

**EXHIBIT**  
**"A"**

**COST PARTICIPATION AGREEMENT**

THE STATE OF TEXAS           §  
  §           KNOW ALL BY THESE PRESENTS:  
COUNTY OF WILLIAMSON      §

**THIS COST PARTICIPATION AGREEMENT ("Agreement")** is entered into between the **City of Round Rock, Texas**, a Texas home-rule city ("**City**"); and **Avery Centre DevCo, Inc.**, a Texas corporation, ("**Developer**"). In this Agreement, Round Rock, and Developer are sometimes individually referred to as **Party** and collectively referred to as **Parties**.

**RECITALS**

**WHEREAS**, Developer owns or otherwise controls approximately 346.53 acres of land, as shown on Exhibit "A", ( the "Properties") attached hereto and incorporated herein; and

**WHEREAS**, City and Developer have previously entered into an agreement wherein Developer and others shared the responsibility to construct a 16 and 12 inch waterline (the "Waterline") within the future right-of-way of Seton Parkway, said right-of-way being depicted on Exhibit "B", attached hereto and incorporated herein; and

**WHEREAS**, City is in process of constructing the extension of Seton Parkway; and

**WHEREAS**, Developer and City agree that it will be cost-effective to construct the Waterline simultaneously with the construction of Seton Parkway; and

**WHEREAS**, Developer agrees to pay to the City the sum of \$100,000.00 (the "Credit Amount") on or before 45 days after the date of this Agreement as a partial payment of the cost of the design and construction of the Waterline, with Developer paying the balance of said Waterline design and construction costs as stipulated herein; and

**WHEREAS**, both parties wish to memorialize their respective duties and obligations with respect to the Project;

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual promises and agreements of the Parties contained in this Agreement, the Parties agree as follows:

## I.

### TERMS

**A. City Participation.** City agrees to cause the design and construction of the Waterline within the proposed Seton Parkway right-of-way at the location shown in Exhibit B. The Waterline shall be constructed concurrently with the construction of the proposed Seton Parkway and shall run from Avery-Nelson Boulevard north to the existing City waterline currently located within Seton Parkway. If City fails to construct the Waterline within one year after the execution of this Agreement by the City, the City will promptly pay the full Credit amount, and any additional amounts paid to the City by the Developer under the terms of this Agreement, to Developer and the Developer shall have the right and the continuing obligation to construct the Waterline within the Seton Parkway right-of-way at its sole cost and expense.

**B. Developer Participation.** Developer agrees to pay to the City the Credit Amount as a partial payment for the Waterline as stated herein. Developer shall pay the balance of the Construction Amount (as defined below) for the Waterline out of 40% of the net sales proceeds of the sale of any of the Properties listed in Exhibit "A", or on or before the third anniversary of the City's execution of this Agreement, whichever occurs earliest. The total design and construction costs (the "Construction Amount") are currently estimated to be \$343,716. The balance owned by Developer under the terms of this Agreement, after payment of the Credit Amount will be \$243,716 (the "Deferred Amount"). Any change orders approved by the City or other additional costs related to the design and construction of the Waterline shall be paid by the City. Developer agrees that City will have no obligation to serve any Property with water from the Waterline until the Deferred Amount for said line is paid in full.

## II.

### GENERAL PROVISIONS

**A. Severability.** The provisions of this Agreement are severable and, if any provision of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Agreement shall not be affected and this Agreement shall be construed as if the invalid portion had never been contained herein.

**B. Cooperation.** The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

**C. Entire Agreement.** Except as otherwise expressly provided herein, this Agreement contains the entire agreement of the Parties regarding the sharing of costs for the Reuse Water project and supersedes all prior or contemporaneous understandings or representations, whether oral or written, regarding the subject matter.

**D. Amendments.** Any amendment of this Agreement must be in writing and shall be effective if signed by the authorized representatives of the Parties.

**E. Applicable Law; Venue.** This Agreement shall be construed in accordance with Texas law. Venue for any action arising hereunder shall be in Williamson County, Texas.

**F. Force Majeure.** Parties shall not be deemed in violation of this Agreement if prevented from performing any of their obligations hereunder by reasons for which they are not responsible or circumstances beyond their control. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

**G. Exhibit.** The following exhibit is attached to this Agreement and incorporated herein by reference:

Exhibit "A"- the Properties

Exhibit B - Seton Parkway right-of-way

**H. Counterparts. Effect of Partial Execution.** This Agreement may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

**I. Authority.** Each Party represents and warrants that it has the full right, power and authority to execute this Agreement.

**J. Recordation.** This Agreement shall be recorded in the Official Records of Williamson County, Texas.

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**CITY OF ROUND ROCK:**

ATTEST:

By: \_\_\_\_\_  
Alan McGraw, Mayor

\_\_\_\_\_  
Sara White, City Clerk

Date: \_\_\_\_\_

**Avery Centre DevCo, Inc.**

By: \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_ President

Date: \_\_\_\_\_, 2015

**STATE OF TEXAS** §  
§  
**COUNTY OF WILLIAMSON** §

On this \_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned notary public, personally appeared Alan McGraw, Mayor of the City of Round Rock, Texas, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein stated.

\_\_\_\_\_  
Notary Public, State of Texas

**STATE OF Texas** §  
§  
**COUNTY OF Williamson** §

On this \_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned notary public, personally appeared \_\_\_\_\_, \_\_\_\_\_ President of Avery Centre DevCo, Inc. known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein stated.

\_\_\_\_\_  
Notary Public, State of Texas

After Recordation, Please return to:

Charles Crossfield  
Sheets & Crossfield, P.C.  
309 East Main  
Round rock, Texas 78664

EXHIBIT "A"  
PROPERTY DESCRIPTION OF 346.53 ACRES remaining unsold within Avery Centre  
Development  
West of A. W. Grimes Boulevard, Round Rock, Texas

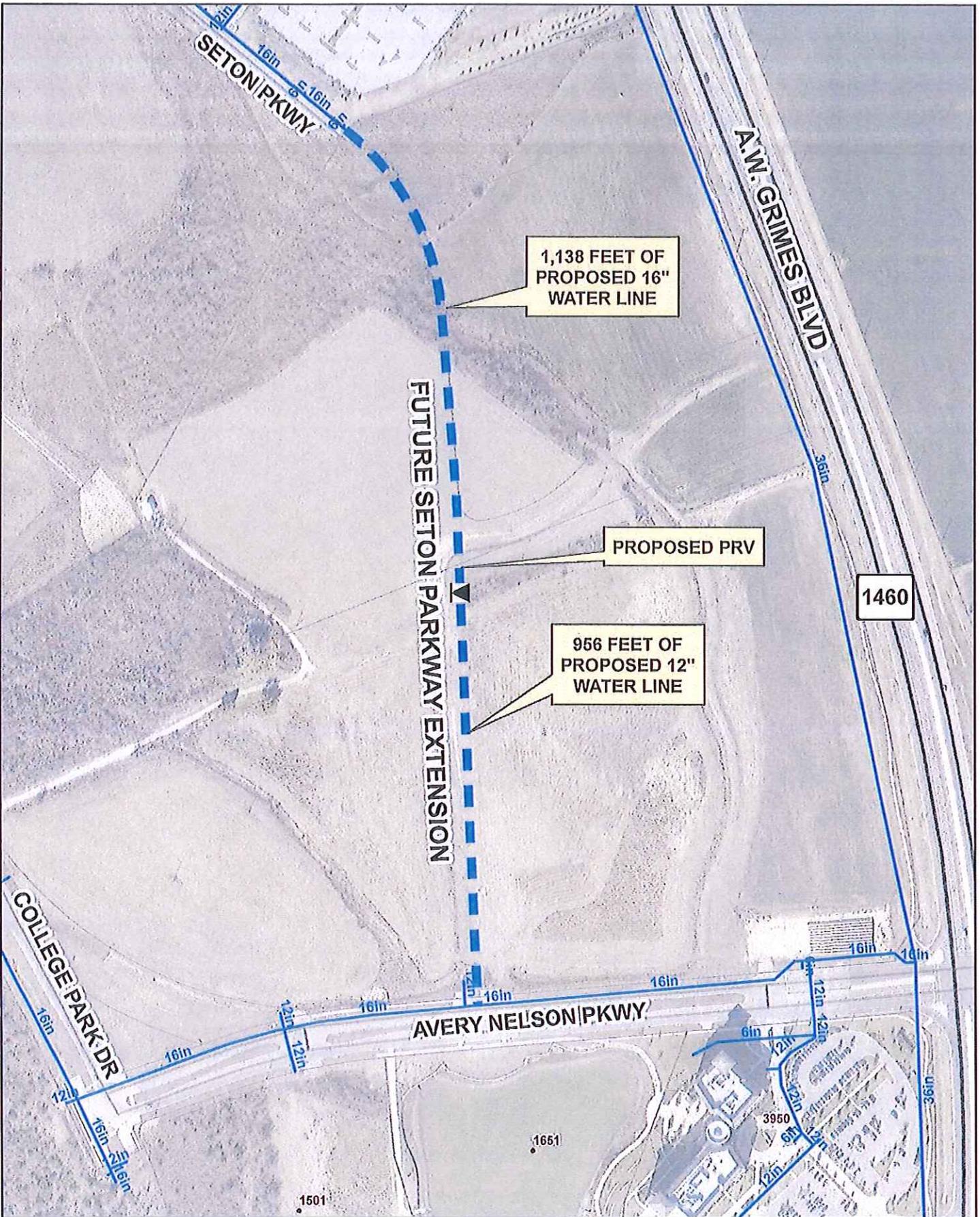
As of February 12, 2015

That certain **685.060** acres of land described by metes and bounds in **Exhibit "A-1"** attached hereto and incorporated herein by reference for all purposes; Plus that certain **1.650** acres of land conveyed to Avery Centre Devco, Inc. by the City of Round Rock by a Deed Without Warranty of record in Doc. No. 201210078994, Official Public Records of Williamson County, Texas.

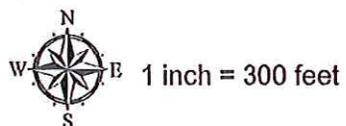
**SAVE AND EXCEPT** the following described tracts of land:

1. That certain .02839 acres (1237 square feet) of land conveyed to Williamson County, Texas for right of way on University Blvd. by Donation Deed of record in Document No. 2004014293, Official Public Records of Williamson County, Texas.
2. That certain 101.376 acres of land conveyed to the **Texas State University System** by Special Warranty Deed of record in Doc. No. 2004014440, Official Public Records of Williamson County, Texas.
3. That certain 18.178 acres of land conveyed to **Williamson County** as right of way for CR 112 by Special Warranty Deed of record in Doc. No. 2005010992, Official Public Records of Williamson County, Texas.
4. That certain 73.920 acres of land conveyed to the **Daughters of Charity Health Services of Austin, d/b/a Seton Healthcare Network**, a Texas non-profit corporation by Special Warranty Deed of record in Doc. No. 2005095410, Official Public Records of Williamson County, Texas.
5. That certain 3.855 acres of land conveyed to the **Daughters of Charity Health Services of Austin, d/b/a Seton Healthcare Network**, a Texas non-profit corporation by Special Warranty Deed of record in Doc. No. 2008012149, Official Public Records of Williamson County, Texas.
6. That certain 60.028 acres of land conveyed to **Austin Community College District Public Facility Corporation** by Special Warranty Deed of record in Doc. No. 2008033434 and Doc. No. 2008033435, Official Public Records of Williamson County, Texas.
7. That certain 50.085 acres of land conveyed to **The Board of Regents of The Texas A&M University System** by Special Warranty Deed of record in Doc. No. 2008042140 and Doc. No. 2008042141, Official Public Records of Williamson County, Texas.

8. That certain 12.211 acres of land conveyed to the **City of Round Rock** for FM 1460 roadway by Warranty Deed of record in Doc. No. 2009038221, Official Public Records of Williamson County, Texas.
9. That certain 5.091 acres of land conveyed to **CORR Health Realty, LLC** by Warranty Deed of record in Doc. No. 2010073016, Official Public Records of Williamson County, Texas. (San Gabriel Skilled Nursing Facility)
10. That 2.712 and 0.227 acres of land conveyed to the **City of Round Rock** by Special Warranty Deed of record in Doc. No. 2010078995, Official Public Records of Williamson County, Texas. (Creates intersection of College Park and Avery-Nelson Blvd.)
11. That certain 4.068 acres of land conveyed to Round Rock Holdings, LLC by Special Warranty Deed of record in Doc. No. 2012100507, Official Public Records of Williamson County, Texas. (cornerstone LTAC)
12. That certain 0.836 acres of land conveyed to the **City of Round Rock** by Special Warranty Deed of record in Doc. No. 2012085012, Official Public Records of Williamson County, Texas. (Reuse Water Tower)
13. That certain 7.567 acres of land conveyed to the **City of Round Rock** by Special Warranty Deed of record in Doc. No. 2014080536, Official Public Records of Williamson County, Texas. (Seton Parkway Right of Way Extension)



Date: 2/10/2015



### EXHIBIT B PROPOSED 12 INCH & 16 INCH WATER LINE

