

EXHIBIT 1

STRATEGIC PARTNERSHIP AGREEMENT BETWEEN THE CITY OF AUSTIN AND THE LOST CREEK MUNICIPAL UTILITY DISTRICT

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS:

This Strategic Partnership Agreement Between the City of Austin, Texas and the Lost Creek Municipal Utility District, Travis County, Texas (“Agreement”) is made and entered into by and among the City of Austin, a municipal corporation, acting by and through its duly authorized City Manager (“City”); and Lost Creek Municipal Utility District (“District”), acting by and through its duly authorized Board of Directors, under the authority of Section 43.0751 of the Texas Local Government Code (“Local Government Code”).

RECITALS

1. The District is a municipal utility district created under Chapter 54 of the Texas Water Code. All of the territory within the District is located within the extraterritorial jurisdiction of the City in Travis County, Texas. The District encompasses approximately 789 acres, more or less. Its boundaries are described in Exhibit “A” and depicted on Exhibit “F” attached to this Agreement.
2. The City is a municipal corporation established by and chartered under Chapter 90, Page 634, of the Special Laws of Texas, 1909, 31st Legislature.
3. The City amended its Municipal Annexation Plan on December, 31 2005, to include the District and desires to annex all of the District, which would result in the dissolution of the District and the City succeeding to all of the District’s powers, duties, assets, and obligations. The City provided public notice and held two public hearings on the full purpose annexation of the District on August 10, 2006, and August 14, 2006, at which all interested persons were given the opportunity to speak.
4. The City and the District and its residents and property owners desire to postpone the City’s annexation of the residential areas of the District, and to enter into this Agreement to provide benefits to each party that are reasonable and equitable with regard to the other party.
5. The intent of this Agreement is to enter into a strategic partnership agreement between the City and the District regarding the terms and conditions of annexation of the District by the City in accordance with Section 43.0751 of the Local Government Code and other terms and conditions as set out herein.
6. Representatives of the City and the District met to negotiate an annexation service plan in September and October of 2006. In accordance with Section 43.0751(a) of the Local Government Code, the District submitted a written request to the City for negotiation of a

strategic partnership agreement on October 12, 2006. A copy of the request is attached to this Agreement as Exhibit "B."

7. The District provided notice of two public hearings concerning the adoption of this Agreement in accordance with the procedural requirements of Section 43.0751 of the Local Government Code.
8. The District conducted two public hearings regarding this Agreement in accordance with procedural requirements of Section 43.0751 of the Local Government Code on _____, 2007, at ____ o'clock p.m., at _____ and on _____, 2007 at ____ o'clock p.m. at _____.
9. The City provided notice of two public hearings concerning the adoption of this Agreement in accordance with the procedural requirements of Section 43.0751 of the Local Government Code.
10. The City conducted two public hearings regarding this Agreement in accordance with procedural requirements of Section 43.0751 of the Local Government Code on _____, 2007 at ____ o'clock p.m., at the City Council Chambers and on _____, 2007 at ____ o'clock p.m., at the City Council Chambers.
11. The District has, by formal action, after public hearings approved this Agreement on _____, 2007 in open session at a meeting held in accordance with the Open Meetings Act.
12. The City has, by formal action, after public hearings approved this Agreement on _____, 2007 in open session at a meeting held in accordance with the Open Meetings Act.
13. All procedural requirements imposed by state law for the adoption of this Agreement have been met.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained in this Agreement, and other good and valuable consideration, the City and the District agree as follows:

ARTICLE I

DEFINITIONS, PURPOSE, AND LEGAL AUTHORITY

Section 1.01 Terms Defined in this Agreement.

In this Agreement, each of the following terms shall have the meaning indicated:

- a. "Agreement" means this Strategic Partnership Agreement Between the City of Austin and the Lost Creek Municipal Utility District.
- b. "City" means the City of Austin, Texas.
- c. "Commercial Property" means the property identified on Exhibit "C".
- d. "Consent Agreement" means the agreement between the City and the original developers of the District, entitled "Agreement on Lost Creek Municipal Utility District," executed 07/24/1972, which was superseded by that certain "Revised Agreement on Lost Creek Municipal Utility

District,” executed 07/07/1977, which was supplemented and amended by that certain “First Supplement to Revised Agreement on Lost Creek Municipal Utility District” executed on 06/22/1990 (the “First Supplement”), which are incorporated for all purposes herein.

- e. “District” means the Lost Creek Municipal Utility District, Travis County, Texas.
- f. “District Boundaries” means the boundaries of the District as they now exist, as such boundaries are more particularly described in Exhibit “A” and depicted on Exhibit “F” attached to this Agreement.
- g. “Effective Date” means the date of approval of this Agreement, as defined in Section 2.02 of this Agreement.
- h. “Force Majeure” means conditions and occurrences as defined in Section 7.13 of this Agreement.
- i. “Full Purpose Annexation Date” means 12:01 a.m., December 31, 2015.
- j. “Notice” means any formal notice or communication required or authorized to be given by one Party to another by this Agreement.
- k. “Party or Parties” means the City and/or the District, as the case may be.
- l. “Remaining Property” means the property identified on Exhibit “D”.

Section 1.02 Purpose of the Agreement.

The purpose of this Agreement is to define and clarify, through contractual agreement, the terms and conditions of annexation of property in the District by the City and the relationship between the City and the District during the period between approval of this Agreement and the date of full purpose annexation of the entire District, all in accordance with Section 43.0751 of the Texas Local Government Code.

ARTICLE II **ADOPTION OF THE AGREEMENT AND ANNEXATION OF THE DISTRICT**

Section 2.01 Conduct of Public Hearings and Procedure for Adoption.

The District and the City acknowledge and agree that prior to the execution of this Agreement and prior to full purpose annexation pursuant to this Agreement, the District and the City conducted public hearings and complied with all procedural requirements for the purpose of considering the adoption of this Agreement and annexation of the District in accordance with the terms of this Agreement.

Section 2.02 Effective Date of Agreement.

Under the provisions of Section 43.0751(c) of the Local Government Code, this Agreement shall become effective on May __, 2007, the date of adoption of this Agreement by the City. Upon adoption, the Agreement shall be filed by the City in the Real Property Records of Travis County, Texas.

Section 2.03 Full-Purpose Annexation of the Property Within the District.

- a. Commercial Property. The District and the City agree that the Commercial Property shall be annexed by the City for full purposes effective December 31, 2007, under Section 43.0751(f)(4) of the Texas Local Government Code. The full purpose annexation of the Commercial Property

shall become effective at 12:01 a.m. on December 31, 2007, without any further procedural action of any kind by either party. The annexation service plan attached as Exhibit G shall be the service plan for the Commercial Property, and shall be effective for ten years from the date of full-purpose annexation of the Commercial Property. The Parties agree that all of the Commercial Property upon full purpose annexation of the same by the City shall continue to be a part of the District following such annexation and shall continue to receive the same services from the District as it now receives until the dissolution of the District, or until the District acts to exclude the Commercial Property from its boundaries. The District may continue to levy an ad valorem tax in all areas within the District Boundaries as long as the District continues to exist, irrespective of annexations for full purposes by the City of any areas within the District Boundaries. The City agrees that the District may exclude the Commercial Property from the District's corporate boundaries in accordance with the procedures set forth in Section 49.303 *et seq.* of the Texas Water Code.

- b. **Remaining Property.** All remaining land within the District which has not been previously annexed for full-purposes shall be automatically annexed by the City for full purposes effective on the Full-Purpose Annexation Date, without further procedural action of any kind by either party, in accordance with Sections 43.0751(f)(5) and 43.0751(h) of the Texas Local Government Code; and the District agrees not to contest such annexation. The District will not contest the annexation service plan attached as Exhibit G, which the City represents to be the service plan for this area, and which shall be effective for a period of ten years from the Full Purpose Annexation Date.
- c. **Dissolution of District.** For a period of 10 business days after the Full Purpose Annexation Date, the District shall remain in existence solely for the purpose of doing all things necessary to assist in the transition of the Remaining Property to the City's full-purpose jurisdiction. At the end of the 10 business day period, the District shall be dissolved without further action of any party.
- d. The District hereby consents to the City's annexation of all the land in the District in accordance with this Agreement. The District accepts the annexation service plan in the form attached to this Agreement as Exhibit "G", and agrees not to seek arbitration, other legal actions, or legislative remedies to challenge the City's annexation service plan. This Agreement, and the consent to annexation granted herein, are binding on the District and each owner and future owner of land within the District's boundaries, in accordance with Texas Local Government Code Section 43.0751(c).
- e. The District agrees that the City may take any and all steps required by the Local Government Code to assure that full purpose annexation of all of the land within the District may be completed in accordance with the timeframes and procedures set forth in this Agreement. The City agrees that nothing in this Agreement shall alter or impair the rights of any landowner or resident within the former District to enforce the City's service obligations under the laws of the State of Texas and the annexation service plan after dissolution of the District, as that law existed on the Effective Date of this Agreement, for services as provided as of the year 2005.

Section 2.04 District Residents as Citizens of the City Upon Full Purpose Annexation of an Area of the District.

A resident of an area of the District annexed for full purposes by the City becomes a citizen of the City for all purposes and shall have all the rights, privileges, and responsibilities accorded to the citizens

residing in all other areas that the City has annexed for full purposes. However, such citizens shall continue to also be citizens of the District until it is dissolved.

Section 2.05 Notice to Landowners of Full Purpose Annexation of Land Within the District.

The District agrees to file the following notice concerning this Agreement in the Real Property Records of Travis County for the property within the District:

All of the property within the boundaries of Lost Creek Municipal Utility District of Travis County, Texas (the "District"), as depicted on the map attached hereto, is subject to the terms and conditions of a Strategic Partnership Agreement ("Agreement") between the District and the City of Austin, dated April __, 2007. The Agreement establishes a timetable for the annexation by the City of Austin of the property in the District. The Agreement is binding on the District and each owner and future owner of land within the District's boundaries. A copy of the Agreement may be obtained by contacting the offices of the District, and questions concerning the Agreement may be directed to the District or the City of Austin Neighborhood Planning and Zoning Department, or its successor department.

This notice with appropriate modifications shall also be included in the notice to purchasers of real property in the District in each future edition of the District's Information Form required to be recorded in the Real Property Records of Travis County, Texas, pursuant to Section 49.455 of the Texas Water Code.

Section 2.06 Regulatory and Taxation Authority of the City and the District Upon Full Purpose Annexation of an Area of the District.

Upon full purpose annexation of an area within the District, the City shall have all the authority and power, including taxation authority, that the City enjoys in all other areas that the City has annexed or does annex for full purposes. During the period after annexation of the Commercial Property and before the Full-Purpose Annexation Date, the District shall continue to exist within the District Boundaries and have all of the authority and power, including taxation authority, of a municipal utility district, except as modified by the terms and provisions of this Agreement and applicable law, so long as the District exists.

ARTICLE III **SERVICES TO THE DISTRICT AND OTHER TRANSITIONAL MATTERS**

Section 3.01 Capital Improvements During the Period Prior to Full Purpose Annexation.

(a) During the period prior to full purpose annexation of the Commercial Property and prior to the Full-Purpose Annexation Date, respectively, and except as otherwise provided by this Agreement, the District shall continue to be responsible for making capital improvements to its water, reclaimed water, and wastewater facilities, and for any other municipal services which the District is now providing and shall continue to provide to its inhabitants within the District Boundaries

(b) Upon full purpose annexation of the Commercial Property, the City shall be responsible for the provision of municipal services to the Commercial Property; provided, however, that the District

shall provide retail water and wastewater services to such property on behalf of the City, as more particularly described in Article V below and as provided in Exhibit “E” attached hereto.

Section 3.02 District Tax Rate.

The District agrees to report the annual debt tax rate and operations and maintenance tax rate set by the District to the District’s tax collector in Travis County, and to perform all acts required by law for the tax rates to be effective.

Section 3.03 Transfer of Assets, Employment and Services Contractual Obligations of the District.

The District agrees that as of the effective date of this Agreement, it will not, without the prior written consent of the City Manager :

- (1) transfer any of its assets to any third party without reasonable consideration, or
- (2) acquire additional assets, other than those required for the normal and customary operations of the District and excluding any assets that would not increase the City’s costs or responsibilities upon full purpose annexation of the District, or
- (3) enter into any contracts for employment or services that will result in the creation or continuation of a contractual obligation or fees and charges for the City after the Full-Purpose Annexation Date.

ARTICLE IV **DISTRICT ASSETS, LIABILITIES, OBLIGATIONS, DEBT** **AND DEBT SERVICE AND THE CONSENT AGREEMENT**

Section 4.01 Consent Agreement; Assets, Liabilities, Indebtedness, and Obligations During the Period Prior to Annexation of the Remaining Property

- a. The Consent Agreement is terminated as of the Effective Date of this Agreement.
- b. Except for the ownership of the Water System and the Wastewater System, which shall be transferred to the City upon the Effective Date in accordance with Article V of this Agreement, the District’s contracts, assets, liabilities, indebtedness, and obligations will all remain the responsibility of the District until the Full Purpose Annexation Date. Prior to that date, disposition or acquisition of additional contracts, assets, liabilities, indebtedness, and obligations shall be governed by this Agreement and the laws of the State of Texas.

Section 4.02 Assumption of the District’s Outstanding Obligations, Assets, Debts, and Liabilities by the City.

Except for the water and wastewater assets previously acquired by the City pursuant to the terms of the agreement attached hereto as Exhibit ‘E’, the City shall assume all of the District’s debts, liabilities, obligations, property and assets, and shall perform all of the functions of the District which a municipality may perform under state law, on the Full Purpose Annexation Date in accordance with Section 43.075(d) of the Local Government Code. The ownership and operation of the District’s water and wastewater system assets shall be according to the terms of the agreement attached hereto as Exhibit “E”.

Section 4.03 No Liability for Operations Performed by Others.

- a. The Parties agree that the City shall not be liable for any claims or causes of action arising out of, or resulting from the maintenance, operations, or ownership of the facilities owned by the District in the performance of the District's functions as described in this Agreement. The Parties agree that the District shall not be liable for any claims or causes of action arising out of, or resulting from the maintenance, operations, or ownership of the facilities owned by the City in the performance of the City's functions as described in this Agreement.
- b. The Parties further agree the City shall not be liable for any or all claims or causes of actions arising out of or resulting from the maintenance, operations, or other activities of the District on any property owned by the City. The District shall not be liable for any or all claims or causes of action arising out of or resulting from the maintenance, operations or other activities of the City.
- c. The District shall add the City of Austin as an added insured on its general liability insurance, which the District shall carry each year for the duration of the existence of the District.

Section 4.04 Additional Bonds and Indebtedness by District.

- a. The District shall not issue bonds for any purpose without the prior written consent of the City Council.
- b. The District may not issue notes, incur indebtedness, or enter into lease agreements, other than for normal operation and maintenance of the District and for the purposes authorized in Section 4.01 of this Agreement. However, District operations and maintenance after the Effective Date of this Agreement shall not be construed to increase the level of services required after full-purpose annexation of the Remaining Property. Any such obligations or debts incurred by the District may not extend beyond the Full Purpose Annexation Date.

ARTICLE V

DISTRICT WATER, WASTEWATER, AND RECLAIMED WATER FACILITIES; PAYMENTS TO CITY; FUNCTIONS

Section 5.01 Transfer of Ownership.

The District shall convey ownership of its water and wastewater system assets to the City in accordance with the terms of the agreement attached hereto as Exhibit "E". The Parties agree that the District shall retain full ownership of its administrative office, parklands and greenbelt areas, and other assets not conveyed to the City in accordance with Exhibit "E", until the Full-Purpose Annexation Date.

Section 5.02 Retail Water and Wastewater Service; Wholesale Water Service and Operations Agreement

- a. The District shall provide retail water and wastewater service to all lands within the District. Upon the full purpose annexation of the Commercial Property by the City, the District shall provide retail water and retail wastewater service to the Commercial Property on behalf of the City. Upon the full purpose annexation of the Remaining Property by the City, the City shall be responsible for providing retail water service and retail wastewater service to the Commercial Property and the Remaining Property.
- b. The City and the District agree to concurrently execute, with this Agreement, the Agreement for Wholesale Water Service and Operations Management of Facilities, attached as Exhibit "E," to address

multiple issues concerning the ownership, capital improvement, operations, and maintenance of certain District Facilities prior to full purpose annexation. The Parties agree that if there is a conflict between this Agreement and the Agreement for Wholesale Water Service and Operations Management of Facilities, that the Agreement for Wholesale Water Service and Operations Management of Facilities will apply.

Section 5.03 Payments to City for Services and Improvements

Beginning on December 31, 2008 and by December 31 of each year thereafter through December 31, 2014 (for seven total payments), the District will annually pay the City the sum of \$272,000 in consideration for the City providing a year of unfunded full purpose municipal services in the year preceding the Full Purpose Annexation Date, and for current and future benefits, improvements and services available to residents from within the corporate City limits, and in consideration for the other terms and covenants in this Agreement. This payment is not made for the purpose of foregoing annexation. The City shall provide an invoice for payment not later than 30 days prior to the due date each year for District accounting and audit purposes. If payment is not made, the City may, after written notice of default to the District and opportunity to cure within 30 days, accelerate the Full Purpose Annexation Date to a date 60 days after the written notice of default is given to the District, or exercise other remedies authorized by this Agreement.

Section 5.04 District Functions.

Prior to the Full Purpose Annexation Date, the District shall have those functions, purposes, and authorities specifically exercised or performed by the District prior to the Effective Date, or otherwise authorized under the laws of the State of Texas, as modified by this Agreement. If the District takes any formal action to discharge a function or to exercise authority that is not directly related to those functions and purposes specifically exercised or performed prior to the Effective Date or otherwise authorized by this Agreement, the City may proceed as provided in Article VII of this Agreement. The parties agree that any increased level of services performed by the District after the Effective Date will not affect the City's service obligations under the Annexation Service Plan.

Section 5.05 Audit; Review of District Records.

The District shall conduct an annual audit each year, at its sole expense, to be performed by an independent certified public accountant. The District shall file a copy of the completed audit with the City's Director of Financial Services. The District shall make its financial records available to the City for inspection during normal business hours upon prior reasonable notice by the City.

ARTICLE VI **MISCELLANEOUS PROVISIONS**

Section 6.01 Effective Date and Multiple Counterparts.

This Agreement may be executed in multiple identical counterparts but shall not be effective unless executed by the City and the District on or before April 15, 2007.

Section 6.02 Entire Agreement/Conflicting Provisions.

- a. This Agreement is not intended to waive or limit the applicability of laws, regulations, and ordinances applicable to the District or the City, nor does it waive the jurisdiction or sovereignty of any governmental body with respect to the District or the City.
- b. As of this date there are no agreements, oral or written, between the Parties which are in conflict with this Agreement. This Agreement, together with all of the attachments to this Agreement, constitutes the entire agreement between the Parties with respect to the terms and conditions governing the annexation of the District. No representations or agreements other than those specifically included in this Agreement shall be binding on either the City or the District.

Section 6.03 Notice.

- a. Any Notice given under this Agreement shall be given in accordance with this Section.
- b. Notice may be given by:
 - i. delivering the Notice to the Party to be notified;
 - ii. by depositing the Notice in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified; or
 - iii. by sending the Notice by telefax with confirming copy sent by mail to the Party to be notified.
- c. Notice deposited in the United States mail in the manner herein described shall be deemed effective upon the earlier of the date of actual receipt or three days after the date of such deposit. Notice given in any other manner shall be effective only if and when received by the Party to be notified.
- d. For purposes of Notice, the addresses of the Parties shall, until changed as provided in this Section, be as follows:

City of Austin:

City Manager
City of Austin
P. O. Box 1088
Austin, Texas 78767

with required copy to
City Attorney:

City Attorney
City of Austin
P. O. Box 1088
Austin, Texas 78767

Lost Creek Municipal Utility District:

General Manager
Lost Creek Municipal Utility District
1305 Quaker Ridge Road
Austin, Texas 78746

with required copy to
District's Attorney:

Tony Corbett
Freeman and Corbett, L.L.P.
8500 Bluffstone Cove, Suite B-104
Austin, TX 78759

- e. The Parties may change their addresses for Notice purposes by providing five days written notice of the changed address to the other Party.
- f. If any date or period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating Notice is extended to the first business day following the Saturday, Sunday, or legal holiday.

Section 6.04 Time.

Time is of the essence in all matters pertaining to the performance of this Agreement.

Section 6.05 Severability or Modification of Agreement as a Result of Court Action, or Amendment of State Law or Statutory Authority for the Agreement; No Legislative or Litigative Efforts by District.

- a. If any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement, or the application of the word, phrase, clause, sentence, paragraph, section or other part of this Agreement to any person or circumstance is held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the Parties agree that they will amend or revise this Agreement to accomplish to the greatest degree practical the same purpose and objective of the part determined to be invalid or unconstitutional, including without limitation amendments or revisions to the terms and conditions of this Agreement pertaining to or affecting the rights and authority of the Parties in areas of the District annexed by the City pursuant to this Agreement, or proposed to be annexed .
- b. If any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement is nullified or modified in whole or in part as a result of amendments to the underlying state law and statutory authority for this Agreement, the Parties agree and understand that such modification may frustrate the purpose of this Agreement. The parties agree that they will attempt to amend or revise this Agreement to accomplish to the greatest degree practical (i) the same purpose and objective of the part of this Agreement affected by the amendment of the underlying state law and statutory authority and (ii) the original intent and purpose of this Agreement
- c. The District will not engage in litigation or legislative processes to challenge this Agreement, or to resolve any disputes related to the agreed annexation process or service plan. If future legislation would have the effect of prohibiting annexation or requiring further approval of residents for annexation, it is the intent of the Parties that annexation will take place in accordance with this Agreement irrespective of any such legislation. Further, the District will not seek or support legislation to incorporate all or a portion of itself as a municipality. The District will not contest the City in its efforts to assure that future legislation does not prohibit, or impose additional requirements affecting, the City's right and ability to annex the District in accordance with the terms of this Agreement.

Section 6.06 Waiver.

Any failure by a Party to the Agreement to insist upon strict performance by the other Party of any provision of this Agreement shall not be deemed a waiver of the provision or of any other provision of the Agreement. The Party has the right at any time to insist upon strict performance of any of the provisions of the Agreement.

Section 6.07 Applicable Law and Venue.

The construction and validity of the Agreement shall be governed by the laws of the State of Texas (without regard to conflict of laws principles). Venue shall be in Travis County, Texas.

Section 6.08 Reservation of Rights.

To the extent not inconsistent with this Agreement, each Party reserves all rights, privileges, and immunities under applicable law.

Section 6.09 Further Agreement and Documents.

Both Parties also agree that they will perform any further acts as the other Party may reasonably request to effectuate the terms of this Agreement.

Section 6.10 Incorporation of Exhibits and Other Documents by Reference.

All exhibits and other documents attached to or referred to in this Agreement are incorporated into this Agreement by reference for the purposes set forth in this Agreement.

Section 6.11 Assignability, Successors, and Assigns.

This Agreement shall not be assignable by the District without the prior written consent of the City Council of the City.

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective representatives, successors, and assigns.

Section 6.12 Amendment.

This Agreement may only be amended in writing upon the approval of the governing bodies of the City and the District.

Section 6.13 Force Majeure.

In the event that either Party is rendered unable by force majeure to carry out any of its obligations under this Agreement, whether in whole or in part, then the obligations of that Party, to the extent affected by the force majeure, shall be suspended during the continuance of the inability, provided, however, that due diligence is exercised to resume performance at the earliest practicable time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the Party whose contractual obligations are affected thereby shall give notice and full particulars of the force majeure to the other Party. The cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure" includes acts of God, strikes, lockouts or other industrial disturbances, criminal conduct or sabotage, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and civil disturbances,

explosions, breakage, or accidents to equipment, pipelines, or canals, partial or complete failure of water supply, and any other inability of either Party, whether similar to those enumerated or otherwise, that are not within the control of the Party claiming their ability and that could not have been avoided by the exercise of due diligence. It is understood and agreed that the settlement of strikes, lockouts and other industrial or labor disturbances shall be entirely within the discretion of the party having the difficulty and that the requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes, lockouts or other industrial or labor disturbances by acceding to the demands of the opposing party if the settlement is unfavorable to it in the judgment of the Party having the difficulty. Force majeure shall relieve City from liability to the District or any water customer of the District for failure to provide water service due to an inability covered by this Article. Force majeure shall not relieve the District of its obligation to make payment to the City as provided in this Agreement.

ARTICLE VII

DEFAULT AND REMEDIES FOR DEFAULT

Section 7.01 Default.

- a. Upon the occurrence, or alleged occurrence, of an event of default under or violation of this Agreement, the non-defaulting Party shall send the defaulting Party Notice of its default or violation or alleged default or violation. Except as otherwise specifically provided in this Agreement and subject to force majeure, the defaulting Party must cure its default or violation within thirty days following receipt of the Notice of default or violation.
- b. If the default or violation is not cured within the thirty day period, the non-defaulting Party may sue for enforcement or cancellation of this Agreement. However, prior to bringing any proceeding in a court of law or before a court of competent jurisdiction, the Parties may (but are not required to) resolve the issue through alternative dispute resolution. If the Parties agree to seek alternative dispute resolution, they must participate in good faith. The Parties shall share the costs of the mediation or arbitration equally. The Parties further agree that neither the City nor the District is not obligated to resolve any dispute based on an arbitration decision under this Agreement if the arbitration decision compromises the City's or District's sovereign immunity.
- c. If the Parties are unable to resolve their dispute through mediation or arbitration, if any, the non-defaulting Party shall have the right to enforce the terms and provisions of this Agreement by specific performance or by such other legal or equitable relief to which the non-defaulting Party maybe entitled. Any remedy or relief described in this Agreement shall be cumulative of, and in addition to, any other remedies and relief available at law or in equity.
- d. If the defaulting Party fails to abide by these deadlines, the non-defaulting Party shall have all rights and remedies available in law and equity and all rights and remedies provided in this Agreement.
- e. All of these rights and remedies shall be cumulative.
- f. The Parties agree that the remedy of accelerated full purpose annexation of the District set forth in Section 5.03 of this Agreement is limited solely to the breach described therein, and shall not be available for any other breach under this Agreement. The parties agree that none of the remedies specified in this agreement shall apply to a breach of the agreement attached hereto as Exhibit E, and that the remedies available for a breach of said agreement shall be controlled by the remedy provisions of the agreement.

Section 7.02 Dissolution of the District

- a. If the District is dissolved for any reason prior to the Full Purpose Annexation Date, this Agreement shall automatically terminate and the City shall have the right to accelerate the Full Purpose Annexation Date without restriction.
- b. If the District is dissolved, the Board of Directors for the District shall continue to exist after the dissolution for the sole purpose of doing any and all acts or things necessary to transfer the assets, obligations, indebtedness, and liabilities to the City.

IN WITNESS WHEREOF, this Agreement consisting of ____ pages and Exhibits A-G is executed in multiple identical counterparts.

CITY OF AUSTIN, TEXAS

Attest: _____
City Clerk

By: _____
Toby Hammett Futrell
City Manager

LOST CREEK MUNICIPAL UTILITY DISTRICT

Attest:

Secretary

By: _____
Rick Cherye
President, Board of Directors

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the __ day of _____, 2007, by Toby Hammett Futrell, City Manager for the City of Austin, Texas, for and on behalf of the City of Austin, Texas.

Notary Public in and for the State of Texas
My Commission Expires: _____

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the __ day of _____, 2007, by Rick Cherye, President of the Board of Directors Lost Creek Municipal Utility District, for and on behalf of the Lost Creek Municipal Utility District.

Notary Public in and for the State of Texas
My Commission Expires:_____

**STRATEGIC PARTNERSHIP AGREEMENT
BETWEEN THE CITY OF AUSTIN AND THE
LOST CREEK MUNICIPAL UTILITY DISTRICT**

LIST OF EXHIBITS

The following are the exhibits for this Agreement:

Exhibit A	District Boundaries;
Exhibit B	District Request for SPA Negotiation
Exhibit C	Commercial Property Description
Exhibit D	Remaining Property Description
Exhibit E	Agreement for Wholesale Water Service and Operation of Facilities
Exhibit F	Map of District
Exhibit G	Annexation Service Plan