

EXHIBIT**“A”****OUT-OF-CITY WATER SERVICE AGREEMENT**

THIS OUT-OF-CITY WATER SERVICE AGREEMENT (“Agreement”), is made and entered by and between NELSON HOMESTEAD FAMILY PARTNERSHIP, LTD., a Texas limited partnership, referred to herein as the “Customer,” and the CITY OF ROUND ROCK, TEXAS, a home-rule municipality located in Williamson and Travis Counties, State of Texas, referred to herein as the “City.” The Customer and the City are hereinafter referred to collectively as “the Parties,” or individually as a “Party.”

RECITALS:

WHEREAS, the Customer is the owner of record of the property at 4401, 4801, and 4811 N. AW Grimes Blvd., Round Rock, Texas 78665 (the “Property”), being more particularly described in Exhibit “A” which is hereby incorporated for all purposes; and

WHEREAS, the City has determined that it is desirable for the Property to receive water service from the City, notwithstanding the fact that the Property is outside the City’s corporate limits; and

WHEREAS, the Property is a part of the real property describe in the “Annexation Development Agreement with Nelson Homestead Family Partnership” between the City and the Customer of even date herewith (the “Development Agreement”); and

WHEREAS, the Customer and the City desire to enter into an agreement to formalize the terms by which the City will provide water service to the Property; and

WHEREAS, pursuant to Sec. 44-3, Code of Ordinances, 2010 Edition, the City Council hereby determines that there is adequate capacity of water services available for the purpose of servicing the Customer without impairing services within the City; NOW THEREFORE:

WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, and the covenants and agreements hereinafter contained to be kept and performed by the respective Parties hereto, it is agreed as follows:

Article I. Customer’s Obligations Under this Agreement

1.01 The Customer shall be required to own and install a standard water service line which will connect with the City’s water system located as shown in Exhibit “B”. Prior to the installation, the Customer shall submit a detailed drawing prepared by a licensed engineer in the State of Texas for review and approval by the City.

1.02 The Customer shall grant the City the right of entry and access to the Customer’s private water line attached to the City’s water system at all times to inspect, to investigate the source of operational or maintenance problems, to prevent or detect, minimize, or avert

operational or maintenance problems, or for any other purpose reasonably related to the provision of service under this Agreement. The Customer will cooperate with the City to provide access for these purposes, provided that the City provides the Customer at least one working day's written notice or, in the event of an emergency, prior notice by telephone or confirmed facsimile, of its need for access.

1.03 The Customer shall be responsible for securing any rights required for the Customer to construct, install, operate, maintain, inspect, reconstruct, enlarge, relocate, rebuild, repair, and remove the water service line and meter described in 1.01 and 1.02 above in, upon, over, under, above and across any necessary areas of private property not owned by the Customer or public property to connect to the City's water system.

1.04 The Customer shall comply with all requirements of Sec. 44-3 Code of Ordinances, 2010 regarding the furnishing of water services outside the city limits, a copy of such Sec. 44-3 being attached hereto as Exhibit C. Failure to comply with any of these requirements shall give the City the option of terminating this Agreement.

Article II. Provision of Water Services

2.01 The City agrees to sell the Customer water service as required by the Customer for domestic use on an as needed basis for three single-family residences and appurtenant improvements located on the Property.

2.02 The water service to be provided herein is for the Property as described in Exhibit A and no other property.

2.03 The Customer agrees to abide by all mandatory and voluntary use restrictions imposed by the City on its own citizens.

2.04 Nothing in this Agreement affects or impairs the Customer's right to use any water well located or that currently serve the Property.

Article III. Rates

3.01 The Customer agrees to pay the City for all water services provided to the Customer at the rate authorized by Chapter 44, Section 44-30, Code of Ordinances, 2010 Edition, City of Round Rock, Texas, as amended from time to time, applicable to customers located outside the corporate limits of the City.

3.02 The City shall render a monthly bill to the Customer for water services. Payment shall be made no later than the sixteenth (16th) day following the mailing of the bill. Failure by the Customer to make a payment when and as specified will give the City the option to terminate all obligations of the City under this Agreement.

3.03 The Customer shall be subject to the penalty provisions for late payment as now exist in Chapter 44, Code of Ordinances, 2010 Edition, City of Round Rock, Texas, and as may be amended from time to time.

Article IV. Compliance with Ordinances

4.01 The Customer agrees to comply with all of the City's ordinances as they now exist or may be amended from time to time regarding the use of the water supply system.

4.02 The Customer agrees to take all necessary precautions to maintain the sanitary conditions of the City's water supply system.

4.03 The Customer agrees to pay a Water Impact Fee in the amount of four thousand twenty-five dollars (\$4,025) for each of the three living unit equivalents, or a total of \$12,075; and to pay all other fees applicable to water service.

4.04 The Customer agrees and understands that the City's willingness to provide water service to the Property is expressly contingent on the Property continuing to be used for its current uses, namely single-family residential use and related appurtenances, or agricultural use as provided in the Development Agreement. The Customer shall not change or expand the existing uses without the express written consent of the City, which may be withheld for any reason. Any change or expansion of uses without the consent of the City will give the City the option of terminating this Agreement.

4.05 The Customer agrees that it will comply with all of the City's ordinances regarding subdivision, zoning, development, and building permits, except as otherwise provided in the Development Agreement.

Article V. Force Majeure

5.01 In the event either Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, then the obligations of that Party, to the extent affected by the force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of the inability. The cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure" includes acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to equipment, pipelines, or canals, partial or entire failure of water supply, and any other inability of either Party, whether similar to those enumerated or otherwise, that are not within the control of the Party claiming the inability and that could not have been avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the Party having the difficulty and that the requirement that any force majeure be acceding to the demands of the opposing party if the settlement is unfavorable to it in the judgment of the Party having the difficulty. Force majeure shall relieve the City from liability to the Customer for failure to provide water service due to an inability covered by this article. Force majeure shall not relieve the Customer of its obligation to make payments to the City as provided in this Agreement.

Article VI. Term

6.01 The term of this Agreement shall be for a term of twenty (20) years from the date hereof.

6.02 This Agreement shall become null and void upon the annexation of the Property by the City.

Article VII. Miscellaneous Provisions

7.01 The Customer is prohibited from selling or giving water service purchased herein to anyone else.

7.02 The Customer shall be permitted to assign its right herein to a bona fide purchaser of the Property as long as the intended use of the service and the Property remains the same or similar.

7.03 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and any and all actions brought to enforce the terms of this Agreement shall be brought in Williamson County, Texas.

7.04 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

7.05 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

7.06 This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the water service to the Property. This Agreement does not affect the Development Agreement, which will remain in full force and effect. In the event of any conflict between this Agreement and the Development Agreement, the Development Agreement will control.

7.07 The violation by the Customer of any of the City's ordinances related to the use or disposition of water, or to subdivision, zoning, development or building ordinances shall render this Agreement voidable at the option of the City.

IN WITNESS HEREOF, the parties have executed this Out of City Water Service Agreement in two (2) counterparts, each of which will be deemed an original on this the _____ day of _____, 2016.

**NELSON HOMESTEAD FAMILY PARTNERSHIP,
LTD., a Texas limited partnership**

By: Nelson Homstead Management, L.L.C., a Texas
limited liability company, its general partner

By: _____
John C. Nelson, Manager

Customer's Address:

3404 Glenview Avenue
Austin, TX 78703

CITY OF ROUND ROCK, TEXAS

By: _____
Alan McGraw, Mayor

Attest:

Sara White, City Clerk

For City, Approved as to Form:

Stephan L. Sheets, City Attorney

Exhibit "A"
(Property Description)

2.500 acres more or less in Williamson County, Texas, and being a portion of that 1629.95 acres tract of land described in a Deed to Nelson Homestead Family Partnership Ltd., more fully described in Document No. 9824078 of Williamson County, Texas Public Records.

Exhibit "B"
(Water service connection line)

(Attached behind this page)

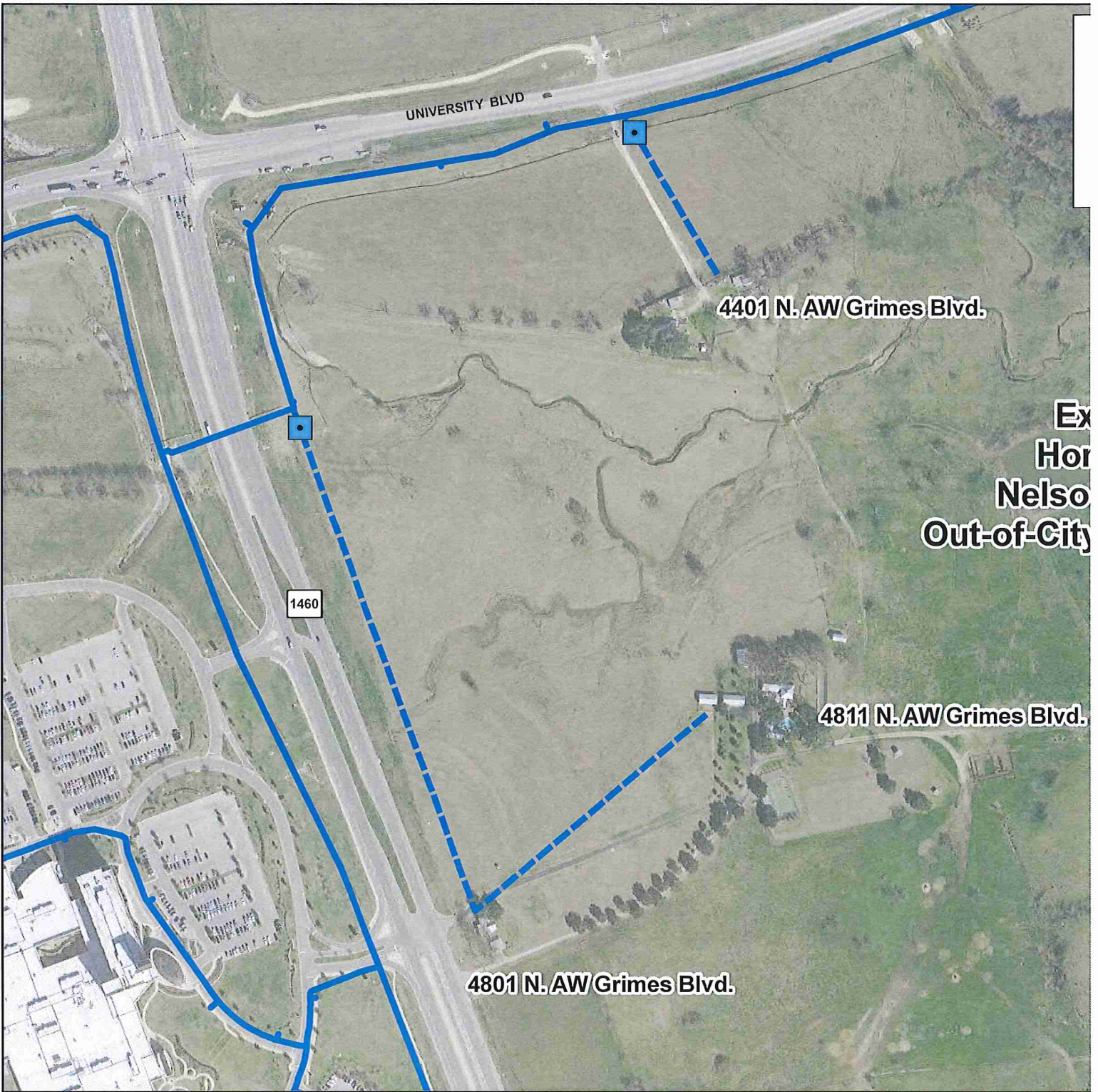


Exhibit "C"

Sec. 44-3. Furnishing of water, reuse water, and sewer services outside city limits.

- (a) *Conditions under which city services will be provided.* The city shall furnish water, sewer and/or reuse water services to residential and commercial users located outside the city limits only upon the following conditions:
- (1) *Adequate capacity exists.* There is adequate capacity of city services available for the purpose of servicing residential and commercial users outside the city without impairing services within the city. Whether such adequate capacity exists shall be determined solely by the city council, and the determination of the city council shall be final.
 - (2) *Owners outside city limits to bear costs of lines and furnish easements.* The construction costs of water, sewer and/or reuse water lines and appurtenances which serve residential and commercial users outside the city limits shall be paid for by the owner, developer, or political entity requesting the service. Such owner, developer, or political entity shall also furnish suitable construction and permanent easements and rights-of-way for utility lines.
 - (3) *Construction to conform to city standards.* All design and construction shall be in accordance with city standards and specifications.
 - (4) *New subdivisions to comply with subdivision regulations.* New subdivisions (any plat recorded after the date of passage of this section) desiring city water, sewer and/or water reuse services shall comply with the subdivision regulations of the City of Round Rock, Texas, in effect at the time such new subdivision is approved. Existing subdivisions whose plats were recorded with the County Clerk of Williamson County, Texas, at the time of the passage of the original Ord. No. 269 (January 8, 1976) can be furnished with water and sewer services without the necessity of having sanitary sewer collection and treatment facilities.
 - (5) *City to have right of review.* The city shall have the right to review and approve all plats and plans and inspect and approve all water, sewer and/or reuse water construction within subdivisions where water, sewer, and/or reuse water service is to be provided.
 - (6) *Water and sewer facility requirements.* Except as provided in subsection (4) of this section, all residential and commercial users shall have sanitary sewer collection and treatment facilities. Water will not be provided to residential and commercial users who utilize septic tanks save and except water can be provided to subdivisions whose plats were recorded with the County Clerk of Williamson County, Texas, at the time original Ord. No. 269 was adopted (January 8, 1976).
 - (7) *Water, sewer, and/or reuse water lines to meet ultimate requirements of city.* Where water, sewer, and/or reuse water lines and appurtenances are extended outside the city limits, the lines shall be sized to serve the ultimate requirements of the city.
 - (8) *Extended lines to be designed and inspected by city's engineer.* All water, sewer, and/or reuse water lines and appurtenances extending from existing city facilities to any tract of land outside the city limits requesting water, sewer, and/or reuse water service shall be designed and inspected by the city's engineer. The owner, developer, or political entity requesting the service shall pay for these services in keeping with the current contract between the city and the engineer employed by the city.
 - (9) *City may reimburse owner for oversized lines.* Where the size of the water, sewer, and/or reuse water lines required to meet the ultimate requirements for the city is larger than eight inches and the total capacity is not required to serve the tract of land to be developed, the city may enter into a contract with the owner, developer, or entity constructing the lines for reimbursement for the excess capacity as other users request and are granted service. The developer or entity requesting service from an existing line shall pay a tap fee on a pro rata basis, as hereinafter set forth. The reimbursement to the owner, developer, or entity who paid for the line construction shall be made only from those tap fees paid to the city by users of the facility paid for by the said owner, developer, or entity.

- (10) *Pro rata basis for tap fee.* The pro rata basis for the tap fee shall be computed based upon the required demand for use and the fire protection as specified by the engineering criteria approved by the city's engineer. The basis for cost shall be the actual total cost of the facility plus five percent interest. The total cost shall include, but shall not be limited to, construction costs, engineering costs, and inspection costs.
- (11) *Wholesale bulk rate sales of water.* Facilities constructed and paid for by another public entity or facilities which will later be acquired by a public entity may be owned, operated, and maintained by that entity. Such facilities shall purchase water from the city at a negotiated wholesale bulk rate. The city shall own, operate, and maintain all other facilities.
- (b) *Rates.* The rates paid by residential and commercial users located outside the city limits for the use of the water, sewer, and/or reuse water facilities of the city shall be in accordance with sections 44-32, 44-33, and 44-34.