

Exhibit A Location Map

Exhibit C - Tree Assessment

Tree#178: DBH 28"

This is a single trunk Live oak located along Cesar Chavez in the southwest corner of the site. It is a single trunk Live oak with a height of 35 feet and a canopy spread of 50 feet. This tree has about 25% deadwood but is in average health according to the size, color and abundance of foliage. The tree has no lean to it. It has retaining walls on the south and west sides of its 1/2 critical root zone. See site map. These walls occurs from 10 to 12 feet from the base of the tree. This tree is the best candidate for transplant among all the tree mentioned above, however, narrow crotch angles with the potential for included wood needs to be addressed by any tree company looking to transplant. If this tree stays in its present location or is transplanted, cabling would be very helpful in preventing splitting of three main lower stems.



Exhibit D

GWTP ANCILLARY AGREEMENT IMPLEMENTING TREE PRESERVATION GOALS UNDER THE MASTER DEVELOPMENT AGREEMENT

This GWTP Ancillary Agreement Implementing Tree Preservation Goals Under The Master Development Agreement (this “**Agreement**”) is made to be effective as of the 30th day of July, 2013 (the “**Effective Date**”), between THE CITY OF AUSTIN, a Texas home rule city and municipal corporation (the “**City**”), and TC GREEN WATER MASTER DEVELOPER, LLC, a Delaware limited liability company (“**Developer**”).

RECITALS

A. On May 24, 2012, the Austin City Council adopted Ordinance No. 20120524-012, approving the execution of a Master Development Agreement relating to the sale, purchase and development of that certain Property, commonly known as the Green Water Treatment Plant (as amended or modified from time to time, the “**MDA**”). Subsequent to Council approval, the MDA was executed by the parties thereto and became effective as of June 6, 2012. The Property subject to the MDA includes all of Block 1, Block 23, Block 185 and Block 188, each as more particularly described in the MDA.

B. The MDA is intended to govern the initial development of the Property and, as such, includes, but is not limited to, requirements for tree preservation, transplantation, and mitigation, as well as a request from the City Council in Section 3.1(h) for Developer to “work with the city arborist to determine whether or how the heritage trees on the site might be incorporated into the design of the project.”

C. In furtherance of Section 3.1(h), and reflecting a shared goal to preserve additional trees on Block 1 of the Property, Developer and the City arborist, together with City staff in the Economic Growth and Redevelopment Services Offices, have established a plan to incorporate heritage trees into the design of the project, as outlined in Section 2.1 of this Agreement (the “**Optional Heritage Tree Plan**”).

D. This Agreement, including but not limited to the Optional Heritage Tree Plan, is authorized by and consistent with the terms, conditions, and intent of the MDA, including but not limited to the following provisions:

(1) Section 3.1(h), which was added at the request of the City Council concurrent with approval of the MDA and requests Developer to work with the city arborist to determine whether or how the heritage trees on the site could be incorporated into design of the project; and

(2) Section 9.18, which authorizes any and all further lawful acts, deeds, and assurances as are reasonably necessary or appropriate to consummate and implement the transactions and agreements reasonably contemplated by the MDA (those actions permitted by Section 9.18 of the MDA, collectively, “**Further Assurances**”); and

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(3) Section 9.19, which authorizes the City Manager of the City of Austin, or its designee, to give any approval, agreement, clarification, determination, consent, waiver, estoppel, certificate, estimate or joinder required under the MDA without further approval, unless expressly stated otherwise and excepting substantial modifications or amendments (those actions permitted by Section 9.19 of the MDA without approval of the Austin City Council, collectively “**Clarifications/Minor Amendments**”); and

(4) Section 9.20, which authorizes the parties to execute memoranda correcting errors in the MDA or its exhibits pertaining to legal descriptions, parcel boundaries, or references thereto, and in the typing of the MDA or its exhibits (those actions permitted by Section 9.20 of the MDA without the necessity of an MDA amendment, collectively “**Corrections**”); and

(5) Sections 6(h) and 6(i) of the Declaration of Restrictive Covenants (GWTP) (“**Declaration**”), approved as Exhibit C to the MDA and to be recorded in the Official Public Records of Travis County, Texas, in connection with the first Takedown, which authorizes the City to terminate or reduce requirements in the MDA for public safety storefront and nonprofit space, respectively, on written notice to the applicable owner of the affected Property.

E. Under this Agreement, Developer, in its sole and absolute discretion, may elect to enact the Optional Heritage Tree Plan under Section 2.3, but has no obligation to enact the Optional Heritage Tree Plan.

F. If Developer elects to enact the Optional Heritage Tree Plan under Section 2.3 of this Agreement, then in consideration of, among other things, the public benefit conferred by the additional tree protections required thereunder and the corresponding reduction of certain incentives under the MDA, then the City shall be obligated to take such actions as are described in Sections 2.1(a), 2.2, 3.1 and 3.2 of this Agreement.

G. Developer and the City wish to enter into this Agreement to implement certain agreements of the City as contemplated by the MDA and, in that connection, Developer and the City wish to evidence certain other Further Assurances, Clarifications/Minor Amendments and Corrections pursuant to the MDA.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the City and Developer agree as follows:

ARTICLE I DEFINED TERMS; TERM OF AGREEMENT

1.1 Defined Terms. As used in this Agreement, terms used, but not defined in the body of this Agreement, will have the meanings ascribed thereto in the MDA except as otherwise provided herein.

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1.2 Term of Agreement. The term of this Agreement shall commence on the Effective Date and shall continue, on a Block by Block basis, until the MDA is terminated, on a Block by Block basis.

ARTICLE II FURTHER ASSURANCES REGARDING HERITAGE TREES

2.1 Optional Heritage Tree Plan. The Optional Heritage Tree Plan consists of the actions described in Subsections (a)-(f) of this Section 2.1 relating to the seven “Heritage” trees (Tree Numbers 1184, 1370, 1371, 1385, 1386, 1412 and 3018) and the one “Protected” tree (Tree Number 1430) which are delineated on Exhibit B attached to the MDA (collectively, the “**Identified Trees**”). Notwithstanding any provision of Section 3.1(g) of the MDA to the contrary, if Developer elects to enact the Optional Heritage Tree Plan under Section 2.3 of this Agreement, then the City must complete the actions specified in Subsection (a) of this Section 2.1 and Developer must complete the actions specified in Subsections (b)-(f) of this Section 2.1:

(a) In connection with the Environmental Remediation during the City’s ownership of Block 23, Tree Number 3018 will be removed and mitigated by the City as provided in the third grammatical sentence of Section 3.1(g) of the MDA.

(b) Prior to the development of Block 185, Tree Number 1184 will be transplanted to a location agreed upon by the City and Developer near the Property as provided in the fourth grammatical sentence of Section 3.1(g) of the MDA.

(c) In lieu of the \$58,632 payment set forth in the fifth grammatical sentence of Section 3.1(g) of the MDA, Developer:

(i) shall pay to the City the total sum of \$14,206 for the removal of Tree Number 1430 by no later than the Commencement of Construction for Block 1; and

(ii) shall not remove Tree Numbers 1370 and 1371, which have an aggregate appraised value of \$44,426, which substantiates the reduced payment of \$14,206 to the City under Subsection (c)(i) of this Section (i.e., \$58,632 - \$44,426 = \$14,206).

(d) In lieu of the 324 caliper inches set forth in the sixth grammatical sentence of Section 3.1(g) of the MDA, Developer shall mitigate the removal of Tree 1412 by:

(i) providing at least 96 caliper inches through: (A) new trees; (B) increasing the minimum caliper inches of onsite trees to be provided under the Great Streets Development Program; or (C) a combination of (A) and (B); and

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(ii) completing the installations required under Subsection (d)(i), above, at the appropriate time in the next growing season, but within 9 months of the Commencement of Construction on Block 1; and

(iii) not removing Tree Numbers 1385 and 1386, which would require aggregate mitigation of 228 caliper inches and which substantiates the reduced caliper inches of mitigation required under Subsection (d)(i) above (i.e., $324 - 228 = 96$).

(e) Any “transplanted” trees or “new trees” required under the Optional Heritage Tree Plan must, except as expressly provided in this Agreement, meet the requirements set forth in the seventh and eighth grammatical sentences of Section 3.1(g) of the MDA.

(f) Developer’s satisfactory performance of its obligations under the Optional Heritage Tree Plan as outlined in this Section 2.1 will be deemed full and complete compliance with Section 3.1(g) of the MDA and Ordinance No. 20120524-012.

2.2 City’s Further Assurance Agreements with Respect to Optional Heritage Tree Plan. If Developer elects to enact the Optional Heritage Tree Plan pursuant to Section 2.3 below, the City shall (i) accept compliance with the actions in Section 2.1(a)-(f) of this Agreement in full satisfaction of Section 3.1(g) of the MDA and Ordinance No. 20120524-012 and (ii) take the following additional actions in furtherance of its obligations under the MDA, all of which may be taken by the City Manager of the City of Austin or his designee:

(a) Acknowledge Developer’s right pursuant to Section 2(a) of the Declaration to reduce the required gross floor area from 1,750,000 gross square feet (exclusive of garages) to 1,690,000 gross square feet (exclusive of garages), which uses only 3.4% of the 10% by which Developer may reduce such square footage without the prior written approval of the City Manager of the Declarant;

(b) Agree that, if Developer requests reductions in the gross square footage (exclusive of garages) by up to an additional 60,000 gross square feet after Developer uses the full 10% reduction authorized in Section 2(a) of the Declaration, as described above, then the City Manager will not unreasonably withhold, condition or delay its approval of such request and will consider the design impacts resulting from Developer’s election to enact the Optional Heritage Tree Plan and the Developer’s furtherance of Council-directed tree preservation goals as factors weighing strongly in favor of approval; and

(c) Provide written notice to Developer terminating and reducing to zero the Public Safety Storefront and Nonprofit Space required by Sections 6(h) and 6(i) of the Declaration, as expressly authorized thereunder, which notice shall permanently

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terminate and reduce to zero the Public Safety Storefront and Nonprofit Space for all Blocks and as to all owners thereof; and

(d) By way of Further Assurances and Clarifications, as authorized by the MDA, provide written notice to Developer that gross square feet of space for purposes of determining the minimum square footage requirements set forth in Section 2 of the Declaration is calculated by including any exterior square footage that is used for retail uses, is within the boundaries of the applicable Property and is otherwise reasonably accessible to Persons occupying, patronizing, visiting, or otherwise using, traversing or visiting the interior square footage to which such exterior square footage is associated. Such exterior square footage, will include, without limitation, patios, terraces, decks and other outdoor seating areas and venues.

(e) At the first Takedown, deliver to the Title Company the following documents duly executed and acknowledged documents:

(i) a Declaration concerning the entire Property, in accordance with Section 5.1(a)(ii) of the MDA, in the form attached to the MDA as Exhibit C; and

(ii) an instrument in the form attached to this Agreement as **Exhibit A**, implementing the City's actions under Subsections (a), (b) and (c) of this Section 2.2, which the Title Company shall record in connection with the first Takedown immediately after the recordation of the Declaration.

2.3 Developer's Election to Enact Optional Heritage Tree Plan.

(a) Developer may, in its sole and absolute discretion, elect to enact the Optional Heritage Tree Plan on or prior to the first Takedown by delivering written notice to the City stating that Developer has elected to enact the Optional Heritage Tree Plan (such notice, an "**OHTP Notice**"). If Developer does not deliver to the City an OHTP Notice on or before the first Takedown, then Developer shall be deemed to have elected not to enact the Optional Heritage Tree Plan.

(b) Developer shall have no obligation or liability whatsoever for electing not to (or being deemed to have elected not to) enact the Optional Heritage Tree Plan. If Developer elects not to (or is deemed to have elected not to) enact the Optional Heritage Tree Plan, then Section 3.1(g) of the MDA shall govern the required actions with respect to the Identified Trees and Sections 2.1 and 2.2 above shall be of no further force or effect.

(c) The City acknowledges that by entering into this Agreement Developer has fully satisfied any and all obligations under Section 3.1(h) of the MDA.

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ARTICLE III CLARIFICATIONS/MINOR AMENDMENTS; CORRECTIONS

3.1 Timing of Selection and Approval of Location of Transplanted Trees and New Trees. The City and Developer desire to make certain Further Assurances and Clarifications/Minor Amendments regarding the selection and approval of the location of transplanted trees and new trees under Section 3.1(g) of the MDA. It was the intention of the City and Developer that the locations of any transplanted trees and/or new trees required pursuant to Section 3.1(g) of the MDA (as it may be further implemented by Article II above) would be determined in a timely fashion that would not delay Developer's construction of Improvements on any portion of the Property. Accordingly, Developer and the City shall work together in good faith to select the locations of any such transplanted trees and/or new trees in accordance with the schedule established by Developer in connection with the construction of the Improvements, but in any event such selection and approval shall be given by the City at least sixty (60) days after requested by Developer in writing.

3.2 Master Development Agreement Joinder. The City, Developer and/or the transferee or SAE Developer, as the case may be, may add a reference to this Agreement and any further implementation agreements to the Master Development Agreement Joinder delivered in connection with the execution thereof, to the extent appropriate given the context thereof.

ARTICLE IV MISCELLANEOUS PROVISIONS

4.1 Incorporation of MDA Miscellaneous Provisions. Article IX of the MDA is hereby incorporated herein as if fully set forth herein.

4.2 Ratification of MDA. Except as provided herein, the terms and provisions of the MDA remain unchanged and are in full force and effect. By its acceptance hereof, each party acknowledges that the other party's agreements evidenced hereby have not in any manner diminished that party's right in the future to insist that the other party strictly comply with the terms of the MDA, except to the extent specifically provided herein. The execution of this Agreement is not intended nor will it be construed as (a) an actual or implied waiver of any obligation of a party under the MDA, except to the extent expressly set forth herein, and (b) a party's approval or consent regarding any other aspect of the development of the Property (e.g., building permits, subdivision approval, etc.).

4.3 The City Manager's Authority. Under Sections 9.18, 9.19 and 9.20 of the MDA, the City Manager of the City has the authority to make Further Assurances, Clarifications/Minor Amendments and Corrections, such as this Agreement.

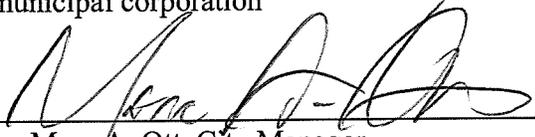
4.4 Counterparts. This Agreement may be executed in multiple counterparts and when all executed signature pages are combined, shall constitute one (1) single instrument.

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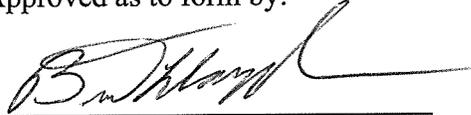
IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

CITY:

THE CITY OF AUSTIN, a Texas home rule city and municipal corporation

By: 
Marc A. Ott, City Manager

Approved as to form by:


Brent D. Lloyd
Assistant City Attorney

DEVELOPER:

TC GREEN WATER MASTER DEVELOPER, LLC, a Delaware limited liability company

By: TC AUSTIN DEVELOPMENT, INC, a Delaware corporation, its Managing Member

By: _____
Name: _____
Title: _____

TC Austin consents to the terms and conditions of this Agreement.

TC AUSTIN DEVELOPMENT, INC, a Delaware corporation

By: _____
Name: _____
Title: _____

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IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

CITY:

THE CITY OF AUSTIN, a Texas home rule city and municipal corporation

By: _____
Marc A. Ott, City Manager

Approved as to form by:

Brent D. Lloyd
Assistant City Attorney

DEVELOPER:

TC GREEN WATER MASTER DEVELOPER, LLC, a Delaware limited liability company

By: TC AUSTIN DEVELOPMENT, INC, a Delaware corporation, its Managing Member

By: 
Name: ADAM NIMS
Title: PRESIDENT

TC Austin consents to the terms and conditions of this Agreement.

TC AUSTIN DEVELOPMENT, INC, a Delaware corporation

By: 
Name: ADAM NIMS
Title: PRESIDENT

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CVI consents to the terms and conditions of this Agreement and agrees that this Agreement may be modified, amended or terminated without its consent.

CONSTRUCTIVE VENTURES, INC., a Texas corporation

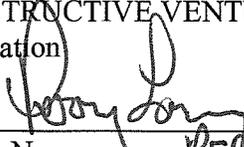
By: 
Name: PERY LORENZ
Title: vice president

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EXHIBIT A

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

After Recording Return To:
DuBois, Bryant & Campbell, LLP
700 Lavaca, Suite 1300
Austin, Texas 78701
Attention: Rick Reed

NOTICE DELIVERED PURSUANT TO
DECLARATION OF RESTRICTIVE COVENANTS
(GWTP)

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Notice Delivered Pursuant to Declaration of Restrictive Covenants (GWTP) (this "Notice") is made, executed and delivered by THE CITY OF AUSTIN, a Texas home rule city and municipal corporation ("Declarant"), to be effective as of _____, 201_ (the "Effective Date") for the benefit of _____, a _____ ("Owner"), and is as follows:

1. **The Declaration.** This Notice is filed in connection with that certain Declaration of Restrictive Covenants (GWTP), recorded as Document No. _____ in the Official Public Records of Travis County, Texas (the "**Declaration**").

2. **Definitions.** Any capitalized term which is used and not otherwise defined in this Notice shall have the meaning which is set forth for such term in the Declaration.

3. **Acknowledgment and Approval of Reduction of Gross Square Feet of Space.** Declarant acknowledges that pursuant to Section 2(a) of the Declaration Owner has exercised its right to reduce the required gross floor area from 1,750,000 gross square feet (exclusive of garages) to 1,690,000 gross square feet (exclusive of garages), which uses only 3.4% of the 10% by which Owner may reduce such square footage without the prior written approval of the City Manager of the Declarant. Additionally, if Owner requests to reduce the gross square footage (exclusive of garages) by up to an additional 60,000 gross square feet after Owner uses the full 10% reduction described above, then the City Manager of Declarant will not unreasonably withhold, condition or delay its approval of such request and will consider the design impacts resulting from Owner's election to enact the Optional Heritage Tree Plan (as defined in that certain GWTP Ancillary Agreement Implementing Tree Preservation Goals Under The Master Development Agreement dated as of June __, 2013 by and between Declarant and Owner, which

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implements certain agreements of Declarant as contemplated by the MDA) and the Owner's furtherance of Council-directed tree preservation goals as factors weighing strongly in favor of approval.

4. **Public Safety Storefront and Nonprofit Space.** Declarant has permanently terminated and decreased to zero the square footage of the obligations set forth in Section 6(h) with respect to Public Safety Storefront and Section 6(i) of the Declaration with respect to Nonprofit Space as permitted therein for each and every block of the Property and as to all owners of any of the Property.

5. **Retail Square Footage.** Declarant acknowledges that gross square feet of space for purposes of determining the minimum square footage requirements set forth in Section 2 of the Declaration is calculated by including any exterior square footage that is used for retail uses, is within the boundaries of the applicable Property and is otherwise reasonably accessible to Persons occupying, patronizing, visiting, or otherwise using, traversing or visiting the interior square footage to which such exterior square footage is associated. Such exterior square footage, will include, without limitation, patios, terraces, decks and other outdoor seating areas and venues.

5. **Conflicts.** In the event of any conflict between this Notice and the terms and provisions of the Declaration, the terms and provisions of this Notice shall control.

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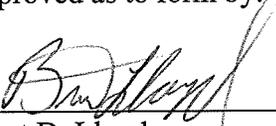
Exhibit D

IN WITNESS WHEREOF, the Declarant has duly executed this Notice on the date of acknowledgment set forth below to be effective as of the date set forth above.

THE CITY OF AUSTIN, a Texas home rule city and municipal corporation

By: _____
Name: _____
Title: _____

Approved as to form by:



Brent D. Lloyd
Assistant City Attorney

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 20__, by _____ of THE CITY OF AUSTIN, a municipal corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

(Printed name)

My Commission Expires:
