract Documents

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

(g)* Observation

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

a. Observe, document, and report to the County, the Managing Developer, and the Construction Contractor whether the project is being constructed in accordance with the contract documents.

b. Observe, document, and report to the County, the Managing 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.

c. Observe, document, and report to the County and the Managing Developer the progress of the Construction Contractor and resources committed to the project by the Construction Contractor.

(h)* Materials Testing and Inspections

d. 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. 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 Managing Developer. A copy of the proposed testing program shall be prepared for review by the County and the Managing Developer prior to beginning work.

e. 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.

(i)* Claims

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

(j)* Contract Enforcement

18. 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 Managing Developer. Communicate to the Construction Contractor, the County, and the Managing 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 Managing Developer with evaluating impacts of potential contract termination upon project costs and schedule.

(k)* Contract Termination

19. Upon request, assist the County and the Managing 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 Managing Developer before proceeding.

(l)* Project Acceptance and Close-out

f. Jointly perform with the County the Managing 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.

g. Compile and review for completeness all Operation and Maintenance Manuals to be submitted by the Construction Contractor and inform Construction Contractor of any deficiencies.

h. Review and comment on final pay request and supporting close-out documents, and provide recommendation for approval or rejection to the County and the Managing Developer.

i. Upon Project completion, obtain the original drawings from the Project Engineer, incorporate all as-built conditions on the original drawings, and provide copies to the County and the Managing Developer at project close-out.

2.* Post Construction Services

45. Warranty Period Services

a. Meet with County and the Managing 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.

b. Coordinate and attend with the County and the Managing 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 "H-1" to Financing Agreement

**TRAVIS COUNTY CONTRACT COMPLIANCE PROGRAM
MANAGING DEVELOPER/PRIME CONTRACTOR CERTIFICATIONS
TURNER'S CROSSING PID**

The Public Improvement District (PID) Developer (the "**Managing Developer**") must complete the Living Wage Certification (one time only) and the Workforce Training Program Certification (for each prime contractor engaged by the Managing Developer) listed below. The Managing Developer must also cause all prime contractors to complete the remaining certifications listed below. These certifications derive directly from the Travis County's PID Policy (Chapter 481 of the Travis County Code). For the Turner's Crossing Project (the "**Project**"), each certification (other than the Living Wage Certification) must be submitted before construction work commences on any Authorized Improvement for which the Managing Developer will seek reimbursement:

- | | | |
|---------------------------------------|-----------------------|----------------------|
| 1. <u>Living</u> | <u>Wage</u> | <u>Certification</u> |
| 2. <u>Workforce</u> | <u>Training</u> | <u>Program</u> |
| 3. <u>Employee</u> | <u>Classification</u> | <u>Certification</u> |
| 4. <u>Apprentice</u> | <u>Designation</u> | <u>Certification</u> |
| 5. <u>OSHA Training Certification</u> | | |

Each prime contractor must also provide:

1. A site-specific OSHA-compliant Safety and Health Plan
2. All OSHA 300 and 300A Logs and Summaries for the previous three years for all of its jobsites

If a prime contractor's business entity has not been in existence for 3 years, that prime contractor must submit the OSHA 300/300A Certification.

Exhibit "H-2" to Financing Agreement

LIVING WAGE CERTIFICATION

This Living Wage Certification must be submitted to Travis County by the Managing Developer before construction work commences on any Authorized Improvement for which the Managing Developer will seek reimbursement. The Managing Developer must complete this Certification one time only.

Required for PID Developer

Project

Title:

Name:

Title:

Business

Name:

Business Address:

County of PID Developer:

STATE OF TEXAS

I, _____, certify that:

I am the _____ (position) of _____ ("Managing Developer" or "PID Developer") and have the authority to execute this Certification on behalf of PID Developer.

I understand that, while the Travis County PID Policy provides that Travis County prefers, but does not mandate, that PID Developer pay, at a minimum, the Travis County living wage (currently \$13.00 per hour) to all construction workers performing work on PID Developer's construction projects, the County is committed to encouraging PID Developer to include this requirement in its construction contracts.

I understand that a living wage is defined as the minimum income necessary for workers to meet their basic needs, and that a living wage should be substantial enough to ensure that no more than 30% of it is spent on housing.

I understand that the goal of a living wage is to allow workers to earn enough income for a satisfactory standard of living.

I understand that I can obtain additional information about the benefits of a living wage by visiting the Travis County Purchasing Office Contract Compliance Program webpage, found here: <https://www.traviscountytx.gov/purchasing/contract-compliance-program>.

PID Developer:

- ☐ **Will require all contractors and all subcontractors employed by the contractors to pay at least the Travis County living wage in effect on the date**

set forth below (currently \$13.00 per hour) to all individuals performing construction work on the Authorized Improvements within the Project that are to be reimbursed by the PID, including but not limited to demolition, remodel, or renovation.

- ☐ **Will NOT require contractors and subcontractors to pay at least the Travis County living wage in effect on the date set forth below (currently \$13.00 per hour) to all individuals performing construction work on the Authorized Improvements within the Project that are to be reimbursed by the PID, including but not limited to demolition, remodel, or renovation.**

The information provided in this Living Wage Certification is true and correct.

Signature

Date

Exhibit "H-3" to Financing Agreement

**TRAVIS COUNTY CONTRACT COMPLIANCE PROGRAM
WORKFORCE TRAINING PROGRAM CERTIFICATION**

This Workforce Training Program Certification must be provided to Travis County by the Managing Developer (or, at the Managing Developer's option, by the Managing Developer's prime contractors) before construction work commences on any Authorized Improvement for which the Managing Developer will seek reimbursement.

Required for PID Developer

Project

Title:

Name:

Title:

Business

Name:

Business

Address:

County of PID Developer:

STATE OF TEXAS

I, _____, certify that:

1. I am the _____ (position) of _____ ("Managing Developer" or "PID Developer") and have the authority to execute this Certification on behalf of PID Developer.

I understand and acknowledge that pursuant to the Travis County PID Policy (Chapter 481, County Code), I must require my Prime Contractor to recruit 30% of its project workforce (i.e., employees of the Prime or employees of its subcontractors) from construction workforce training programs approved by Travis County ("Workforce Training Programs"). The County will approve all Workforce Training Programs that are registered with the Department of Labor (DOL).

The Prime Contractor made Good Faith Efforts (as defined in Par. 4) to satisfy this 30% hiring requirement and [] was able to do so OR [] was unable to do so because: (Please choose A, B, or both, whichever applies):

There were no DOL-registered apprenticeship programs in all or some construction trades relevant to this project. Those trades are listed below or attached to this Certification.

The following statements apply to the subcontractors I notified: (Please Check All that Apply)

- ☐ Subcontractors solicited were not competitive.
- ☐ Subcontractors solicited did not respond.
- ☐ Subcontractors solicited were unavailable for one or more trades.

I understand that "Good Faith Efforts," at a minimum, means the Prime Contractor has done, and is able to provide documentation that it has done, the following:

Reviewed the list of DOL-registered Apprenticeship Programs located in Texas provided by the Contract Compliance Program to find programs that offer training in construction trades relevant to this Project.

Contacted other workforce training programs such as on-the-job training programs sponsored by industry associations or educational institutions in an effort to identify subcontractors who hire from such programs.

Shared information about the Prime Contractor's experience using workers who are enrolled in or have completed other workforce training programs. If the Prime Contractor has not collected such information prior to the date of this Project, the Prime Contractor will cooperate with the Contract Compliance Program staff in their efforts to collect this type of information during construction of the Project.

The information provided in this Workforce Training Program Certification is true and correct.

Signature

Date

Exhibit "H-4" to Financing Agreement

**TRAVIS COUNTY CONTRACT COMPLIANCE PROGRAM
EMPLOYEE CLASSIFICATION CERTIFICATION
(PRIME CONTRACTOR)**

This Employee Classification Certification must be submitted to Travis County by the Managing Developer (or, at the Managing Developer's option, by the Managing Developer's prime contractors), before construction work commences on any Authorized Improvement for which the Managing Developer will seek reimbursement.

Project

Title:

Name:

Title:

Business

Name:

County of Prime Contractor:

STATE OF TEXAS

I, _____, certify that:

1. I am the _____ (position) of _____ ("Prime Contractor") and have the authority to execute this Employee Classification Certification on behalf of Prime Contractor.

To the best of my knowledge, information and belief, each worker performing work on the project on behalf of Prime Contractor is properly classified under all applicable state and federal laws, including all laws concerning workers compensation insurance coverage, unemployment taxes, Social Security taxes, and income taxes as either (A) an employee or (B) an independent contractor.

The information provided in this Employee Classification Certification is true, correct and accurately reflects all employee classification information pertaining to workers performing work on the project on behalf of Prime Contractor.

Signature

Date

Exhibit "H-5" to Financing Agreement

**TRAVIS COUNTY CONTRACT COMPLIANCE PROGRAM
APPRENTICE DESIGNATION CERTIFICATION
(PRIME CONTRACTOR)**

This Apprentice Designation Certification (Prime Contractor) must be provided to Travis County by the Managing Developer (or, at the Managing Developer's option, by the Managing Developer's prime contractors) before construction work commences on any Authorized Improvement for which the Managing Developer will seek reimbursement.

Name:

Title:

Business

Business

County of Prime Contractor:

Name:

Address:

STATE OF TEXAS

I, _____, certify that:

2. I am the _____ (position) of _____ ("Prime Contractor") and have the authority to execute this Apprentice Designation Certification on behalf of Prime Contractor.

[Place an "X" in the appropriate box]

- ☐ All apprentices employed on this construction project meet the following definition in accordance with 29 C.F.R. §5.2(n)(1):

20. "(1) Apprentice means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice."

OR

- ☐ To the best of my knowledge and belief, no construction workers employed on this Project are "apprentices" meeting the above definition.

The information provided in this Apprentice Designation Certification is true and correct.

Signature

Date

Exhibit "H-6" to Financing Agreement

**TRAVIS COUNTY CONTRACT COMPLIANCE PROGRAM
OSHA TRAINING CERTIFICATION
(PRIME CONTRACTOR)**

This OSHA Training Certification (Prime Contractor) must be provided to Travis County by the Managing Developer (or, at the Managing Developer's option, by the Managing Developer's prime contractors) before construction work commences on any Authorized Improvement for which the Managing Developer will seek reimbursement.

Project

Title:

Name:

Title:

Business

Name:

County of Prime Contractor:

STATE OF TEXAS

I, _____, certify that:

1. I am the _____ (position) of _____ ("Prime Contractor") and have the authority to execute this OSHA Training Certification on behalf of Prime Contractor.

To the best of my knowledge, information and belief, all workers performing work on the project on behalf of Prime Contractor have received OSHA 10-hour safety training and all project safety managers or supervisors have received OSHA 30-hour safety training.

The information provided in this OSHA Training Certification is true, correct, and accurately reflects all OSHA training received by workers and safety managers or supervisors performing work on the project on behalf of Prime Contractor.

Signature

Date

Exhibit "H-7" to Financing Agreement

**TRAVIS COUNTY CONTRACT COMPLIANCE PROGRAM
OSHA 300/300A CERTIFICATION
(PRIME CONTRACTOR)**

If applicable, this OSHA 300/300A Certification (Prime Contractor) must be provided to Travis County by the PID Developer (or, at the PID Developer's option, by its prime contractors) before construction work commences on any Authorized Improvement for which the Managing Developer will seek reimbursement.

Project

Title:

Name:

Title:

Date:

Business Name:

County of Prime Contractor:

STATE OF TEXAS

I, _____, certify that:

1. I am the _____ (position) of _____ ("Prime Contractor") and have the authority to execute this statement on behalf of Prime Contractor.

Prime Contractor is exempt from submitting OSHA 300 Logs and OSHA 300A Summaries for the previous three (3) years because Prime Contractor has been legally incorporated for thirty-six (36) months or less. Prime Contractor was legally incorporated on _____, _____ in the State of _____.

The information provided in this OSHA 300/300A Certification is true and correct.

Signature

Exhibit "H-8" to Financing Agreement

**TRAVIS COUNTY CONTRACT COMPLIANCE PROGRAM
SUBCONTRACTOR CERTIFICATIONS
TURNER'S CROSSING PID**

The Public Improvement District (PID) Developer must cause its Prime Contractors to require their selected subcontractors to complete the following certifications. These certifications derive directly from the Travis County PID Policy (Chapter 481 of the Travis County Code) and must be submitted before construction work commences on any Authorized Improvement for which the Managing Developer will seek reimbursement:

1. Employee Classification Certification

Apprentice Designation Certification

OSHA Training Certification

The Prime Contractor must also cause its selected subcontractors to provide:

1. A site-specific OSHA-compliant Safety and Health Plan

All OSHA 300 and 300A Logs and Summaries for the previous three years for all of their jobsites

If the subcontractor's business entity has not been in existence for 3 years, the subcontractor must submit the OSHA 300/300A Certification.

Exhibit "H-9" to Financing Agreement

**TRAVIS COUNTY CONTRACT COMPLIANCE PROGRAM
EMPLOYEE CLASSIFICATION CERTIFICATION
(SUBCONTRACTOR)**

This Employee Classification Certification (Subcontractor) must be submitted to Travis County by the PID Developer (or, at the PID Developer's option, by its prime contractors) before construction work commences on any Authorized Improvement for which the Managing Developer will seek reimbursement.

Project

Title:

Name:

Title:

Business

Name:

County of Subcontractor:

STATE OF TEXAS

I, _____, certify that:

1. I am the _____ (position) of _____ ("Subcontractor") and have the authority to execute this Employee Classification Certification on behalf of Subcontractor.

To the best of my knowledge, information and belief, each worker performing work on the project on behalf of Subcontractor is properly classified under all applicable state and federal laws, including all laws concerning workers compensation insurance coverage, unemployment taxes, Social Security taxes, and income taxes as either (A) an employee or (B) an independent contractor.

The information provided in this Employee Classification Certification is true, correct, and accurately reflects all employee classification information pertaining to workers performing work on the project on behalf of Subcontractor.

Signature

Date

Exhibit "H-10" to Financing Agreement

**TRAVIS COUNTY CONTRACT COMPLIANCE PROGRAM
APPRENTICE DESIGNATION CERTIFICATION
(SUBCONTRACTOR)**

This Apprentice Designation Certification (Subcontractor) must be provided to Travis County by the PID Developer (or, at the PID Developer's option, by its prime contractors) before construction work commences on any Authorized Improvement for which the Managing Developer will seek reimbursement.

Name of Subcontractor:

Title:

Business Name:

Business Address:

County of Subcontractor: Travis

STATE OF TEXAS

I, _____, certify that:

1. I am the _____ (position) of _____ ("Subcontractor") and have the authority to execute this Apprentice Designation Certification on behalf of Subcontractor.

[Place an "X" in the appropriate box]

- ☐ All apprentices employed on this construction project meet the following definition in accordance with 29 C.F.R. §5.2(n)(1):

21. "(1) Apprentice means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice."

OR

- ☐ To the best of my knowledge and belief, no construction workers employed on this Project are "apprentices" meeting the above definition.

The information provided in this Apprentice Designation Certification is true and correct.

Signature

Date