

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

**FIRST AMENDMENT TO COST
REIMBURSEMENT AGREEMENT
(PEARSON PLACE SUBDIVISION)**

THIS FIRST AMENDMENT TO COST REIMBURSEMENT AGREEMENT (“**First Amendment**”) is made and entered into by and between the **City of Austin**, a Texas municipal corporation chartered under Article XI, Sec. 5 of the Texas Constitution (“**City**”) and **Century Land Holding II, LLC**, a **Colorado limited liability company**, (the “**Owner**”), as assignee of Pearson Place Subdivision.

**I.
RECITALS:**

1.01. WHEREAS, on February 19, 2013, the City and Pearson Place at Avery Ranch, Ltd. entered into a Cost Reimbursement Agreement (the “Wastewater Project Cost Reimbursement Agreement”) that set forth agreed terms for the design and construction of certain utility improvements that were determined to be necessary to serve a single and multi-family development as more particularly described in the Wastewater Project Cost Reimbursement Agreement. The Wastewater Project Cost Reimbursement Agreement was assigned by a duly executed Assignment Agreement between Pearson Place at Avery Ranch, Ltd. and Century Land Holdings II, LLC on July 9, 2014, whereby Century Land Holdings II, LLC has assumed all duties and obligations of the Owner. The Wastewater Project Cost Reimbursement Agreement was approved by City Council for an amount not to exceed \$ 2,131,677.19.

1.02. WHEREAS, since the bids for the construction of the Wastewater Project came in more than the original cost estimate, on April 17, 2014, the City Council authorized an amendment of the Wastewater Project Cost Reimbursement Agreement to provide for supplemental reimbursement for the additional actual hard construction costs and soft costs associated with the Wastewater Project for a total combined amount of up to \$2,778,484.43

1.03. WHEREAS, the City and the Owner now desire to enter into this First Amendment to the Wastewater Cost Reimbursement Agreement to increase by \$ 646,807.34 the City’s cost reimbursement amount payable to the Owner for actual hard construction costs and soft costs for the Wastewater Project for a total not to exceed amount of \$ 2,778,484.43.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements and covenants set forth below, the City and Owner hereby amend the Wastewater Project Cost Reimbursement Agreement as follows:

II.
AMENDMENTS TO THE WASTEWATER PROJECT
COST REIMBURSEMENT AGREEMENT

2.01. From and after the date of this First Amendment, all references in the Wastewater Project Cost Reimbursement Agreement to the “Agreement” shall mean and refer to the Wastewater Project Cost Reimbursement Agreement as amended by this First Amendment. From and after the date of this First Amendment, all references in the Wastewater Project Cost Reimbursement Agreement to the “Owner” shall mean Century Land Holdings II, LLC.

2.02 **Section 1.04** is amended to read as follows:

“**1.04** By its approval on June 4, 2015 the Austin City Council authorized the City to enter into this Agreement with the Owner to design and construct the Wastewater Project as described in **SER No. 2814**, and for the City to reimburse the Owner for up to \$2,778,484.43 of actual construction costs (“hard costs”) and costs incurred by the Owner for engineering, design, and project management (“soft costs”) to complete the Wastewater Project.”

2.03. Section 3.01 is amended to read as follows:

“**3.01. Estimated Project Costs.** The City and the Owner have estimated the original total reimbursable hard construction costs and soft costs of the Wastewater Project were originally estimated to be \$2,131,677.19. The recently approved low bid for the Wastewater Project was \$3,517,671.00. The parties acknowledge and agree that the final actual construction costs for the Wastewater Project may be greater or less than \$3,517,671.00.”

2.04. Subsections (a) and (b) of Section 3.04 are amended to read as follows:

“(a) Subject to completion of the Wastewater Project by the Owner and final acceptance thereof by the City, the City agrees to reimburse to the Owner for the following **hard costs** incurred by the Owner:

(1) for the 24-inch Gravity Wastewater Line Improvements and appurtenances;

(2) for the Lift Station Improvements, Force Main Improvements and appurtenances in an amount not to exceed 57.39% of Owner’s hard costs; and

(3) for the 12-inch Gravity Wastewater Line Improvements and appurtenances in an amount not to exceed thirty three percent (33%) of the Owner’s hard costs.

(b) Subject to completion of the Wastewater Project by the Owner and final acceptance thereof by the City, the City agrees to reimburse to the Owner for the following **soft costs** incurred by the Owner:

(1) for the 24-inch Gravity Wastewater Line Improvements and appurtenances in an amount not to exceed fifteen percent (15%) of the Owner's hard costs;

(2) for the Lift Station Improvements, Force Main Improvements and appurtenances in an amount not to exceed fifteen percent (15%) of the 57.39% of the Owner's hard costs; and

(3) for the 12-inch Gravity Wastewater Line Improvements and appurtenances in an amount not to exceed fifteen percent (15%) of the thirty three percent (33%) of the Owner's hard costs."

2.05. Section 6.15 is amended to read as follows:

"6.15. Expiration of Agreement. Unless sooner terminated under the provisions of this Agreement, this Agreement shall expire of its own terms and without further notice at 12:00 o'clock a.m. on the next business day following the second anniversary of the effective date of this Agreement, if actual construction of the Wastewater Project has not commenced before that date."

III. GENERAL CONDITIONS

3.01. Effect of This Amendment. The terms and conditions of the Wastewater Project Cost Reimbursement Agreement are incorporated by reference for all purposes. Except as specifically amended and modified by this First Amendment, the parties hereby agree that the terms and conditions of the Wastewater Project Cost Reimbursement Agreement are in full force and effect as written.

3.02. Resolution of Conflicts. If there is any conflict or inconsistency between the provisions of this First Amendment and the Wastewater Project Cost Reimbursement Agreement, the provisions of this First Amendment will control.

3.03. Defined Terms. All terms delineated with initial capital letters in this First Amendment that are defined in the Wastewater Project Cost Reimbursement Agreement shall have the same meanings in this First Amendment as in the Wastewater Project Cost Reimbursement Agreement. Other terms have the meanings commonly ascribed to them.

3.04. Notices. Notices to Owner shall be delivered to:

Century Land Holdings II, LLC
8390 E. Crescent Parkway, Suite 650
Greenwood Village, Colorado 80111

3.05. Duplicate Originals. This First Amendment may be executed in duplicate originals, each of equal dignity.

3.06. Effective Date. This First Amendment will be effective from and after the date of execution by the City and Owner.

IN WITNESS WHEREOF, the authorized representatives of the City and Owner have executed this First Amendment, as of the date(s) indicated below.

Approved as to form:

CITY OF AUSTIN:

Maria Sanchez
Assistant City Attorney

By: _____
Robert Goode
Assistant City Manager

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THIS INSTRUMENT was acknowledged before me on this ____ day of _____, 2015, by Robert Goode, Assistant City Manager of the City of Austin, Texas, a municipal corporation, on behalf of said municipal corporation.

(SEAL)

Notary Public, State of Texas

Approved as to form:

**Century Land Holdings II, LLC, a Colorado
limited liability company d/b/a Century LH II,
LLC**

Attorney for Owner

By: _____
Name: _____
Title: _____

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THIS INSTRUMENT was acknowledged before me on this ____ day of _____, 2015, by Todd Amberry, Vice President Land and Acquisitions on behalf of Century Land Holdings II, LLC.

(SEAL)

Notary Public, State of Texas