

**CONSENT AGREEMENT BY AND AMONG
THE CITY OF AUSTIN, TEXAS,
ONION CREEK METRO PARK DISTRICT,
AND AUSTIN GOODNIGHT RANCH LP**

This **CONSENT AGREEMENT** ("Consent Agreement"), effective as of the Effective Date, is made by and among **THE CITY OF AUSTIN, TEXAS**, a home rule municipality located in Travis, Hays and Williamson Counties of the State of Texas (the "City"); **ONION CREEK METRO PARK DISTRICT**, a political subdivision of the State of Texas created by the Legislature under the authority of Article 16, Section 59, and Article 3, Sections 52 and 52-a of the Texas Constitution (the "District") once it is confirmed at a confirmation election; and **AUSTIN GOODNIGHT RANCH LP**, (the "Developer").

RECITALS

WHEREAS, the District was created by SB 1872, 83rd Legislative Session, codified as Chapter 3924, Special District Local Laws Code (the "Enabling Legislation"), and a copy of the enrolled bill is attached to this Agreement as **Exhibit "A"**, which identifies the land within the district; and

WHEREAS, the District was created by the Enabling Legislation, its authority to organize and operate is subject to the consent of the City, and it is the intention of the parties that the City will adopt an ordinance granting its consent to the creation of the District (the "Consent Ordinance") simultaneously with approval of this Consent Agreement; and

WHEREAS, the District will be an in-city district and the Parties acknowledge that the District residents are also City residents and the District property tax imposed on and paid by the residents supplements the base funding that will continue to be provided by the City for park and recreation improvements in the District and ensures the premier quality of said improvements; and

WHEREAS, the District is located adjacent to the City's approximately 555 acre Onion Creek Metro Park and Greenbelt Corridors (as defined in this Consent Agreement and referred to herein as "OCMPGC") and the Parties have determined that such proximity is a benefit to the future residents of the District; and

WHEREAS, the Developer intends to construct the In-District Improvements (as defined in this Agreement) and upon completion and acceptance by the District, to

convey them to the District in exchange for the District's commitment to operate and maintain the In-District Improvements; and

WHEREAS, the Parties acknowledge that the City's development of park and recreation improvements inside OCMPGC will occur in phases, to be determined by agreement among the Parties and limited by the lawfully available financial resources of the City and the District and the terms and conditions of this Consent Agreement; and

WHEREAS, the Developer intends to propose that the District impose an ad valorem property tax sufficient to fund the costs of the administration and operation of the District (including the maintenance and operation of the In-District Improvements), reimbursement of the Developer pursuant to the terms of a DFA (defined below) between the District and the Developer, and the maintenance and operation of the OCMPGC Improvements per the terms of this Consent Agreement, and, to the extent allowed by law, the District intends to implement such proposal upon an affirmative vote of its Board of Directors; and

WHEREAS, the Parties intend that the Developer will pre-finance all costs for the Austin Parks Foundation (the "APF") to create a Master Park Plan for the OCMPGC and all costs of the In-District Improvements, for which the Developer will be reimbursed by the District pursuant to the DFA to the extent allowed by law; and

WHEREAS, the Parties desire the Council to consider putting before the voters of the City a ballot proposition that the City shall issue General Obligation Bonds for park purposes to be used within OCMPGC when deemed feasible, or for Council to take such other actions as it deems reasonable to dedicate funds to OCMPGC projects in the future; and

WHEREAS, the City, the District, and the Developer have determined that it is in their best interests to enter into this Consent Agreement with one another to provide for certainty with regard to the benefits to be provided to the land within the District and to the City and to ensure efficient and effective implementation of park development within the boundaries of the District for the benefit of the present and future residents and the public at large;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements contained in this Consent Agreement, the City, the Developer, and the District agree as follows:

ARTICLE I

DEFINITIONS

The terms “City,” “Consent Agreement”, “Developer,” “District,” and “Enabling Legislation” have the meanings set forth in the preamble of this Consent Agreement, and the following capitalized terms shall have the meanings provided below, unless otherwise defined or the context clearly requires otherwise.

“Austin Parks Foundation” (“APF”) means the 501 (c) (3) organization that has partnered with the Developer and PARD to facilitate the efficient planning and design of the Master Park Plan.

“Base Park Improvement” means the “Great Lawn,” a 50 acre park improvement in the OCMPGC to be constructed and installed by the City, comprised of a fifty space parking lot, 30 acres of irrigated lands and 20 acres of non-irrigated lands if depicted in the Master Park Plan.

“Base Park Payment” means an annual payment not to exceed \$160,000, in the form of a Grant, which is the estimated annual cost of operation and maintenance of the Base Park Improvement. “Board” means the duly qualified and acting Board of Directors of the District.

“Bonds” means the bonds, notes, and other indebtedness issued by the District in compliance with this Consent Agreement.

“City Bonds” means the bonds, notes and other indebtedness issued by the City in furtherance of this Consent Agreement.

“Council” means the governing body of the City of Austin.

“Commission” or “TCEQ” means the Texas Commission on Environmental Quality, and any state agency succeeding to its jurisdiction.

“Confirmation and Tax and Bond Election” means the election called by the temporary Board of Directors named in the Enabling Legislation to present propositions to the voters in the District as set forth in this Consent Agreement.

“Consent Ordinance” means the ordinance or resolution the City Council adopts to grant its consent to the creation of the District and the inclusion of the Developer’s land within the District, as provided for in the Enabling Legislation.

“Developer Financing Agreement,” referred to in this Consent Agreement as “the DFA,” means an agreement between the District and a developer within the District, including the Developer.

“Effective Date” means the latest date of the execution of this Consent Agreement by the Parties, except that the Consent Agreement shall be effective as to the City and the Developer on the last date of their executions; the Effective Date as to the District shall be the date its government body executes the Consent Agreement.

“Force Majeure” means circumstances which are beyond the reasonable control of the applicable party (which circumstances may include, without limitation, pending or threatened litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not limitation, major flooding or tornadoes] labor action, strikes or similar acts.

“Grant” means certain payments by the District to the City provided for in this Consent Agreement which shall be deposited into the City’s special revenue fund to be created and used only for the purposes described in this Consent Agreement and the Grant documents.

“In-District Improvements” means the parks and recreational facilities and improvements to be generally located as shown on **Exhibit “B”**. “Level One Maintenance” means maintenance associated with high traffic areas that have amenities that require significant staff time and attention. These areas are serviced at least once a day if not more often. Staff resources are spent on irrigation, general repairs, mowing, planting beds, trails, bathrooms and trash removal. City-prepared description of maintenance standards is reflected in **Exhibit “C”**.

“Master Park Plan” means the plan prepared by a design professional through a vetting selection performed by the APF pursuant to a contract between the APF and the Developer that will include a “Vision Plan” and a final Master Plan for development of OCMPGC, as illustrated in drawings that are or will be attached to this Agreement as **Exhibit “D”**. The term does not include surveys, architectural design, engineering design, or construction.

“Notice to Purchasers” means the Notice required in Section 49.452, Texas Water Code, intended to notify prospective District landowners of the facts associated with buying land within a taxing district, the form of which is attached to this Consent Agreement as **Exhibit “E”**. **Exhibit “E-1”** is the “plain speak” Notice to Purchasers. **Exhibit “E-2”** is the “plain speak” Notice to Purchasers translated into Spanish.

“Onion Creek Metro Park and Greenbelt Corridors,” referred to in this Consent Agreement as “OCMPGC,” means the land comprising approximately 555 acres as shown in the City’s maps entitled Onion Creek Metro Park and Greenbelt Corridors, located south of William Cannon Drive, east of IH-35, west of Salt Springs Road, south of East William Cannon Drive, and north of the District and Nuckols Crossing Road.

“OCMPGC Improvements” means the parks and recreational improvements constructed by the City within the OCMPGC.

“PARD” means the Parks and Recreation Department of the City of Austin.

“PARD Director” means the Director of PARD or her designee.

“Parties” means the City, the District and the Developer.

“Passageway” means any structure enabling the non-vehicular crossing of a thoroughfare that may be established in lieu of an underpass to provide access between the OCMPGC and property within the District’s boundaries.

“Pond” means a drainage and/or water quality pond required by the City that may serve recreation uses only as allowed by City Code and as regulated by the Texas Water Code.

“Reclaimed Water” means reclaimed domestic or municipal wastewater that has been treated to a quality suitable for certain purposes including landscape irrigation as allowed by applicable law including 30 TAC Chapter 210, and the City Code.

“Underpass” means any underground by-ways that travel north and south under Slaughter Lane and provide access between the OCMPGC and the lands within the District, eliminating the need to cross the surface of Slaughter Lane.

ARTICLE II

CONSENT TO CREATION OF DISTRICT

Section 2.01. Consent. The City consents to the creation of the District.

Section 2.02. Consent Conditions. The City consents to the creation of the District as required by the Enabling Legislation and conditions its consent upon the execution of this Consent Agreement by the District and the Developer evidencing their agreement to comply with the terms of the Enabling Legislation and with the terms of this Consent Agreement, to the extent allowed by law.

ARTICLE III

AGREEMENTS IN ADVANCE OF DEVELOPMENT

Section 3.01. Notice to Purchasers. (a) The District will adopt a Notice to Purchasers as required by Section 49.452 of the Texas Water Code in a form substantially similar to Exhibit “E” in order to effectively notify persons prior to purchasing land within the District that:

(i) ad valorem property taxes will be imposed by the District,

(ii) that such tax will be in addition to the tax imposed by the City,

(iii) that the District tax is expected, in part, to provide funds for planning, design, maintenance and operation, and phased construction, if, as, and when possible, of park and recreational facilities within the District and within the OCMPGC.

(b) In addition to the notice to purchasers required by Section 3.01(a) above, the District will promulgate and record in the Official Public Records of Travis County, Texas a supplemental "plain speak" notice in the form attached as **Exhibit "E-1."**

(c) The "plain speak" Notice to Purchasers shall be made available in both Spanish and English. The Developer may make the Notice to Purchasers required by the Texas Water Code available in Spanish and English, at its option.

Section 3.02. Master Park Plan. The Developer agrees to advance funding on behalf of the District to the APF to pay the cost of master planning the park and recreational facilities within the OCMPGC. The elements of the Master Park Plan are reflected in **Exhibit "F"**.

Section 3.03. In-District Improvements. The Developer intends to advance funding on behalf of the District to pay the costs of planning, design, and construction of public park improvements within the District, generally in the locations depicted on **Exhibit "B"**, including the Underpasses, a three-mile loop for hiking and biking, the trails along Slaughter Lane that provide access from the District to OCMPGC, the Pond and other open space areas within the southern portion of the development, and to convey such improvements to the District upon completion of construction and acceptance.

Section 3.04. Enabling Legislation Incorporated into Agreement. The provisions of the Enabling Legislation, attached to this Agreement as **Exhibit "A,"** are incorporated into and made a part of this Agreement for all purposes.

ARTICLE IV

DISTRICT GOVERNANCE

Section 4.01. District Board of Directors. (a) The Enabling Legislation provides that the District is to be governed initially by a Board of seven appointed directors. This Article IV contains the procedures for appointing persons to the Board of Directors as vacancies occur in the slate of initial permanent directors named below:

1. Susan Roth
2. Greg Canally
3. Jeff Francell
4. Philip Koske

5. Tyler Zickert
6. Sara Partridge
7. Andrea Rado Hamilton

(b) The Parties agree to the following system of Board member appointment:

(1) Of the seven members of the Board named above, the City has nominated three persons (Places 1, 2 and 3 above), and the Developer, on behalf of the District, has nominated four persons (Places 4, 5, 6 and 7 above). With the adoption of this Consent Agreement by the City, the City appoints all seven of the initial permanent directors as members of the Board.

(2) Members of the Board shall serve four-year terms, except for the initial one year term required in the Enabling Legislation in order to establish terms that are staggered, as set forth below. No member shall serve more than two consecutive terms of four years each. All directors must meet the qualifications set forth in the Enabling Legislation and more particularly specified in the City's Ordinance No. _____. The City shall appoint the members of the Board according to the procedure it follows when it appoints other citizen members of City Boards and Commissions.

(3) As vacancies occur, the City shall nominate directors to replace Places 1, 2 and 3 above ("City Directors") and the District, after its execution of this Consent Agreement, shall nominate directors to replace Places 4, 5, 6 and 7 above ("District Directors"). Until the District executes this Consent Agreement, the Developer shall nominate directors to replace Places 4, 5, 6 and 7 above.

(4) Nomination and Appointment of City Directors. In nominating and appointing City Directors, the City will follow the procedure set forth in the City Code for appointments to a board with fewer than seven members. The City will make its appointments and provide notice setting forth the appointments to the Board within 60 days of receipt of notice that a vacancy exists among the Board appointments that are made by the City in this Consent Agreement.

(5) Nomination and Appointment of District Directors. In nominating District Directors, the District will follow the procedure set forth in Texas Water Code Section 49.105(a), and the City shall appoint the District's nominees by adopting a resolution setting forth the appointments to the Board within 60 days of receipt of the District's nomination(s).

(6) Notwithstanding Sections 4.01(b) (4) and (5) preceding, if a Board vacancy, whether a City Director or a District Director, has not been filled before the 61st day after the vacancy occurs, the remaining members of the Board may fill the

vacancy in accordance with Texas Water Code Section 49.105(a), provided that District Directors shall always constitute a majority of the Board.

(7) The Directors in Places 1, 3, 5 and 7 above shall begin their first term of office on the date of the Board meeting at which the Board canvasses the ballots of the Confirmation Election and announces the results (the "Inaugural Date of Service"), and terminate on June 1, 2015.

(8) The terms of the Directors in Places 2, 4 and 6 above shall begin their first term of office on the date of the Board meeting at which the Board canvasses the ballots of the Confirmation Election and announces the results (the "Inaugural Date of Service"), and terminate on June 1, 2017.

(9) At such time as 1500 homes are occupied within the District, the District Directors will identify one resident homeowner to serve as one of the four District Directors. At such time as 2000 homes are occupied within the District, the District Directors will identify one resident homeowner to serve as the second of the four District Directors. At such time as 3000 homes are occupied within the District, the District Directors will identify one resident homeowner to serve as the third of the four District Directors. At such time as 3500 homes are occupied within the District, the District Directors will identify one resident homeowner to serve as the fourth of the four District Directors.

(10) The Board by resolution may change the number of voting directors on the Board if the Board determines that the change is in the best interest of the District and the City approves the change. In the event the Board elects to enlarge the Board, the Board shall notify PARD and the Developer of the need for additional nominations for Board members. The City must make additional appointments to fill such new positions on the Board as provided above. At no time may the Board consist of more City Directors than District Directors. The Board may not consist of fewer than seven nor more than 15 members and must be comprised of an uneven number.

(11) The PARD Director or his or her designee shall be an ex officio and non-voting member of the Board.

Section 4.02. District Information to be Provided to the City. The District will provide copies of the following documents to the City in care of the PARD Director:

(1) The Board's agenda for each meeting of the Board, concurrently with the posting of the agenda under the Open Meetings Act.

(2) The Board's minutes, no later than 15 days after approval of the minutes by the Board.

(3) The District's annual audit or financial dormancy affidavit and the annual budget and any budget amendments, no later than 30 days after approval by the Board.

Section 4.03. Service Agreements. The District may enter into service agreements.

(a) If the District desires to enter into a service agreement related to the operation or maintenance of OCMPGC Improvements, (a "OCMPGC Park Service Agreement") it must present a written request to do so to the Parties, who may consider the request for 30 business days. If the Parties fail to object to the District's request by the close of business on the 31st business day following the date the request is sent (evidenced by post mark or email time and date) then the District may enter into the requested OCMPGC Park Service Agreement.

(b) If a Party objects during the time period set forth in this section, the Parties shall discuss and edit the request until all Parties agree that the District has authorization to enter the requested OCMPGC Park Service Agreement or the District withdraws the request. OCMPGC Park Service Agreements that include the City must be approved by Council. If the Parties cannot agree, the Parties may utilize mediation.

ARTICLE V

AGREEMENTS RELATED TO FINANCING

Section 5.01. District Property Tax. To the extent allowed by law, the District agrees to impose upon all taxable property in the District an ad valorem tax and dedicate its received tax collections first to the purposes set forth in this Consent Agreement. The District agrees, to the extent allowed by law, to establish its fiscal year to be to the same as the City's, as that may change from time to time.

Section 5.02. Developer Reimbursements. (a) The parties acknowledge that, pursuant to the terms of the DFA and in compliance with the Enabling Legislation and all applicable laws, rules and regulations, the Developer intends to seek reimbursement from the District for funds that the Developer advances on behalf of or for the benefit of the District, including:

(i) fees arising from the legislative creation of and consent for the District, and organization, operation and administration of the District;

(ii) costs arising from the preparation of the Master Park Plan for the OCMPGC;

(iii) costs of design, construction, installation, operation and maintenance of the In-District Improvements;

- (iv) capital improvements related to park amenities in the District and OCMPGC, if any;
- (v) operation and maintenance of the OCMPGC Improvements pursuant to the terms of this Consent Agreement and any OCMPGC Park Service Agreement;
- (vi) parkland dedication fees required by the City as to land within the District;
- (vii) any debt service requirements that the Developer pays on behalf of the District.

(b) The District's Board will consider the DFA, which will include the terms set forth in this Section 5.02 at the meeting at which the Board canvasses the ballots of the Confirmation Election.

Section 5.03. Improvement Projects and Services. (a) The District has the authority, among others, to:

- (i) issue bonds; and
- (ii) contract with a governmental or private entity in order to provide, design, construct, acquire, improve, relocate, operate, maintain, or finance an improvement, project, or service; and
- (iii) use available funds as allowed by law.

(b) The City agrees that the District may issue its bonds to finance, pay, or reimburse up to 100% of all costs and expenses that it is authorized to finance, pay, or reimburse under the terms of the Enabling Legislation, the DFA and any other applicable laws, rules and regulations, including rules of the Commission, and any conflicting, inconsistent, or limiting provisions of Ordinance No. 810819-E, other City ordinances, or any other applicable rules are waived. To the extent allowed by law, the District may issue bonds for the planning and implementation of the purchase, construction, acquisition, repair, extension and improvement of land, works, improvements, facilities, equipment and appliances, undivided interests in facilities and contract rights necessary to :

(i) develop and maintain parks and recreational facilities as authorized by Subchapter N of Chapter 49, Texas Water Code, as amended, including the In-District Improvements and the OCMPGC Improvements or its share thereof; and

(ii) provide for delivery of power and lighting, potable water for water fountains, restrooms, and public showers, and for a wastewater system to collect, transport, process, and dispose of and control all domestic wastes generated from public restrooms whether in fluid, solid, or composite state (other than solid waste as defined in Chapter 15-6 of the City Code) and a gray water system to irrigate public parkland and for any other purpose for which use of gray water is permitted by the Commission and City Code and regulations, including transport facilities necessary to bring the gray water to needed areas whether inside the District or OCMPGC;

(iii) pay for expenses authorized by Section 49.155, "Payment of Expenses," Texas Water Code.

(d) The Parties acknowledge that the Developer has paid parkland dedication fees ("Dedication Fees") as required by Title 25 of the City Code, relating to the Developer's property within the District for up to 3533 dwelling units, and will pay additional fees for any dwelling units constructed in addition to the initial 3533. The City agrees to use all Dedication Fees received from Developer, whether to date or in the future, exclusively on improvements within OCMPGC per Section 7.01(b) below.

Section 5.04. Notification for Bond Reviews. The District agrees to include, in each application for the approval of the issuance of Bonds, the terms and conditions of this Consent Agreement related to bond issuance. The Developer and the District each agree that it will not request reimbursement or authorization to reimburse expenses not authorized by this Consent Agreement.

Section 5.05. Bonds Requiring Commission Approval. The District must give written notice to the City's Chief Financial Officer at the time the District submits any application to the Commission for approval of the issuance of Bonds, and the City agrees it will promptly, but no later than 30 business days after such submission, provide the District written evidence of its conditioned consent if required by the TCEQ to complete its review of the bond application. The City's consent may be conditioned upon its final approval upon review of the TCEQ staff memorandum issued prior to final TCEQ approval of the bond issuance.

Section 5.06. City Review and Approval. (a) Upon concurrence with a "staff memorandum" and proposed order issued by the Commission, the District must submit a copy of its bond application to the City's Chief Financial Officer for review, including the engineering report and projected debt service schedule; a copy of the "staff memorandum" and proposed order; and any other information reasonably required by the City.

(b) The City's approval of any District Bond issue will not be unreasonably withheld, conditioned or delayed and if the City has not acted to approve or

disapprove the sale of the Bonds within 14 days after receipt of the “staff memorandum” and proposed order, the sale of the Bonds will be deemed approved and the District may proceed with the sale. The City will have the right to disapprove the sale of any proposed Bond issue only if the District or the Developer is not in compliance with this Consent Agreement.

(c) The District may be required to provide evidence of compliance with this Consent Agreement and applicable City ordinances at the time of the sale of its Bonds; therefore, the City agrees that the City’s Chief Financial Officer will be authorized to and will provide written confirmation of City approval to the District promptly upon the District’s request.

Section 5.07. Other Funds. (a) To the extent allowed by law, the District may use funds obtained from any available and lawful source to accomplish the purposes set forth in this Consent Agreement. Such funds may include revenues from any lawful source and District maintenance taxes, loans, gifts, grants, and donations from public and private sources. To the extent any bond funds are issued by the City or the District as tax-exempt bonds, the District and the City will take such steps as are necessary to preserve the tax-exempt status of those bonds.

(b) The Parties contemplate that fees may be charged to persons and entities for services and facilities use within the OCMPGC rationally related to such use, and agree that all funds generated by such activities shall be accounted for separately and shall be an offset against any Base Park Payment or other Grant paid by the District to the City.

(c) If the City and the District enter into an agreement under Section 4.03 (b), the District may be authorized in such agreement to establish fees for use of the OCMPGC Improvements and the City will approve such fees, provided they are reasonable and related to the type of use of the OCMPGC Improvements involved.

Section 5.08. Dissolution. A district may not be dissolved by its board if the district has any outstanding bonded indebtedness until that bonded indebtedness has been repaid or defeased in accordance with the order or resolution authorizing the issuance of the bonds. If the District intends to terminate payments to the City for the OCMPGC, it shall give at least 24 months’ notice to the City of this intent so that the City may budget for the operations of that parkland.

Section 5.09. No Full Faith and Credit Pledge by City or District. Except as provided by Section 375.263, Local Government Code, Dissolution by City Ordinance, the City is not required to pay a bond, note, or other obligation of the District, including the obligation of the District under any DFA. The District is not required to pay a bond, note, or other obligation of the City.

ARTICLE VI

DISTRICT CONFIRMATION ELECTION

Section 6.01. Confirmation Election Required. The Board that is named in the Enabling Legislation shall meet and call the District's Confirmation and Tax and Bond Election at any time after the Effective Date of this Agreement, and is expected to do so in time to hold its election in November 2014.

Section 6.02. Execution of the Consent Agreement by District. At the Board meeting at which the ballots of the Confirmation and Tax and Bond Election are canvassed, the Board shall consider and execute this Agreement and be bound by its terms.

ARTICLE VII

MANAGEMENT OF OCMPGC

Section 7.01. Overview. (a) The Parties are cooperating in the planning, designing, developing, operating, and maintaining of the OCMPGC. The APF has entered into a contract with the Developer to serve as the manager of the planning process for OCMPGC, and has issued a Request for Proposal, evaluated the submittals, and selected a design professional to develop the Master Park Plan for OCMPGC. The Developer, on behalf of the District, agrees to pay the costs of the design of the Master Park Plan and the City shall have no responsibility to reimburse such expenditure(s). The Master Park Plan process shall be conducted in a manner consistent with the City's requirements for park master plans. The Developer's commitment includes the selection process and all planning and design work and shall terminate at the time the Master Park Plan is approved and accepted by the City. The Developer is not required to contribute funds for surveying, engineering design, or construction of park improvements in OCMPGC.

(b) The City intends to seek funding for the majority of the capital improvements within OCMPGC as authorized by Council and as funds become available and appropriated for such improvements. The City agrees to dedicate an amount of money equal to the total amount of Dedication Fees received from the Developer in connection with the land in the District to planning and construction of the OCMPGC Improvements consistent with the timing set forth in this Consent Agreement.

Section 7.02. Flow of Funds. (a) Pursuant to the DFA, the Developer shall advance to the District the money necessary to provide funding for:

- (i) the APF-led planning process for OCMPGC;

(ii) the design, construction, operation and maintenance of the In-District Improvements; and

(iii) the operation and administration of the District.

(b) To the extent allowed by law, regulation and rules, the District intends to reimburse the Developer for such costs, and other costs paid by the Developer, pursuant to the terms of the DFA.

(c) The City agrees that it will not construct or install OCMPGC Improvements unless and until the District has collected sufficient tax revenues to support the operation and maintenance of said improvements at a Level One Maintenance standard, or unless the City agrees to fund or perform such operation and maintenance, as more fully detailed in Section 7.04 below.

(d) The City agrees that it will complete construction of the Base Park Improvement in the fall of 2017. Unless and until there is any contrary agreement per Section 7.06 below, the City agrees to operate and maintain the Base Park Improvement at Level One Maintenance. The Developer agrees to advance sufficient funds to the District for Base Park Payment(s) until such time as the District has sufficient financial resources to make such payment(s). To the extent allowed by law, the annual Base Park Payment shall be made by the District as a Grant to the City pursuant to Section 3924.109 of the Enabling Legislation.

(e) Upon approval by the voters at the confirmation and tax and bond election, which is expected to occur in November 2014, the District intends to impose an ad valorem property tax at a rate not to exceed \$0.20.

Section 7.03. Amendments to the Plan. The Master Park Plan has been conceived by the Parties together, and completion of the Master Park Plan is expected to occur in 2015. Over time, the Parties may determine that the Master Park Plan should be changed or modified or revised, if all Parties agree.

Section 7.04. Timing. (a) The Developer has begun the construction of the In-District Improvements and will proceed with reasonable diligence to completion. Subject to Section 7.02(c) above, The City will commence the construction of the OCMPGC Improvements consistent with the Master Plan and as authorized by Council and will proceed with reasonable diligence.

(b) Following City approval by the departments with authority to review and approve plans and specifications for proposed In-District Improvements, the Developer will notify PARD within 10 business days of receipt of such approval. PARD will arrange for an inspection if required, and the inspection will be performed no later than 30 days from the date of the City's approval of the plans and specifications.

(c) The Developer and the District will construct the In-District Improvements to meet or exceed City design standards, specifications, and requirements, unless otherwise provided in this Consent Agreement or approved by the City. The In-District Improvements will be operated and maintained to meet or exceed then-current City standards, if any, for the operation and maintenance of similar park and recreational facilities.

(d) Subject to the offset in Section 5.08 (b) above, the District agrees to make or cause to be made the initial Base Park Payment on or before October 1, 2017, and to make an additional Base Park Payment on or before October 1 of every year thereafter throughout the term of this Consent Agreement, in addition to such other payments that it makes to the City.

(e) Excluding the Base Park Improvement, the City has no obligation to expend City funds for OCMPGC Improvements unless the District can support the corresponding operation and maintenance costs for such improvements. In order to determine the availability of District funds for such purpose, on request of the PARD Director, the District shall submit the most recently obtained certified appraised values within the District, copies of the District's then-current annual budget and most recent audit, and its calculation of available, uncommitted funds. The District may include in its calculation a reserve recommended by its bookkeeper and financial advisor. The Parties will then collaborate to reach a joint decision on what OCMPGC Improvements, if any, should be constructed with the expectation of the District funding operation and maintenance and the timing of such construction.

(f) Notwithstanding the foregoing Section 7.04(e), the City, in its sole discretion and its sole expense, may construct, operate and maintain OCMPGC Improvements for an interim time period until District tax revenues are sufficient to support the operation and maintenance costs of such facilities; provided, however, that the District shall have no obligation to fund the operation and maintenance of such facilities unless and until it is agreed among the Parties that the District has sufficient funds and revenue streams to do so. The City acknowledges that the District may not be able to fund the operation and maintenance of such facilities.

Section 7.05. District Tax. To the extent allowed by law, the District pledges that it will levy an annual ad valorem tax without legal limit as to rate or amount but in no event less than the rate per \$100 of assessed valuation, that is, when levied against all taxable property in the District, sufficient to provide for the payment of reasonable and necessary operation and maintenance expenses of OCMPGC Improvements agreed upon in writing by the City, the District and the Developer, if any, as such improvements are constructed and installed by the City. The Parties acknowledge that the certified appraised values within the District are a major determining factor in setting the District tax rate and that the taxes collected will be used to fund expenses other than the maintenance and operation of the OCMPGC Improvements.

Section 7.06. District Operation and Maintenance of OCMPGC. In order to obtain the best value for the Parties, the District may enter into a Park Service Agreement to operate and maintain some or all of the OCMPGC Improvements at Level One Maintenance. The District may initiate a request to enter such a Park Service Agreement under Section 4.03, above.

Section 7.07. Mutual Assurances. The Parties agree that once a year the Board of Directors of the District, the PARD Director and his or her staff, and representatives of the Developer will meet in order to review the audited financials of the City and the District with respect to capital, operation and maintenance expenditures and income related to the then-existing OCMPGC Improvements. The Parties also shall at that time discuss the efficacy of the past year's use of funds and improvements that could be considered for the upcoming year. If the Parties conclude that District tax revenues have been paid to the City but were not necessary or used for operation and maintenance in the OCMPGC, the funds shall be returned promptly to the District.

ARTICLE VIII

CITY, DISTRICT, AND DEVELOPER COVENANTS

Section 8.01. The City. The City represents and warrants to the District and the Developer that the City has full constitutional and lawful right, power, and authority, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid, and binding obligation of the City, is enforceable in accordance with its terms and provisions and does not require the consent of any other governmental authority. The City further represents and warrants that the OCMPGC improvements are and will be open to the public at large.

Section 8.02. The District. The District represents and warrants to the City and the Developer that the District has full constitutional and lawful right, power, and authority under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be authorized and approved by all necessary District proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid, and binding obligation of the District, is enforceable in accordance with its terms and provisions and does not require the consent of any other governmental body. The District further represents and warrants that the In-District Improvements constructed and maintained with public funds, or other funds lawfully available to the District for the park improvements are open to the public at large.

Section 8.03. The Developer. The Developer represents and warrants to the City and the District that the Developer has full lawful right, power, and authority to execute and deliver and perform the terms and obligations of this Agreement and all

of the foregoing have been or will be duly and validly authorized and approved by all necessary actions of the Developer. The Developer represents that it will abide by the terms of any planned unit development agreement made with the City, as it may be amended from time to time.

ARTICLE IX

GENERAL PROVISIONS

Section 9.01. Time of the essence. Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 9.02. Default and Remedies.

(1) Default: A Party shall be deemed in default under this Agreement (which shall be deemed a breach) if such Party fails to materially perform, observe or comply with any of its covenants, agreements or obligations or breaches or violates any of its representations contained in this Agreement.

(2) Notice of default and opportunity to cure: 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 30 days of the receipt of such notice and is thereafter diligently pursued until completion.

(3) If any default is not cured as provided above, or a dispute arises among the Parties regarding performance under this Consent Agreement which the Parties are unable to resolve through negotiation, the Parties agree that the dispute will be submitted to mediation before any suit is filed, and the cost of the mediation will be shared equally among participating Parties. If the mediation does not successfully resolve the dispute, each Party is free to pursue any or all other remedies available to it. The Parties agree to share the costs of any mediation equally.

(4) If any default is not cured as provided above and is deemed a breach of this Agreement, and non-binding alternative dispute resolution methods fail, the non-defaulting Party, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements contained in this Consent Agreement, may be awarded damages for failure of performance, or both. Except as otherwise set forth in this Consent Agreement, no action taken by a Party pursuant to the provisions of this Article or pursuant to the provisions of any other Article of this Consent Agreement shall be deemed to constitute an election of remedies, and all remedies set

forth in this Consent Agreement shall be cumulative and non-exclusive 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 any other Party. The Parties agree to bear their respective legal fees and costs associated with any action described in this subsection.

(5) Notwithstanding anything in this Consent Agreement which is or may appear to be to the contrary, if the performance of any covenant or obligation to be performed by any Party is delayed as a result of Force Majeure the time for such performance shall be extended by the amount of time of such delay.

Section 9.03. Notices. Any notice sent under this Consent Agreement (except as otherwise expressly required) shall be written and mailed or sent by rapid transmission confirmed by mailing written confirmation at substantially the same time as such rapid transmission, or personally delivered to an officer of the receiving Party at the following addresses:

If to the District:

Onion Creek Metro Park District
c/o Allen Boone Humphries Robinson LLP
1108 Lavaca Suite 510
Austin, Texas 78701
Attn: President, Board of Directors

With copies to the District General Counsel
Attention: ABHR

If to the City:

The City of Austin, Texas
301 West Second Street
Austin, Texas 78701
Attention: City Manager

With copies to the Law Department
Attention: City Attorney

If to the Developer:

Austin Goodnight Ranch LP
c/o David Mahn
Benchmark Development

200 Congress Ave., Suite 9A
Austin, Texas 78701

Each Party may change its address by written notice in accordance with this Section. Any communication addressed and mailed in accordance with this Section shall be deemed to be given when so mailed, any notice so sent by rapid transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when received for, or actually received by, an authorized as the case may be.

Section 9.04. Limitations on Funding by Governmental Entities. (a) The Parties acknowledges that the City has provided notice of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person who is in arrears to City of Austin for taxes, and of § 2-8-3 of the Austin City Code concerning the right of City of Austin to offset indebtedness owed to the City of Austin.

(b) The Parties acknowledge notice from the City and the District that each entity's payment obligations under this Consent Agreement are payable only from funds appropriated or available for the purpose of this Consent Agreement. If either entity fails to appropriate funds for its obligations referenced in this Consent Agreement, or if there are no other lawfully available funds for such entity's obligations referenced in this Consent Agreement, the funding for that entity's obligations referenced in this Consent Agreement is void. The City and the District shall provide the other Parties with notice of the failure of the entity to make an adequate appropriation for any fiscal year to pay the amounts due for its obligations referenced in the Consent Agreement or the reduction of any appropriation to an amount insufficient to permit the entity to pay its obligations under the Consent Agreement or the failure of the entity to have lawfully available funds for such obligations.

Section 9.05. Amendments and Waivers. Any provision of this Consent Agreement may be amended or waived if such amendment or waiver is in writing and is approved by the Parties. No course of dealing on the part of the Parties nor any failure or delay by the Parties with respect to exercising any right, power or privilege pursuant to this Consent Agreement shall operate as a waiver, except as otherwise provided in this Consent Agreement.

Section 9.06. Severability. In the event that any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provisions of this Consent Agreement and, to that end, all provisions, covenants, agreements or portions of this Consent Agreement are declared to be severable.

Section 9.07. Successors and Assigns. No Party to this Consent Agreement shall have the right to assign its rights or obligations under this Consent Agreement or any interest herein, without the prior written consent of the other parties, which consent shall not be unreasonably withheld, conditioned, or delayed, so long as the assignee has demonstrated that the assignee has the financial and managerial capacity, the experience, and expertise to perform the duties and obligations so assigned and so long as the assigned rights and obligations are assumed without modifications to this Consent Agreement.

Section 9.08. Exhibits, Titles of Articles, Sections and Subsections. (a) The exhibits attached to this Consent Agreement are incorporated and shall be considered a part of this Consent Agreement for the purposes stated, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Consent Agreement, the provisions of this Consent Agreement shall prevail. All titles or headings are only for the convenience of the Parties and shall not be construed to have any effect or meaning as to the agreement between the Parties. Any reference to a section or subsection shall be considered a reference to such section or subsection of this Consent Agreement unless otherwise stated. Any reference to an exhibit shall be considered a reference to the applicable attached exhibit unless otherwise stated.

(b) the Exhibits to this Consent Agreement are:

EXHIBIT A	The Enabling Legislation
EXHIBIT B	The In-District Improvements
EXHIBIT C	City Maintenance Standards
EXHIBIT D	The Master Park Plan for the OCMPGC
EXHIBIT E	The Form of Notice to Purchasers
EXHIBIT E-1	“Plain speak” Notice to Purchasers
EXHIBIT E-2	“Plain speak” Notice to Purchasers in Spanish
EXHIBIT F	The Elements of the Master Park Plan

Section 9.09. Applicable Law. This Agreement is a contract made under and shall, be construed in accordance with and governed by the laws of the United States of America and the State of Texas, and any actions concerning this Agreement shall be brought in either the Texas State Courts of Travis County, Texas or the United States District Court for the Southern District of Texas.

Section 9.10. Entire Agreement. This written agreement represents the final agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties. There are no unwritten oral agreements between the Parties.

Section 9.11. Term and Termination. This Agreement shall be in force and effect from the Effective Date of this Agreement.

Section 9.12. Approval by the Parties. Whenever this Agreement requires or permits approval or consent to be given by any of the Parties, the Parties agree that such approval or consent shall not be unreasonably withheld or delayed.

Section 9.13. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

Section 9.14. Interpretation. This Agreement has been jointly negotiated by the Parties and shall not be construed against a Party because that Party may have primarily assumed responsibility for the drafting of this Agreement.

IN TESTIMONY OF WHICH this instrument has been executed in multiple counterparts, each of equal dignity and effect, on behalf of the City, the District, and the Developer effective as of the date last written.

[EXECUTION PAGES FOLLOW]

**CONSENT AGREEMENT BY AND AMONG THE CITY OF AUSTIN, TEXAS, UNION CREEK
METRO PARK DISTRICT, AND AUSTIN GOODNIGHT RANCH LP (JUNE 26, 2014)**

THE CITY OF AUSTIN

By: _____

Name: Mark Ott

Title: City Manager

ATTEST/SEAL:

City Clerk

CONSENT AGREEMENT BY AND AMONG THE CITY OF AUSTIN, TEXAS, UNION CREEK
METRO PARK DISTRICT, AND AUSTIN GOODNIGHT RANCH LP (_____, 2014)

ONION CREEK METRO PARK DISTRICT

President, Board of Directors

ATTEST:

Secretary, Board of Directors

**CONSENT AGREEMENT BY AND AMONG THE CITY OF AUSTIN, TEXAS, UNION CREEK
METRO PARK DISTRICT, AND AUSTIN GOODNIGHT RANCH LP (JUNE 26, 2014)**

AUSTIN GOODNIGHT RANCH LP

By: _____

Name: David Mahn

Title: Vice President, Benchmark Land &
Exploration

Member, Austin Goodnight Ranch PLLC,

General Partner, Austin Goodnight Ranch LP