

ANDERSON MILL ROAD “CYPRESS CANYON”

PARTICIPATION AGREEMENT

This Participation Agreement (“Agreement”) is entered into between Travis County, Texas (the “County”) and Standard Pacific of Texas, L.P., a Delaware limited partnership (the “Developer”). The County and the Developer are sometimes hereinafter individually referred to as a “Party” and collectively referred to collectively as the “Parties.” Each of the Parties confirms that it has the authority and ability to enter into this Agreement, and to perform its obligations under this Agreement, without the further approval or consent of any other person or entity.

Recitals

WHEREAS, the Developer owns and is in the process of developing the Cypress Canyon and the Ranch at Deer Creek subdivisions (“Developer’s Land”), which are, in part, adjacent to the proposed extension of Anderson Mill Road, which is a road that the County will maintain and that is specified in the Capital Area Metropolitan Planning Organization (CAMPO) 2025 Plan to be a major, divided arterial road with six lanes, and also adjacent, in part, to Lime Creek Road, a [two](#) lane collector road that the County will maintain; and

WHEREAS, in connection with its development of Cypress Canyon, and in recognition of the impact that its development will have on traffic demands on Anderson Mill Road and Lime Creek Road, Developer has agreed to design and build (i) a segment of Anderson Mill Road (the “Anderson Mill Segment”) from its current terminus to the [Travis County Line](#), and (ii) a segment of Lime Creek Road [realigned](#) from Anderson Mill Road approximately [700](#) feet to connect to the “Anderson Mill Segment (the “Lime Creek Segment”). The Anderson Mill Segment and the Lime Creek Segment are referred to collectively as the “Project”; and

WHEREAS, both the general public and the Developer will benefit if the County and the Developer cooperate to construct the Anderson Mill Segment and the Lime Creek Segment as a single, coordinated, capital improvement project; and

WHEREAS, Section 232.105 of the Texas Local Government Code provides that a commissioners court may contract with a developer of land in the unincorporated area of the County to construct public improvements, and this Agreement is being entered into pursuant to, and is in compliance with, Section 232.105; and

WHEREAS, the Developer has donated, or will donate as provided herein, all of the right of way for the Anderson Mill Segment, and is willing to proceed with construction of the Project on behalf of the County, provided that the County reimburse the Developer for certain costs of the Project as provided in this Agreement;

WHEREAS, by interlocal cooperation agreement dated August 12, 2003, Williamson County has given the County permission to construct any portion of the Anderson Mill Segment that lies within Williamson County;

NOW, THEREFORE, in consideration of the mutual promises, covenants, obligations and benefits set forth in this Agreement, the Parties agree as follows:

Section 1. The Project. The Project is depicted on the attached Exhibit “A-1”, and includes the following components:

(a) The Anderson Mill Segment shall be designed as a Major Arterial Divided 6 Lane roadway (MAD6) as shown in Exhibit “A-2” and referred to as the “Design Cross-Section,” and built as a divided 4 lane roadway, as shown in Exhibit “A-3” and referred to as the “Construction Cross-Section” and/or “Phase 1 Construction,” with curb and gutter at the median adjacent to interior lanes, and bar ditches within the exterior shoulder area, with the following features:

- (i) Right of way of approximately one hundred thirty feet (130’), depending on design requirements;
- (ii) Design for six (6) twelve foot (12’) wide travel lanes; asphalt pavement sections with curb and gutter.
- (iii) Construct as the Phase 1 Construction four (4) lanes with curb and gutter at the median and with bar ditches within the exterior shoulder area; transition to the existing sections of Anderson Mill Lane and Lime Creek Road;
- (iv) Medians approximately twenty-three feet (23’) wide with turn lanes at intersections, depending on traffic needs and design requirements;
- (v) Two (2) median breaks, one located at Zappa Drive, and one located at Lime Creek Road;
- (vi) Ten feet (10’) wide sidewalks on the south side of the Anderson Mill Segment and six foot (6’) wide sidewalks on the north side of the Anderson Mill Segment, with all certified by the Texas Department of Licensing and Regulation to meet all applicable accessibility standards, being built simultaneously with the road;
- (vii) Traffic signal underground conduit and pullboxes at Lime Creek Road and Anderson Mill Rd intersection;
- (viii) Mitigation for environmental impacts (as, and to the extent, required by applicable law based on the environmental, archeological and endangered species studies obtained under Paragraph 5(e)(ii) below);
- (ix) Design and construct for the Design Cross-Section erosion/sedimentation controls, revegetation, and stormwater management during construction as required by Travis County and Texas Commission on Environmental Quality (TCEQ) Regulations, and permanent stormwater management controls as required by Travis County and the City of Cedar Park as required by Section 8, below;

- (x) Guardrails, traffic control devices, pavement markings, and Traffic Control Plans for the Phase 1 Construction, both temporary and permanent, as required by the Texas Manual of Uniform Traffic Control Devices and AASHTO engineering principles and practices; and
 - (xi) Compliance with any standard County and/or City of Cedar Park policies, procedures, and requirements for acceptance of the Project for maintenance.
- (b) The Lime Creek Segment shall be designed and built with the following features:
- (i) Right of way of approximately eighty feet (80'), depending on design requirements;
 - (ii) Two (2) twelve foot (12') wide travel lanes with asphalt pavement sections including turn lanes and curb and gutter;
 - (iii) Ten feet (10') wide sidewalks on the east side of the Lime Creek Segment certified by the Texas Department of Licensing and Regulation to meet all applicable accessibility standards, being built simultaneously with the road;
 - (iv) Mitigation for environmental impacts (as, and to the extent, required by applicable law based on the environmental, archeological and endangered species studies obtained under Paragraph 5(e)(ii) below);
 - (v) Erosion/sedimentation controls, revegetation, and stormwater management during construction as required by the Travis County and TCEQ Regulations, and permanent stormwater management controls as required by Travis County and the City of Cedar Park, as required by Section 8, below;
 - (vi) Guardrails, traffic control devices, pavement markings and Traffic Control Plans, both during construction and permanent, as required by the Texas Manual of Uniform Traffic Control Devices and AASHTO engineering principles and practices; and
 - (vii) Compliance with any standard County and/or City of Cedar Park policies, procedures, and requirements for acceptance of the Project for maintenance.

(c) The Developer, at the Developer's expense (and not as a part of Project Costs which shall be reimbursed) shall cause the Project Engineer, as defined below, to design both the Anderson Mill Segment and the Lime Creek Segment. The Developer shall cause the Contractor, as defined below, to construct the Lime Creek Segment and that portion of the Anderson Mill Segment that is designated as Phase I Construction, but in no event shall the Project Costs (as shown on the preliminary budget attached hereto as Exhibit C) for which the County is obligated

to reimburse the Developer under this Agreement exceed one million, nine-hundred thousand dollars (\$1,900,000).

Section 2. Project Engineering. Developer shall engage the services of Carlson, Briggance and Doering Engineering, Inc. to assist and serve as Developer's agent in performing all necessary engineering and investigations including [surveying, geotech design and traffic analysis](#) for the Project ("**Project Engineers**"), as required by Section 5(e), below. Developer shall submit copies of the proposed contract with the Project Engineers to the County for approval. The County shall have ten (10) business days after such submission within which to make any comments to the form of the contract, and if no such comments are received by Developer within said ten-day period, the County shall be deemed to have approved the form of contract. In their contract, the Project Engineer must acknowledge that the Project is a public works project on public property. Developer shall in a timely manner pay all amounts due to the Project Engineer for the engineering services rendered in association with this Agreement. The County may require the Developer to replace Project Engineer if Project Engineer does not satisfactorily perform any and all responsibilities related to the Project. The design of the Project will be subject to approval by the County, and all other governmental agencies with jurisdiction. The Developer will also obtain from the Project Engineer and provide to the County a collateral assignment of the Developer's rights under the contract with the Project Engineer in the form attached as Exhibit "B", which authorizes the County to utilize the services of the Project Engineer to complete the Project if the Developers fail to do so as provided in this Agreement.

Section 3. Project Management. The Developer will retain Blake Magee Company, L.P. or other entity acceptable to the County to serve as Developer's agent and manage the construction of the Project ("**Project Manager**"). Developer shall submit copies of the proposed contract with the Project Manager to the County for approval. The County shall have ten (10) business days after such submission within which to make any comments to the form of the contract, and if no such comments are received by Developer within said ten-day period, the County shall be deemed to have approved the form of contract. The Project Manager will ensure timely and satisfactory completion of the Project, including planning and conducting a preconstruction conference, monitoring the construction schedule, providing the County with prior notice of major items of work during construction, otherwise coordinating among the Parties and other persons and entities involved in the Project on an ongoing basis, and providing services under Section 5(h), below. The County will reimburse the Developer for the fees and charges of the Project Manager, in an amount equal to **four** percent (4 %) of the "hard costs" of the Project as shown on the preliminary budget attached hereto as Exhibit C . The County may require the Developer to replace the Project Manager if it does not satisfactorily perform its responsibilities related to the Project. The Developer will also obtain from the Project Manager and provide to the County a collateral assignment of the Developer's rights under the contract with the Project Manager in the form attached as Exhibit "B", which authorizes the County to utilize the services of the Project Manager to complete the Project if the Developers fail to do so as provided in this Agreement.

Section 4. Designated Representatives. The County and the Developer each designate the individual specified below ("**Designated Representative**") to represent them and to act on their behalf with respect to the subject matter of this Agreement. Each Designated Representative will have authority to determine and interpret the policies and exercise the

discretion of the Party it represents, and a Party may rely on the decisions and representations made by the other Party's Designated Representative with respect to the subject matter of this Agreement, except as provided by Section 12(d) below. Each Designated Representative may further designate other representatives to transmit instructions and receive information on the Designated Representative's behalf.

County: Joe Gieselman (or successor), Executive Manager, Transportation and Natural Resources Department

Address: P.O. 1748
411 W. 13th St.
Austin, Texas 78767

Developer: Bruce Dickson

Address: Standard Pacific of Texas, L.P.
3215 Steck Avenue, Suite 102
Austin, Texas 78757

The Developer will require the Project Manager to report regularly to, and to cooperate and coordinate with, the County's Designated Representative. Each Party will require its Designated Representative and agents to cooperate and coordinate with one another, including but not limited to meeting with and or reporting information to one another regarding any aspect of the Project, either at regular intervals or at other times determined by the County, and reviewing and commenting in a timely manner on work products associated with the Project.

Section 5. Construction and Acquisition of Project.

(a) The Parties acknowledge that the Project is a County road project and involves construction of public improvements. Accordingly, the Project will be constructed and all right-of-way, easements, equipment, materials and supplies will be acquired in the name of the County; however, all construction contracts and other agreements will contain a provision that each contractor, materialman or supplier will look solely to the Developer for payment of all sums coming due thereunder and that the County will have no obligation to any such party, but will only be obligated to reimburse the Developer in the time and manner required under this Agreement. The County and the Developer acknowledge and agree that all tangible personal property to be purchased for use in construction of the Project and all taxable services to be performed for the design, management and construction of the Project are subject to the sales tax provisions of Section 151.311 of the Texas Tax Code. The County agrees to provide its employer identification number and any other information reasonably required to obtain an exemption of sales tax for the Project and the labor and materials incorporated into the Project upon the Project Manager's request.

(b) The Developer shall solicit bids for a contract to construct the Project. If the bid determined by the Developer to be the lowest responsive and responsible bid exceeds one million seven hundred twenty two thousand six hundred fifty dollars (\$1, 722, 650), the Developer may reject all bids as excessive and solicit bids a second time. If bids are rejected as excessive, the

Developers shall require the Project Engineer, in consultation with the Developers and the County, to modify the Final Plans and Specifications employing value engineering principles in a manner designed to secure a lower bid, while still meeting applicable standards without impairing the cost effectiveness of the Project or violating sound engineering principles or practices or applicable legal requirements. Each Party shall approve the modified Final Plans and Specifications, which approval shall not be unreasonably withheld or delayed. Based on the modified Final Plans and Specifications, the Developer again shall solicit bids for the Construction Contract in an effort to secure a lower acceptable bid. If the second bid solicitation fails to produce an acceptable bid not exceeding one million seven hundred twenty two thousand six hundred fifty dollars (\$1, 722, 650), either the Parties may mutually agree to repeat the bid solicitation and value engineering process until an acceptable bid is received, or either of the Parties may elect to terminate this Agreement. Any deadline in this Agreement affected by a value engineering and rebidding process shall be extended by the amount of time required for that process. Once the Developer has selected a contractor for the construction of the Project, the Developer shall submit copies of the proposed construction contract to the County for approval. The County shall have ten (10) business days after such submission within which to make any comments to the form of the contract, and if no such comments are received by Developer within said ten-day period, the County shall be deemed to have approved the form of contract. The approved form of contract, when executed shall be referred to herein as the "Construction Contract". Within 10 days after execution of the Construction Contract, the Developer will provide to the County a copy of the executed Construction Contract and any related documents, including the required insurance certificates, which will name the County as an additional insured, and payment and performance bonds in compliance with Chapter 2253, Texas Government Code. The Developer will also provide copies of any subsequent documents amending or replacing the Construction Contract or any related documents; however, no change orders to the Construction Contract as approved by the County may be made without the County's approval, which will not be unreasonably withheld or delayed. The Developer will also obtain from the contractor under the Construction Contract (the "Contractor") and provide to the County a collateral assignment of the Developer's rights under the Construction Contract, in the form attached as Exhibit "B", which authorizes the County to exercise the Developer's rights under the Construction Contract and to complete the Project if the Developer fails to do so as provided in this Agreement.

(c) The Developer acknowledges that the County, as a political subdivision of the State of Texas, is subject to the provisions of Chapter 2258, Subchapter B, of the Texas Government Code, pertaining to prevailing wage rates. The Contractor will be required to pay not less than the prevailing wage rates established by the County to workers employed by it in the execution of the Construction Contract, and to comply with all applicable provisions of Chapter 2258, Subchapter B, Texas Government Code, including the recordkeeping required therein. Further, the Contractor will be required to certify in writing that it provides worker's compensation insurance coverage for each employee of the Contractor employed on the Project, and to obtain a certificate from each subcontractor, relating to the coverage of the subcontractor's employees, in accordance with Section 406.096, Texas Labor Code. The Contractor will be required to implement and maintain all customary or necessary safety precautions and programs in connection with the construction of the Project.

(d) Within thirty (30) days after all required approvals of the plans for the Project are obtained, the Developer will execute the Construction Contract and the Project Manager will issue notice to proceed with construction of the Project to the Contractor. Subject to its rights to be reimbursed as provided in this Agreement, the Developer will: (i) construct, and require its contractors and subcontractors to diligently pursue construction of, the Project in a good and workmanlike manner and, in all material respects, in accordance with the Plans and Specifications, as defined below, and all applicable laws, regulations, and ordinances, and (ii) make timely payment for all materials received and work properly performed under each applicable contract, subject to any applicable retainage requirements and amounts withheld due to improper work or punch list items.

(e) With respect to the Project, the Project Engineer will:

(i) provide the County, Project Manager, and Contractor with all existing geotechnical surveys, topographic surveys, and right-of-way boundary exhibit/control maps;

(ii) provide all feasibility or environmental impacts or assessments or studies and permits or approvals required by applicable federal, state, or local law, including those for noise, trees, archaeological or historical sites, wetlands, stormwater, endangered species, or similar resources;

(iii) provide all engineering design for construction of the Project in compliance with the County's standards applicable to roads of the same type and classification as the Project, including utility and infrastructure relocations or adjustments, preparation of final Plans and Specifications, construction cost estimates, and other supporting documentation, which will be in a form that can readily be used in preparation of the Construction Contract documents;

(iv) prepare and submit to the County, Project Manager, and Developer for approval, at preliminary alignment, thirty percent (30%) design complete, sixty percent (60%) design complete, and ninety percent (90%) design complete, plans and specifications for the Project in compliance with the County's standards applicable to roads of the same type and classification as the Project ("Plans and Specifications"), ensure that the Plans and Specifications are accompanied by appropriate engineering reports as required by the County pursuant to its standards applicable to roads of the same type and classification as the Project,

(v) within five business days of receipt, review and approve or take other appropriate action regarding shop drawings and samples, and requests for information, the results of tests and inspections and other data that the Contractor is required to submit; provided, however, that, for structural or geotechnical items, the applicable review and approval period will be ten days;

(vi) determine the acceptability of substitute materials and equipment proposed by the Contractor, receive and review for general content as required by the applicable specifications maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by Contractor in accordance with the

Construction Contract; prepare or review change orders, and design any necessary engineering changes;

(vii) approve all pay estimates submitted and certify them as correct;

(viii) maintain master job files of correspondence, reports of conferences, shop drawings, samples, reproductions of the applicable Plans and Specifications, change orders, addenda, daily inspection reports, additional or revised drawings, and other related construction documents, which will be available for inspection by the County at all times;

(ix) periodically inspect the Project during construction,

(x) reject all work and materials found not to conform to minimum requirements of the Construction Contract and the final approved Plans and Specifications and, in consultation with the County, Project Manager, and Contractor ensure that defects are corrected or remedied;

(xi) advise the County, Project Manager, and Contractor of the remedies that will be effected to correct any defects brought to the attention of the Project Engineer by the County or otherwise brought to the attention of the Project Engineer;

(xii) attend the final inspection of each portion of the Project in the presence of the County inspector and transmit a list of any items to be completed or repaired to the County, Project Manager, and the Contractor; and verify the Contractor's correction of the same;

(xiii) upon completion of the Project, make any changes to the final approved Plans and Specifications for the Project required to reflect field changes and, after verifying that the revised plans reflect, to the best of his knowledge and belief, actual conditions, submit record drawings (as built plans) of the Project to the County; and

(xiv) determine the County's long-term responsibilities for maintenance of storm water quality BMP's after completion and acceptance of the Project.

(f) All work product produced by the Project Engineer will meet customary professional standards applicable to the work product or the Project, as reasonably determined by the County, and is subject to approval by the County based on cost effectiveness, sound engineering principles and practices, and applicable legal requirements, which approval shall not be unreasonably withheld, conditioned or delayed.

(g) [This section intentionally left blank.]

(h) The Project Manager will:

(i) manage construction of the Project, and make monthly reports to the Parties on the progress of construction and the amounts paid to the Contractor;

(ii) submit all proposed changes to the final approved Plans and Specifications and change orders to the Construction Contract to the Project Engineer and the County for approval at least five business days prior to approving or executing them;

(iii) arrange and coordinate materials testing with the Project Engineer and the Contractor through an independent materials testing lab and provide the Parties with all testing information within three business days of receipt;

(iv) arrange and observe with the Project Engineer and the Construction Contractor all acceptance testing for the Project;

(v) upon substantial completion of the Project, provide the Parties with a certificate of substantial completion for the Project prepared by the Project Engineer, together with copy of the notice to the Contractor of observed items requiring completion or correction;

(vi) permit the County to inspect the construction of the Project at all reasonable times during construction until final acceptance of the Project by the County; and

(vii) coordinate the final inspection of the Project with the County's inspectors.

(i) If, after initiation of construction, the Project Manager, based on cost effectiveness, sound engineering principles and practices, or applicable legal requirements, reasonably determines that the Project as described in Section 1, above, cannot be completed without modifications to the approved Plans and Specifications, the Project Manager, in consultation with the County, will coordinate with the Project Engineer to make those required changes. Any modifications that would materially change the Plans and Specifications or increase the amount of the Construction Contract will be subject to the Developer's and the County's approval within ten business days after receipt of notice of the proposed changes from the Project Manager, which approval will not be unreasonably withheld.

(j) The Project will be constructed in dedicated public rights-of-way and/or dedicated easements. The Parties anticipate that all rights-of-way and easements necessary for the Project have been dedicated except (i) easements and property for permanent stormwater management controls required under Section 8, below, and (ii) that portion lying with a 60.458 acres tract owned by the City of Austin that is required for the Anderson Mill Segment, which the County shall be responsible for obtaining at the County's expense. The Developer shall cause the Project Engineer to use reasonable efforts to design the Project to avoid the necessity for acquiring any rights-of-way or easements other than the foregoing. If the County has not acquired the foregoing rights-of-way, easements, or property by March 1, 2004, the County may terminate this contract. If the County does not terminate this Contract, all deadlines set forth herein for Developer's performance shall be extended by the number of days after March 1, 2004 until the date upon which the County notifies the Developer that all such right-of-way, easements or property has been obtained.

(k) The Project must be constructed in a good and workmanlike manner and all material used in the construction must be free from defects and fit for their intended purpose.

Section 6. Inspection. The County's inspectors will inspect all work done and materials furnished at times and using procedures determined by the County. The inspections and certifications will be conducted in accordance with standard County policies, procedures, and requirements. The County will notify the Project Manager and Project Engineer if any inspection reveals that any part of the Project is not constructed or completed in accordance with the final approved Plans and Specifications or this Agreement or is otherwise materially defective. This notice will specifically detail any deficiencies. If an inspection indicates that work or material may not comply with the final approved Plans and Specifications or the requirements of this Agreement, the County may require the Contractor to suspend work until the County is satisfied any defect is or will be remedied.

Section 7. Completion of Project and Final Accounting and Payment of Costs.

(a) If the Developer has not executed the Construction Contract and given notice to proceed within thirty (30) days after all development approvals for the Project are obtained and all right of way dedicated, the County may terminate this Agreement and be relieved of any obligation to pay any amount under this Agreement. The Developer must cause the Project to be substantially complete within 270 **calendar days** from the issuance of notice to proceed to the Contractor, and to be finally accepted by the County within 360 **calendar days** from the issuance of notice to proceed.

(b) The Project Engineer will prepare a written notice of substantial completion and forward the notice to the Project Manager, who will submit the notice to the County. The County will conduct a final inspection of the Project within five business days after receiving written notice of substantial completion from the Project Manager. If completed in accordance with the terms of the final approved Plans and Specifications and this Agreement in all material respects, the County will certify the Project as being in compliance and issue a notice of final acceptance to the Project Manager.

(c) Upon final acceptance of the Project by the County, all warranties for the Project and the final approved Plans and Specifications will be transferred to the County and the Developer will execute any documents reasonably required to evidence such assignment. The Contractor will be responsible for any defects in workmanship or materials (ordinary wear and tear excepted) in the Project for one year following acceptance by the County. The Developer must provide the County with a one-year Contractor's warranty and maintenance bond as a condition to final acceptance of the Project, which will be in a form approved by the County, such approval not to be unreasonably withheld or delayed.

(d) Upon final acceptance of the Project by the County, the Project Manager and the Project Engineer will deliver all plans **including "as built" plans**, specifications, and files pertaining to the Project, which materials will be the property of the County.

(e) The Developer will promptly pay all costs of the Project as they become due, including, without limitation, all costs of design, engineering, materials, labor, construction, project management and inspection arising in connection with the Project; and all payments arising under any contracts entered into for the construction of the Project. The County hereby waives all County review, permit and inspection fees in connection with the Project.

Section 8. Responsibilities and Costs of Project to be Funded by Developer.

(a) Developer shall design and construct at Developer's sole expense, all permanent stormwater management controls necessary under regulations of Travis County, the City of Cedar Park, and the Texas Commission on Environmental Quality (TCEQ) for the conveyance, detention, and treatment of all stormwater from the Project. For that stormwater from the Project that drains to Developer's Land, those controls shall convey, detain, and treat the stormwater to and within facilities on a suitable location(s) on property owned by Developer. For that stormwater from the Project that does not drain to Developer's Land, those controls shall convey, detain, and treat the stormwater to and within facilities that either already exist within, or that will be constructed by the Developer as part of the Project within, existing rights or way or easements to and within which it is permissible to convey that stormwater and construct those facilities.

(b) Other than the stormwater to be conveyed to facilities that either already exist, or that will be constructed by the Developer as part of the Project, within existing rights of way or easements, developer shall accept and convey all stormwater from the Project onto Developer's adjacent property.

(c) In seeking development approvals for the Project, the Developer shall include within the scope of the applications or requests for approvals only those stormwater management controls serving the Project itself, and shall not without the County's prior written consent include in an application or request stormwater management controls serving development other than the Project.

(d) Developer shall dedicate for public use the remaining right of way for the Anderson Mill Segment and all necessary easements and property for stormwater management associated with the Project no later than January 1, 2004. Further, by January 1, 2004, Developer shall cause a correction dedication deed to be filed, correcting the field notes on the prior right of way dedication.

Section 9. Time and Amount of Reimbursement.

(a) The County will reimburse the Developer for actual costs of the Project incurred after the effective date of the Agreement as follows:

(i) For costs paid to the Contractor under the Construction Contract, for the sum of four percent (4%) of "hard costs" paid to the Project Manager for project management services, for costs paid for traffic analysis and geotechnical analysis, and for project costs of any required material testing, permits, utility relocation costs, construction staking and inspections, a total amount not to exceed one million, nine-hundred thousand dollars (\$1,900,000) ("Project Cost"), unless an increase in the Project Cost is authorized by the County under Section 5(i), above.

(b) Monthly Payments by County. The Project Manager will submit an invoice to the County each month which details sums due and payable to the Contractor, Project Engineer and Project Manager for services and work performed during the previous calendar month, together with the following backup documentation:

(i) a signed Travis County Invoice Cover Sheet Form in the form attached as Exhibit "C";

(ii) copies of all Contractor pay estimates included in the request for payment, which will include a detailed summary of the work completed by the Contractor and an affidavit of bills paid and partial lien waiver from the Contractor;

(iii) copies of all Project Manager invoices included in the request for payment; and

(iv) copies of any invoices for permits, inspection or testing, [utility relocation](#) and [any](#) other miscellaneous costs of the Project.

(c) A minimum five percent retainage (the "Construction Retainage") will be withheld by the County on payments attributable to the Contractor until the Project is accepted by the County. In addition, the final 5% of the Project Manager's fee will be held by the County as retainage until the Project is accepted by the County, at which time such retained fee shall be paid to Project Manager. The Construction Retainage amount will be released and paid by the County within 30 days of final acceptance of the Project and delivery to the County of the Contractor's affidavit of bills paid and a final lien waiver.

(d) If the services and work described in the invoice were rendered in compliance with this Agreement, the County will make payment to the Developer within 30 days of receipt of each invoice submitted as provided in (b), above. In the event changes or corrections are required to any invoice, a request for additional information [will](#) be made by the County within five days of receipt of the invoice.

Section 10. Correction of Defects; Claims. Conveyance of the Project to the County will not relieve the Developer of liability for satisfaction of any unpaid claim for materials or labor. The County will be under no obligation to challenge any claim for unpaid labor or materials; however, if the Developer fails to promptly resolve any claim, the County may elect to do so and, in this event, will have full rights of subrogation.

Section 11. County Completion of Project.

(a) If the Developer begins, but does not diligently pursue timely completion of, construction of the Project materially in accordance with the final approved Plans and Specifications and this Agreement for any reason, the County has the right, but not the obligation, to complete the construction of the Project pursuant to the Construction Contract or otherwise. Before exercising this right, the County will send the Developer written notice specifying the deficiency in the Developer's performance and the actions required to cure the deficiency. If the Developer does not cure the deficiency within ten days (or such time as reasonably may be required to cure the deficiency provided the Developer promptly begins, and diligently pursues, such cure), the County may assume the Construction Contract and proceed with construction of the Project.

(b) If the County elects to complete the Project, all plans, designs, easements, real and personal property produced or installed within the public right-of-way prior to the take-over

of construction of the Project by the County will become the property of the County to the reasonable extent necessary to allow the County to complete and maintain the Project.

(c) The Developer hereby grants to the County a nonexclusive right and easement to enter the property of the Developer to the reasonable extent necessary for construction of the Project under this Agreement in accordance with its terms and provisions and in accordance with the notice and cure periods contained in this Agreement.

Section 12. Miscellaneous.

(a) Any notice given hereunder by any Party to another must be in writing and may be effected by personal delivery or by certified mail, return receipt requested, when mailed to the appropriate Party's Designated Representative, at the addresses specified in Section 4, with copies as noted below:

County: Joseph P. Gieselman (or successor), Executive Manager,
Transportation and Natural Resources Department

Address: P.O. 1748
411 W. 13th St.
Austin, Texas 78767

Copy to: David Escamilla (or successor)
Travis County Attorney
P.O. Box 1748
Austin, Texas 78767
Attn: File No. 163.792

Developer: Bruce Dickson

Address: Standard Pacific of Texas, L.P.
3215 Steck Avenue, Suite 102
Austin, Texas 78757

Copy to: Blake J. Magee

Address: 1011 N. Lamar Blvd.
Austin, Texas 78703

The Parties may change their respective addresses for purposes of notice by giving at least five days written notice of the new address to the other Party. If any date or any period provided in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period will be extended to the next business day.

(b) As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular or plural number will each be deemed to include the others.

(c) This Agreement contains the complete and entire Agreement between the Parties respecting the Project, and supersedes all prior negotiations, agreements, representations, and understandings, if any, between the Parties. This Agreement may not be modified, discharged, or changed except by a further written agreement, duly executed by the Parties. However, any consent, waiver, approval or other authorization will be effective if signed by the Party granting or making such consent, waiver, approval, or authorization.

(d) No official, representative, agent, or employee of the County has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the commissioners court of the County.

(e) The Parties agree to execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the purposes of this Agreement.

(f) If performance by any Party of any obligation under this Agreement is interrupted or delayed by reason of unforeseeable event beyond its control, whether such event is an act of God or the common enemy, or the result of war, riot, civil commotion, sovereign conduct other than acts of the County under this Agreement, or the act of conduct of any person or persons not a party or privy hereto, then such Party will be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

(g) To the extent allowed by law, each Party will be responsible for, and will indemnify and hold harmless the other Parties, their officers, agents, and employees, from any and all claims, losses, damages, causes of action, lawsuits or liability resulting from, the indemnifying Party's acts or omissions of negligence or misconduct or in breach of this Agreement, including but not limited to claims for liquidated damages, delay damages, demobilization or remobilization costs, or claims arising from inadequacies, insufficiencies, or mistakes in the Plans and Specifications and other work products or any other materials or services a Party provides under this Agreement. Each Party will promptly notify the others of any claim asserted by or against it for damages or other relief in connection with this Agreement.

(h) The Parties acknowledge that in the event of default on any obligation under this Agreement, remedies at law will be inadequate and that, in addition to any other remedy at law or in equity, each Party will be entitled to seek specific performance of this Agreement.

(i) This Agreement will be construed under the laws of the State of Texas and all obligations of the Parties hereunder are performable in Travis County, Texas. Any suits pursued relating to this Agreement will be filed in a court of Travis County, Texas.

(j) Any clause, sentence, provision, paragraph, or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective will not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof will be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.

(k) This Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and assigns. No Party may assign its rights or obligations under this Agreement without the written consent of the other Party; however, the

Developer may grant a security interest in and collaterally assign all sums to be paid to the Developer by the County under this Agreement to any lending institution making a loan to the Developer for purposes of payment of the costs of the Project, and the County expressly consents to any such security interest or collateral assignment.

(l) Except as otherwise expressly provided herein, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto, any benefits, rights or remedies under or by reason of this Agreement.

(m) This Agreement is effective upon execution by all the Parties. This Agreement may be executed simultaneously in one or several counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument. The terms of this Agreement will become binding upon each Party from and after the time that it executes a copy hereof. In like manner, from and after the time it executes a consent or other document authorized or required by the terms of this Agreement, such consent or other document will be binding upon such Party.

(n) The following exhibits are attached to and incorporated into this Agreement for all purposes:

- Exhibits A1 through 3: The Project, Design Cross-Section, Construction Cross-Section
- Exhibit B: Collateral Assignment
- Exhibit C: Budget
- Exhibit D: Travis County Invoice Cover Sheet

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, on this ____ day of _____, 2003.

TRAVIS COUNTY, TEXAS

By: _____
Samuel T. Biscoe, County Judge

Date: _____

STANDARD PACIFIC OF TEXAS, L.P., a
Delaware limited partnership

By: Standard Pacific of Texas GP, Inc., a
Delaware corporation, General
Partner

By: _____

Date: _____

EXHIBITS A1 THROUGH 3

THE PROJECT, THE DESIGN CROSS-SECTION, THE CONSTRUCTION CROSS-SECTION

EXHIBIT B

COLLATERAL ASSIGNMENT

COLLATERAL ASSIGNMENT OF CONTRACT AND CONTRACT RIGHTS

DATE: _____, 2003

ASSIGNOR: Standard Pacific of Texas, L.P., a Delaware Limited Partnership

ASSIGNOR'S ADDRESS: 3215 Steck Avenue, Suite 102, Austin, Texas 78757

BENEFICIARY: Travis County, Texas

BENEFICIARY'S ADDRESS: P.O. Box 1748, 411 West 13th Street, Austin, Texas 78767

PARTICIPATION AGREEMENT: The Anderson Mill Road "Cypress Canyon" Participation Agreement between Assignor and Assignee dated _____, 2003.

CONTRACT: All of Assignor's right, title, and interest (but not Assignor's duties or obligations) in and to the following described contracts (collectively, the "Contracts"):

- (a) The Construction Contract between _____ and Assignor dated as of _____, 2003, a copy of which is attached hereto as Exhibit "A";
- (b) The Engineering Contract between _____ and Assignor dated as of _____, 2003, a copy of which is attached as Exhibit "B"; and
- (c) The Project Management Agreement between _____ and Assignor dated as of _____, 2003, a copy of which is attached as Exhibit "C".

1. **Agreement.** Subject to the terms and conditions of this Collateral Assignment of Contract and Contract Rights (this "Assignment"), in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which Assignor acknowledges, Assignor hereby grants, assigns, transfers, and conveys to Beneficiary the Contracts, and all powers, benefits, right, title, and interest accruing and to accrue to Assignor and to which Assignor is or may hereafter become entitled to by virtue of the Contracts.

2. **Secured Obligations.** This assignment is made to Beneficiary to secure the performance by Assignor of all of Assignor's duties and obligations under the Participation Agreement..

3. **License.** Beneficiary hereby grants to Assignor a limited license (the "License") to exercise and enjoy all of Assignor's rights and benefits under the Contracts. Upon the occurrence of an Event of Default (as defined below), Beneficiary will have the complete right,

power and authority hereunder, then or thereafter, to terminate the License in its own name or in the name of Assignor, to exercise and enjoy all of Assignor's rights and benefits under the Contracts.

4. **Assumption Date.** Upon the occurrence of an Event of Default, as defined below, Secured Party may, at its option, assume Assignor's rights under the Contracts, subject to the terms and conditions of this Assignment, as of the date of such default or at any time thereafter while such default continues (the "Assumption Date").

(a) After the Assumption Date, all of Assignor's rights and benefits under the Contracts will terminate without notice of any kind to Assignor, and Beneficiary will succeed to all of Assignor's rights, benefits, duties and obligations under the Contracts.

(b) The other parties to the Contracts will recognize and attorn to Beneficiary as if Beneficiary had originally been a party to such Contracts. In the event of a conflict between the terms of the Contracts and the terms of the Participation Agreement, the terms of the Participation Agreement will control.

5. **Assignor's Representations and Warranties and Related Covenants.** Assignor represents and warrants to Beneficiary as follows:

(a) Assignor's execution, delivery and performance of this Assignment does not require the consent or approval of any governmental body or other regulatory authority and are not in contravention of, or in conflict with, any law or regulation or any term or provision of the Contracts. This Assignment is a valid, binding and legally enforceable obligation of Assignor in accordance with its terms, except to the extent, if any, that enforceability may be affected or limited by creditors' rights, legislation and court decisions of general application.

(b) The execution and delivery of this Assignment is not, and the performance of this Assignment will not be, in contravention of, or in conflict with, any agreement, indenture or undertaking to which Assignor is a party or by which Assignor or any of its property is or may be bound or affected, and do not and will not cause any security interest, lien or other encumbrance to be created or imposed or accelerated upon or in connection with any such property.

(c) To the Assignor's current actual knowledge, there is no litigation or other proceeding pending against or affecting Assignor or its properties which, if determined adversely to Assignor, would have a materially adverse effect on Assignor's financial condition, properties or operations. Assignor is not in default in any materially adverse manner with respect to any law, restriction, order, writ, injunction, decree or demand of any court or other governmental or regulatory authority or with respect to any agreement, indenture or undertaking to which it or any of its property is bound or affected.

(d) Except for this Assignment (which Assignor has authority to grant): Assignor has not previously assigned, transferred, conveyed, sold, pledged or hypothecated any of the Contracts.

6. **Assignor's Agreements.** Assignor agrees as follows:

- (a) To perform all of its obligations under the Participation Agreement.
- (b) To perform or cause to be performed each and every obligation and duty imposed upon Assignor by the Contracts and to not do any act or not omit to do any act which would constitute a breach of, default under or noncompliance with the Contracts.
- (j) Not to execute any amendment or modification of the Contracts or otherwise change or alter any of the terms and provisions of the Contracts without Beneficiary's prior written consent.
- (l) To promptly notify Beneficiary of the occurrence of any event which constitutes a breach of, default under, or noncompliance with, or which with the passage of time, notice, or both, will constitute a breach of, default under, or noncompliance with any of the terms and provisions of the Contracts.
- (m) To send, with reasonable promptness, to Beneficiary copies of any and all notices of default, breach or material alteration sent or received by Assignor under the Contracts or in connection with Assignor's interest in the Contracts.

7. **Events of Default.** Assignor will be in default under this Assignment upon the happening of any one or more of the following events or conditions (an "Event of Default"):

- (a) Any event of default which occurs under the Participation Agreement which is not cured within any applicable grace or notice and opportunity to cure period.
- (b) Breach of, noncompliance with, or default by Assignor in any of its agreements under this Assignment which is not cured within 15 days after notice of such breach, noncompliance or default, provided that such 15-day cure period will be extended if such breach, noncompliance or default cannot be reasonably cured within 15 days, provided that Assignor commences to cure such breach, noncompliance or default within the 15-day period and thereafter diligently prosecutes such cure to completion.
- (c) Material breach of, noncompliance with, or default under any of the terms and provisions of the Contracts which is not cured within any applicable grace or notice and opportunity to cure period.

8. **Beneficiary's Rights and Remedies.**

- (a) Assignor hereby irrevocably appoints Beneficiary as Assignor's true and lawful agent and attorney-in-fact, with full power of substitution, in Beneficiary's own name or in the name of Assignor, for Beneficiary's sole use and benefit, but at Assignor's cost and expense, to exercise, upon the occurrence of an Event of Default, all or any of the following powers and rights with respect to the Contracts (without any obligation on the part of Beneficiary to exercise any of the following powers and rights): (1) to demand, receive, collect, sue and give acquittance for, settle, compromise, compound, prosecute or defend any action or proceeding with respect to the Contracts; (2) to exercise, enforce, enjoy, carry out, receive, and/or perform

any and all rights, powers, duties, benefits, obligations and remedies of Assignor with respect to and arising under the Contracts; provided, however, Beneficiary's exercise of or Beneficiary's failure to exercise any such authority will in no manner affect Assignor's liability hereunder or under the Participation Agreement, and provided, further, that Beneficiary will be under no obligation or duty to exercise any of the powers hereby conferred upon it and will be without liability for any act or failure to act in connection with the preservation of any rights under, any of the Contracts. The agency and authority hereby granted and created is an agency coupled with an interest.

(b) Upon the occurrence of an Event of Default and at any time thereafter, Beneficiary will have the rights and remedies provided by law.

(c) All recitals in any instrument of assignment or any other instrument executed by Beneficiary incident to the Contracts or any part thereof will be full proof of the matters stated therein and no other proof will be requisite to establish full legal propriety of the action taken by Beneficiary or of any fact, condition or thing incident thereto, and all prerequisites of such action will be presumed conclusively to have been performed or to have occurred.

(d) Assignor waives demand, notice, protest, and all demands and notices of any action taken by Beneficiary under this Assignment.

10. **General**. Assignor and Beneficiary agree as follows:

(a) Upon the full performance of Assignor's obligations under the Participation Agreement, this Assignment and the interests created hereby will terminate. Upon termination of this Assignment, Beneficiary will, at Assignor's sole cost and expense, execute and deliver to Assignor such documents as Assignor will reasonably request to evidence such termination.

(b) Beneficiary is not, by entering into this Assignment or accepting the assignment of and security interest in the Contracts, assuming or agreeing to assume any obligation or liabilities on the part of Assignor under the Contracts.

(c) Beneficiary's remedies hereunder are cumulative, and the exercise of any one or more of the remedies provided for herein will not be construed as a waiver of any of Beneficiary's other remedies.

(d) Notice mailed to Assignor's address as reflected above, or to Assignor's most recent changed address on file with Beneficiary, at least ten (10) days prior to the related action, will be deemed reasonable.

(e) THIS ASSIGNMENT HAS BEEN MADE IN, AND THE INTEREST GRANTED HEREBY IS GRANTED IN, AND BOTH Will BE GOVERNED BY, THE LAWS OF THE STATE OF TEXAS IN ALL RESPECTS, INCLUDING WITHOUT LIMITATION MATTERS OF CONSTRUCTION, VALIDITY, ENFORCEMENT AND PERFORMANCE. This Assignment may not be modified, altered or amended except in writing duly signed by an authorized representative of Beneficiary and by Assignor. If any provision of this Assignment is

rendered or declared illegal or unenforceable by reason of any existing or subsequently enacted statute, rule or regulation, or by order of or judgment of a court, any and all other terms and provisions of this Assignment will remain in full force and effect as stated and set forth herein.

(1) All notices, demands, requests and other communications required or permitted hereunder will be in writing and may be personally served or sent by mail, and if given by personal service, it will be deemed to have been given upon receipt, and if sent by mail, it will be deemed to have been given upon its deposit in the mail, postage prepaid, registered or certified, return receipt requested, addressed to Assignor or Beneficiary, as the case may be. The addresses of the parties to this Assignment are set forth on page I of this Assignment. Any of the parties to this Assignment will have the right to change their respective addresses by designating a new address in a written notice to the other parties as herein required.

(m) This Assignment may be executed in multiple original counterparts.

EXECUTED this ____ day of _____, 2003.

BENEFICIARY:

TRAVIS COUNTY, TEXAS

By: _____

Samuel T. Biscoe, County Judge

Date: _____

ASSIGNOR:

CONSENTED TO BY:

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT C

TRAVIS COUNTY INVOICE COVER SHEET