

NOTICE OF CONFIDENTIALITY RIGHTS: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

**ENCROACHMENT AGREEMENT BETWEEN
THE CITY OF MANOR, TEXAS, AND
THE CITY OF AUSTIN, TEXAS**

This **ENCROACHMENT AGREEMENT BETWEEN THE CITY OF MANOR, TEXAS AND THE CITY OF AUSTIN, TEXAS** (this “**Agreement**”) is made and entered into by and between the **CITY OF MANOR, TEXAS**, a home-rule municipal corporation and political subdivision of the State of Texas situated in Travis County, Texas (the “**City**”) and the **CITY OF AUSTIN, TEXAS**, a Texas home-rule city and municipal corporation situated in Travis, Williamson, and Hays Counties (**Austin**), sometimes collectively referred to as the “**Parties**.”

WHEREAS, Lennar Homes of Texas Land and Construction Ltd, a Texas limited corporation (**Lennar**) is developing an approximate 320.49-acre tract, located in Travis County, Texas, and anticipates developing such tract for single-family residential use (as depicted on **Exhibit “A”** attached hereto, the “**Lennar Development**”); and

WHEREAS, LIT IDV Ranch 130 Phase I, LLC, a Texas limited liability corporation (“**IDV**”) is developing an approximate 399.56-acre tract, located in Travis County, Texas, and anticipates developing such tract as an industrial park (as depicted on **Exhibit “A”** attached hereto, the “**IDV Development**”); and

WHEREAS, a public right-of-way easement exists over, under, upon, and across that certain public street commonly known as “Entrada Blvd.” in Manor, Texas (the “**Right-of-Way**”); and

WHEREAS, under applicable Texas law, including but not limited to Section 311.001 of the Texas Transportation Code, the City has “exclusive dominion and control” over the Right-of-Way; and

WHEREAS, under the City of Manor License Agreement between the City, Lennar, and IDV dated November 6, 2024 and recorded in Document No. 2025013171 of the Official Public Records of Travis County, Texas (the “**Developer’s License**”), the City has granted Lennar and IDV the right to install and construct a wastewater force main and related appurtenances within the Right-of-Way to serve the Lennar Development, the IDV Development, and other future customers of Austin Water, a municipally-owned utility and department of Austin (the “**Improvements**”); and

WHEREAS, upon Lennar and IDV’s installation of the Improvements and Austin’s final acceptance of the Improvements, the Improvements will be operated and maintained by Austin;

and

WHEREAS, after due consideration and deliberation, the City has determined that upon Austin's acceptance of the Improvements, it may grant Austin the limited right to operate, use, repair, maintain, replace, relocate, enlarge, and remove such Improvements within a limited portion of the Right-of-Way upon the terms and conditions set forth herein;

NOW, THEREFORE, the City and Austin agree as follows:

1. Permission for Encroachment. Subject to the terms and conditions of this Agreement, the City grants Austin the contractual right to use those certain portions of the City's Right-of-Way described in **Exhibit "A"** (the "**Encroachment Area**") for the purpose of operating, using, repairing, maintaining, replacing, relocating, enlarging, and removing the Improvements for the Permitted Use described below.

2. Permitted Use. Austin may use the Encroachment Area only for the purpose of providing wastewater service to customers of Austin Water (the "**Permitted Use**"). Any other use will not be permitted and will result in the termination of this Agreement. Other than in the exercise of the rights granted herein, Austin shall not interfere with or obstruct the City's or other legally permitted uses of the Right-of-Way. Austin agrees that this Agreement in no way alters or amends the rights and privileges of the City in the Right-of-Way, except as set forth herein. In particular, the City and other legally authorized users of the Right-of-Way may use and make improvements within the Right-of-Way adjacent to the Encroachment Area and the Improvements, but the City covenants that the City and other legally authorized users of the Right-of-Way will not use or make improvements within the Encroachment Area without the express written consent of Austin or except as expressly authorized herein.

3. Legal Requirements. Austin shall comply with all applicable State and/or Federal laws, codes, rules, regulations, and policies now existing or later adopted (the "**Legal Requirements**") regarding the maintenance and operation of the Improvements and any modification, repair, removal, or replacement of the Improvements and shall pay all costs required to maintain, modify, repair, remove, or replace the Improvements or any portion thereof in compliance with the Legal Requirements.

4. Consideration. In consideration of the grant of the rights hereunder and the indeterminate length of the grant, Austin has caused Lennar and IDV to pay the City a fee as part of the Developer's License. The amount paid to the City will be reduced by Ten Dollars (\$10.00) in consideration of the retention of the right of redemption rights described below (the "**Independent Consideration**").

5. Term. The term of this Agreement commences upon the date of final execution by the Parties (the "**Effective Date**") and continues thereafter for so long as the Encroachment Area is used by Austin solely for the Permitted Use, subject to earlier termination as set out below. Use of the Encroachment Area by others, either inadvertent or with approval by the Parties, shall not impact the term of this Agreement.

6. Limits on Encroachment Agreement. The existence of this Agreement is expressly subordinate to the present and future right of the City to construct, install, establish, maintain, use, operate, renew, and connect with any public roadways, sidewalks, or streets above or adjacent to the Encroachment Area (collectively, the “**City Facilities**”). The City retains the absolute right to access its Right-of-Way above and adjacent to the Encroachment Area for the purpose of constructing, installing, operating, maintaining, repairing, replacing, or connecting with City Facilities in the Right-of-Way.

7. Repair or Relocation of City Facilities. Austin must pay all costs required to repair damage to or relocate any City Facilities that are damaged or destroyed or need to be relocated as a result of activities under this Agreement. Austin shall notify the City in advance of any excavation it undertakes within the Right-of-Way, so that the City may relocate or close the City Facilities as necessary.

8. Maintenance. Austin is responsible for the ongoing and long-term maintenance and repair of the Improvements as required to maintain the structural integrity, condition, capacity, and performance of the Improvements and the Right-of-Way, and the City will be responsible for any repair to the Improvements that are necessary as a result of the City’s access, maintenance, or improvement of the Right-of-Way.

9. Right of Entry. The City retains the right to enter onto the Encroachment Area to access the Improvements and take such action as reasonably necessary to address public health and safety concerns with respect to Improvements or Right-of-Way. The City shall notify Austin of such emergency access as soon as reasonably possible and not more than 12-hours after the access has occurred. The City may summarily enter the Encroachment Area without incurring any obligation to Austin and take such actions it deems reasonably necessary to address imminent public health or safety emergencies with respect to the Encroachment Area, the Improvements, or the Right-of-Way.

10. Damage and Destruction. Austin acknowledges that the Improvements may be damaged or destroyed as a result of the City’s legally permitted use of the Right-of-Way. If the Improvements are thusly damaged, the City shall, at the City’s sole cost and expense, be responsible for the repair or replacement of the Improvements that were damaged by the City or other legally permitted users of the Right-of-Way.

11. Right of Redemption. The City retains the right of redemption to pay Austin to extinguish the rights granted hereunder, if the construction of the Improvements is not commenced within three (3) years of the Effective Date of this Agreement, unless the Parties mutually agree to extend this date. The consideration to be paid to Austin will be the amount paid by Lennar and IDV to the City under the Developer’s License.

12. Termination by the City. The City may terminate this Agreement by (i) delivering written notice of termination to Austin not later than one (1) calendar year before the proposed effective date of termination that identifies a proposed alternative location for the Improvements or a proposed alternative means of providing wastewater service to any Austin customers who would be affected by the removal of the Improvements; (ii) obtaining Austin’s written approval of

the alternative location for the Improvements or the alternative means of providing wastewater service at least 180 days before the effective date of termination; (iii) acquiring, prior to the effective date of termination, on behalf of Austin any wastewater easements and other interests necessary to effectuate the approved alternative location of the Improvements or the alternative means of providing wastewater service to the affected customers; and (iv) designing, permitting, and constructing, prior to the effective date of termination, on behalf of Austin, at the City's sole cost and expense and to Austin's satisfaction in its sole and absolute discretion, any replacement facilities or improvements necessary to effectuate the relocation of the Improvements and/or the provision of wastewater service to any affected Austin customers.

13. Insurance. The City acknowledges that Austin is self-insured.

14. Default.

A. The occurrence of one or more of the following events (beyond applicable notice and cure periods) will constitute a default under this Agreement:

1. The failure of Austin to maintain the Improvements, and such failure causes damage to the City or endangers the health and safety of the public;
2. The abandonment of the Improvements by Austin;
3. The use of the Improvements for other than the Permitted Use;
4. The failure of Austin to modify the Improvements as necessary to alleviate a present or potential danger to the public health and safety, as mutually determined by the Parties;
5. The mutual determination that the Improvements or a portion thereof constitute a danger to the public not remediable by the modification or maintenance of the Improvements;
6. The mutual determination that the Improvements are structurally inadequate to support the Right-of-Way; or
7. The failure of Austin to comply with any other material term or condition of this Agreement.

B. In the event of such a default, the City will give Austin written notice of the default. Austin will have thirty (30) calendar days from the date of the notice to take action to cure the default, or such lesser period as specified by the City in the event of a default that creates the need for a health or safety or emergency response; provided, however, except in the event of an emergency or a health and safety default, if Austin commences the process of curing the default and notifies the City of such action within the thirty (30) calendar day period, and proceeds diligently and continuously toward fully curing such default, Austin shall have an additional period of up to thirty (30) calendar days or such other reasonable period to be agreed to in writing by the City to fully cure the default. If Austin does not satisfactorily cure the default within the period allowed, the City may cure the default or contract to cure the default at its sole cost.

C. In the event of a failure to cure an event of default within the period allowed by Section 14.B, the City may terminate this Agreement.

D. Either party may waive any default of the other at any time, without affecting or impairing any right arising from any subsequent or other default.

15. Termination by Austin. Austin may terminate this Agreement by delivering written notice of termination to the City not later than thirty (30) calendar days before the proposed effective date of termination. Upon the effective date of such a termination, any Improvements not removed from the Encroachment Area may be deemed property of the City by Austin filing a bill of sale in the Official Public Records of the county in which the Improvements are located stating that Austin has elected to convey the Improvements to the City.

16. Automatic Reversion; Remaining Improvements. In the event of abandonment of the Improvements or any other default resulting in termination of this Agreement after any cure periods have run, any and all rights granted to Austin under this Agreement will automatically revert to the City on a date that is 30 days after the City provides notice of the termination to Austin, and all Improvements not removed from the Encroachment Area may be deemed property of the City by the City filing an affidavit in the Official Public Records of the county in which the Improvements are located stating that the City has elected to acquire the Improvements.

17. Eminent Domain. If eminent domain is exercised on the Encroachment Area, the Right-of-Way, or the Improvements by a third party with eminent domain authority, the City will cooperate with Austin in the removal, relocation, or modification of Austin's affected Improvements. Austin may retain all monies paid by such condemning authority for Austin's taken Improvements and damages to Austin's utility system, if any. In the event that the City determines that it requires the Right-of-Way free of the Encroachment Area or partial Encroachment Area granted hereunder for Right-of-Way purposes, the City may re-acquire the rights granted under this Encroachment Agreement through eminent domain proceedings or by agreement with Austin in lieu of eminent domain.

18. Assignment. Austin may assign or transfer its interest in this Agreement to a successor owner of wastewater system by providing written notice to the City of the proposed assignment and evidence that the assignee or transferee has agreed to assume Austin's obligations herein. Austin will provide the City with a copy of any such proposed assignment or transfer, which must include the name, address, and contact person of the proposed assignee or transferee; with the proposed date of assignment or transfer; and, following the assignment or transfer, with a copy of the assignment or transfer with its recording notation in the county in which the Encroachment Area is located. Upon the City's receipt of the recorded assignment or transfer, Austin shall have no further obligations under this Agreement arising after such assignment or transfer.

19. General Provisions.

A. Applicable Law. This Agreement is governed by and shall be construed under Texas law.

B. Venue. Venue for all causes of action arising out of or connected in any way to this Agreement will lie exclusively in the state district courts of Travis County, Texas.

C. Entirety & Amendment. This is the entire agreement between the Parties with respect to the Encroachment Agreement.
City of Manor – City of Austin

to the subject matter hereof. This Agreement may only be amended by subsequent written instrument executed by both Parties.

D. Interpretation. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts will be enforced, to the extent possible, consistent with the intent of the parties as evidenced by this Agreement. Although drafted by Austin, this Agreement will in the event of any dispute over its meaning or application be interpreted fairly and reasonably and neither more strongly for or against either party.

E. Notice. Any notice must be given in writing and shall be deemed received on the earlier of (i) actual receipt or (ii) three (3) calendar days after the date the notice is deposited in the United States mail, postage prepaid, certified mail, and return receipt requested. Notice must be sent to:

If to the City:

City of Manor

If to Austin:

City of Austin
Financial Services Department – Real Estate
P.O. Box 1088
Austin, TX 78767

With copies to:

City of Austin
Austin Water Utility
P.O. Box 1088
Austin, TX 78767

and

City of Austin
Law Department
P.O. Box 1088
Austin, TX 78767

Notification of a change of address must be delivered to the other party within ten (10) calendar days of any change of address to the then current notice address.

F. Recording. The City will file either this Agreement or a Memorandum of Encroachment Agreement in the Official Public Records of the county in which the Encroachment Area is located to provide public notice and notice to all future users of the Right-of-Way of the existence of this Agreement and the obligations hereunder.

G. Management Authority. The City will act under this Agreement by and through its

duly authorized City Manager or the City Manager's designee. Austin will act under this Agreement by and through its duly authorized City Manager or the City Manager's designee, who for purposes of this Agreement will be the Real Estate Officer of the City of Austin, Texas or the Director of Austin Water.

[Signature page(s) to follow]

Executed to be effective as of the later date set forth below.

**THE CITY:
CITY OF MANOR, TEXAS**

By: _____
Name: _____
Title: _____

Dated: ____/____/20____

Approved as to Form

Assistant City Attorney

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 2025, by _____, _____ of the City of Manor, Texas, a Texas home-rule city and municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

AUSTIN:
CITY OF AUSTIN, TEXAS

By: _____
Michael Gates
Real Estate Officer

Dated: ____/____/20____

Approved as to Form:

Assistant City Attorney

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____2025, by Michael Gates, Real Estate Officer of the City of Austin, Texas, a Texas home-rule city and municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

Reviewed by:

Name: _____
Title: _____
Austin Water Utility

Exhibit A

Map Identifying the Location of the
Developments, Improvements, and
Encroachment Area

Exhibit B

**ENCROACHMENT
AREA**