

**DEVELOPER'S AGREEMENT FOR  
CONSTRUCTION OF AN OFF-SITE WASTEWATER  
COLLECTION LINE**

This Developer's Agreement for Construction of an Off-Site Wastewater Collection Line ("Agreement") is by and between the City of Taylor, Texas, a home rule political subdivision, ("City") and R. McBroom Industries, LLC, a Texas Limited Liability Company having its registered office address at 1218 West Lake Road, Cleburne, Texas 76033, ("Developer").

**RECITALS**

- A. Developer purchased property within the City of Taylor, Texas, and will construct a development on the property known as N & W Development Subdivision, Phase One, City of Taylor, Williamson County, Texas, according to a final plat filed with the City ("Development").
- B. The Development requires an off-site wastewater collection line and upsizing to obtain wastewater services to the Development.
- C. The City and Developer have entered into this Agreement whereby the City will pay the Developer the upsize cost for the off-site wastewater collection line and adopt an Ordinance requiring a pro rata reimbursement for the off-site wastewater collection line construction cost.

NOW, THEREFORE, for good and valuable consideration, and in consideration of the mutual covenants and benefits herein contained, and subject to all of the terms and conditions hereof, the City and Developer agree as follows:

**AGREEMENT**

- 1. Upsizing. A wastewater collection line required to service the Development, requires a six inch (6") line but the City required Developer, because of governing regulations, to install an eight inch (8") line. In consideration for the upsizing by the Developer, the City will pay Developer \$2,500.00 representing all costs, fees, and expenses incurred by Developer in the upsizing the off-site wastewater collection line.

The upsizing cost from the City to the Developer will be paid upon execution of this Agreement and adoption by the City of an Ordinance hereinafter referenced in this Agreement.

2. Pro Rata Reimbursement. The City shall adopt the Reimbursement Ordinance described in Exhibit "A", attached hereto and incorporated by reference herein ("Ordinance"). The Ordinance provides pro rata reimbursement to the Developer for the off-site wastewater collection line cost, which pro rata reimbursement will be paid to the City by Intervening Property Owners owning Intervening Property as described within the Ordinance for pro rata reimbursement to the Developer from the City after collection.
3. Waiver of Claims. In consideration for the \$2,500.00 paid by the City to the Developer for the upsizing, and in consideration of the pro rata reimbursement Ordinance, Developer shall waive any and all claims, damages, or causes of action against the City for costs incurred by Developer for the off-site wastewater collection line to the Development.
4. Costs. Developer acknowledges the cost for the off-site wastewater collection line was 62,839.00, which sum has been paid by Developer. The Developer further acknowledges the \$2,500.00 payment by the City is credited to the construction cost of the off-site wastewater collection line, and \$8,642.40, represents the agreed Developer cost for the off-site wastewater collection line that is not subject to reimbursement. Developer further acknowledges \$52,296.60, shall be the total pro-rata reimbursement to the Developer under the Ordinance.
5. Ownership. After the off-site wastewater collection line is completed by Developer, the City Council will consider accepting the off-site wastewater collection line and if accepted, will by Motion, accept ownership of the off-site wastewater collection line and will thereafter own, operate, and maintain the off-site

wastewater collection line, accepted by the City, and be responsible for the cost associated with the ownership, operation, and maintenance of the off-site wastewater collection line.

6. Miscellaneous.

(a) No Partnership. The City and Developer agree and acknowledge that with respect to the off-site wastewater collection line, or otherwise by virtue of this Agreement, they are not partners or joint venturers. This Agreement will not be construed in any form or manner to establish a partnership, joint venture or agency, express or implied, nor any employer-employee or borrowed servant relationship by and between the parties.

(b) Notice. All notices, demands and requests which may be given or which are required to be given by either party to the other shall be in writing and shall be deemed effective when: (i) personally delivered to the intended recipient; (ii) two (2) days after being sent, by certified or registered mail, return receipt requested, addressed to the intended recipient at the address specified below; (iii) delivered in person to the address set forth below for the party to whom the notice was given; (iv) deposited into the custody of a recognized overnight delivery service such as Federal Express Corporation, Emery, or Lone Star Overnight, addressed to such party at the address specified below; or (v) sent by facsimile, telegram or telex, provided that receipt for such facsimile, telegram or telex is verified by the sender. For purposes of this Agreement, the addresses of the parties for all notices are as follows (unless changed by similar notice in writing given by the particular person whose address is to be changed):

If to R. McBroom Industries, LLC, a Texas Limited Liability Company:

1218 West Lake Road  
Cleburne, Texas 76033

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

If to the City of Taylor, Texas, a home rule political subdivision:

City of Taylor  
400 Porter Street  
Taylor, Texas 76574  
Attention: City Manager  
Telephone: 512-352-3676  
Fax: 512-352-8255

- (c) Legal Expenses. The party or parties not in default may employ attorneys to pursue its legal rights and, if the party or parties not in default prevails before any court or agency of competent jurisdiction, the defaulting party shall be obligated to pay all expenses incurred by the party or parties not in default, including reasonable attorney's fees.
- (d) Governing Law. This Agreement shall be governed by and be construed in accordance with the laws of the State of Texas. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law or public policy or otherwise unenforceable, the remaining provisions shall remain in full force and effect, and the parties shall negotiate, in good faith, a substitute, valid, and enforceable provision which most nearly reflects the parties' stated intention as set forth in such affected provision. Venue for actions arising in connection with this Agreement shall be in Williamson County, Texas.
- (e) Time. Time is of the essence with respect to all matters covered by this Agreement.
- (f) Binding Effect. This Agreement shall bind the parties to this Agreement, their affiliates, successors, and assigns. No other persons or entities may enforce this Agreement or claim any benefits under this Agreement. There are no oral agreements between the parties hereto with respect to the subject matter hereof. This Agreement shall be subject to change or

modification only with the mutual written consent of both parties.

- (g) Counterparts. The parties agree that this Developer's Agreement for Construction of an Off-Site Wastewater Collection Line may be executed in multiple counterparts which, taken together, shall form the contractual agreement of the parties.
- (h) Authority. The person signing this Agreement warrants that he is authorized to sign this Agreement on behalf of the respective signatory.
- (i) Assignment. This Agreement, is not assignable, in whole or in part, by Developer without the prior written consent of the City.

Executed to be effective this the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

R. MCBROOM INDUSTRIES, LLC  
A Texas Limited Liability  
Company

\_\_\_\_\_  
BY:  
ITS:

THE CITY OF TAYLOR, TEXAS  
A home rule political  
subdivision

\_\_\_\_\_  
BY:  
ITS:

STATE OF TEXAS,

COUNTY OF \_\_\_\_\_.

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, \_\_\_\_\_, of R. McBroom Industries, LLC, a Texas Limited Liability Company, known to me to be the person whose name is subscribed to the foregoing instrument, and swore and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated and as the act and deed of the corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Notary Public in and for  
the State of T E X A S

STATE OF TEXAS,

COUNTY OF WILLIAMSON.

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, \_\_\_\_\_ of the City of Taylor, Texas, a home rule political subdivision, known to me to be the person whose name is subscribed to the foregoing instrument, and swore and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated and as the act and deed of the City of Taylor, Texas.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Notary Public in and for  
the State of T E X A S

# EXHIBIT "A"

ORDINANCE NUMBER 2004-9

PROVIDING A PRO RATA REIMBURSEMENT FOR AN OFF-SITE WASTEWATER COLLECTION LINE CONSTRUCTED UNDER A DEVELOPMENT AGREEMENT WITH R. MCBROOM INDUSTRIES, LLC, ("DEVELOPER"); PROVIDING A METHOD OF PRO RATA REIMBURSEMENT TO THE DEVELOPER FOR OFF-SITE CONSTRUCTION CHARGES OF THE WASTEWATER COLLECTION LINE; PROVIDING A METHOD OF ENFORCING PAYMENT OF THE PRO RATA CHARGES; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTANT AND CONFLICT HEREWITH; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00 FOR EACH DAY OF VIOLATION HEREOF.

WHEREAS, under the law of the State of Texas, every owner of a tract, lot, or plot of land situated within the corporate limits of the City of Taylor, Texas, ("City"), or within its jurisdiction, may request permit for the construction of wastewater lines used for wastewater collection; and

WHEREAS, the Texas Legislature has specifically exempted off-site wastewater collection construction costs from the definition of "impact fee" as referenced in Section 395.001 (4) of the Texas Local Government Code, as amended, provided the construction is required by valid Ordinance and is necessitated by and attributable to the new development; and

WHEREAS, the City Council of the City of Taylor, Texas; therefore, is empowered by law, to promulgate and establish pro rata charges for construction of off-site wastewater collection lines and to establish a pro rata reimbursement ordinance for such charges; and

WHEREAS, Developer will construct the N & W Development Subdivision, Phase One, shown on a final plat filed with the City of Taylor, Texas, and Developer was required to complete an off-site wastewater collection line and to oversize the wastewater line to a size greater than required by governing regulations; and

WHEREAS, the wastewater line oversize construction was paid by the City to the Developer; and

WHEREAS, it is determined the wastewater collection line reimbursement cost is \$55.40 per lineal foot and the reimbursement charge shall apply to Intervening Property Owners, as hereinafter defined, and Intervening Property as hereinafter described in Exhibit "A", attached hereto and incorporated by reference herein ("Intervening Property").

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TAYLOR, TEXAS:

SECTION 1. All of the facts recited in the preamble to this Ordinance are hereby found by the City Council to be true and correct and are incorporated by reference herein and expressly made a part hereof, as if copied herein verbatim.

SECTION 2. Upon approval of a pro rata agreement by and between the City Council and the Developer, the City will reimburse the Developer pro rata charges received from Intervening Property Owners who desire to connect or utilize the off-site wastewater collection line constructed by the Developer for Intervening Property.

SECTION 3. The pro rata charge to Intervening Property Owners shall be \$55.40 for each lineal foot of Intervening Property fronting on Highway 95 that is connected to the off-site wastewater collection line constructed by Developer.

SECTION 4. *Intervening Property Owners* shall mean the property owners owning the Intervening Property shown in Exhibit "A" at the time of connection to the off-site wastewater collection line.

SECTION 5. In addition to the pro rata charge, the Intervening Property Owners shall pay all of the charges related to the connection and/or service, including, but not limited to, impact and permit fees, if any, established by the City. The City may charge a reasonable fee to recover its costs in administering this Ordinance.

SECTION 6. The total pro rata reimbursement shall not exceed \$52,296.60 which amount equals the cost of the

wastewater collection line requiring reimbursement, after deducting the Developer's portion of the wastewater collection line serving the Development not subject to pro rata reimbursement and after deducting \$2,500.00 paid by the City for oversizeing the wastewater collection line.

SECTION 7. The Intervening Property Owners of all Intervening Property served by the wastewater collection line described herein shall be required to pay the pro rata charge provided for herein prior to the issuance of a construction permit for construction on any Intervening Property.

SECTION 8. The maximum period of time for the pro rata reimbursement to the Developer for the off-site wastewater collection line shall not exceed twenty (20) years.

SECTION 9. Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2,000.00. Each day of violation shall constitute a separate offense.

SECTION 10. All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

SECTION 11. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Taylor, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

SECTION 12. In accordance with Article VIII, Section 1 of the City Charter, this Ordinance was introduced before the City Council of the City of Taylor, Texas, on the \_\_\_\_\_ day of August, 2004.

PASSED, APPROVED and ADOPTED on this the \_\_\_\_\_ day of August, 2004.

\_\_\_\_\_  
Donald R. Hill, Mayor

ATTEST:

\_\_\_\_\_  
Susan Brock, Assistant City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ted W. Hejl, City Attorney

CERTIFICATE

THE STATE OF TEXAS  
COUNTY OF WILLIAMSON

I, Susan Brock, being the current Assistant City Clerk of the City of Taylor, Texas, do hereby certify that the attached is a true and correct copy of Ordinance No. 2004-\_\_\_\_\_, passed and approved by the City Council of the City of Taylor, Texas, on the \_\_\_\_\_ day of August 2004, and such Ordinance was duly introduced, passed, approved and adopted at meetings open to the public and notices of the meetings, giving the dates, places, and subject matter thereof, were posted as prescribed by Government Code Section 551.043.

Witness my hand and seal of office this the \_\_\_\_\_ day of August, 2004.

\_\_\_\_\_  
Susan Brock  
Assistant City Clerk

R019541 R020030  
HARVEY VORWERK  
2001004234  
146.30 AC 3.0 AC

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BARTOSH  
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22.6 AC

R017068  
DANIEL DOSS  
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R020078  
DANIEL DOSS  
27113 AC

R020079  
DANIEL DOSS  
27113 AC

R019877  
L. BERRY  
796011  
22113 AC

R000061  
WEST STORAGE TAYLOR, L.P.  
22514 AC

R019877  
L. BERRY  
796011  
22113 AC

R019548 R020046  
HARRY ZEPLIN  
348258  
38.0 AC 1.44 AC

R019847  
THIRTY LUTHERAN  
CHURCH OF TAYLOR  
518841  
4.08 AC

R019542 R020040 R020254  
NOLAN WERCHAN  
13.54 AC 1.0 AC 25 AC

R019533 5  
JOSEPH  
H  
103.903 AC 43.1

R019875  
WALLACE BERGER  
4.28 AC

R019534 R051520  
WALLACE BERGER  
530746  
18.32 AC 8.7125 AC

R019534 R051520  
WALLACE BERGER  
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18.32 AC 8.7125 AC

R019533  
ARB PARTNERS, LTD.  
00012500014

R024092  
TAYLOR L.S.D.  
510726

EXHIBIT "A"