

1. **The Project.** Developer is planning and developing multi-use subdivision on the Property comprised primarily of single family residences, in accordance with the Concept Plan, over a period of up to 20 years, and in conjunction therewith is proposing to subdivide the Property through a series of subdivision plats. As part of the development of the Property, the Developer is desiring to close an existing median cut on Parmer Lane and replace it with a new median cut, including traffic signalization, in accordance with the plans and specifications listed in the above-referenced Advance Funding Agreement, at the proposed intersection of Avery Ranch Boulevard and Parmer Lane.

2. **Surety.** Developer agrees to submit, or cause to be submitted, in a form acceptable to the County, a performance bond or other surety as requested by the County, in an amount of 100% of the estimated construction costs as listed in the Advance Funding Agreement. Additionally, the surety shall be supplemented at the request of the County if the construction costs increase over and above the costs listed in the Advance Funding Agreement.

3. **Project Responsibility.** Both parties acknowledge that County is not responsible for any aspect of the construction of the Project as stated in the Advance Funding Agreement.

4. **Violation of this Agreement.** Both parties acknowledge that County is acting only as a sponsor for said project and is under absolutely no obligation to commit any funds or labor to said Project.

5. **Miscellaneous Provisions.**

a. **Actions Performable.** The County and Developer agree that all actions to be performed under this Agreement are performable solely in Williamson County, Texas.

b. **Governing Law.** The County and Developer agree that this Agreement has been made under the laws of the State of Texas in effect on this date, and that any interpretation of this Agreement at a future date shall be made under the laws of the State of Texas.

c. **Severability.** If a provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void; but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.

d. **Complete Agreement.** This Agreement represents a complete agreement of the parties and supersedes all prior written and oral matters related to this agreement. Any amendment to this Agreement must be in writing and signed by all parties.

e. Notice. All notices, requests or other communications required or permitted by this Agreement shall be in writing and shall be sent by (i) telescope, with the original delivered by hand or overnight carrier, (ii) by overnight courier or hand delivery, or (iii) certified mail, postage prepaid, return receipt requested, and addressed to the parties at the following addresses:

County:

County of Williamson
 Judge John Doerfler
 Williamson County Courthouse
 Georgetown, Texas 78626
 Att.: County Judge
 Phone: (512) 930-3652-943-1550
 Fax: (512) 930-3659-943-1662

Developer:

If to PCJV: Pebble Creek Joint Venture
 2711 Hillview Green Lane
 Austin, Texas 78703
 Phone: 512.472.0590
 Fax: 512.835.9865

With copy to: Mr. Matt Harriss
 10300 Metropolitan
 Austin, Texas 78758
 Phone: 512.837.6550
 Fax: 512.837.6953

If to Continental: Continental Homes of Texas, L.P.
 Attn: Mr. Terry Mitchell
 4515 Seton Center Parkway, Suite 200
 Austin, Texas 78759
 Phone: 512.345.4663
 Fax: 512.345.6080

With copy to: Timothy C. Taylor, Esq.
 Jackson Walker L.L.P.
 100 Congress Avenue, Suite 1100
 Austin, Texas 78701
 Phone: 512.236.2390

Fax: 512.236.2002

If to DAR:
& Wunsch Trustee

Developers of Avery Ranch, Ltd.
c/o Robert D. Wunsch
2414 Exposition Blvd., Suite 280
Austin, Texas 78703
Phone: 512.381.1282
Fax: 512.381.1280

With copy to:

J. Winston Chapman
Rash Chapman Schreiber & Porter, L.L.P.
2112 Rio Grande Street
Austin, Texas 78705-5526
Phone: 512.477.7543
Fax: 512.474.0954

If to Rathgeber:

c/o Dick Rathgeber
2711 Hillview Green Lane
Austin, Texas 78703
Phone: 512.472.0590
Fax: 512.835.9865

g. **Force Majeure.** Developer and the County agree that the obligations of each party shall be subject to force majeure events such as natural calamity, fire or strike.

7. **Term of Agreement.** This Agreement shall be in effect for a term of three years from the date of approval by the County, provided that the term may be amended by written agreement of the parties. If the build-out of the Project has not occurred within the term of this Agreement, and the Project is continuing to develop, Developer submit a written request to the County to extend the term of the Agreement for an additional three years or less.

8. **Signature Warranty Clause.** The signatories to this Agreement represent and warrant that they have the authority to execute this Agreement on behalf of the County and Developer, respectively.

9. **Assignment.** This Agreement may be assigned, but the Assignee assumes all duties and obligations of Assignor.

SIGNED as of this 8th day of August, 2000.

COUNTY:

The County of Williamson

By: John C. Doerfler 8-8-00
John Doerfler, County Judge

PCJV:

Pebble Creek Joint Venture
(a Texas joint venture partnership)

By: Rathgeber Investment Company, Ltd.
(a Texas limited partnership)
Managing Partner

By: Rathgeber Investment GP, Inc.
(a Texas corporation)
Its General Partner

By: _____
Edward R. Rathgeber, Jr.
President

CONTINENTAL:

Continental Homes of Texas, L. P.
(a Texas limited partnership)

By: CHTEX of Texas, Inc.
(a Delaware corporation)
Its General Partner

By: _____
Terry E. Mitchell, Vice President

RATHGEBER:

Rathgeber Investment Company, Ltd.
(a Texas limited partnership)

By: Rathgeber Investment GP, Inc.
(a Texas corporation)
Its General Partner

By: _____
Edward R. Rathgeber, Jr., President

DAR:

Developers of Avery Ranch, Ltd.
(a Texas limited partnership)

By: RWR Development Company, L.L.C.
(a Texas limited liability company)
Its General Partner

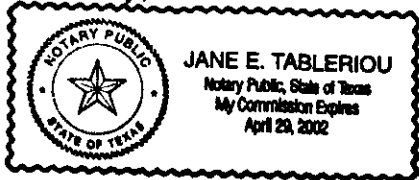
By: _____
Robert D. Wunsch, President

WUNSCH, TRUSTEE:

Robert D. Wunsch, Trustee

STATE OF TEXAS §
 § CORPORATE ACKNOWLEDGMENT
 COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on this the 8th day of Aug., 2000, by John Doerfler, a person known to me, in his capacity as County Judge of Williamson County, Texas.



Jane E. Tableriou
 Notary Public, State of Texas

STATE OF TEXAS §
 §
 COUNTY OF TRAVIS §

This instrument was acknowledged before me this ____ day of August, 2000, by Edward R. Rathgeber, Jr., President of Rathgeber Investment GP, Inc., a Texas corporation, General Partner of Rathgeber Investment Company, Ltd., a Texas limited partnership, the Managing Partner of Pebble Creek Joint Venture, a Texas joint venture, on behalf of said corporation, partnership, and joint venture.

 Notary Public - State of Texas

STATE OF TEXAS §
 §
 COUNTY OF TRAVIS §

This instrument was acknowledged before me this ____ day of August, 2000, by Terry E. Mitchell, Vice President of CHTEX of Texas, Inc., a Delaware corporation, General Partner of Continental Homes of Texas, L.P., a Texas limited partnership, on behalf of said corporation and said limited partnership.

 Notary Public - State of Texas

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

 This instrument was acknowledged before me on this ____ day of August, 2000, by Edward R. Rathgeber, Jr., President of Rathgeber Investment GP, Inc., a Texas corporation, General Partner of Rathgeber Investment Company, Ltd., a Texas limited partnership, on behalf of said corporation and said limited partnership.

Notary Public - State of Texas

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

 This instrument was acknowledged before me this ____ day of August, 2000, by Robert D. Wunsch, President of RWR Development Company, L.L.C., a Texas limited liability company, General Partner of Developers of Avery Ranch, Ltd., a Texas limited partnership, on behalf of said limited liability company and said limited partnership.

Notary Public - State of Texas

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

 This instrument was acknowledged before me this ____ day of August, 2000, by Robert D. Wunsch, Trustee.

Notary Public - State of Texas

AGENDA ITEM 29

Consider authorizing County Judge to execute an agreement between Williamson County and TxDot regarding construction of median within Parmer Lane.

Moved: **Commissioner Boatright**

Seconded: **Commissioner Limmer**

Motion: To authorize County Judge to execute an agreement between Williamson County and TxDot regarding construction of median within Parmer Lane.

Vote: Motion carried 5 – 0

< Clerk copy here >

ADVANCE FUNDING AGREEMENT

THE STATE OF TEXAS §

THE COUNTY OF TRAVIS §

THIS AGREEMENT IS MADE BY AND BETWEEN the State of Texas, acting through the Texas Department of Transportation, hereinafter called the State, and Williamson County, a political subdivision, acting by and through its Commissioner’s Court, hereinafter called the Outside Entity.

WITNESSETH

WHEREAS, Transportation Code §201 et.seq. and Transportation Code §221 authorizes the State to lay out, construct, maintain, and operate a system of streets, roads, and highways that comprise the State Highway System; and,

WHEREAS, Commission Minute Order Number 85094 authorizes the State to undertake and complete highway improvements generally described as roadway improvements to FM 734; and,

WHEREAS, the Outside Entity has requested that they be allowed to participate in said improvements by closing of an existing median cut and constructing a new median cut at the proposed intersection of Avery Ranch Blvd. and Parmer Lane; hereinafter called the Project; and,

WHEREAS, the Outside Entity has approved entering into this agreement by order dated August 8, 2000, attached hereto and made a part of this Agreement as Attachment B.

WHEREAS, the State has determined that such participation is in the best interest of the citizens of the State; and,

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, the State and the Outside Entity agree as follows:

ARTICLE 1. TIME PERIOD COVERED

This agreement becomes effective when signed by the last party whose signature makes the agreement fully executed. The State and the Outside Entity consider it to be in full force and effect until the Project described herein has been completed and accepted by all parties or unless terminated as hereinafter provided.

AGREEMENT

ARTICLE 2. PROJECT FUNDING

If the Project is approved, the State will authorize construction of only those Project items of work which the Outside Entity has requested and has agreed to pay for as described in Attachment A, Payment Provision and Work Responsibilities, attached to and made a part of this agreement.

ARTICLE 3. TERMINATION

This agreement may be terminated before the Project is completed by:

- ◆ mutual written agreement and consent of both parties
- ◆ or, by either party upon the failure of the other party to fulfill the obligations set forth herein
- ◆ or, by the State if it determines that completion of the Project is not in the best interest of the State

If the contract is terminated in accordance with the above provisions, the Outside Entity will be responsible for the payment of all direct and indirect Project costs incurred by the State on behalf of the Outside Entity, up to the time of termination.

ARTICLE 4. RIGHT OF ACCESS

If the Outside Entity is the owner of, or has control of, any part of the Project site, the Outside Entity shall permit the State or its authorized representative access to the site to perform any activities required to complete the work. The Outside Entity will provide for all necessary right-of-way and utility adjustments needed for performance of the work regardless of ownership.

ARTICLE 5. RESPONSIBILITIES OF THE PARTIES

The Outside Entity acknowledges that while it is not an agent, servant, nor employee of the State, it is responsible for its own acts and deeds and for those of its agents or employees during the performance of the work on the Project.

ARTICLE 6. SOLE AGREEMENT

In the event the terms of the agreement are in conflict with the provisions of any other existing agreements between the Outside Entity and the State, the latest agreement shall take precedence over the other agreements.

ARTICLE 7. SUCCESSORS AND ASSIGNS

The State and the Outside Entity each binds itself, its successors, executors, assigns, and administrators to the other party to this agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this agreement.

ARTICLE 8. AMENDMENTS

By mutual written consent of the parties, the scope of work and payment provisions of this contract may be amended prior to the expiration of this contract.

ARTICLE 9. INTEREST

The State will not pay interest on funds provided by the Outside Entity. Funds provided by the Outside Entity will be deposited into, and retained in, the State Treasury.

ARTICLE 10. INCREASED COSTS

In the event it is determined that the funding provided by the Outside Entity will be insufficient to cover the State's cost for the requested work, the Outside Entity will pay to the State the additional funding necessary to cover the cost overrun. The State shall send the Outside Entity written notification, stating the amount of funding needed and the reasons for such. The Outside Entity shall submit the funds to the State within 30 days of the written notification, unless otherwise agreed to by all parties of this agreement. If the Outside Entity cannot pay the additional funds, this contract shall be mutually terminated in accordance with Article 3 - Termination.

ARTICLE 11. SIGNATORY WARRANTY

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the organization they represent.

IN WITNESS WHEREOF, THE STATE AND THE OUTSIDE ENTITY have executed duplicate counterparts to effectuate this agreement.

THE STATE OF TEXAS

Certified as being executed for the purpose and effect of activating and/or carrying out the orders, established policies, or work programs heretofore approved and authorized by the Texas Transportation Commission under the authority of Minute Order 100002.

By _____ Date _____
 William C. Garbade, P.E.
 Austin District Engineer

THE OUTSIDE ENTITY

WILLIAMSON COUNTY

By John C. Doerfler Date 8-8-00
 Typed or Printed Name and Title John C. Doerfler - County Judge

For the purpose of this agreement, the address of record for each party shall be as shown on the following page

For the Outside Entity:

Williamson County
3151 S.E. Inner Loop, Suite B
Georgetown, Texas 78626

For the Texas Department of Transportation:

William C. Garbade, P.E.
Texas Department of Transportation
Austin District
P. O. Drawer 15426
Austin, Texas 78761-5426

ATTACHMENT A

Work Responsibilities and Payment Provisions

1. Project Description

Construction of a median cut for southbound and northbound FM 734 at the intersection of Parmer Lane and the proposed Avery Ranch Blvd. and the removal of an existing median cut approximately 500' north of the proposed intersection

2. Right of Way

If right of way is required, the Outside Entity shall prepare right of way maps, property descriptions and other data needed, utilizing all applicable Federal and State laws governing the acquisition policies for acquiring real property. The right of way maps and property descriptions shall be submitted to the State for approval. Tracings of the maps shall be retained by the Outside Entity for its permanent records.

3. Utility Adjustments/Relocations

If the proposed construction requires the adjustment, removal or relocation of utility facilities, the Outside Entity will establish the necessary utility work and notify the appropriate utility company to design and schedule their adjustments. The Outside Entity shall be responsible for all costs associated with the adjustment not assumed by the utility Company. Removal or relocation of such utility facilities shall be in accordance with applicable State law, regulations, policies and procedures.

4. Environmental

- A. If required, the Outside Entity shall prepare the appropriate environmental documentation and secure environmental clearance for the Project. Coordination of the documentation will be through Mr. Mike Walker, Austin District Environmental Coordinator, 512/832-7168.
- B. If required, To the extent required to complete the Project, the Outside Entity will be responsible for the mitigation and remediation of any environmental problems associated with the development of the Project.

5. Engineering Services

5. Engineering Services

- A. The Outside Entity shall prepare or cause to be prepared the engineering plans, specifications, and estimates (P.S.&E.) necessary for the development of the Project. The P.S.&E. shall be prepared in accordance with all applicable State and Federal guidelines.
- B. The Engineering plans shall be developed in accordance with the Highway Design Division Operations and Procedures Manual, the 1993 Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges and the Texas Accessibility Standards.
- C. The Outside Entity shall submit the completed P.S.&E. to the State for review and approval, three (3) months prior to the anticipated bid opening date. Should the State determine that revisions are required to the documents, the Outside Entity shall make the necessary revisions, prior to the State's bid opening date.

6. Construction Responsibilities

- A. After approval of the P.S.&E., the State shall advertise for construction bids, issue bid proposals, receive and tabulate bids and award/reject a contract for construction of the Project.
- B. The State shall supervise and inspect all work performed by the construction contractor and will provide such engineering, inspection and testing services as may be required to ensure that the construction of the Project is accomplished in accordance with the approved P.S.&E.

7. Maintenance Responsibilities

Upon completion of the Project, the State shall assume responsibility for the maintenance of the completed facility.

8. Payment Provisions

The Outside Entity's cost for the work will be based on an actual cost agreement, estimated to be \$253,000. This amount includes the estimated construction costs plus 100% of the construction engineering, TxDOT design review/coordination, bid letting and indirect costs at the rate in effect for the year in which the work will be performed.

Two (2) executed original agreements and a check in the amount of \$253,000 shall be transmitted by the Outside Entity to the State prior to TxDOT participation.

Any additional costs required to complete the project will be requested from the Outside Entity after the project is completed and a State audit has been performed. All costs remaining in the Project and due to the Outside Entity will be promptly returned.

COST BREAKDOWN:

Bid Items		\$180,000
Construction Engineering Costs (14% of Bid Items)		\$ 25,000
Estimated TxDOT Review Costs		\$ 20,000
Estimated Bid Letting Costs		<u>\$ 5,000</u>
	Sub-Total	\$ 230,000
Indirect Costs (10%)		<u>\$ 23,000</u>
Total Costs		\$253,000

Consider approving the placement of an 8' x 16' digital remote cabinet for GTE on County Right-of-Way on Jim Hogg Road off Farm-to-Market 2338.

No action taken on this agenda item.

AGENDA ITEM 31

Consider approving Williamson County Revenue Investment Policy.

County Treasurer Vivian Wood addressed the court on county investment policy and answered all questions.

Moved: **Judge Doerfler**

Seconded: **Commissioner Hays**

Motion: To approve Williamson County Revenue Investment Policy.

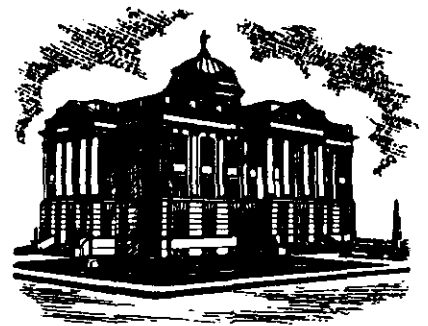
Vote: Motion carried 5 – 0

< Clerk copy here >

Williamson County

Vivian L. Wood

County Treasurer



MEMORANDUM

Date: August 2, 2000

To: The Honorable John C. Doerfler, County Judge
The Honorable Mike Heiligenstein, Commissioner, Pct. 1
The Honorable Greg Boatright, Commissioner, Pct. 2
The Honorable David Hays, Commissioner Pct. 3
The Honorable Frankie Limmer, Commissioner Pct. 4

From; Vivian L. Wood *Vivian*
County Treasurer

Re: Williamson County Revenue Reporting Policy

I have requested that the attached Williamson County Revenue Reporting Policy be placed on the August 8th Commissioners Court agenda for adoption by the Court.

Williamson County does not have a policy in place. The Policy was developed to clarify the procedures to be used by all fee officers for the County. The legal requirements for the Policy have been attached for your review also. The Policy has been reviewed by the Auditor's office.

Please let me know if you have questions or concerns in regard to my request.

*approved 8-8-00
John C. Doerfler*