

ADVANCE FUNDING COMMITMENT AGREEMENT

This ADVANCE FUNDING COMMITMENT AGREEMENT ("**Agreement**") is made by and between MDSR GP, Inc. hereinafter called the "**Developer**", and the WILLIAMSON COUNTY, TEXAS, acting by and through their duly authorized officials, hereinafter called the "**County**".

WITNESSETH:

WHEREAS, the County has or will have entered into an Advanced Funding Agreement with the Texas Department of Transportation ("Advanced Funding Agreement") regarding the modification of a traffic signal at the intersection of RM 1431 and Sendero Springs (the "Project"), and

WHEREAS, the Advanced Funding Agreement contemplates the expenditure of approximately \$64,295, which is 110% of the estimated costs for the Project, and

WHEREAS, TxDOT, through the Advanced Funding Agreement, has or will have agreed to assume responsibility for the construction of the Project, and

WHEREAS, the County, through the Advanced Funding Agreement, has or will have committed to be responsible for funding all costs of the Project ("Project Costs"), and

WHEREAS, the Developer desires to enter into this Agreement to facilitate and expedite the construction of the Project, which will greatly enhance the value of Developer's adjacent property, and

WHEREAS, by this Agreement, the Developer agrees to fund the Project Costs, including any cost over-runs.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, Developer and the County do agree as follows:

AGREEMENT

Article 1. Effective Date

This Agreement becomes effective when signed by the last party whose signature makes the agreement fully executed.

Article 2. Developer Funding Responsibilities

Developer agrees to remit to the County one hundred and ten percent (110%) of Project Costs, as defined herein ("Developer Participation"). At this time, it is estimated that the Project Costs will be approximately \$58,450. At least sixty (60) days prior to the date set for receipt of the construction bids, Developer shall remit to the County \$64,295.

Article 3. Compliance with Conditions of Advanced Funding Agreements between County and TxDot

Developer acknowledges that the County is entering into an Advanced Funding Agreement with TxDot for the payment of Project Costs. All of the terms and conditions in said Advanced Funding Agreement are incorporated into this Agreement, said Advanced Funding Agreement being attached hereto as Exhibit "A".

Article 4. Project Costs

Project Costs shall mean all of the all those items listed in Attachment "A" of the Advanced Funding Agreement and other Project items included in the Advanced Funding Agreement that are the responsibility of the County, including, but not limited to, relocation of utilities and right-of-way acquisition costs. All change orders, if any, shall be included in the Project Costs.

Article 5. Miscellaneous.

5.1 Mutual Assistance. The County and the Developer will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions of this Agreement.

5.2 Representations and Warranties. The County represents and warrants to the Developer that this Agreement is within its authority, and that it is duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Developer represents and warrants to the County that it has the requisite authority to enter into this Agreement.

5.3 Default. If either the County or the Developer should default in the performance of any obligations of this Agreement, the other party shall provide such defaulting party written notice of the default, and a minimum period of thirty (30) days to cure such default, prior to instituting an action for breach or pursuing any other remedy for default. If either party fails to cure any default, then this Agreement shall be terminated automatically and any unexpended Project Cost payments shall be refunded to the Developer.

5.4 Attorney's Fees. In the event any legal action or proceeding is commenced between the County and the Developer to enforce provisions of this Agreement and recover damages for breach, the prevailing party in such legal action shall be entitled to recover its

reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.

5.5 Entire Agreement. This Agreement contains the entire agreement between the parties. This Agreement may only be amended, altered or revoked by written instrument signed by the County and the Developer.

5.6 Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns.

5.7 Assignment. Developer may not assign all or part of its rights and obligations to a third party without the written consent of the County.

5.8 Amendment. This Agreement may be amended by the mutual written agreement of the parties.

5.9 Termination. The County may terminate this Agreement if, in its own determination, it is unable or unwilling to participate in the Project, unless Developer has remitted payment as required in Article 2, herein.

5.10 Notice. Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, facsimile with receipt of confirmation, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

Developer:

Blake Magee
MDSR, GP., Inc.
1011 North Lamar
Austin, Texas 78703

County:

Dan A. Gattis
County Judge
710 Main St.
Georgetown, TX 78628

Either party may designate a different address at any time upon written notice to the other party.

5.10 Interpretation. Each of the parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute,

however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any party.

5.11 Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Williamson County, Texas.

5.12 Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected. It is also the intention of the parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

5.13 Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

5.14 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

5.15 Exhibit. The following Exhibit "A" is attached and incorporated by reference for all purposes:

Exhibit "A": Advance Funding Agreement


5.16 No Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The County, its past, present and future officers, elected officials, employees and agents of the County, do not assume any responsibilities or liabilities to any third party in connection with the development of the Project or the design, construction or operation of any portion of the Project.

IN WITNESS WHEREOF, DEVELOPER AND THE COUNTY have executed duplicate counterparts to effectuate this Agreement.

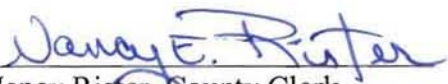


By: Blake Magee
Its: President, MDSR. GP. Inc.

WILLIAMSON COUNTY, TEXAS

By: 
Date: 11-27-2012

ATTEST:


Nancy Rister, County Clerk