

**GWTP MASTER
DEVELOPMENT
AGREEMENT**

BETWEEN

THE CITY OF AUSTIN

AND

TC GREEN WATER MASTER DEVELOPER, LLC

**CONCERNING THE DEVELOPMENT OF
THE GREEN WATER TREATMENT PLANT
AUSTIN, TEXAS**

“Public Improvements Completion” means the day on which all of the following have been satisfied:

(a) the applicable Public Improvements have been substantially completed (which may not include the final street “top coat”) in accordance with the plans and specifications therefor as evidenced by a certificate of substantial completion from Developer’s engineer,

(b) all Governmental Authorities having jurisdiction have issued certificates of completion, certificates of occupancy, final acceptance letter or their equivalent, as applicable, for the Public Improvements, and

(c) all bills for such applicable Public Improvements have been paid, are not yet due and payable or are being contested in good faith through appropriate proceedings.

“Public Improvements City Plans” as defined in Section 3.1(d)(i).

“Public Improvements City Plans License” as defined in Section 3.1(d)(i).

“Shoal Creek Bridge” as defined in Section 3.1(d) hereof.

“Shoal Creek Bridge Construction Easement” means a temporary construction easement for the construction of the Shoal Creek Bridge as provided in Section 3.2(~~gh~~) hereof in the area shown on Exhibit G attached hereto.

“Staging Right” as defined in Section 3.3(k) hereof.

“Survey” means any survey of the Property (or any Block) prepared by a civil engineer for the Developer.

“Takedown” means the transfer by the City of a Block to Developer.

“Takedown Date” as defined in Section 4.1(a) hereof.

“TCEQ” means the Texas Commission on Environmental Quality, including its successors.

“Title Binder” means the Commitment For Title Insurance prepared by Heritage Title Company of Austin, Inc. with an effective date of March 5, 2012 as GF No. 102663 and all exceptions to title coverage set forth therein as provided in Section 4.4 hereof.

“Title Company” means Heritage Title Company of Austin, Inc., its successors and assigns, or any other title company approved by the City and Developer.

“Transfer” as defined in Section 9.15(c) hereof.

(iii) Developer shall provide an outreach program designed to solicit participation of minority-owned businesses, women-owned businesses, and small businesses.

(iv) Developer shall inform the City's Small and Minority Business Resources Department ("SMBR") when Developer, its architect, or its general contractor desires assistance from SMBR in its efforts regarding the ethnic-specific M/WBE utilization goals set forth above. This assistance may include providing a list of certified M/WBE firms from which Developer may solicit or cause its architect or general contractor to solicit participation in design or construction, identifying potential scopes of work, establishing the bid packages available, scheduling and hosting outreach meetings, and assisting Developer in soliciting M/WBE firms to provide bids. The foregoing covenant does not require Developer to solicit participation during a period in which Developer is not designing and/or constructing the Improvements or Public Improvements, but rather, requires Developer to incorporate the standards and principles of the M/WBE Ordinance including the foregoing M/WBE Participation goals into its development process as and when such process exists. Additionally, the foregoing covenant does not require Developer to modify or amend any contract or agreement that Developer has entered into prior to the Effective Date which are listed on Exhibit J attached hereto. In the event the Developer applies for a service extension request for the Property, Developer is encouraged to comply with the standards and principles of the M/WBE Ordinance in the design of the water and wastewater infrastructure and related facilities.

(v) Developer shall provide monthly reports to allow SMBR to track (A) the utilization on a percentage basis of M/WBE firms in the design and construction of the Improvements and Public Improvements, and (B) a summary of Developer's efforts to implement the M/WBE Resolution. SMBR shall provide the forms to be used by Developer in submitting such reports.

(e) Prevailing Wage Ordinance. Developer shall, ~~or shall use demonstrated good faith efforts to,~~ require construction contractors and subcontractors engaged by the Developer to construct the Public Improvements and the shell building Improvements to pay the prevailing wage as defined in the City of Austin Ordinances attached hereto as Exhibit F.

(f) OSHA Resolution. Developer shall, ~~or shall use demonstrated good faith efforts to,~~ require construction contractors and subcontractors engaged by the Developer to construct the Public Improvements and the shell building Improvements to comply with the OSHA Resolution attached hereto as Exhibit H.

(g) Worker's Defense. In addition to complying with the covenants pertaining to M/WBE, the Prevailing Wage Ordinance and the OSHA Resolution in accordance with Sections 3.2(d), (e) and (f) of this Agreement, Developer will comply with all applicable state and federal laws relating to construction, including laws related to labor, equal employment opportunity, safety, workers compensation

and other applicable insurance and wage and hour (including minimum wage), and Developer agrees to make commercially reasonable efforts to work with the Workers Defense Project (“WDP”) in connection therewith. Additionally, Developer will, and will require its contractors to, use commercially reasonable efforts to comply with each of the following:

(i) Advertise open labor positions with workforce training centers certified by WDP;

(ii) Provide construction workers with personal protective equipment required by OSHA without charge;

(iii) Provide construction workers with 10 hour OSHA safety training without charge;

(iv) Provide construction workers breaks, in addition to a lunch break, for every four consecutive hours of work, and provide drinking water and sanitation facilities;

(v) Require contractors to provide workers compensation insurance for construction workers;

(vi) Require general contractors to employ a safety representative with a minimum of 30 hours of OSHA approved supervisor safety training on any construction site;

(vii) Allow a WDP representative with a minimum of 30 hours of OSHA approved supervisor safety training to accompany representatives of Developer and the general contractor’s safety representative on scheduled monthly safety inspections;

(viii) Prohibit contractors from retaliating against construction workers who address workplace concerns with WDP;

(ix) Provide reasonable signage that provides contact information for WDP and encourages construction workers to contact WDP regarding project safety or wage issues, which signage shall be posted in the same general location where other federal and state regulation signage is posted; and

(x) Work with WDP to reasonably investigate and address concerns raised by construction workers regarding safety conditions or wages.

(h) ~~(g)~~ Shoal Creek Bridge Construction Easement. City, at no cost, shall have the right to occupy the Shoal Creek Bridge Construction Easement for the purpose of constructing the Shoal Creek Bridge. The Shoal Creek Bridge Construction Easement location may change from time to time as the needs of the City, in its construction of the

the north and Cesar Chavez on the south with the right to tie into this system from each Block, which will satisfy all water quality requirements for each of the Blocks. The Water Quality Basin will be constructed as part of the Public Improvements to serve both private (i.e., the Blocks) and public (i.e., the Public Improvements) improvements and the design, permitting and construction cost thereof will be fully reimbursed by the City under a Community Facility Agreement, but be maintained by the owners of the Blocks under the Declaration at their expense.

ARTICLE IV PROPERTY TAKEDOWN AGREEMENTS

4.1 Takedown Agreement and Timing.

(a) Takedown Dates. The Takedowns of the Property will occur in four or less closings on the following dates:

	<u>Block</u>	<u>Timing</u>
First Takedown	1 or 23 <u>Any Block</u>	Within 6 <u>12</u> months following the Initial Ready Date (but in no event earlier than the date which is 6 <u>12</u> months following the Effective Date) (the “ First Required Takedown Date ”)
Second Takedown	Any remaining Block	Within the date which is the later of (a) 21 months following the First Required Takedown Date, and (b) 180 days following the Final Ready Date (the “ Second Required Takedown Date ”)
Third Takedown	Any remaining Block	Within 18 months following the Second Required Takedown Date (the “ Third Required Takedown Date ”)
Fourth Takedown	Any remaining Block	Within 15 months following the Third Required Takedown Date (the “ Fourth Required Takedown Date ”)

The First Required Takedown Date, Second Required Takedown Date, Third Required Takedown Date and Fourth Required Takedown Date, each a “**Takedown Date**” and collectively, the “**Takedown Dates**”.

The Developer, at its option, may Takedown any Block before the applicable Takedown Date, but such early Takedown will not accelerate any subsequent Takedowns.

(b) Real Estate Market Delay of Takedown Date. ~~The next occurring Any Takedown Date (other than the First Required Takedown Date)~~ may be delayed by Developer for up to 3 periods of 9 months each (a “**Market Delay Period**”) if one of the following conditions exist:

(i) Residential. If (A) Class A “for rent” multifamily vacancy rate for the City of Austin Central Business District exceeds 8%, or (B) the unsold inventory of new, completed for-sale high rise condominium units in the City of Austin Central Business District represents 10% of the total number of high rise condominium units in the City of Austin Central Business District, on the date which is 3 months prior to a scheduled Takedown Date.

(ii) Hotel. If occupancy of Class A hotel rooms in the City of Austin Central Business District is less than 70% for the prior 12 month period ending on the date which is 3 months prior to a scheduled Takedown Date.

(iii) Office. If Class A office direct vacancy rate for the City of Austin Central Business District exceeds 12% on the date which is 3 months prior to a scheduled Takedown Date.

Once utilized, a Market Delay Period will no longer be available to Developer (i.e., if Developer exercises the office Market Delay Period, the office Market Delay Period will no longer be available; provided however if Block 23 is the first Block to be Takedown, the “Office” Market Delay Period in Section 4.1(b)(iii) above will be replaced with the following:

Additional Residential. If Class A “for rent” multifamily vacancy rate for the City of Austin Central Business District exceeds 8% on the date which is 3 months prior to a scheduled Takedown Date.

A Market Delay Period may only be exercised by written notice to the City effective as of the date which is 2 months prior to a scheduled Takedown Date. Any notice of exercise of a Market Delay Period must be accompanied by evidence from a mutually acceptable research publication or commissioned study concerning the market factors listed above prepared by a third party that is unaffiliated with Developer. No Market Delay Period may be exercised if a Bankruptcy Event, Event of Default or Potential Event of Default exists.

By way of example and not of limitation, if the future Takedown Dates are January 1, 2015, July 1, 2016 and October 1, 2017, the exercise of a Market Delay Period on October 1, 2014 would extend the *next occurring* Takedown Date by 9 months resulting in future Takedown Dates of October 1, 2015, July 1, 2016 and October 1, 2017.

(c) Financing Market Delay of Takedown Date. All ~~future occurring~~ Takedown Dates ~~(other than the First Required Takedown Date)~~ may be delayed by Developer for 1 period of 12 months (the “**Financing Delay Period**”) if a loan for the construction of the proposed improvements on the remaining Blocks is not available to Developer in the then current debt market on the date which is 3 months prior to a scheduled Takedown Date, based on any one or more of the following terms (and such other terms as are customary for similar projects):

- (i) loan amount of not less than 60% but not more than 80% of total projects costs related to the development of the applicable takedown Block;
- (ii) a market required guaranty not to exceed a 25% repayment and completion guaranty;
- (iii) an interest rate of not more than 8% per annum (fixed or equivalent rate); and
- (iv) a commitment or origination fee not more than 75 basis points.

A Financing Delay Period may only be exercised by written notice to the City effective as of the date which is 2 months prior to a scheduled Takedown Date. Any notice of exercise of a Financing Delay Period must be accompanied by evidence in form and content reasonably acceptable to the City from an independent third party stating that such financing is not available. No Financing Delay Period may be exercised if a Bankruptcy Event, Event of Default or Potential Event of Default exists.

By way of example and not of limitation, if the future Takedown Dates are January 1, 2015, July 1, 2016 and October 1, 2017, the exercise of a Financing Delay Period on October 1, 2014 would extend *all future* Takedown Dates by 12 months resulting in future Takedown Dates of January 1, 2016, July 1, 2017 and October 1, 2018.

(d) Developer Unilateral Right to Delay Takedown Date. ~~The next occurring~~ **Any** Takedown Date ~~(other than the First Required Takedown Date)~~ may be delayed by Developer for up to 4 periods of 3 months each (a “**Unilateral Delay Period**”) which periods may be exercised one at a time or cumulatively, subject to the following conditions:

- (i) Developer has given City not less than 60 days’ prior written notice of Developer’s intention to extend the next occurring Takedown Date.
- (ii) No Bankruptcy Event, Event of Default or Potential Event of Default exists.
- (iii) Developer shall pay to City, contemporaneously with the written notice of the extension, an extension fee in the amount of \$125,000, which extension fee will be deemed due, payable, earned and nonrefundable, but will apply as a credit against Developer’s obligation to pay the Transfer Price at the next Takedown and if such next Takedown does not occur, City may retain such amount.

By way of example and not of limitation, if the future Takedown Dates are January 1, 2015, July 1, 2016 and October 1, 2017, the exercise of a Unilateral Delay Period on October 1, 2014 would extend the *next occurring* Takedown Date by 3 months resulting in future Takedown Dates of April 1, 2015, July 1, 2016 and October 1, 2017.

(ii) Deliver to the Title Company a duly executed and acknowledged counterpart of the Deed.

(iii) Deliver to the City the applicable payments and contributions set forth in ARTICLE VI hereof.

(iv) Deliver such other documentation or instruments as reasonably required by the Title Company for such Takedown to occur in accordance with this Agreement.

(c) Taxes and Assessments. Real estate taxes and assessments, if any, concerning the applicable portion of the Property for the calendar year of Takedown, to the extent the City is obligated to pay such items, will be apportioned between the City and Developer at the applicable Takedown as of midnight of the day preceding the applicable Takedown Date.

(d) Closing Costs. Developer will pay all closing costs (e.g., title insurance, survey, inspection fees, Developer's attorney fees, financing fees, recording fees and escrow fees) in connection with each Takedown, except the City's legal fees and financial obligations of any lien the City granted on the Takedown Property, security interests and other collateral financing interests for which the City is responsible under Section 4.3(c) and any encumbrances created by the City after the Effective Date without Developer's consent. Section 3.1(b) of the ENA provides that Developer will receive a credit against the Transfer Price for certain Developer deposits. As the Improvements are approximately 75% of the overall improvements contemplated in the RFP response and the ENA (the other 25% being covered in the ECC Master Development Agreement), at the Takedown, Developer will receive a credit against the Transfer Price for 75% of the deposits referenced in Section 3.1 of the ENA (i.e., 75% of \$50,000 + 3% interest accruing from April 30, 2008 [RFP response submission date] plus 75% of \$100,000 + 3% interest accruing from August 11, 2008 [ENA effective date]), apportioned based on the Transfer Price for each Block compared to the sum of all Transfer Prices.

ARTICLE VI DEVELOPER'S PAYMENTS AND CONTRIBUTIONS

6.1 Shoal Creek Improvements. Developer shall contribute \$62,500 cash to the City to fund improvements in that portion of Shoal Creek adjacent to the Property on or before the Takedown of each Block (for a total contribution of \$250,000). With respect to the improvements constructed with the funds delivered under this section, City will provide advance notice and the opportunity for a representative(s) of Developer to attend all planning/design public meetings concerning such improvements with the intent that City exercise due regard and consideration for Developer's input regarding such improvements. Developer acknowledges that the City may, in its discretion, utilize such funds for the reimbursement of past expenses related to improvements in Shoal Creek.

6.2 Arts in Public Places. ~~Contemporaneously with the Takedown of each Block,~~ Developer shall contribute \$93,750 cash on or before the issuance of the applicable

Certificate of Occupancy of each Block to the Arts in Public Places program (for a total contribution of \$375,000). Such contribution will be used to pay for public art, and for the installation of public art on the Property. With respect to the exact location and selection of such public art under this section (a) Developer shall advise City during the process of artist selection as to Developer's plans as a guiding principle in artist selection, (b) City will provide written notice of the proposed design concept to Developer, together with drawings and descriptions of the public art supplied by the proposed artist, and (c) City will provide advance notice and the opportunity for a representative(s) of Developer to attend all planning/design meetings, with the intent that City exercise due regard and consideration for design issues that may impact Developer's planned design, construction and use of the Property or any portion thereof. Any such public art project and the installation thereof may not adversely impact Developer's design, construction and use of the Property or any portion thereof.

6.3 **Public Music.** ~~Contemporaneously with the Takedown of each Block,~~ Developer shall contribute \$37,500 **cash on or before the issuance of the applicable Certificate of Occupancy of each Block** to the Music Division of the City's Economic Growth and Redevelopment Services Office (or its successor) to program music performances on the Property (for a total contribution of \$150,000). With respect to the selection of such public music under this section (a) Developer shall advise City during the process of selection as to Developer's plans as a guiding principle in such selection, and (b) City will provide advance notice and the opportunity for a representative(s) of Developer to attend all music selection meetings, with the intent that City not negatively impact Developer's planned use of the Property.

6.4 **Excess Environmental Remediation Costs.** Contemporaneously with the Takedown of Block 23, Developer shall pay to the City all costs of the Environmental Remediation incurred by the City in excess of \$3,100,000, if any.

ARTICLE VII INSURANCE AND INDEMNITY

7.1 **Insurance.**

(a) **General.** Developer shall carry and maintain from the inception of this Agreement (except as specifically noted below) the following insurance policies:

(i) Workers' Compensation and Employers' Liability Insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 401) and minimum policy limits for employers liability of \$1,000,000 bodily injury for each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee. The insurance required by this subsection shall be in effect commencing not later than the Commencement of Construction of any portion of the Improvements or the Public Improvements.

(ii) Automobile Liability Insurance for all owned, non-owned, and hired motor vehicles, which Developer, or its agents or contractors on