



Recommendation for Water & Wastewater Commission

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| Commission Meeting Date: | January 13, 2016 |
| Council Meeting Date: | January 28, 2016 |
| Department: | Austin Water |
| SUBJECT | |
| Approve an ordinance authorizing negotiation and execution of an amended wastewater cost reimbursement agreement with Club Deal 120 Whisper Valley, L.P., for the design and construction of a phased wastewater treatment plant and wastewater interceptor in an amount not to exceed \$18,194,779 (which represents an increase of \$3,394,779). This ordinance would supersede ordinances 20070607-004, 20100527-006, 20100826-004, 20130117-015, and 20140807-013 and would waive City Code Section 25-9-33, 25-9-62, 25-9-63, 25-9-64 and resolution 20080214-055. | |
| AMOUNT AND SOURCE OF FUNDING | |
| Funding is available in the FY 2015-2016 Capital Budget of the Austin Water. | |
| Purchasing Language: | N/A |
| Prior Council Action: | <p>June 7, 2007- Council approved an agreement relating to a cost reimbursement agreement.</p> <p>February 14, 2008- Council approved a resolution regarding pump and haul operations.</p> <p>August 26, 2010- Council approved an amendment to a cost reimbursement agreement.</p> <p>January 17, 2013- Council approved an amendment to a cost reimbursement agreement.</p> <p>August 7, 2014- Council approved an amendment to a cost reimbursement agreement.</p> |
| For More Information: | Bart Jennings, 512-972-0118; Denise Avery, 512-972-0104 |
| Boards and Commission Action: | <p>January 13, 2016- To be reviewed by the Water and Wastewater Commission.</p> <p>January 20, 2016- To be reviewed by the Public Utilities Committee.</p> |
| MBE/WBE: | N/A |

Background

Club Deal 120 Whisper Valley, Limited Partnership (the “Developer”) owns approximately 2,066 acres (the “Property”) generally located south of the City of Manor and north of FM 969 within the City of Austin’s (“City’s”) extraterritorial jurisdiction and the City’s Desired Development Zone as shown on the attached map. The Developer plans to construct single-family, multi-family, and commercial development within the Property that will require an estimated 8,600 units of wastewater service LUEs (Living Unit Equivalents). In June 2007, City Council approved a cost reimbursement agreement (“Agreement”) for the construction of a wastewater treatment plant and wastewater interceptor. In August 2010, City Council approved the creation of the Whisper Valley Public Improvement District (“PID”) for the Property.

Over time, the Agreement has been amended multiple times as the requirements related to the formation of the PID, infrastructure to be constructed, and financial obligations of the Developer changed.

In 2013, six years after the Agreement was executed, the contemplated 500,000 gallons per day (“gpd”) wastewater treatment plant (“Original WWTP”) was designed and bid with the lowest bid totaling approximately \$12 million, \$6 million more than was estimated in 2007. Because of the significant monetary difference between bid amount and the 2007 City Council authorization, the City and the Developer (the “Parties”) agreed that a redesign and rebid of the Original WWTP, and a change in identified phases of the project, may lower the costs. Unfortunately, the rebid totaled approximately \$11 million. The Parties then agreed on a design of a smaller wastewater treatment plant (250,000 average gpd, “Second WWTP”) in order to reduce the costs. However, because it will take 24 to 30 months to finalize the design and construction of the concrete basin Second WWTP, the Parties agreed that a 100,000 average gpd steel basin WWTP (“Start-up WWTP”) that would only take six to eight months to complete, be used for the first phase of the wastewater treatment plant (“WWTP”). The Start-up WWTP would be suited to meet imminent development needs for this area.

Requested amendments to Agreement

- 1. Increase the amount of wastewater soft costs (such as engineering, design, and project management) to be reimbursed to the Developer and allow each phase of the WWTP to be reimbursed on various acceptance criteria.**

The Developer has requested additional funds to pay for the additional designs and to be reimbursed for the additional design costs associated with, the lift station and site work, the Start-up WWTP, and the Second WWTP within 90 days of the City’s final acceptance of each design. The Developer has requested to be reimbursed for the project management costs within 90 days of the City’s conditional acceptance of each phase of the wastewater infrastructure. The Developer has requested to be reimbursed for any additional soft costs incurred after conditional acceptance within 90 days of the City’s final acceptance of each phase of the wastewater infrastructure (i.e. lift station and site work, Start-up WWTP, and Second WWTP) when placed in service. City Council previously approved \$3,300,000 for soft costs for the Original WWTP and interceptor. An

increase of \$394,779 for design costs is being requested for a total amount not to exceed \$3,694,779 for soft costs for the Start-up and Second WWTPs and interceptor. PID bond proceeds will not be used for any wastewater soft costs and City soft cost reimbursements will be directed to the Developer.

2. Increase the amount of hard costs for the construction of a phased WWTP starting with the Start-up WWTP and followed by the Second WWTP.

The first phase of design will be used to construct the Start-up WWTP. The treatment capacity will be increased as demands from this development and other potential development within the drainage basin grows. The hard costs associated with each phase of the WWTP will be reimbursed within 90 days of the City's conditional acceptance and to the extent additional funds are expended after final acceptance of each City-approved phase of the WWTP infrastructure (lift station and site work, Start-up WWTP, and the Second WWTP). The City will determine the construction schedule of the Second WWTP, and any subsequent WWTP(s). The City will use its due diligence to commence design of any new WWTP when the current operating WWTP reaches 75% of its treatment capacity and will start construction on any new WWTP when the current operating WWTP reaches 90% of its treatment capacity. The City will be allowed to construct the Second WWTP at the City's sole discretion. The City shall also have, after giving notice to the Developer, the sole discretion to assign all or any component thereof, of the cost reimbursement agreement to a developer(s) seeking wastewater service. Such developer(s) may be required to increase the treating or carrying capacity of the required wastewater infrastructure (wastewater interceptor and WWTP, as applicable). Club Deal 120 Whisper Valley shall also record within six months of execution of the amended agreement the required wastewater easements, as identified by the City, to allow the remaining portion of the wastewater interceptor be extended to the northern property line of the Property along FM 973. The soft costs associated with the engineering and survey services needed to dedicate the easements will be reimbursed within 90 days of the easement recordation by Club Deal 120 Whisper Valley. An increase of \$3,000,000 is requested for a total amount not to exceed \$9,000,000 for WWTPs hard costs. The Developer has agreed to use its own funds for the construction of the lift station and Start-up WWTP, and may use its own funds for the construction of the Second WWTP, therefore, if the Developer uses its own funds for the construction of the lift station, Start-up WWTP, or the Second WWTP, the City will reimburse the hard costs to the Developer. The City may, at its sole discretion, allow the Developer to use a portion of the \$6.6 million in PID bond proceeds designated for wastewater infrastructure toward the upcoming \$16 million dollar payment(s) due in 2016.

3. Temporarily waive the resolution related to pump and haul services.

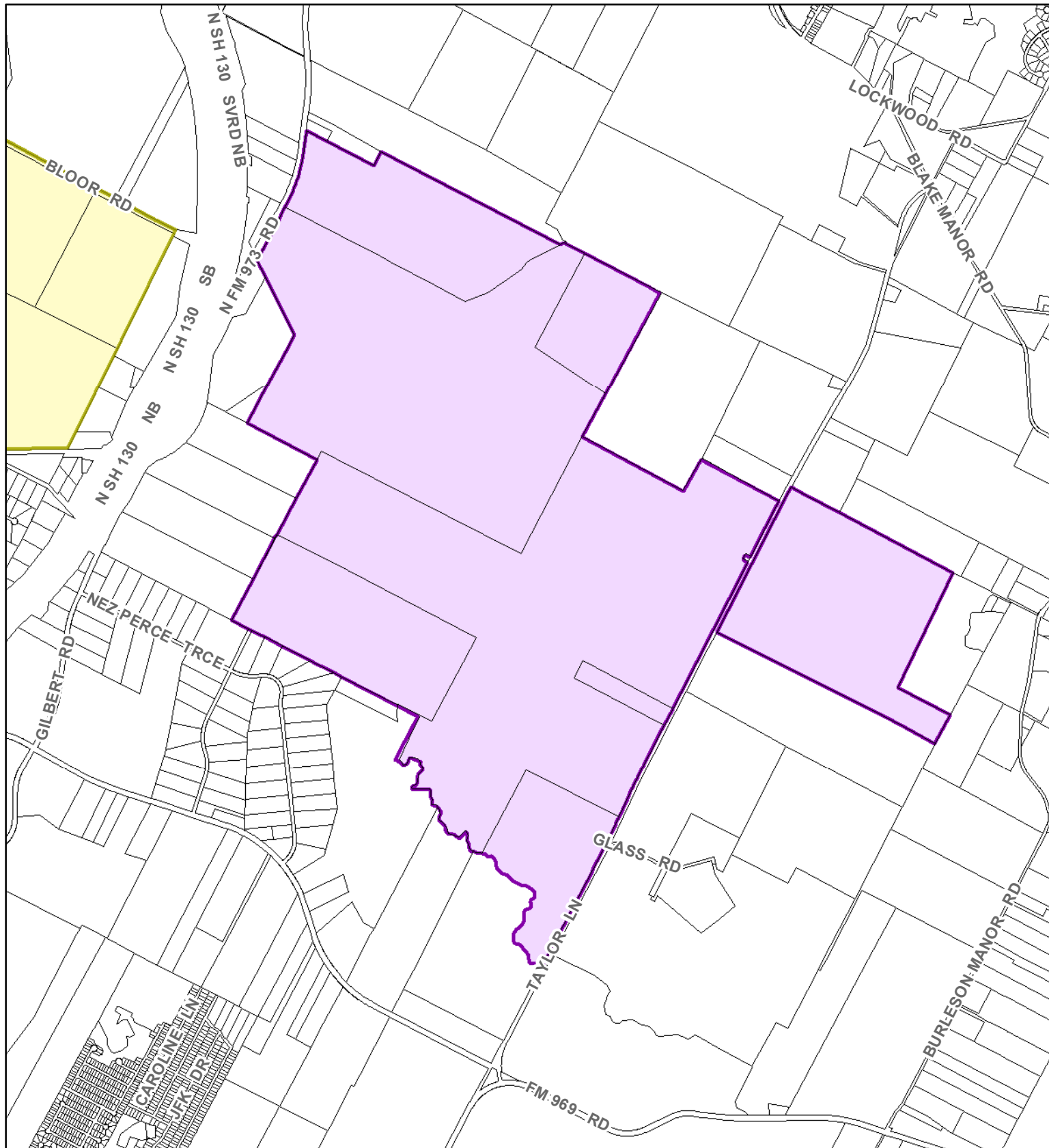
Resolutions 20080214-055 prohibits the use of wastewater pump and haul services for developments except for emergency or unique operational situations. Because of the delays associated with the designs and bidding of the Original WWTP, the Developer has requested temporary pump and haul services, at the Developer's cost and liability, after the City's interim conditional acceptance of the lift station, until such time the Start-up WWTP is conditionally accepted by the City and is ready for service. The expected amount of time for temporary pump and haul service by the Developer is about 6 to 9 months from the conditional acceptance of the first phase of the lift station. No Certificates of Occupancy will be released by the City for this development after the one year anniversary date

of Council approval of this amendment, if the Start-up WWTP has not been conditionally accepted by then. The Developer will not be reimbursed for the costs associated with its pump and haul and will not be allowed to use PID bond proceeds to pay for pump and haul services. Therefore, there is no additional funding for this particular change to the Agreement. The Developer will post a bond, acceptable to the City, for the construction of the Start-up WWTP and the Developer's temporary pump and haul services. The City will not approve another platted subdivision or site plan within the Property until such time as the Start-up WWTP is conditionally accepted by the City and the design for the Second WWTP has the City's final approvals. Thereafter, the Developer can continue to plat as needed.

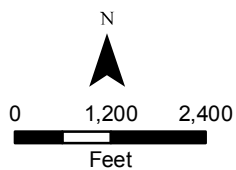
Major terms of the Agreement that will remain unchanged include the Developer allowing the size of the WWTP to be expanded to 10 million gpd on the City's existing wastewater easement, and paying all applicable City fees including capital recovery fees.

Summary

The total amount of authorized funds for wastewater soft costs (such as engineering, design, and project management) for the Start-up and Second WWTPs and wastewater interceptor shall not exceed \$3,694,779. The total amount of authorized funds for the hard costs for the construction of the wastewater interceptor shall not exceed \$5,500,000, which remains unchanged from the City Council approved funding identified in the original Agreement. The total amount of authorized funds for the hard costs for the construction of the WWTP (lift station, Start-up and Second WWTPs) shall not exceed \$9,000,000. The sum total of authorized cost reimbursements with regard to hard and soft costs of wastewater infrastructure is \$18,194,779. This is a net increase of \$3,394,779 from the current amount authorized by City Council for the cost reimbursement of this wastewater project.



- Whisper Valley
- Full-Purpose City Limit
- City of Austin ETJ



City of Austin
Austin Water Utility
October 2010



Whisper Valley Properties