

**AMENDMENT TO PASS-THROUGH AGREEMENTS**

This **AMENDMENT TO PASS-THROUGH AGREEMENTS** (this "*Amendment*") is entered into effective as of November 1, 2018 (the "*Effective Date*") between the **CITY OF ROUND ROCK, TEXAS**, a home rule municipality located in Williamson County, Texas (the "*City*"), and **VISTA OAKS MUNICIPAL UTILITY DISTRICT**, a political subdivision of the State of Texas operating under Chapters 49 and 54 of the Texas Water Code and formerly known as Williamson County Municipal Utility District No. 9 (the "*District*"). The City and the District are sometimes referred to individually in this Amendment as a "*Party*" and collectively as the "*Parties*".

A. In accordance with (i) that certain Agreement between Williamson County Municipal Utility District No. 9, BJM Mayfield Ranch, Ltd., and the City of Round Rock for Pass-Through Water and Wastewater Service dated effective June 14, 2001 (the "*Mayfield Ranch Agreement*"); and (ii) that certain Agreement Between Williamson County Municipal Utility District No. 9, Continental Homes of Texas, L.P., and the City of Round Rock for Pass-Through Wastewater Service dated January 22, 2004 (the "*Preserve at Stone Oak Agreement*") (collectively, the "*Pass-Through Agreements*"), the City was authorized to pass water and wastewater through certain District facilities for the purpose of providing water and wastewater service to the Mayfield Ranch Development (the "*Mayfield Ranch Property*") and the Preserve at Stone Oak development (the "*Preserve at Stone Oak Property*") (collectively, the "*Properties*"), both of which are located adjacent to the boundaries of the District.

B. Pursuant to the Pass-Through Agreements, the City agreed to pay the District on a monthly basis a fee of \$3.75 per active wastewater service connection within the Properties per month for the operation and maintenance of the District's lift station used to provide pass-through service to the Properties (the "*Operations and Maintenance Payment*").

C. The City has notified the District that the City has over-paid the District for the Operations and Maintenance Payments under the Pass-Through Agreements because the City failed to accurately account for the number of active wastewater service connections within the Properties for the monthly Operations and Maintenance Payments made from September 2014 to October 2018 (the "*Overpayments*").

D. The City has proposed that, rather than refunding the entire balance of the Overpayments, the District issue a \$15,326.25 credit to the City, representing the Overpayments from November 2016 to October 2018, and use the credit to offset future Operations and Maintenance Payments.

E. The Parties now desire to resolve any concerns and disputes related to the Overpayments and any amounts owing to the City and clarify the process under which future Operations and Maintenance Payments will be paid to the District under the Pass-Through Agreements.

**NOW THEREFORE**, in consideration of the mutual promises, covenants, obligations, and benefits contained in this Amendment, the City and the District contract and agree as follows:

1. Mutual Release. In consideration of the District's agreement to issue a \$15,326.25 credit (the "*Credit*") to the City, which will be used to offset the City's future Operations and Maintenance Payments in accordance with the schedule set forth in Section 2 below, the receipt and sufficiency are hereby acknowledged by the City, and in consideration of the mutual agreements, conditions, representations, warranties, recitals, covenants, and statements of intention contained herein, the City hereby accepts the Credit in full settlement,

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compromise, and release of all claims against the District arising from or related to the Overpayments, pursuant to this Amendment. The City and District hereby fully and unconditionally release, acquit, and forever discharge each other and their respective officers, directors, employees, agents, and representatives from any and all actual or potential claims, suits, causes of action, debts, liabilities, demands, obligations, promises, and acts, agreements, costs, expenses (including, but not limited to, attorneys' fees), and damages (collectively, "Claims"), known or unknown, of any kind or character whatsoever, which the City and/or the District currently has, has ever had in the past, or may have in the future, and whether based in statute, common law, or otherwise, arising out of or related to the Overpayments.

2. Operations and Maintenance Payments. As of the Effective Date, in lieu of paying the Operations and Maintenance Payments to the District on a monthly basis based on the City's accounting of the number of active wastewater service connections within the Properties each month, the City will pay the Operations and Maintenance Payments to the District on an annual basis based off of (i) 455 active wastewater service connections within the Mayfield Ranch Property at \$3.75 per connection per month and (ii) 87 active wastewater service connections within the Preserve at Stone Oak Property at \$3.75 per connection per month. Within 30 days after receipt of an invoice from the District, the City will pay the District, as the annual Operations and Maintenance Payment for the period beginning on the Effective Date and ending on September 30, 2019, the amount of \$7,031.25, representing \$18,768.75 under the Mayfield Ranch Agreement and \$3,588.75 under the Preserve at Stone Oak Agreement, less the \$15,326.25 Credit. On or before October 31<sup>st</sup> of each subsequent fiscal year (October 1 – September 30) during the terms of the Pass-Through Agreements, the City will pay to the District as the annual Operations and Maintenance Payments, \$20,475.00 under the Mayfield Ranch Agreement and \$3,915.00 under the Preserve at Stone Oak Agreement. Interest charges for any overdue Operations and Maintenance Payments shall be paid by the City in accordance with Texas Government Code Section 2251.025. The \$3.75 per active wastewater service connection charge may be adjusted by the District annually to reflect the actual reasonable and necessary costs of operating and maintaining the lift station; provided, however, the District shall provide written notice to the City of any adjustment at least thirty days prior to the effective date of such adjustment.

3. Notices. All notices to the District must be in writing and mailed by Certified Mail, Return Receipt Requested, and addressed to:

Vista Oaks Municipal Utility District  
c/o Armbrust & Brown, PLLC  
Attn: Jenn Scholl  
100 Congress Avenue, Suite 1300  
Austin, Texas 78701

*with a copy to:*

Vista Oaks Municipal Utility District  
c/o Crossroads Utility Services LLC  
Attn: Andrew Hunt  
2601 Forest Creek Drive  
Round Rock, Texas 78665

All notices to the City must be in writing and mailed by Certified Mail, Return Receipt Requested, addressed to:

City of Round Rock  
c/o City Manager

221 East Main Street  
Round Rock, Texas 78664

*with a copy to:*

City of Round Rock  
c/o Sheets & Crossfield, P.C.  
Attn: Charlie Crossfield  
309 East Main Street  
Round Rock, Texas 78664

A Party may change its address by giving written notice of such change to the other Parties.

4. Effect of Amendment. Except as specifically provided in this Amendment, the terms of the Pass-Through Agreements continue to govern the rights and obligations of the Parties, and the terms of the Pass-Through Agreements remain in full force and effect. If there is any conflict or inconsistency between this Amendment and the Pass-Through Agreements, this Amendment will control and modify the Pass-Through Agreements. While not all parties to the Pass-Through Agreements have executed this Amendment, the City and the District intend this Amendment to be binding as between themselves in order to (i) resolve any concerns and disputes related to the Overpayments and any amounts owing to the City; and (ii) clarify the process under which future Operations and Maintenance Payments will be paid to the District under the Pass-Through Agreements. All Parties have participated in the negotiation and drafting of this Amendment; therefore, in the event of any ambiguity, the provisions of this Amendment will not be construed for or against any Party.

5. Future Effect. The provisions of this Amendment will be binding upon and inure to the benefit of the Parties and their respective successors and assigns until the expiration of the term of the underlying Pass-Through Agreements, at which time the provisions of this Amendment will be of no further force or effect.

6. Waiver. Any failure by a Party to insist upon strict performance by the other Party of any material provision of this Amendment will not be deemed a waiver of that or of any other provision, and a Party may at any time thereafter insist upon strict performance of any and all of the provisions of this Amendment.

7. Severability. If any provision of this Amendment is illegal, invalid, or unenforceable under present or future laws, it is the intention of the Parties that the remainder of this Amendment not be affected, and it is also the intention of the Parties that, in lieu of each provision of this Amendment that is illegal, invalid, or unenforceable, there be added as a part of this Amendment a provision as similar in terms to the illegal, invalid, or unenforceable provision as is possible, and is legal, valid, and enforceable.

8. Applicable Law. This Amendment will be construed under the laws of the State of Texas and all obligations of the Parties hereunder are performable in Williamson County, Texas. Venue for any action arising under this Amendment will be in Williamson County, Texas.

9. Third Party Beneficiaries. Except as otherwise expressly provided, nothing in this Amendment is intended to confer upon any person, other than the Parties and their successors and permitted assigns, any benefits, rights, or remedies under or by reason of this Amendment.

10. Assignment. A Party's rights and obligations under this Amendment may not be assigned or transferred without the consent of the other Parties, which consent will not be unreasonably withheld or delayed.

11. Amendment. This Amendment may only be amended by written agreement executed by all of the Parties.

12. Counterparts. This Amendment may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. Signature by facsimile will be deemed to have the same effect as an original signature.

13. Authority. Each Party represents and warrants that it has the full right, power, and authority to execute this Amendment and all related documents. Each person executing this instrument on behalf of a Party represents that he or she is an authorized representative of and has the authority to sign this document on behalf the respective Party.

14. Effective Date. This Amendment will be effective upon the date of due execution by the last Party to sign this Amendment, as indicated below.

Executed to be effective as of the Effective Date.

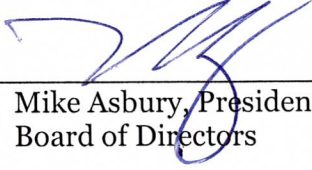
*[signature pages immediately follow]*

COUNTERPART SIGNATURE PAGE TO  
AMENDMENT TO PASS-THROUGH AGREEMENTS

**DISTRICT:**

**VISTA OAKS MUNICIPAL UTILITY DISTRICT**



By:   
Mike Asbury, President  
Board of Directors

Date: March 11, 2019

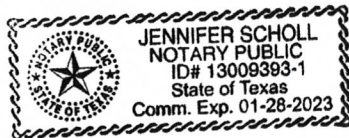
THE STATE OF TEXAS                   §

COUNTY OF WILLIAMSON           §

This instrument was acknowledged before me this 11<sup>th</sup> day of March, 2019 by Mike Asbury, President of the Board of Directors of Vista Oaks Municipal Utility District, a political subdivision of the State of Texas operating under Chapters 49 and 54 of the Texas Water Code, on behalf of said district.

(SEAL)

  
Notary Public Signature



COUNTERPART SIGNATURE PAGE TO  
AMENDMENT TO PASS-THROUGH AGREEMENTS

**CITY:**

**CITY OF ROUND ROCK, TEXAS**

By: \_\_\_\_\_  
Craig Morgan, Mayor

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

THE STATE OF TEXAS                   §

COUNTY OF WILLIAMSON           §

      This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by Craig Morgan, Mayor of the City of Round Rock, Texas, a home rule municipality located in Williamson County, Texas, on behalf of said municipality.

(SEAL)

\_\_\_\_\_  
Notary Public Signature