

**RESOLUTION NO 20070927-016**

**WHEREAS**, on August 28 and 29, 2007, the City of Austin and Lost Creek Municipal Utility District participated in an arbitration hearing concerning a Strategic Partnership Agreement for the District, in accordance with the provisions of Texas Local Government Code Chapter 43, and

**WHEREAS**, the arbitrator issued a decision approving and incorporating the City's offer as the Strategic Partnership Agreement between the City and the District, as requested by the City of Austin, and

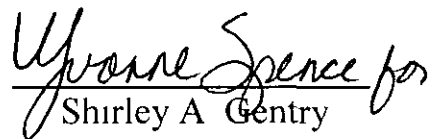
**WHEREAS**, the Summary Award in Arbitration is attached as Exhibit 1, and City Council accepts the arbitrator's decision and wishes to confirm the award, **NOW, THEREFORE**,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN**

The City Council accepts and confirms the Summary Award in Arbitration in the Lost Creek Municipal Utility District Strategic Partnership Agreement arbitration, attached as Exhibit 1

**ADOPTED** September 27, 2007

**ATTEST**

  
Shirley A. Gentry  
City Clerk

## EXHIBIT 1

Arbitrator  
Dean M Kilgore  
1301 West 25<sup>th</sup> Street, Suite 540  
Austin, Texas 78705  
Phone (512) 478 6120  
Fax (512) 478-6213

<b>Lost Creek Municipal Utility District</b>	§	
<b>Claimant,</b>	§	
	§	
<b>vs</b>	§	<b>In Re</b>
	§	<b>Lost Creek Municipal Utility District</b>
<b>The City of Austin</b>	§	<b>Annexation</b>
<b>Respondent,</b>	§	

### SUMMARY AWARD IN ARBITRATION

This Award is made in the arbitration of the claims by and between the Lost Creek Municipal Utility District Claimant (the "MUD"), and the City of Austin, Respondent (the "City"), respecting all issues in dispute between the parties as to the terms of a strategic partnership agreement (generally a SPA"), as that term is used in Sections 43 0751 and 43 0752 of the Texas Local Government Code (all further statutory references are to the Local Government Code) This is an arbitration under Section 43 0752, and arises generally out of the inclusion of the MUD by the City in its annexation plan and the parties efforts to negotiate and agree to the terms of a SPA related to such annexation efforts The MUD properly invoked the right to arbitrate these disputes This arbitration was conducted according to the terms of Section 43 0752, the terms of the letter agreement of the parties dated July 30, 2007 by which the undersigned was named as Arbitrator and the letter agreement between the parties and the Arbitrator, dated August 7, 2007 by which the undersigned accepted the appointment as Arbitrator, effective as of August 20, 2007

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On August 28 and 29 2007 after written notice to all parties and their attorneys the parties and their attorneys appeared and adduced evidence before the Arbitrator at the arbitration hearing of this matter Each party sponsored an ' offer' as that term is used in Section 43 0752 with respect to the terms of a SPA, and offered evidence as to whether the parties' offers met the requirements of or ' complie(d) with", Section 43 0751(p), all in accordance with Section 43 0752

During the hearing the MUD stipulated that it would not seek to set aside an award incorporating the City s offer on the basis that such offer was incomplete as a SPA During the hearing, the City stipulated that it would not seek to set aside an award incorporating the document presented by the MUD to the Arbitrator on August 29 2007 titled ' Strategic Partnership Agreement' on the basis that such document was incomplete as a SPA Both parties reserved all other objections

The arbitrator having received such evidence and stipulations heard arguments and closed the hearing on Wednesday, August 29 2007 The Arbitrator proceeded to consider all evidence adduced by the parties, all stipulations and all arguments made Upon consideration of the submissions of the parties, the evidence the stipulations and the arguments, the arbitrator makes the following findings, conclusions and award

1 The offer sponsored by the City (the City s Offer ), attached as exhibit "A" to the City s Response to Statement of Claim and Counter-Statement of Claim (such pleading City s Exhibit 2 before the Arbitrator), and generally described in the evidence as the 'mediated, negotiated SPA" complies with all requirements of Section 43 0751(p)

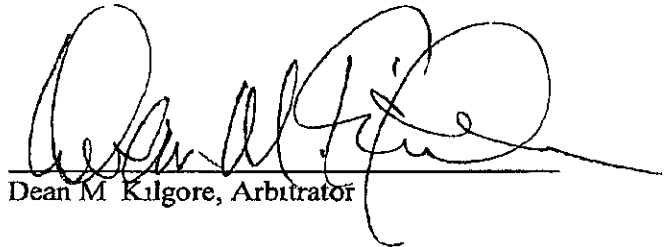
2 The City's Offer a copy of which is attached as Exhibit "A" hereto is incorporated in this award, in accordance with Section 43 0752, as the strategic partnership agreement of the parties (the "Arbitration SPA ")

3 The Arbitration SPA will be effective and binding upon both parties immediately, unless the City, pursuant to Section 43 0564(h) does not agree with the Arbitrator's decision

4 As provided by Section 43 0752(e), each party shall bear the expense of the arbitrator's fees, as they were paid

5 All other claims for relief, by or against any party, are Denied

Dated August 31, 2007



Dean M. Kilgore, Arbitrator

## **EXHIBIT A**

### **ORDINANCE NO 20070621-018**

**AN ORDINANCE DIRECTING THE CITY MANAGER TO PROCEED TO ARBITRATION WITH THE STRATEGIC PARTNERSHIP AGREEMENT MEDIATED WITH THE LOST CREEK MUNICIPAL UTILITY DISTRICT AS THE OFFER TO BE CONSIDERED BY THE ARBITRATOR.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** The Council finds that

- (A) Notices of two City Council public hearings concerning the adoption of a Strategic Partnership Agreement ("Mediated Agreement") with the Lost Creek Municipal Utility District ("District") as described in Exhibit "1" were published in a newspaper of general circulation in the City and in the District, and posted on the City of Austin internet website
- (B) The Mediated Agreement includes terms for delayed annexation, municipal services, water and wastewater management, and other provisions
- (C) The Mediated Agreement was the result of mediation held on January 24, 2007 in accordance with Section 43 0751 of the Local Government Code
- (D) The City conducted public hearings regarding the Mediated Agreement on May 3, 2007 at 6 00 p m and May 17, 2007 at 6 00 p m , at the Austin City Hall, 301 West Second Street, Austin, Texas
- (E) The District conducted two public hearings regarding the Mediated Agreement on May 12, 2007 and May 17, 2007
- (F) The public hearings were concluded after providing an opportunity for all persons present to be heard with respect to the Mediated Agreement
- (G) The Mediated Agreement with the District was rejected by the Board of Directors of the District on June 19, 2007
- (H) Section 43 0564 of the Texas Local Government Code requires the parties to proceed to arbitration on the request of the District

**PART 2.** The City Manager is directed to proceed to arbitration in accordance with State law with the Mediated Agreement as the offer to be considered by the Arbitrator

**PART 3.** This ordinance takes effect on July 2, 2007

**PASSED AND APPROVED**

\_\_\_\_\_, June 21, 2007      §  
§  
§ \_\_\_\_\_  
Will Wynn  
Mayor

**APPROVED:** \_\_\_\_\_  
David Allan Smith  
City Attorney

**ATTEST:** \_\_\_\_\_  
Shirley A Gentry  
City Clerk

## **EXHIBIT I**

### **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 "I" 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

Iony 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

## EXHIBIT A

FIRST TRACT - 720.91 ACRES

## FIELD NOTES

FOR FIRST OF TWO TRACTS

LOST CREEK MUNICIPAL UTILITY DISTRICT BOUNDARY

ALL OF THAT CERTAIN TRACT OR PARCEL OF LAND, BEING A PORTION OF THE PATTERSON MOORE SURVEY NO. 84, THE JOSEPH FESSENDEN SURVEY NO. 75, THE JOHN L. BRAY SURVEY NO. 72, THE JOHN SWESEY SURVEY NO. 506, THE ALEX EANES SURVEY NO. 507, THE ALEX EANES SURVEY NO. 508 AND THE JACOB STANDEFORD SURVEY NO. 100, ALL IN TRAVIS COUNTY, TEXAS, BEING ALL OF THAT CERTAIN 274.71 ACRE TRACT OF LAND AS CONVEYED TO MUTUAL SAVINGS INSTITUTION BY DEED RECORDED IN VOLUME 3746, PAGE 1307 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, BEING THAT SAME TRACT AS CONVEYED TO LOST CREEK DEVELOPERS BY DEED RECORDED IN VOLUME 4221, PAGE 211 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, BEING ALL OF LOST CREEK SECTIONS ONE AND TWO AS RECORDED IN PLAT BOOK 61, PAGE 60 AND PLAT BOOK 74, PAGE 89, RESPECTIVELY, OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS, 64.08 ACRES BEING A PORTION OF TRACT ONE, AND 4.549 ACRES BEING ALL OF TRACT TWO, AS CONVEYED TO MUTUAL SAVINGS INSTITUTION, BY DEED RECORDED IN VOLUME 5168, PAGE 711 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, 0.29 ACRES AS CONVEYED TO LOST CREEK DEVELOPERS BY DEED RECORDED IN VOLUME 4837, PAGE 1137 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, A 97.95 ACRE TRACT AND A 37.22 ACRE OF LAND AS CONVEYED TO THE LOST CREEK COMPANY BY DEED RECORDED IN VOLUME 5680, PAGE 1319 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, 228.813 ACRES OF LAND AS CONVEYED TO LOST CREEK COMPANY BY DEED RECORDED IN VOLUME 5683, PAGE 841 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, AND 13.84 ACRES OF LAND AS CONVEYED TO FRANK DOUGLASS, TRUSTEE, BY DEED RECORDED IN VOLUME 4173, PAGE 447 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a concrete monument found at the Northwest corner of the Lost Creek Company Tract as recorded in Volume 5680, Page 1319 of the Deed Records of Travis County, Texas, being a Southwesterly corner of Lot 39A, and an Easterly corner of Lot 40A of the Resub. of Lots 38 through 42, Camelot Section Three, as recorded in Plat Book 54, Page 58 of the Plat Records of Travis County, Texas, for the Northwest corner hereof,

THENCE along a Northerly line of the said Lost Creek Company Tract, being the South line of Camelot Section One, Camelot Section Two and Camelot Section Three, as recorded in Plat Book 33, Page 50, Plat Book 39, Page 20 and Plat Book 46, Page 11, respectively, the following courses:

S 80° 35' E for a distance of 2422.73 feet to an iron pin found

S 79° 17' E for a distance of 204.53 feet to an iron pin found at a Northerly corner of the said Lost Creek Company Tract, being at the Northwest corner of that certain 9.72 acre tract of land as conveyed to Lundgren & Maurer by Deed recorded in Volume 4871, Page 2147 of the Deed Records of Travis County, Texas, being at the most Southerly corner of Lot 11 of the said Camelot Section One, for a Northerly corner hereof,

THENCE along the West line of the said 9.72 acre Lundgren & Maurer Tract, S 27° 29' W for a distance of 279.58 feet to an iron pin found at the Southwest corner of the said 9.74 acre Lundgren & Maurer Tract, being at the Northwest corner of that certain 39.75 acre tract of land as conveyed to Dan Marshall, II, et al, by Deed recorded in Volume 3911, Page 884 of the Deed Records of Travis County, Texas,

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FOR FIRST OF TWO TRACTS  
LOST CREEK MUNICIPAL UTILITY DISTRICT BOUNDARY

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THENCE along the West line of the said 39.75 acre Marshall Tract,  
S 03° 04' E for a distance of 692.50 feet to an iron pin found,  
S 06° 21' W for a distance of 283.80 feet to an iron pin found and  
S 12° 55' W for a distance of 232.05 feet to an iron pin found at  
the Southwest corner of the said 39.75 acre Marshall Tract for  
an inside corner hereof,

THENCE along the South line of the said 39.75 acre Marshall Tract,  
for the following courses

S 73° 31' E for a distance of 441.02 feet to an iron pin found

N 51° 28' E for a distance of 536.30 feet to an iron pin found

N 87° 47' E for a distance of 286.15 feet to an iron pin found

S 78° 58' E for a distance of 675.80 feet to an iron pin found  
at the Southeast corner of the said 39.75 acre Marshall Tract,  
for an inside corner hereof,

THENCE along the East line of the said 39.75 acre Marshall Tract,  
N 09° 02' E for a distance of 275 feet to an iron pin found and  
N 02° 09' W for a distance of 556.60 feet to an iron pin found at  
the Northeast corner of the said 39.75 acre Marshall Tract, being  
at a Northerly corner of the said Lost Creek Company Tract,  
being in the Southwesterly line of Loop 360, for a Northerly corner  
hereof,

THENCE along the Southwesterly line of the said Loop 360, S 33° 30' E  
for a distance of 1175.21 feet to an iron pipe found at the Northeast  
corner of that certain tract of land designated as Tract Two as  
conveyed to Mutual Savings Institution by Deed recorded in Volume  
5166, Page 711 of the Deed Records of Travis County, Texas,

THENCE along the East line of the said Mutual Savings Institution  
Tract Two, being the Easterly r o w line of Loop 360, S 33° 35' E  
for a distance of 268.62 feet to an iron pin set at the Southeast  
corner of the said Mutual Savings Institution Tract Two, being at  
the Northeast corner of that certain portion of Lost Creek Boulevard  
as recorded in Volume 4411, Page 1255 of the Deed Records of Travis  
County, Texas, for the Southeast corner hereof,

THENCE along the South line of the said Mutual Savings Institution  
Tract Two, being the South r o w line of the said Lost Creek  
Boulevard, N 46° 25' W for a distance of 400.82 feet to an iron pin  
set at a point of curve,

THENCE along a curve to the right whose radius is 266.34 feet and  
whose chord bears N 89° 35' W for a distance of 257.87 feet to an  
iron pin set,

THENCE continuing along the South line of the said Mutual Savings  
Institution Tract Two, being the North r o w line of Lost Creek  
Boulevard, N 65° 08' W for a distance of 30.15 feet to an iron pin  
set at a point of curve,

THENCE along a curve to the right whose radius is 300.59 feet and  
whose chord bears N 49° 43' W for a distance of 61.45 feet to an  
iron pin set at the Southwest corner of the said Mutual Savings  
Institution Tract Two, being in the Easterly line of the Lost  
Creek Company Tract, as recorded in Volume 5680, Page 1319 of the  
Deed Records of Travis County, Texas,

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FIELD NOTES  
FOR FIRST OF TWO TRACTS  
LOST CREEK MUNICIPAL UTILITY DISTRICT BOUNDARY

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THENCE along the Southerly line of the herein described tract of land, along a curve to the right whose radius is 300.59 feet and whose chord bears N 39° 44' W for a distance of 43.24 feet to an iron pin set at a point of tangency,

THENCE N 35° 36' W for a distance of 255.22 feet to an iron pin set at a point of curve,

THENCE along a curve to the left whose radius is 614.95 feet and whose chord bears N 45° 28' W for a distance of 210.75 feet to an iron pin set at a point of tangency,

THENCE N 55° 20' W for a distance of 191.92 feet to an iron pin set at a point of curve,

THENCE along a curve to the left whose radius is 517.98 feet and whose chord bears N 67° 09' W for a distance of 212.14 feet to an iron pin set at a point of tangency said point being 1 foot South of the South line of the said 39.75 acre Marshall Tract,

THENCE along a line 1 foot South of and parallel to the said Marshall Tract, N 78° 58' W for a distance of 79.18 feet to an iron pin set at a point of curve,

THENCE along a curve to the left whose radius is 902.08 feet and whose chord bears N 85° 35' W for a distance of 208.15 feet to an iron pin set at a point of tangency said point being 1 foot South of the South line of the said 39.75 acre Marshall Tract,

THENCE along a line 1 foot South of and parallel to the said Marshall Tract, S 87° 47' W for a distance of 67.94 feet to an iron pin set at a point of curve,

THENCE along a curve to the left whose radius is 345.05 feet and whose chord bears S 69° 38' W for a distance of 215.07 feet to an iron pin set at a point of tangency, said point being 1 foot South of the South line of the said Marshall Tract,

THENCE along a line 1 foot South of and parallel to the said Marshall Tract, S 51° 28' W for a distance of 479.75 feet to an iron pin set at a point of curve,

THENCE along a curve to the right whose radius is 300 feet and whose chord bears S 81° 53' W for a distance of 303.77 feet to an iron pin set at a point of tangency,

THENCE N 67° 42' W for a distance of 490.02 feet to an iron pin set at a point of curve,

THENCE along a curve to the right whose radius is 301.30 feet and whose chord bears N 62° 44' W for a distance of 52.26 feet to an iron pin set at a point of reverse curve,

THENCE along a curve to the left whose radius is 352.50 feet and whose chord bears N 78° 21' W for a distance of 255.09 feet to an iron pin set at a point of tangency,

THENCE S 81° 03' W for a distance of 337.50 feet to an iron pin at the Southeast corner of the 97.95 acre tract as conveyed to the Lost Creek Company by Deed recorded in Volume 5680, Page 1319 of the Deed Records of Travis County, Texas, being at the most Easterly corner of Lot 15, Block 6, Lost Creek Section One, as recorded in Plat Book 61, Page 60 of the Plat Records of Travis County, Texas, for a corner hereof,

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THENCE S 53° 44' E for a distance of 49 85 feet to a nail set,  
THENCE S 67° 09' E for a distance of 8 83 feet for a corner hereof,  
THENCE S 81° 07' W for a distance of 535 05 feet for a corner hereof,  
THENCE S 47° 34' W for a distance of 899 00 feet for a corner hereof,  
THENCE S 50° 05' W for a distance of 500 04 feet for a corner hereof,  
THENCE S 16° 07' W for a distance of 71 59 feet for a corner hereof,  
THENCE N 50° 05' E for a distance of 560 31 feet for a corner hereof,  
THENCE N 47° 34' E for a distance of 350 00 feet to an iron stake  
at a westerly corner of the 228.873 acre tract of land as conveyed  
to the Lost Creek Company by Deed recorded in Volume 5683, Page  
841 of the Deed Records of Travis County, Texas, being in the  
Southeast line of Lost Creek Boulevard,

THENCE with the Southeast line of Lost Creek Boulevard, the  
following courses

N 47° 30' E for a distance of 449 84 feet to an iron pin at  
a point of curve,

THENCE along a curve to the right whose radius is 291 74 feet and  
whose chord bears N 64° 17' E for a distance of 168 40 feet to  
an iron pin at a point of tangency,

THENCE N 81° 03' E for a distance of 730 26 feet to an iron pin  
at a point of curve,

THENCE along a curve to the right whose radius is 282 50 feet and  
whose chord bears S 78° 21' E for a distance of 198 79 feet to an  
iron pin set at a point of reverse curve,

THENCE along a curve to the left whose radius is 381 30 feet and  
whose chord bears S 62° 44' E for a distance of 66 13 feet to an  
iron pin set at a point of tangency,

THENCE S 67° 42' E for a distance of 490 02 feet to an iron pin set  
at a point of curve,

THENCE along a curve to the left whose radius is 380 feet and whose  
chord bears N 81° 53' E for a distance of 384 78 feet to an iron  
pin set at a point of tangency,

THENCE N 51° 28' E for a distance of 479 75 feet to an iron pin set  
at a point of curve,

THENCE along a curve to the right whose radius is 265 05 feet and  
whose chord bears N 69° 38' E for a distance of 165 20 feet to  
an iron pin set at a point of tangency,

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THENCE N 87° 47' E for a distance of 67 94 feet to an iron pin set at a point of curve,

THENCE along a curve to the right whose radius is 822 08 feet and whose chord bears S 85° 35' E for a distance of 189 69 feet to an iron pin set at a point of tangency,

THENCE S 78° 58' E for a distance of 79 18 feet to an iron pin set at a point of curve,

THENCE along a curve to the right whose radius is 437 98 feet and whose chord bears S 67° 04' E for a distance of 179 38 feet to an iron pin set at a point of tangency,

THENCE S 55° 20' E for a distance of 191 92 feet to an iron pin set at a point of curve,

THENCE along a curve to the right whose radius is 534 95 feet and whose chord bears S 45° 28' E for a distance of 183 33 feet to an iron pin set at a point of tangency,

THENCE S 35° 36' E for a distance of 255 22 feet to an iron pin set at a point of curve,

THENCE along a curve to the left whose radius is 380 59 feet and whose chord bears S 41° 39' E for a distance of 80 23 feet to an iron pin set,

THENCE continuing along a curve to the left whose radius is 380 59 feet and whose chord bears S 51° 38' E for a distance of 52 34 feet to an iron pin set,

THENCE continuing along the Easterly r o w line of the said Lost Creek Boulevard, S 46° 02' E for a distance of 30 15 feet to an iron pin set at a point of curve,

THENCE continuing along the Easterly r o w line of the said Lost Creek Boulevard along a curve to the left whose radius is 356.34 feet and whose chord bears S 89° 35' E for a distance of 398 55 feet to an iron pin set;

THENCE continuing along the Southerly r o w line of Lost Creek Boulevard, N 56° 25' E for a distance of 300 87 feet to an iron pin set at the intersection of the South r o w line of Lost Creek Boulevard with the Southerly r o w line of Loop 360, for the most Northerly corner hereof,

THENCE along the Southwesterly r o w line of the said Loop 360, S 33° 35' E for a distance of 231 62 feet to a monument found, S 26° 28' E for a distance of 201 80 feet to a monument found and S 33° 35' E for a distance of 204 15 feet to an iron stake at the Northeast corner of the said Mutual Savings Tract, being the Northwest corner of the said 13 84 acre tract as conveyed to Frank Douglass, Trustee, by Deed recorded in Volume 4173, Page 447 of the Deed Records of Travis County, Texas,

THENCE continuing with the Southwesterly r o w line of Loop 360, S 33° 25' E for a distance of 346 00 feet to a concrete monument found; S 37° 56' E for a distance of 200 00 feet to a concrete monument found; S 33° 25' E for a distance of 1121 00 feet to a concrete monument found at the most Easterly corner of the said 13 84 acre tract for the most Easterly corner hereof,

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THENCE with the South line of the said 13.84 acre tract, N 62° 46' W for a distance of 1492.7 feet to an iron pin found at the Southwest corner of the said 13.84 acre tract, being in the East line of the said Mutual Savings Institution Tract, for an inside corner hereof, being the Northwest corner of a county lane

THENCE continuing along the Easterly line of the said Mutual Savings Institution Tract One, S 30° 42' W for a distance of 20.46 feet to an iron pin found in the South line of the said lane, being at the Northwest corner of that certain 4 acre tract of land as conveyed to Kenneth Oehler, by Deed recorded in Volume 4552, Page 1457 of the Deed Records of Travis County, Texas, }

THENCE continuing along the Easterly line of the said Mutual Savings Institution Tract One, and the West line of the said Oehler Tract, S 29° 23' W for a distance of 281.97 feet to a monument found at the Northwest corner of that certain 4 acre tract of land as conveyed to Christie Sarris by Deed recorded in Volume 4404, Page 2346 of the Deed Records of Travis County, Texas, being the most Easterly corner of the said 228.875 acre Lost Creek Company tract,

THENCE continuing along the Easterly line of the said Lost Creek Company and the West line of the said Sarris Tract, as found fenced and used upon the ground, S 29° 23' W for a distance of 300.30 feet to a monument found at the Southeast corner of the said Sarris Tract, being at the Northwest corner of that certain 9.15 acre tract of land as conveyed to L. Barclay by Deed recorded in Volume 692, Page 526 of the Deed Records of Travis County, Texas,

THENCE continuing along the Easterly line of the said Lost Creek Company Tract, as found fenced and used upon the ground, S 29° 35' W for a distance of 1011.43 feet to an iron pin found at a Southeasterly corner of the said Lost Creek Company Tract, being at the Southwest corner of that certain 4.00 acre tract of land as conveyed to M. L. O'Brien by Deed recorded in Volume 1969, Page 68 of the Deed Records of Travis County, Texas, being in the North line of that certain 50.46 acre tract of land as conveyed to Wilbur A. Foster by Deed recorded in Volume 4428, Page 2054 of the Deed Records of Travis County, Texas, for a Southeasterly corner hereof,

THENCE along the Southeasterly line of the said Lost Creek Company Tract and the North line of the said 40.46 acre Foster tract, as found fenced and used upon the ground, N 61° 25' W for a distance of 468.75 feet to a nail found at the Northwest corner of the said 50.46 acre Foster tract, for an inside corner hereof

THENCE leaving the South line of the Lost Creek Company Tract and continuing along the Southeasterly line of the said Mutual Savings Institution Tract One, being the West line of the said 50.46 acre Foster tract as found fenced and used upon the ground, for the following courses

S 28° 19' W for a distance of 276.55 feet to an iron pin set

S 28° 18' W for a distance of 442.13 feet

S 27° 56' W for a distance of 241.01 feet

S 28° 35' W for a distance of 138.44 feet to an iron pin found at a Southeasterly corner of the said Mutual Savings Institution Tract One, being at the Northeast corner of that certain 30.00

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acre tract of land as conveyed to Wilbur Foster by Deed recorded in Volume 4867, Page 2274 of the Deed Records of Travis County, Texas for a Southeasterly corner hereof,

THENCE continuing along the Southeasterly line of the said Mutual Savings Institution Tract One, being the North line of the said 30.00 acre Wilbur Foster Tract, N 61° 52' W for a distance of 1906.33 feet to an iron pin found at the Northwest corner of the said 30.00 acre Wilbur Foster Tract, being at an inside corner of the said Mutual Savings Institution Tract One, being in the East line of the Lost Creek Company 228.875 acre tract for an inside corner hereof,

THENCE continuing along the Southeasterly line of the said Lost Creek Company Tract, being the West line of the said 30.00 acre Wilbur Foster Tract, S 29° 51' W for a distance of 16.44 feet to an iron pin set and S 31° 43' W for a distance of 489.66 feet to an iron pin found at a Southeasterly corner of the said Lost Creek Company Tract, being at the most Easterly corner of that certain 22.70 acre tract of land as conveyed to Lost Creek Developers by Deed recorded in Volume 4905, Page 139 of the Deed Records of Travis County, Texas, for a Southeasterly corner hereof,

THENCE along the Northerly line of the said 22.70 acre Lost Creek Developers Tract, for the following courses

N 58° 06' W for a distance of 168.02 feet to an iron pin found

N 68° 51' W for a distance of 155.21 feet to an iron pin found

N 87° 10' W for a distance of 199.43 feet to an iron pin found

N 66° 26' W for a distance of 113.58 feet to an iron pin found

N 89° 33' W for a distance of 138.07 feet to an iron pin found

S 85° 30' W for a distance of 141.01 feet to an iron pin found

N 80° 48' W for a distance of 76.29 feet to an iron pin found

S 50° 11' W for a distance of 305.58 feet to an iron pin found

S 60° 48' W for a distance of 74.19 feet to a nail set in the Northeasterly line of Lot 42, Block 14, Lost Creek Section 1, a subdivision in Travis County, Texas, as recorded in Plat Book 61, Page 60 of the Plat Records of Travis County, Texas, for a Southwesterly corner of the said Lost Creek Company Tract,

THENCE along the Easterly and Southerly line of the said Lost Creek Section 1, for the following courses

S 19° 01' E for a distance of 69.73 feet

S 43° 07' W for a distance of 592.60 feet

S 48° 29' W for a distance of 330.00 feet

S 67° 10' W for a distance of 389.00 feet

N 42° 54' W for a distance of 370.00 feet

N 28° 30' W for a distance of 1073.56 feet

N 08° 00' W for a distance of 778.11 feet

N 30° 07' W for a distance of 489.84 feet to an iron pin at the Northwest corner of Lost Creek Section 1, being the Southwest corner of Lost Creek, Section 2, as recorded in Plat Book 74, Page 89 of the Plat Records of Travis County, Texas,

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THENCE with the West line of Lost Creek, Section 2, the following courses

N 30° 00' W for a distance of 273.23 feet to an iron pin found  
N 39° 00' W for a distance of 354.04 feet to an iron pin found  
N 39° 19' W for a distance of 232.42 feet to an iron pin found  
S 50° 50' W for a distance of 149.89 feet to an iron pin found  
N 40° 34' W for a distance of 402.13 feet to an iron pin found  
N 64° 48' W for a distance of 125.00 feet to an iron pin found  
N 04° 01' E for a distance of 340.19 feet to an iron pin found  
at the Northwest corner of Lost Creek Section 2,

THENCE continuing with the West line of the Lost Creek Developers Tract, N 04° 03' E for a distance of 223.69 feet to an iron pipe found, and N 01° 04' E for a distance of 127.85 feet to an iron pin at the most Westerly corner of the Lost Creek Developers Tract for the most Westerly corner hereof,

THENCE with the Northwest line of the Lost Creek Developers Tract, N 50° 48' E for a distance of 1154.39 feet to an iron pin found and N 46° 59' E for a distance of 1386.71 feet to an iron pin at the most Northerly corner of the Lost Creek Developers Tract, being in the South line of Tract One of the William J. Darilek Subdivision, as recorded in Plat Book 65, Page 72 of the Plat Records of Travis County, Texas, for the Northwest corner hereof,

THENCE with the Northeast line of the Lost Creek Developers Tract, and the Southwest line of the Darilek Subdivision, the following courses

S 51° 57' E for a distance of 99.52 feet to an iron pin found

S 54° 35' E for a distance of 49.67 feet to an iron pin found

S 61° 29' E for a distance of 281.98 feet to an iron pin found at the most Southerly corner of the said Darilek Subdivision, being the Southwest corner of that certain 0.562 acre tract of land as conveyed to Lost Creek Developers by Deed recorded in Volume 4674, Page 2348 of the Deed Records of Travis County, Texas,

THENCE continuing S 61° 51' E for a distance of 180.31 feet to an iron pin found at the Southeast corner of the Lost Creek Developers Tract as recorded in Volume 4674, Page 2348 of the Deed Records of Travis County, Texas, being the Southwest corner of the said 97.95 acre tract as conveyed to the Lost Creek Company by Deed recorded in Volume 5680, Page 1319 of the Deed Records of Travis County, Texas, for an inside corner hereof,

FIELD NOTES  
FOR FIRST OF TWO TRACTS  
LOST CREEK MUNICIPAL UTILITY DISTRICT

PAGE NINE

THENCE along the East line of that certain tract of land as conveyed to Lost Creek Developers by Deed recorded in Volume 4674, Page 2348, being the West line of the Lost Creek Company Tract, N 11° 33' W for a distance of 266 15 feet to an iron pin found and N 23° 10' W for a distance of 13 64 feet to an iron pin found at the Northeast corner of the said Lost Creek Developers Tract, being in the curving Southerly r o w line of Falcon Ledge Drive, for a Westerly corner hereof,

THENCE along the Southerly r o w line of the said Falcon Ledge Drive along a curve to the left whose radius is 50 feet and whose chord bears N 41° 05' E for a distance of 55 94 feet to an iron pin found at the Northwest corner of Lot 42B of the Resub of Lots 38 through 42, Camelot Section Three,

THENCE along the West line of the said Lot 42B, being an inside corner of the Lost Creek Company Tract, S 22° 37' E for a distance of 57 38 feet to an iron pin found at the Southwest corner of the said Lot 42B,

THENCE along the Southerly line of the said Resub of Lots 38 through 42, Camelot Section Three, being the West line of the Lost Creek Company Tract, the following courses

N 88° 13' E for a distance of 159 20 feet to an iron pin found

N 74° 45' E for a distance of 105 73 feet to an iron pin found

N 35° 22' E for a distance of 114 22 feet to an iron pin found

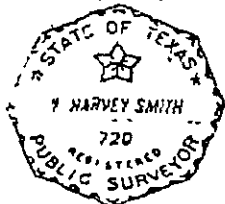
N 40° 33' E for a distance of 147 80 feet to an iron pin found

N 23° 0' E for a distance of 147 81 feet to an iron pin found

N 43° 05' E for a distance of 91 74 feet to the PLACE OF BEGINNING and containing 720 91 acres of land, more or less

AS PREPARED FROM VARIOUS GROUND SURVEYS PERFORMED BY W HARVEY SMITH FROM WATER DISTRICT RECORDS AND FROM DEED RECORDS

W HARVEY SMITH  
REGISTERED PUBLIC SURVEYOR NO. 720  
July 11, 1977



REAL PROPERTY RECORDS  
TRAVIS COUNTY TEXAS

11800 0349

SECOND TRACT - 1.30 ACRESFIELD NOTES  
FOR SECOND OF TWO TRACTS  
LOST CREEK MUNICIPAL DISTRICT

ALL OF THAT CERTAIN TRACT OR PARCEL OF LAND OUT OF THE JOHN L BRAY SURVEY NO 72 IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN TRACT OF LAND AS CONVEYED TO HILL COUNTRY GOLF, INC BY DEED RECORDED IN VOLUME 5234, PAGE 1827 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS.

BEGINNING FOR REFERENCE at an iron stake at the Southeast corner of Lost Creek Boulevard, being the Southwest corner of Lot 42, Block 14 of Lost Creek Section 1, a subdivision recorded in Plat Book 61, Page 60 of the Plat Records of Travis County, Texas,

THENCE N 67° 33' W for a distance of 1309.43 feet to a point for the Northeast corner and PLACE OF BEGINNING hereof,

THENCE S 23° 30' W for a distance of 237.97 feet to a point for the Southeast corner hereof,

THENCE N 66° 30' W for a distance of 237.97 feet to a point for the Southwest corner hereof,

THENCE N 23° 30' E for a distance of 237.97 feet to a point for the Northwest corner hereof,

THENCE S 66° 30' E for a distance of 237.97 feet to the PLACE OF BEGINNING and containing 1.30 acres of land, more or less

STATE OF TEXAS  
AS PREPARED FROM RECORDS BY  
V. H. SMITH

SMITH  
REGISTERED PUBLIC SURVEYOR NO 720  
JULY 14, 1977

REAL PROPERTY RECORDS  
TRAVIS COUNTY TEXAS

11800 0350



FIELD NOTES  
FOP  
THOMAS E FOSTER

19 039 ACRES

ALL OF THAT CERTAIN TRACT OR PARCEL OF LAND OUT OF THE JACOB STANDEFORD SURVEY NO 100 IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 30.00 ACRES OF LAND AS CONVEYED TO WILBUR A AND BARBARA C. FOSTER BY DEED RECORDED IN VOLUME 4867, PAGE 2274 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS

BEGINNING FOR REFERENCE at an iron pin found at the Northeast corner of the said Wilbur Foster Tract, same being in the East line of the said Standeford Survey at the Southeast corner of that certain tract of land as conveyed to Thomas E Foster by Deed recorded in Volume 6129, Page 2179 of the Deed Records of Travis County, Texas,

THENCE with the North line of the said Wilbur Foster Tract, being the South line of the said Thomas Foster Tract, N 61° 52' W for a distance of 310 00 feet to an iron pin set for the Northeast corner and PLACE OF BEGINNING hercof.

THENCE with the East line of the herein described tract, the following courses

S 02° 30' W for a distance of 450 00 feet to an iron pin set for an angle point

S 16° 00' W for a distance of 250 00 feet to an iron pin set on the high bank of Barton Creek for the Southeast corner hercof,

THENCE with the high bank of Barton Creek, same being the South line of the herein described tract, the following courses

N 78° 07' W for a distance of 283 45 feet to an iron pin set for an angle point

N 45° 07' W for a distance of 204 48 feet to an iron pin set for an angle point

N 33° 08' E for a distance of 93 97 feet to an iron pin set for an angle point

N 45° 46' W for a distance of 124 51 feet to an iron pin set for an angle point

N 14° 52' W for a distance of 60 11 feet to an iron pin set for an angle point

N 46° 10' W for a distance of 181 03 feet to an iron pin set for an angle point

EXHIBIT "A"

REAL PROPERTY RECORDS  
TRAVIS COUNTY TEXAS

11800 0351

FIELD NOTES  
 FOF  
 THOMAS E FOSTER

19 039 ACRES PAGE TWO

N 38° 02' W for a distance of 96 15 feet to a nail set  
 for an angle point

N 52° 05' W for a distance of 94 22 feet to an iron pin  
 set for an angle point

N 60° 39' W for a distance of 109 99 feet to an iron pin  
 set for an angle point

N 60° 19' W for a distance of 39 01 feet to an iron pin  
 set for an angle point

N 60° 28' W for a distance of 55 05 feet to an iron pin  
 set for an angle point

N 59° 47' W for a distance of 78 03 feet to an iron pin  
 set for an angle point

N 62° 53' W for a distance of 126 74 feet to an iron pin  
 set for an angle point

N 55° 26' W for a distance of 64 04 feet to an iron pin  
 set for the Southwest corner hereof,

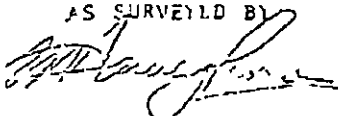
THENCE with the West line of the herein described tract,  
 the following courses

N 03° 09' E for a distance of 101 46 feet to an iron pin  
 set for an angle point

N 33° 20' E for a distance of 340 00 feet to an iron pin  
 set in the North line of the said Wilbur Foster Tract, for the  
 Northwest corner hereof,

THENCE with the North line of the said Wilbur Foster Tract, same  
 being the North line of the herein described tract  
 S 61° 52' E for a distance of 1370.93 feet to the PLACE OF  
 BEGINNING and containing 19 039 acres of land, more or less

AS SURVEYED BY



H. H. SMITH  
 REGISTERED PUBLIC SURVEYOR NO 720  
 July 5, 1978



REAL PROPERTY RECORDS  
 TRAVIS COUNTY TEXAS

11800 U352

22 70 acres in Travis County Texas as more particularly described by survey and bounds as follows:--

BEGINNING at a point on the south line of Lot 42 of Lost Creek Section One, a subdivision of record in Book 61 at Page 50, Plat Records of Travis County Texas and from which point the southwest corner of said Lot 42 in the southeast line of Lost Creek Boulevard bears N 48° 10' W 440.49 feet and S 53° 00' W 10 283 feet,

THENCE with the southeast line of said Lot 42 the following

four (4) courses;

- (1) N 66° 57' E 262.70 feet to an iron stake
- (2) N 46° 16' E 310.00 feet to an iron stake;
- (3) N 42° 45' E 593.15 feet to a cross in rock; and
- (4) N 19° 15' W 69.88 feet to a point

THENCE N 62° 30' E 73.53 feet to an iron stake

THENCE N 50° 17' E 305.56 feet to an iron stake;

THENCE S 80° 43' E 76.25 feet to an iron stake

THENCE N 85° 35' E 141.01 feet to an iron stake

THENCE S 89° 29' E 118.08 feet to an iron stake

THENCE S 60° 22' W 143.57 feet to an iron stake

THENCE S 87° 07' E 139.42 feet to an iron stake

THENCE S 68° 48' E 155.21 feet to an iron stake

THENCE S 56° 05' E 167.89 feet to an iron stake and rock mound found on top of a bluff in the east line of the said John C. Bray Survey No. 72 same being the west line of the James Sandeford Survey No. 100 and from which iron stake and rock mound the northwest corner of the John C. Bray Survey No. 77 bears N 31° 40' E 489.56 feet, S 62° 19' E 1907.32 feet, N 28° 44' E 171.70 feet, N 20° 01' E 444.45 feet, and N 28° 05' E 280.70 feet

THENCE with the division line between the said Bray and Sandeford surveys S 28° 37' W 614.37 feet to an iron stake

THENCE N 67° 14' W 335.12 feet to an iron stake

THENCE S 89° 07' W 434.57 feet to an iron stake

THENCE S 78° 33' W 81.28 feet to an iron stake

THENCE S 64° 35' W 143.61 feet to an iron stake

THENCE S 67° 44' W 148.50 feet to an iron stake;

THENCE S 60° 42' W 241.70 feet to an iron stake;

THENCE S 14° 15' W 77.78 feet to an iron stake

THENCE S 62° 31' W 66.08 feet to an iron stake;

THENCE S 68° 03' W 182.25 feet to an iron stake;

THENCE S 73° 45' W 103.11 feet to an iron stake

THENCE N 40° 10' W 198.80 feet to the POINT OF BEGINNING

REAL PROPERTY RECORDS  
TRAVIS COUNTY TEXAS

11800 0353

Lost Creek Country Club  
M U D Annexation

FN 695 p (JPD)  
April 30, 1982  
EH&A Job No 2265-32

A DESCRIPTION OF 10.59 ACRES OUT OF THE JOHN L. BRAY SURVEY NO 72 IN TRAVIS COUNTY, TEXAS; SAID 10.59 ACRES BEING A PART OF A 175.53 ACRE TRACT DESCRIBED IN A DEED FROM LOST CREEK CLUB TO FRED C MORSE, JR, TRUSTEE, AND JAMES E CROZIER, TRUSTEE, RECORDED IN VOLUME 4805 AT PAGE 808 OF THE TRAVIS COUNTY DEED RECORDS, SAID 10.59 ACRES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING at an iron pin found at the common corner of Lot 7 and Lot 8, Block 14, Lost Creek Section 1, a subdivision recorded in Book 61, Page 60 of the Travis County Plat Records, said iron pin being also on the east line of Lost Creek Blvd;

THENCE S 73° 14' 06" W, a distance of 1877.11 feet to an iron pin found for the POINT OF BEGINNING,

THENCE the following sixteen (16) bearings and distances

1. S 33° 10' 58" W, 78.68 feet to an iron pin set;
2. S 45° 31' 50" W, 205.67 feet to an iron pin set;
3. S 43° 20' 00" W, 241.36 feet to an iron pin set;
4. S 59° 00' 24" W, 211.78 feet to an iron pin set;
5. S 27° 17' 43" W, 450.96 feet to an iron pin set;
6. S 78° 56' 13" E, 465.50 feet to an iron pin set;
7. S 56° 03' 49" E, 319.48 feet to an iron pin set;
8. N 38° 05' 40" E, 580.19 feet to an iron pin set;
9. N 45° 45' 15" W, 236.15 feet to an iron pin set;
10. S 35° 48' 47" W, 234.96 feet to an iron pin set;
11. N 68° 23' 11" W, 367.32 feet to an iron pin set;
12. N 27° 33' 44" E, 309.35 feet to an iron pin set;
13. N 54° 58' 44" E, 201.32 feet to an iron pin set;
14. N 71° 07' 56" E, 108.36 feet to an iron pin set;
15. N 18° 28' 41" E, 98.29 feet to an iron pin set;

REAL PROPERTY RECORDS  
TRAVIS COUNTY TEXAS

Lost Creek Country Club  
M U D Annexation

FN 695 p (JPD)  
April 30, 1982  
EH&A Job No 2265-32  
|

16. N 58° 42' 25" W, 151.67 feet to the POINT OF BEGINNING  
containing 10.59 acres, more or less.

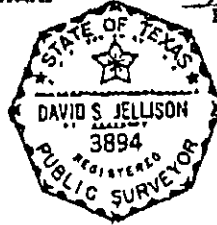
THE STATE OF TEXAS |  
|  
COUNTY OF TRAVIS |

KNOW ALL MEN BY THESE PRESENTS:

That I, David S. Jellison, a Registered Public Surveyor, do hereby certify  
that the above description is true and correct to the best of my knowledge and that  
the property described herein was determined by a survey made on the ground under  
my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas this the  
30<sup>th</sup> day of APRIL, 1982 A.D.

ESPEY, HUSTON & ASSOCIATES, INC.  
Engineering & Environmental Consultants  
P.O. Box 519  
Austin, Texas 78767



*David S. Jellison*  
Registered Public Surveyor  
No 3894 - State of Texas

## **EXHIBIT B**

*Lost Creek Municipal Utility District*

PHONE (512) 327-6243

1305 QUAKER RIDGE DRIVE  
AUSTIN TEXAS 78746-6211

FAX (512) 327-6282

October 12, 2006

City of Austin  
Att: City Council Members  
P.O. Box 1088  
Austin, Texas 78767-8865

Re Request for Negotiation of Strategic Partnership Agreement with Lost  
Creek Municipal Utility District

Dear Council Members

On behalf of the Board of Directors of Lost Creek Municipal Utility District (the "District"), I am writing to formally request that the Austin City Council negotiate and enter into a written strategic partnership agreement with the District pursuant to and in accordance with Section 43 0751, Texas Local Government Code.

Under the Local Government Code, if the District and City cannot reach an agreement on the terms of a strategic partnership agreement, then either party may request the appointment of an arbitrator within 60 days of the date of this letter. Because of the short time period available for negotiations prior to arbitration, we suggest that a series of meetings be scheduled to conduct negotiations. If you have an alternative method or procedure for conducting negotiations that you prefer, however, please advise us accordingly.

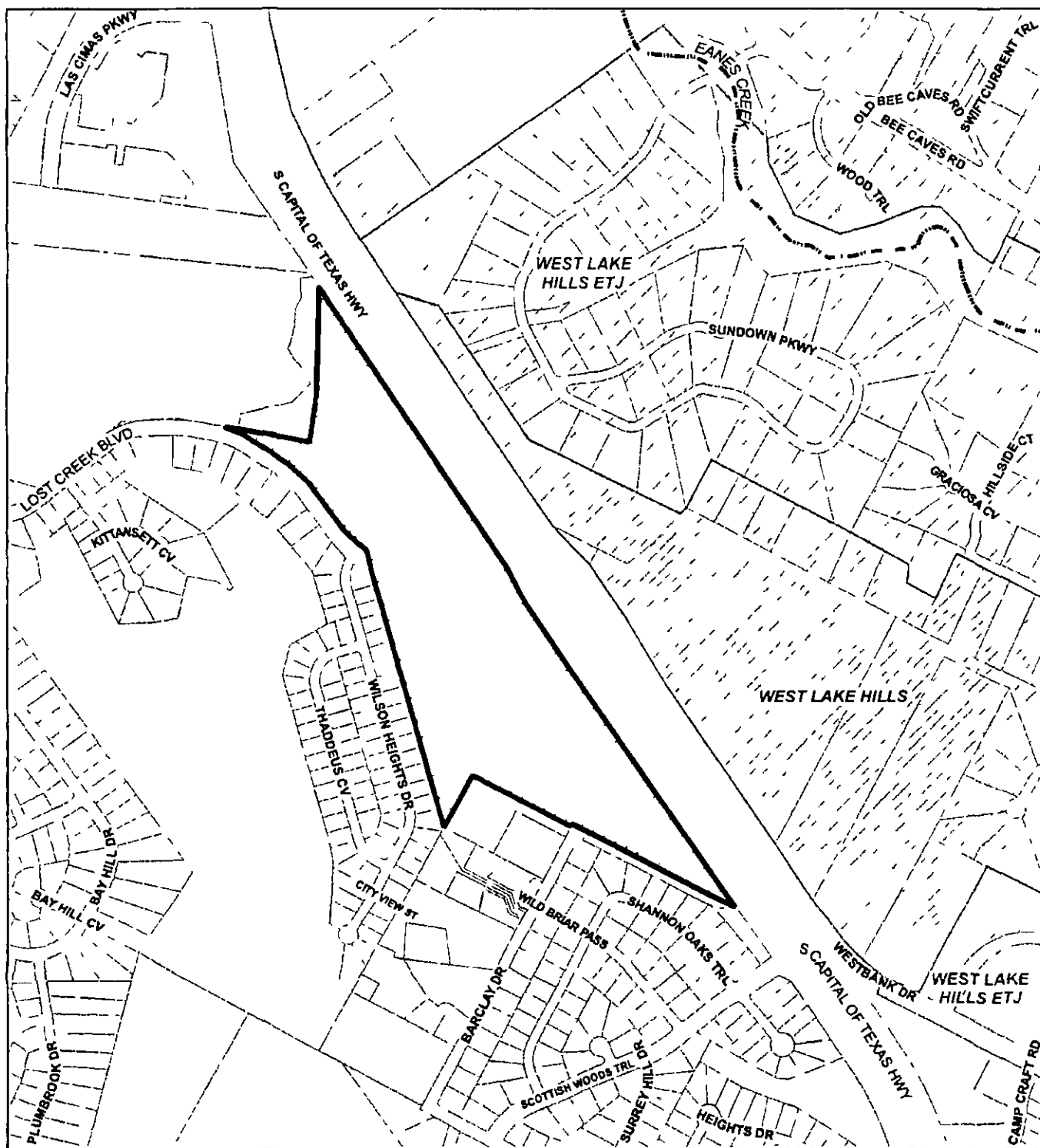
We look forward to your prompt response and negotiations regarding the terms of a strategic partnership agreement.

Sincerely,



Rick Cherye, President

cc Laura Huffman  
City Clerk  
LCMUD Board of Directors



# Lost Creek MUD Commercial Property

Exhibit C to the Strategic Partnership Agreement  
Approx 44 acres

0 1,000 Feet

## Legend

Annexation Area

Lot Line

Creek

## Jurisdiction

Austin Full Purpose

Austin Limited Purpose

Austin ETJ

Other City

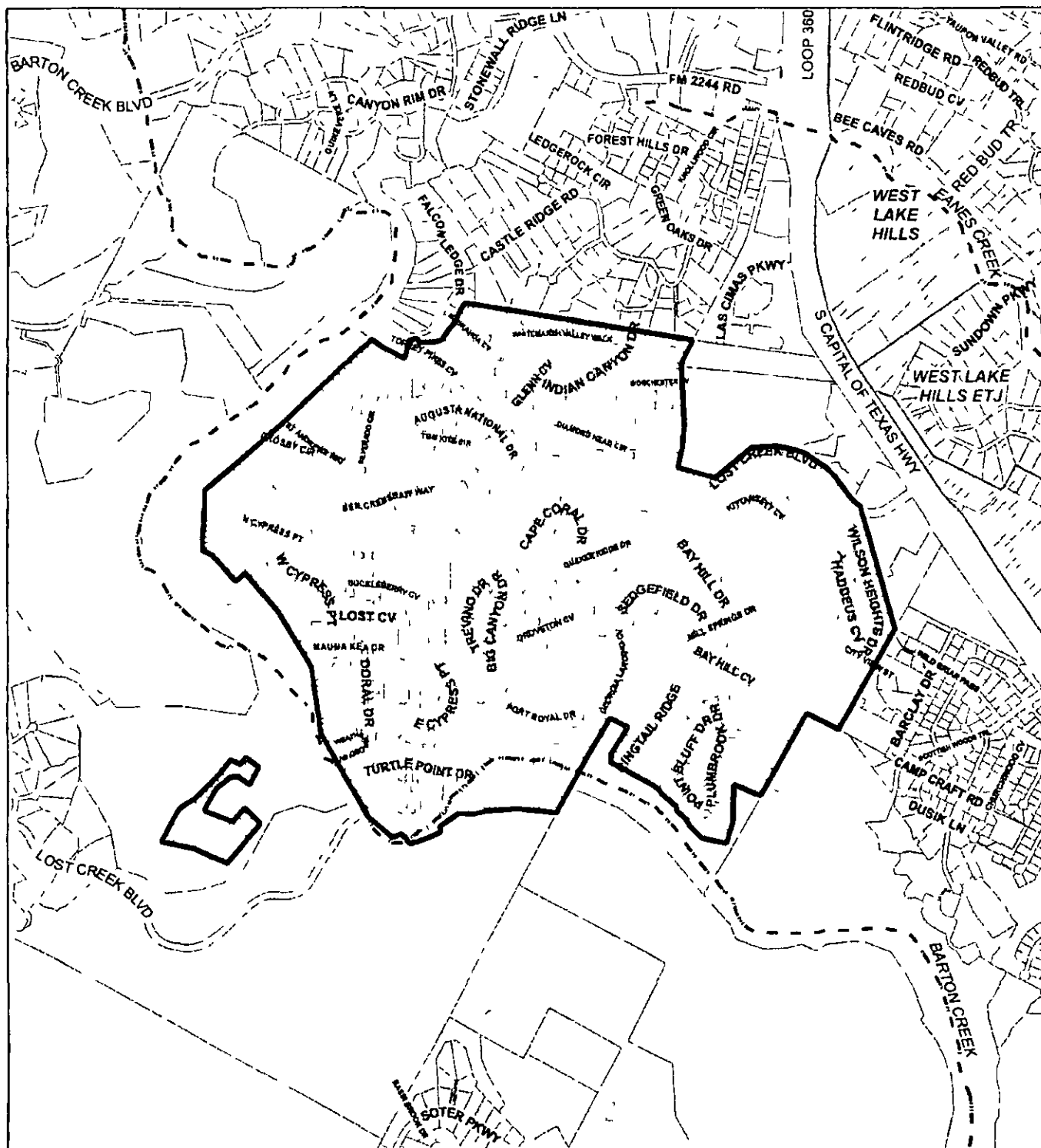
Other City's ETJ



City of Austin NPZD  
February 22, 2007  
J Chuter







## Lost Creek MUD Remaining Property

Exhibit D to the Strategic Partnership Agreement  
Approx 744 acres

0 1,000 2,000 4,000 Feet



City of Austin NPZD  
February 22 2007  
J Chuter



### Legend

- Annexation Area
- Lot Line
- Creek

### Jurisdiction

- Austin Full Purpose
- Austin Limited Purpose
- Austin ETJ

Other City

Other City's ETJ

**EXHIBIT E**

**AGREEMENT FOR WHOLESALE WATER  
SERVICE AND OPERATIONS MANAGEMENT OF FACILITIES  
BETWEEN THE CITY OF AUSTIN AND THE LOST CREEK MUNICIPAL UTILITY  
DISTRICT**

THE STATE OF TEXAS     )  
                                          )     KNOW ALL BY THESE PRESENTS  
COUNTY OF TRAVIS     )

THIS AGREEMENT ("Agreement") is made and entered into between the of City of Austin, Texas ("City"), a Texas home rule municipal corporation, and the Lost Creek Municipal Utility District, a conservation and reclamation district created and operating as a municipal utility district pursuant to the provisions of Chapters 49 and 54, Texas Water Code ("District"), collectively "Parties"

**WHEREAS**, the City and the District previously entered into the Revised Agreement on Lost Creek Municipal Utility District, executed on July 7, 1977, the Water and Wastewater Contract, executed on July 7, 1977, and the First Supplement to Revised Agreement on Lost Creek Municipal Utility District, executed on June 22, 1990 ("Prior City Agreements"),

**WHEREAS**, the District entered into those certain agreements with Hill Country Golf, Inc , Barton Creek Country Club, Stratus Properties, Inc , and/or Travis County Municipal Utility District #4 listed hereto in Exhibit 1 (collectively, the "Prior Irrigation Agreements") regarding the disposal of treated effluent from the District's wastewater treatment plant,

**WHEREAS**, the City and the District desire to enter into a new agreement, prior to full purpose annexation by the City on December 31, 2015, to set out terms and conditions for the City's continued provision of wholesale water service to the District for its distribution system, for the ownership, operation, and maintenance of the District's water, wastewater, and reclaimed water facilities, and to supersede all Prior City Agreements,

**WHEREAS**, the Austin City Council, by minutes, dated \_\_\_\_ \_\_\_\_, has authorized the negotiation and execution of this Agreement with the District,

**WHEREAS**, the District, by minutes, dated \_\_\_\_\_, has authorized the negotiation and execution of a this Agreement with the City,

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual undertakings herein contained, the parties agree as follows

## **ARTICLE I DEFINITIONS**

The following terms shall have the meanings set out below

**1 01 City Water System** means all water treatment, transmission, and distribution facilities, lines, mains, reservoirs, and pump stations, residential, commercial, and industrial connections, and any other parts or components that comprise the public water system of the City

**1 02 Commission** means the Texas Commission on Environmental Quality or its successor agency

**1 03 Connection** means a single family residential unit, or each commercial or industrial establishment, to which drinking water is supplied from the Retail Water System

**1 04 Default** means the omission or failure of a party to perform its contractual duty under this Agreement

**1 05 Director.** means the Director of the Austin Water Utility or the Director's authorized designee

**1 06 Effective Date** means the last date of execution of this Agreement

**1.07. EPA** the United States Environmental Protection Agency

**1 08. Industrial Waste** industrial waste as defined in Chapter 15-10 of the 2006 Austin City Code, as amended

**1 09 Infiltration and Inflow** water that has migrated from the ground or through direct sources into a wastewater system

**1.10. Master Meter** means a water meter that serves more than one residential, commercial, or industrial customer

**1 11 Point of Delivery.** means the point designated and approved under this Agreement at which the District may withdraw water from the City Water System for distribution as more particularly described in Exhibit 2

**1 12 Replacement Irrigation Agreements** means any agreements entered into by the City regarding the storage and disposal of treated wastewater effluent generated within the Service Area, as more particularly described in Section 12 08

**1 13 Retail Wastewater System** means the collection lines, lift stations, mains, residential, commercial, and industrial connections and any other parts or components that comprise the public

wastewater system serving the retail customers located within the Service Area and also includes the District's ownership interest in any facilities necessary for the storage and transfer of treated effluent for irrigation purposes

**1.14 Retail Water System** means the lines, reservoirs, pump stations, mains, residential, commercial, and industrial connections, and any other parts or components that comprise the public water system serving the retail customers of the Service Area

**1.15 Service Area.** means a portion of District's boundaries and City approved out-of-district areas as more particularly designated on Exhibit 2

**1.16. Sewage** water-borne human excretae and gray water

**1.17. Waste or Wastewater** liquid or water borne waste, including, without limitation, sewage, industrial waste, or other wastes, whether separate or commingled

**1.18 Water** means potable water meeting the requirements of the Commission for human consumption and other domestic uses

**1.19. Wholesale Water Service** means City's provision of a potable water supply to the District for its distribution system that serves retail connections in the Service Area

## **ARTICLE II. DELIVERY OF WATER**

**2.01. Maximum Volume and Rate of Flow.** Subject to all the terms and conditions set forth in this Agreement, the City agrees to sell and the District agrees to buy potable water for the operation of the Retail Water System for domestic, commercial, and industrial uses on an as-needed basis in an amount not to exceed a monthly average of 1.8 million gallons per day ("MGD"), at a rate not exceeding the capacity of the existing City pumping infrastructure, and at a minimum pressure of 35 pounds per square inch ("psi") under normal operating conditions at the Master Meter located at the agreed Point of Delivery. The parties agree that a monthly average of 1.8 MGD is the maximum level of service to which the District is entitled under this Agreement.

**2.02 Sole Water Supply Intended.** The District and the City agree that the City shall provide the sole source of water for the operation of the Retail Water System during the term of this Agreement and the Parties do not construe this agreement to provide for supplemental, backup, peak-load, or as-available service. Notwithstanding the foregoing, if the City cannot provide 1.8 MGD of potable wholesale water supply in accordance with Section 2.01 above, then the District may, after written notice to the City, obtain a supplemental supply of water from an alternative service provider, and the District will assume all costs associated with such alternative supply, including backflow prevention to protect the City Water System.

**2.03 Manner of Water Delivery** During the term of this Agreement, the District shall provide retail water service to the connections within the Service Area in this Agreement by means of the Retail Water System connected to the City Water System at the Point of Delivery

**2.04 Nondiscrimination.** Water service to the District by the City shall be nondiscriminatory and consistent with City policies, ordinances, and regulations applicable to wholesale water services as established by the Austin City Council and amended from time to time

**2.05 Backflow Prevention**

The District shall be solely responsible for adopting and enforcing appropriate regulations for the control and elimination of cross-connections and conditions of backflow and back siphonage within the Retail Water System in accordance with applicable federal, state, and local laws and regulations

**2.06 Curtailment and Conservation Restrictions** Delivery, volume, and pressure of potable water to the District under this Agreement is subject to and limited by the City's available water supply and water system treatment and transportation capabilities. The City shall have the right to curtail or ration wholesale service to the District in times of high system demand in the same manner and to the same extent that the City imposes such curtailment or water rationing on other wholesale customers of the City. The City will give written notice to the District of the implementation and termination of any conservation and user restrictions it imposes on its wholesale customers. Further, within thirty days of the execution of this Agreement, the City agrees to provide the District current data regarding the City's water conservation program, including its conservation goals. The District shall utilize such data for purposes of adopting a water conservation program in accordance with Section 3.01 below

**2.07. Temporary Curtailment of Service for Maintenance, Capital Replacement or Emergency Operations** The City shall have the right at all times to curtail water service hereunder in the event of a required maintenance operation, replacement of capital facilities, or emergency for a reasonable period necessary to complete such maintenance operations or capital replacement, effect emergency repairs, or otherwise respond to emergency conditions necessitating the temporary suspension of water service or decreased volume or pressure. For any curtailment other than one caused by an emergency, the City, if possible, will give at least 72 hours telephonic notice to the District. In the event of an emergency curtailment, the City will give telephonic notice as soon as possible

**2.08. Cooperation During Maintenance or Emergency.** The District shall cooperate with the City during periods of emergency or required maintenance or replacement of equipment and, if necessary, the District shall, at its sole expense, discontinue, cycle, test, inspect, or otherwise operate and maintain its pumps or the Retail Water System in a manner to be necessary to the safe and efficient completion of such operations

**2.09 Operation and Maintenance.** Unless otherwise agreed in writing, the District shall be responsible for operation, maintenance, and leakage of water of the Retail Water System

### **ARTICLE III WATER CONSERVATION**

**3 01 Water Conservation Program** The District will adopt and enforce a water conservation program sufficient to meet the requirements of Commission water conservation rules, as amended. The District shall also adopt and enforce water conservation measures and goals that are similar to the measures and goals within the City's water conservation program, as amended. Not later than ninety (90) days after receipt of the data furnished by the City in accordance with Section 2 06 above, the District agrees to provide to the City a written water conservation program, which shall be prepared to achieve the same goals in water usage as the City's water conservation program based on local usage, soil and other conditions within the District. If the City determines that the District's water conservation program is not reasonably designed to achieve water conservation goals at least equal to those of the City's water conservation program, then the City may request that Patrick Keel, or other mutually acceptable arbitrator, meet with the Parties within 10 days of the City's request, who will make the final binding determination (either the District's program is reasonably designed to achieve water conservation goals at least equal to those of the City's water conservation program or it is not, in which event the arbitrator may specify necessary revisions thereto) within 3 business days of the joint meeting. The Parties agree to share the cost of the arbitrator equally. The District may submit proposed revisions to its water conservation plan from time to time thereafter, which shall be subject to the same review and arbitration process set forth above.

### **ARTICLE IV WASTEWATER SERVICE**

**4.01 Operation and Maintenance.** The District shall be responsible for operation, maintenance, and overflow, if any, of wastewater of the Retail Wastewater System. The City agrees that the District may adopt and enforce reasonable rules and regulations applicable to all customers, including those in the commercial area, required for the protection and proper operation of the Retail Wastewater System.

**4 02. Condition of Wastewater.**

The District shall require all persons discharging wastewater containing industrial waste or other prohibited waste to the Retail Wastewater System to comply with applicable EPA, Commission, or the District's pretreatment regulations. The District agrees to pay for the cost of required repairs to the Retail Wastewater System that is caused by such wastewater. The District agrees that the City shall have the right, at its option and expense, to sample wastewater discharges within the Retail Wastewater System at the site of discharge, and other locations as required for the purpose of determining the source, type, and strength of discharge.

**4 03 District Prevention of Infiltration and Inflow** The District will undertake reasonable measures to minimize infiltration and inflow to the Retail Wastewater System.

The District agrees that it will maintain supervision and maintenance of the Retail Wastewater System to prevent connections such as roof drains or any other means by which surface drainage can enter the Retail Wastewater System

## **ARTICLE V COMPLIANCE WITH STATE LAWS AND CITY REGULATIONS**

**5 01 Legal Lots Required.** The District shall not sell taps or otherwise permit the connection of water or wastewater service to any customer within the Service Area unless the property is exempt from or in compliance with the provisions of Chapter 212, Texas Local Government Code, as amended

**5 02 Service Outside District, Enlargement of District Boundaries or Service Area.** The District agrees that it shall not construct or install water or wastewater facilities to serve areas outside the Service Area in this Agreement, nor sell, resell, or deliver water or reclaimed water to areas outside the Service Area as of the Effective Date unless it first obtains the prior written consent of the City. The District further agrees that it will not initiate any proceedings to enlarge its jurisdictional boundaries through any other agency or court of competent jurisdiction. This section shall not prevent the District from delivering reclaimed water under the Prior Irrigation Agreements for so long as such agreements remain in effect. Moreover, any Replacement Irrigation Agreements shall not restrict or interfere with the proper disposal of all wastewater generated from the Service Area

**5 03 Agreement Subject to Applicable Law** This Agreement will be subject to all applicable federal, state, and local rules, regulations, and laws, and of any other governmental body or agency having lawful jurisdiction

**5.04 District Cooperation to Assure Regulatory Compliance** Because both Parties must comply with all federal, state, and local requirements to obtain permits, grants, and assistance for system construction, studies, etc., the District and the City will cooperate in good faith at all times to assure compliance with any such governmental requirements where noncompliance or noncooperation may subject the parties to penalties, loss of grants or other funds, or other adverse regulatory action

**5 05 Sewer System Overflows** The District will immediately notify the City of any sewer system overflows originating inside the Service Area. The District is responsible for timely providing any required notice to the EPA and the Commission regarding any overflows. If the EPA or the Commission issues any form of order or penalty for violations of applicable law resulting from operation, maintenance, or other program associated with the Retail Wastewater System, the District will take all necessary action to comply with, or otherwise respond to, the order. To the extent permitted by law, the District agrees to hold the City harmless for violations that occur within the Retail Wastewater System that arise out of the actions or inactions of the District, and which do not arise out of the actions or inactions of the City

**5 06 Water Line Breaks** The District shall notify City of any water line breaks inside the Service Area in this Agreement. The District is responsible for timely providing any required notice to Federal, State, and/or local government officials regarding water line breaks. If the Commission issues any form of order or penalty for violations of applicable law resulting from operation, maintenance, or other program associated with the Retail Water System, the District will take all necessary action to comply with, or otherwise respond to, the order. To the extent permitted by law, the District agrees to hold the City harmless for violations that occur within the Retail Water System that arise out of the actions or inactions of the District, and which do not arise out of the actions or inactions of the City.

**5 07. Right of Entry** In cooperation with and after notice to the District, the City shall have the right of entry and access to the Retail Water System and the Retail Wastewater System at all times in order to inspect those facilities, to investigate the source of operational or maintenance problems, for preventive purposes intended to detect, minimize, or avert operational or maintenance problems, or for any other purpose reasonably related to the provision of service. The District shall make all arrangements reasonably required to provide such access, provided that the City provides at least one (1) working day's written notice or, in the event of an emergency, prior notice by telephone or confirmed facsimile, to a District representative describing the City's need for emergency access. This Agreement shall not affect the City's access for inspections conducted under the provisions of Federal or State law, or the City's EPA required program governing the pretreatment, monitoring, and discharge of industrial waste.

**5 08 Verification of Connections** The District will make available for inspection and copying during regular business hours, at the City's expense, all records for retail connections to the Retail Water System and Retail Wastewater System. In addition, the City will have the right to inspect the Retail Water System and Retail Wastewater System at any time to verify the type and amount of retail connections made, and District will provide lawful access to the City for this purpose.

## **ARTICLE VI RATES, CHARGES, AND BILLING**

**6 01. Wholesale Water Rates** The District agrees to pay the City for all wholesale water delivered to the District under this Agreement, in accordance with the wholesale water rate established and amended from time to time by the Austin City Council for the District's customer class.

**6 02 Wholesale Billing and Payment.** The City shall send a bill to the District once per month setting forth the quantity of water delivered to the District as determined by the City's periodic readings of the Master Meter installed at the Point of Delivery. Each bill shall include a due date and the total amount owed to the City based on the metered quantity of wholesale water delivered multiplied by the City's wholesale water rate for District's customer class, as amended from time to time by the Austin City Council. The District shall pay the total amount owed to the City by the due date on each bill for Wholesale Water Service. If the District in good faith questions the amount of the bill, the District shall follow the procedures therefore established in the City's Utility Customer



Service Regulations in Chapter 15-9 of the 2006 Austin City Code, as amended. In the event of a conflict between this Agreement and the terms of the City's Utility Service Regulations, the provisions of this Agreement shall prevail.

The District agrees to make timely payments to the City for Wholesale Water Service. Payments shall be considered past due 30 days after the date of receipt of each bill for Wholesale Water Service. The City may apply a late charge on past due payments in accordance with its policies and ordinances applicable to other customers of the City.

**6.03 Effect of Default for Non-Payment.** With respect to monthly wholesale water billings and monthly remittance of Commercial Revenues (as defined in Section 6.04 below), if the City has not received payment from the District by the due date, the bill shall be considered delinquent, unless contested in good faith. In such event, the City shall notify the District of such delinquency in writing; if the District fails to make payment of the delinquent billing within 30 days from the date of transmittal of a written notice of delinquency from the City, then the City may, at its discretion, temporarily terminate service to the District until payment is made, subject to the District's right of continuity of service during a good faith appeal or a disputed bill as provided by applicable state laws and regulations and the City's Utility Service Regulations, Chapter 15-9 of the 2006 Austin City Code, as amended.

If the District has not paid a delinquent bill within 30 days of the above notice and there is no good faith appeal or a disputed bill pending, then the City shall have the right, at the City's sole option, to (i) reduce service to the District under this Agreement (and the District shall not invoke remedies in Section 2.02), (ii) require the District to terminate service to non-paying customers in accordance with the City's Utility Service Regulations, or (iii) pursue such other and further remedies as the City shall deem appropriate. The remedy of full purpose annexation shall not be available to the City for any default or dispute arising out of or relating to this Agreement except as provided in Section 10.05 herein.

**6.04 District's Budget and Rates.** The District agrees to adopt and manage its own budget, tax rate, and water and wastewater utility rates and fees. The District agrees to manage such in a manner to ensure that all contractual and regulatory obligations and requirements are promptly and timely met.

Notwithstanding any statement herein, the District agrees to charge the commercial area, identified in Exhibit 2, the City's water and wastewater rates and fees, as amended, for inside City customers ("Commercial Revenues") as of December 31, 2007. The District shall remit such amounts on a monthly basis, with supporting documentation, to the Austin Water Utility and shall not charge the City any District fees or charges or retain any amount from the Commercial Revenues. To ensure that the customers in the commercial area will be subject to the in-City commercial rates adopted by the City pursuant to its ordinance powers, the Customers in the commercial area will be considered retail customers of the City for the term of this Agreement, provided, however, the District shall perform billing, collection, operation, maintenance and other services specified in this Agreement on behalf of the City by contract. The City agrees to provide timely written notice to the District of all

rates applicable to the commercial area, and the District shall not be responsible for any payments to the City for shortfalls because the City failed to provide such notice to the District

The District agrees to provide the City a copy of its proposed budget, tax rate, and water and wastewater utility rates and fees at least 60 days prior to the District's adoption of such. The information provided to the City will be of sufficient detail in order for the City to identify and understand each specific proposed capital improvement that will be made to the facilities. The City will review and provide input on the District's proposed budget, tax rate, and water and wastewater utility rates and fees, which may be subject to revision based upon final Travis County Appraisal District values. The District agrees to respond to all reasonable City inquiries and input prior to the District's adoption of its proposed budget, tax rate, and water and wastewater utility rates and fees and give the City's input serious consideration.

The District agrees to provide the City 30-day written notice of the date, time, and location of the District meeting to adopt its proposed budget, tax rate, and water and wastewater utility rates and fees.

**6.06. District Water Rates and Charges.** During the term of this agreement, the District shall fix and collect rates and charges for retail water and wastewater service to its customers that are, in the opinion of the District's Board of Directors, sufficient, together with any other revenues and funds available to the District, to produce the amount necessary to operate, repair, and maintain the Retail Water System, Retail Wastewater System, and to pay the cost of Wholesale Water Service from City under this Agreement.

The District shall be solely responsible for ensuring that its retail rates and charges are determined and collected in accordance with applicable law.

**6.07. District's Water and Wastewater Billing and Collection Services.** The District shall continue to provide customer billing, collection, and customer inquiry services as was provided as of the Effective Date for all of its retail and out-of-district customers.

**6.08. District Responsible for Approval of Retail Connections.** The District will be solely responsible for the appropriate allocation of water and wastewater capacity among its retail customers within the Service Area. The District will be responsible for ensuring compliance by its retail customers with the applicable terms of this Agreement and for the proper and lawful application of District policies and ordinances governing connection to the Retail Water System and Retail Wastewater System.

**6.09. Customer Connection Fees.** The District shall be solely responsible for the proper exercise of its governmental power to assess and collect fees, rates, taxes, or other charges and for ensuring that the assessment and collection of the same is in compliance with applicable law.

**6.10. District Fees Charged to the City.** The District agrees that it shall not charge the City any fees or charges or require any licenses related to the City's ownership or the District's operations and

maintenance of the Retail Water System and Retail Wastewater System located within the Service Area

**6 11 Obligation of District** The Parties agree that the District's obligations under this Agreement to make payments to the City for Wholesale Water Service and Commercial Revenues in any fiscal year are a current expense for that fiscal year payable solely from the revenues of the Retail Water System and Retail Wastewater System for that fiscal year. The obligation of the District to make payments to the City does not constitute a general obligation or indebtedness of the District for which the District is obligated to levy or pledge any form of taxation.

## **ARTICLE VII METERS**

**7 01 Master Water Meters Required** All water consumed by the District shall be measured by Master Meters of a design, size, location and configuration approved by the Director and District's Engineer. The parties agree that the existing Master Meter(s) located at the Point of Delivery in Exhibit 2 shall be deemed approved under this Section upon the Effective Date.

**7 02 Master Water Meter Requirements.** The City shall operate and maintain the Master Meters and related equipment and appurtenances and shall calibrate the metering equipment annually and more frequently upon request by the District provided, however, that the additional cost of calibrating the metering equipment shall be borne by the District if the meter is deemed to be reading accurately. Any meter registering within American Water Works Association, or its successor, standards for that type and size of meter shall be deemed to be accurate. Unless otherwise agreed in writing, if any meter fails to register accurately for any period, the City's charge for the amount of water furnished during such period shall be determined in accordance with the City's Utility Service Regulations as in effect on the effective date of this Agreement. The City shall read the metering equipment at least once for each monthly billing cycle.

**7 03 Wastewater Flow Meter** The District shall continuously measure treated wastewater discharged from the wastewater treatment plant. The District shall calibrate the metering equipment annually and more frequently upon request by the City provided, however, that the additional cost of calibrating the metering equipment shall be borne by the City if the meter is deemed to be reading accurately. A wastewater meter registering within 10% of accurate flow measurements shall be deemed to be accurate.

## **ARTICLE VIII. CONSTRUCTION OF FACILITIES**

**8 01 Construction by District** Unless otherwise agreed in writing, the District shall be solely responsible for design, engineering, financing, construction, installation, inspection, operation, maintenance, repair, and replacement of all facilities within the Retail Water System and Retail Wastewater System.

**8.02 No Private Lines, Reselling of Water** The District has no knowledge of any existing and shall prohibit the installation of new, privately owned water lines, mains, or appurtenances installed, maintained, or utilized in the public right-of-way within the Service Area in this Agreement. The District shall not permit the resale of potable water provided by the City, even if mixed with other water sources, under this Agreement.

**8.03 Approval of Plans and Specifications** All new water and wastewater facilities installed after the Effective Date shall be constructed or installed to the City's standards and design criteria and in accordance with plans and specifications approved by the City, the Commission, the Texas Department of State Health Services, and any other agency having jurisdiction thereof. The review and approval requirement shall not apply to the repair or replacement of existing facilities where circumstances require prompt action including, without limitation, the repair or replacement of line breaks or any actual or threatened release of potable water or wastewater into the environment, but all such repairs and replacements must be accomplished in accordance with the City's standards and design criteria, and all applicable requirements of any other governmental entity with jurisdiction.

The Director will review and approve or disapprove any plans submitted under this subsection within 30 days of submittal. Upon request by the Director, District shall timely submit all documents that are needed for the review and approval of plans and specifications. If any plans are not approved, the Director will provide written comments to District specifying in detail the changes that will be required for approval of the plans and specifications. District agrees not to advertise for bids until approval from the Director has been secured with respect to the plans and specifications.

If after approval of the plans and specifications by the City, the District fails to enter a construction contract for those facilities within two years, the District must resubmit the plans and specifications for review and approval by the Director to assure their conformity with City's then current specifications, and current laws, ordinances, and regulations. If such plans and specifications do not conform to the then existing standards, then, upon the request of the Director, the District agrees to revise the plans and specifications to meet the City's standards before commencement of construction.

The City may inspect all phases of the construction.

**8.04. Notification of Commencement of Construction.** After all required approvals for construction is obtained but prior to commencement of construction, the District shall provide written notice to the Director of the date on which construction of the facilities is scheduled to commence to allow the City to assign an inspector.

**8.05 As-Built or Record Drawings Upon Completion of Construction** Upon completion of construction or any portion thereof, the District shall within 14 days provide, at the District's expense, to the Director as-built drawings or record drawings of each such completed project.

**8.06. Acquisition of Rights-of-Way** The District represents and warrants that to the best of its knowledge, it has all required easements and access rights required to access, own, and operate the

Retail Water System and Retail Wastewater System, either by instrument, plat dedication or by prescription, and the District transfers and assigns said rights to the City in accordance with the terms of this Agreement. In the event that any third person challenges the City's exercise of any such rights prior to December 31, 2015, then the District agrees to fully cooperate with the City and take all reasonable actions at the District's expense to defend or establish such rights.

## **ARTICLE IX. SERVICE AREA AND LIMITATIONS ON SERVICE**

**9.01 Limitation of Service Area.** The Parties agree to the following:

(a) This agreement is for a specific level of Wholesale Water Service for the Service Area. The District may not expand the level of Wholesale Water Service, or provide water or wastewater service outside the Service Area without the prior approval of the Austin City Council,

(b) The Austin City Council reserves the right to deny for any reason any requests by the District for approval under subsection (a) above,

(c) If the District provides water or wastewater service outside the Service Area, without the approval of City, as reflected by an amendment to this Agreement, the City may require the District to immediately terminate service to the land outside the Service Area,

(d) The District may not connect any customer that the District knows provides water or wastewater service directly or indirectly to another person or entity outside the Service Area. The District will immediately terminate the service of any such customer once it discovers any such connection, and

(e) The District will notify the City within three business days if the District receives a request to serve outside of the Service Area.

**9.02 No Delegation of Governmental Authority.** The limitations stated herein shall not be construed as a delegation by the District to the City of any governmental authority or power but rather shall be construed as a contractual requirement for consent by the City to the enlargement of the City's required performance hereunder and a condition precedent to further performance by the City hereunder.

**9.03 Septic Tank Regulations.** The District will enforce its existing regulations relating to septic tank inspection.

## **ARTICLE X. OWNERSHIP OF FACILITIES**

#### **10 01. Transfer of Ownership.**

(a) Upon the Effective Date and except as otherwise provided below, the District grants, bargains, sells, assigns, and conveys all of its water, wastewater, and reclaimed water infrastructure, and personal and real property containing such infrastructure ("Utility Property"), to the City, together with all and singular the rights, interests, and appurtenances thereto in any wise belonging. The Parties agree that the District shall retain full ownership of, and not convey its administrative offices, parklands and greenbelt areas, parking areas for employee vehicles at the District's administrative offices, or any other personal or real property interests not reasonably required for the City's operation of the water, wastewater, and reclaimed water infrastructure being conveyed hereby (as described in Exhibit 3). With respect to any water or wastewater infrastructure located in the real property being retained by the District, the District agrees to convey to the City an easement (in the form attached hereto as Exhibit 4) within said properties for the facilities and equipment as installed as necessary for the City to access, own, operate, and maintain the facilities. The easements shall reserve to the District full authority with respect to the real property interests being retained by the District, provided the District takes no action that would materially impair or interfere with the City's easement rights.

(b) The District agrees that as part of the conveyance of the Utility Property, it is conveying to the City the lot on which the District's wastewater treatment plant facilities are located. The City agrees that the District shall have free use and unrestricted access to all facilities, equipment, parking areas, storage facilities, and other buildings located on said property. The City specifically agrees that prior to December 31, 2015, it shall not construct any improvements whatsoever on the wastewater treatment plant site, or take any other actions that would materially impair or interfere with the District's access, operation or use of facilities, equipment, buildings, and parking. By way of example and without limitation, the City shall take no action whatsoever that would lessen or compromise the available sludge removal truck parking areas. The District agrees that none of the foregoing provisions shall be construed to relieve the District of any obligation to construct infrastructure improvements required by this Agreement, including by way of example, and without limitation, improvements required by maintenance in Section 10 04, as a result of the criticality assessment in Section 10 05, or by phosphorus removal in Section 10 06 hereof.

(c) The City acknowledges that, except for the warranties contained in this Section with respect to the Utility Property, neither the District nor its representatives have made any representations or warranties, express, implied, or statutory, relating to the physical condition, operating history, valuation, governmental approvals, governmental regulations, or environmental or physical condition of the Utility Property. The City further acknowledges and agrees that other than the warranties contained in this Section

**(d) THE DISTRICT HAS NOT MADE, DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, ANY WARRANTIES, REPRESENTATIONS, COVENANTS, OR GUARANTEES, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, AS TO THE MERCHANTABILITY, HABITABILITY, QUANTITY, QUALITY OR ENVIRONMENTAL CONDITION OF THE PROPERTY OR THEIR SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE**

(e) Further, as to title, the District warrants and represents to the City that (1) it has no knowledge of any title defect, (2) to the best of its knowledge, its title is free and clear of the rights of persons other than the District, and (3) to the best of its knowledge, its interest is free and clear of all mechanic's liens, liens, mortgages, or encumbrances of any nature and no work has been performed or begun by the District, and no materials have been furnished which might give rise to mechanic's, materialman's, or other liens against the Utility Property, or the City's title therein, or any portion thereof, and (4) that it has neither assigned, pledged, or otherwise in any manner whatsoever sold or agreed to sell or transfer by an instrument in writing or otherwise the Utility Property to any other person or entity. The City acknowledges and agrees that the District owns an undivided interest in the 102 acre ft holding pond, with the remainder being held by other entities. The City further acknowledges and agrees that it has reviewed the Prior Irrigation Agreements, and the foregoing warranties are being made subject to the Prior Irrigation Agreements.

**10.02 Transfer of Water Quality No-Discharge Permit** The District agrees to promptly prepare and execute an application to transfer the water quality no-discharge permit (WQ0011319001) for the wastewater treatment plant to the City. The City and District agree to cooperate in order for the City to submit the permit transfer application to the Commission, at the District's cost, within six months of the Effective Date. The District shall pay only the permit transfer application fees and its own expenses to prepare and execute the application and cooperate with the City.

#### **10.03. City's Use of Facilities.**

(a) Until December 31, 2015, the City may use the Utility Property to provide water and wastewater utility service to other portions of the City so long as it does not impair the service provided to the District residents, result in the need for the District to fund any expansion of facilities, or to incur any material additional operating costs. Thereafter, the City may use the Utility Property without limitation in its sole discretion in accordance with the applicable regulations. If the EPA or the Commission issues any form of order or penalty for violations of applicable law resulting from the City's use of Utility Property, the City will take all necessary action to comply with, or otherwise respond to, the order. To the extent permitted by law, the City agrees to hold the District harmless for violations that arise out of the actions or inactions of the City, and which do not arise out of the actions or inactions of the District.

(b) The ownership and use of Utility Property granted to the City in this Agreement shall not be construed to authorize, and the City agrees that it shall not, expand the existing wastewater treatment capacity of the District's wastewater treatment plant, whether or not through rehabilitation or replacement of former wastewater treatment units, prior to December 31, 2015. This provision shall not be construed to prevent the District from performing any repairs or replacement of facilities required as a result of the criticality assessment (rather than any expansion of capacity for providing service to other portions of the City) to be performed in accordance with Section 10.05 below.

(c) The City agrees that it shall not take any action in connection with its use of the Utility Property that impairs the availability and sufficiency of capacity required for the provision of retail water and wastewater service by the District within the Service Area.

**10.04 District's Operations and Maintenance of City Facilities** The District agrees to provide for the full operation, maintenance, emergency services, ongoing inspection, and management of the Retail Water System, Retail Wastewater System, and customer services to the District and existing out-of-district customers, as shown on Exhibit 2, until December 31, 2015, on a continuous basis. The District shall not reduce the level of service that is currently being provided by the District for the term of this Agreement. The District agrees to meet regularly with the City and reasonably cooperate with City staff concerning the operation, maintenance, and management of the Retail Water System and Retail Wastewater System. The District agrees to use its best efforts in the operation, maintenance, and management of Retail Water System, Retail Wastewater System, and customer services to meet all applicable regulations and requirements. Moreover, the City shall not be responsible for any fees, damages, or claims related to the Retail Water System and Retail Wastewater System and the violation of any permits or legal requirements that arise out of actions taken by the District prior to December 31, 2015. The City agrees that in connection with its ownership of the Retail Water System and Retail Wastewater System, it shall take no action inconsistent with this Agreement that would materially impair or interfere with the District's operation and maintenance of the Retail Water System and Retail Wastewater System prior to termination of this Agreement.

**10.05 City's Criticality Assessment**

(a) The City, with the cooperation of the District, will conduct a criticality assessment of the Retail Water System and Retail Wastewater System within nine months of the Effective Date. The City's criticality assessment report will specifically identify each area for improvement and a schedule for completion. The City will provide the District a written copy of the report.

(b) The District agrees to fund and complete, by December 31, 2012, all City-identified infrastructure improvements from the criticality assessment that are considered maintenance activities. These may include, but are not limited to, such items as pump overhauls, replacement of aging electrical wiring or electrical equipment, additional SCADA points and equipment for monitoring operations, painting, repair of identified damaged or cracked water or wastewater mains, or manholes, additional portable generators, removal of silt and debris and repair of damaged liner at the treated effluent holding ponds, replacement/repair of water valves or fire hydrants not properly working, acquisition of easements or modification of lift station facilities necessary to allow emergency equipment to access each lift station, repair or replacement of plant equipment in accordance with generally accepted industry standards and practices, and repair or replacement of plant equipment that has been deemed a risk to public health or safety. The City's criticality assessment may include a proposed schedule for completing infrastructure improvements. Upon receipt of the City's criticality assessment and proposed schedule for infrastructure improvements, the District shall prepare a proposed schedule for infrastructure improvements, which may or may not be identical to the City's schedule.

(c) These improvements shall not include any replacement of equipment, repairs, or improvements that do not show a need of repair in accordance with generally accepted industry standards and practices or does not represent a risk to public health or safety. If the District disagrees



with the list of infrastructure improvements identified by the Austin Water Utility , or if the City disagrees with the District's schedule for completion or list of infrastructure improvements, Patrick Keel, or other mutually acceptable arbitrator, will meet with the Parties within 60 days of either Party's request and will make the final binding determination (either (i) the District performs the improvement according to the City's schedule and assumes the additional cost, (ii) the District performs the improvement according to the District's schedule, or (iii) the District is not required to adopt the City's requested improvement) within 3 business days of the joint meeting. The Parties agree to share the cost of the arbitrator equally. In the event of a dispute regarding the schedule for completion, the City shall bear the burden of proving that the District's schedule is unreasonable. In the arbitration, the arbitrator shall consider, among other things, costs for completing the infrastructure improvements and the resources available to the District for doing so.

(d) If any of the improvements will unavoidably not be completed by December 31, 2012, the City and the District may agree to modify the deadline date, but no later than six months for each item. If any of the improvements are not completed within the modified schedule, the City may, after notice to the District and opportunity to cure not less than 30 days, proceed with full purpose annexation of the District, provided, however, that such remedy shall not be available if the delay is caused by force majeure.

**10.06 Phosphorus Removal.** By December 31, 2007, the District agrees to implement continuous treatment for phosphorus at the wastewater treatment plant so as to achieve a significant improvement in phosphorus removal. The parties intend for the wastewater treatment plant to substantially achieve a 1 mg/l treatment level for phosphorus through introduction of a coagulant in the wastewater treatment process. Prior to December 31, 2015, the water quality no-discharge permit shall not be amended to require such treatment and thereafter, the City shall have the sole discretion to modify the water quality no-discharge permit in its sole discretion.

## **ARTICLE XI TERM, PERFORMANCE, AND FORCE MAJEURE**

**11.01. Term of Agreement.** This Agreement shall be effective upon execution by the authorized representatives of the City and the District and shall continue in effect until December 31, 2015, unless earlier terminated in accordance with the provisions herein or upon full purpose annexation of the District.

**11.02 Default.** This provision is in addition to all other default provisions in this Agreement, provided, however, the Parties agree that the remedy of full purpose annexation set forth in Section 10.05 shall be available only for a breach under that section. In the event that one party believes that the other party is in default of any of the provisions in this agreement, the non-defaulting party will make written demand to cure to the defaulting party and give the defaulting party up to thirty days to cure the default or, if the curative action cannot reasonably be completed within thirty days, the defaulting party will commence the curative action within thirty days and thereafter diligently pursue the curative action to completion. This period must pass before the nondefaulting party may initiate any remedies available to the nondefaulting party due to such default. The nondefaulting party shall

mitigate direct or consequential damages arising from any default to the extent reasonably possible under the circumstances. The parties agree that they will use their best efforts to resolve any disputes and may engage in nonbinding arbitration or other alternative dispute resolution methods as recommended by the laws of the State of Texas before initiating any lawsuit to enforce their rights under this agreement. Nothing in this agreement shall be construed to limit either party's right to recover damages or to seek other appropriate curative remedies if a breach of contract action is filed by a nondefaulting party to this agreement. The parties agree that the remedies for a breach of this agreement by either party shall be controlled by the breach and remedy provisions set forth in this agreement, and not by the breach and remedy provisions of the Strategic Partnership Agreement being executed by the parties simultaneously herewith.

**11.03. Effect of 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 XII. GENERAL PROVISIONS**

**12.01 Notices** Any notice required or permitted to be delivered under this Agreement shall be forwarded via hand-delivery or the United States Postal Service, postage prepaid, to the addresses shown below.

City of Austin  
Austin Water Utility  
P O Box 1088  
City, Texas 78767-8828  
Attn Director

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

With required copy to  
City Attorney  
City of Austin  
P O Box 1088  
Austin, Texas 78767

With required copy to  
Tony Corbett  
Freeman & Corbett, LLP  
8500 Bluffstone Cove, Suite B-104  
Austin, Texas 78759

Each party shall forward to the other within twenty four hours of the filing thereof in the Commission or other court or agency of competent jurisdiction a true copy of any petition, application, or other instrument affecting this Agreement, whether directly or indirectly

**12.02. Address Change Procedure** The addresses of the Parties shall, until changed as provided, be as shown above. The Parties shall have the right at any time to change their respective addresses by giving written notice of same to the other party.

**12.03. Interlocal Cooperation** The City and the District shall cooperate with each other at all times so as to promote the efficient performance of the utility services provided hereunder.

**12.04. Provision of Data, Documents.** The District agrees to timely provide to the City at the City's expense all data, records, plans, and specifications, computer tapes, or other documents or information necessary or incidental to the terms of this Agreement.

**12.05. Provision of Further Documents** The District shall execute and deliver such other legal documents or instruments and perform such other acts as are necessary to effectuate the purposes and intent of this Agreement.

**12.06. Severability** The provisions of this Agreement are severable, and if any part of this Agreement or the application thereof to any person or circumstances is ever held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such part of this Agreement to other persons or circumstances shall not be affected thereby and this Agreement shall be construed as if such invalid or unconstitutional portion had never been contained herein.

**12.07. Entire Agreement** This Agreement, including any exhibits attached hereto and made a part hereof by reference for all purposes, constitutes the entire agreement between the parties relative to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements, representations, covenants, or warranties, whether oral or in writing, respecting the subject matter hereof.

## **12.08. Previous Contracts**

(a) This Agreement by the Parties supersedes all Prior City Agreements and upon the execution of this Agreement all Prior City Agreements shall be void

(b) The District agrees that the City may contract for the storage and disposal of treated effluent from the wastewater treatment plant (the "Replacement Irrigation Agreements", whether one or more) , and the District agrees to execute any documents necessary to terminate the Prior Irrigation Agreements, under the following terms and conditions

(i) All parties to the Prior Irrigation Agreements (or their successors in interest) must contractually agree that the Prior Irrigation Agreements are terminated for all purposes and the District has no further responsibility or liability of any kind whatsoever under said Prior Irrigation Agreements,

(ii) The Replacement Irrigation Agreements must not materially increase the District's costs of operation, restrict or impair the District's ability to operate the Retail Water System, the Retail Wastewater System, or provide retail water or wastewater service. This prohibition shall not be construed to relieve the District from performing any infrastructure improvements required as a result of the criticality assessment in Section 10.05 hereof, and

(iii) If any of the Replacement Irrigation Agreements provide for the ownership or operation or maintenance of any wastewater effluent storage, pumping, transmission or disposal facilities, then the District shall have no further responsibility for the operation, maintenance or repair of said facilities under this Agreement, and all references to the Retail Wastewater System or Utility Property under this Agreement shall be deemed, for all purposes, to exclude the facilities owned, operated or maintained by any third parties under the Replacement Irrigation Agreements. This provision shall not be construed to relieve the District from performing any infrastructure improvements required as a result of the criticality assessment in Section 10.05 hereof. The City of Austin specifically agrees that the District shall have no responsibility or liability of any kind for any costs or expenses related to, or arising out of, the actions or inactions taken by any third persons with respect to the storage, transmission or disposal of wastewater effluent under the Replacement Irrigation Agreements.

**12.09 Compliance with Rules.** The District agrees to file a copy of this Agreement with the Executive Director of the Commission, it being fully recognized by the Parties that the effectiveness of this contract is dependent upon and subject to compliance with all applicable local, State, and Federal rules and laws.

**12.10 Amendment** No amendment of this Agreement shall be effective unless it is executed by the authorized representatives of the City and the District.

**12.12 Independent Contractor.** The District shall have the status of an independent contractor hereunder and shall be solely responsible for the proper direction of its employees hereunder and the

District's employees shall not be considered employees or borrowed servants of the City for any reason

**12.13 No Third Party Beneficiary** This Agreement shall be construed as an interlocal contract respecting the performance of governmental services and nothing herein shall be construed to confer any right, privilege, or benefit on any person or entity not a party hereto or otherwise creates any vested right or third party beneficiary relationship

**12.14 Governing Law** This Agreement shall be construed under the laws of the State of Texas and all obligations of the parties are deemed performable in Travis County, Texas

**12.15 Venue** Venue for any suit arising under this Agreement shall be in Travis County

**12.16 Assignment** Neither party may assign its rights and obligations hereunder without the prior written consent of the other

**12.17 Multiple Originals** This Agreement may be executed in multiple originals, each of equal dignity

**12.18 Effective Date** This Agreement shall become effective upon the Effective Date

**IN WITNESS WHEREOF**, the authorized representatives of the City and the District have executed this Agreement as of the date(s) set forth below

**CITY OF AUSTIN**

**By:** \_\_\_\_\_

**Name:** Rudy Garza

**Title:** Assistant City Manager

**Date:** \_\_\_\_\_

**LOST CREEK MUNICIPAL UTILITY DISTRICT**

**By:** \_\_\_\_\_

**Name:** Rick Cherye

**Title:** President

**Date:** \_\_\_\_\_

**THE STATE OF TEXAS    )**

**)**

**COUNTY OF TRAVIS    )**

**THIS INSTRUMENT** is acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2007, by Rudy Garza as Assistant City Manager of the City of Austin, Texas, a municipal corporation, on behalf of that municipal corporation

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Printed/Typed Name of Notary

My Commission Expires \_\_\_\_\_

**THE STATE OF TEXAS    )**

**)**

**COUNTY OF TRAVIS    )**

**THIS INSTRUMENT** was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2007 by Rick Cheyre, President of the Board of Directors of Lost Creek Municipal Utility District, a conservation and reclamation district created and operating as a municipal utility district, on behalf of that district

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Printed/Typed Name of Notary

My Commission Expires \_\_\_\_\_

**EXHIBIT 1**  
**PRIOR IRRIGATION AGREEMENTS**

- 1 Settlement Agreement dated as of September 21, 2001 between Lost Creek MUD Travis County MUD No 4, Barton Creek Resort & Clubs Inc , and Stratus Properties Operating Co , L P
- 2 Agreement dated January 28, 1986 between Lost Creek MUD and Lost Creek Municipal Utility District
- 3 Easement dated November 3, 1986 conveyed by Hill Country Golf, Inc , d/b/a Lost Creek Country Club to Lost Creek MUD, recorded at Volume 09967, Page 0892 of the Real Property Records of Travis County, Texas
- 4 That certain instrument recorded in Volume 7233, Page 2383 of the Deed Records of Travis County, Texas (the "38-acre lease")
- 5 That certain instrument recorded in Volume 7481, Page 418 of the Deed Records of Travis County, Texas (the "131-acre lease")
- 6 That certain "Modification of Leases" recorded as Document No 90011262 of the Deed Records of Travis County, Texas

**EXHIBIT 2**  
**MAP OF SERVICE AREA**

[TO BE ATTACHED]



**EXHIBIT 3**  
**UTILITY PROPERTY RETAINED BY MUD**  
[TO BE ATTACHED]

**EXHIBIT 4**  
**EASEMENT CONVEYED TO CITY**

**WATER AND WASTEWATER EASEMENT**

**THE STATE OF TEXAS**                    )  
                                                  )  
**COUNTY OF TRAVIS**                    )       **KNOW ALL BY THESE PRESENTS:**

**THAT LOST CREEK MUNICIPAL UTILITY DISTRICT**, of Travis County Texas, "Grantor" whether one or more, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, to Grantor in hand paid by the CITY OF AUSTIN, TEXAS, the receipt and sufficiency of which is acknowledged and confessed and for which no lien, express or implied, is retained, hereby GRANTS, SELLS, and CONVEYS to the **CITY OF AUSTIN**, a municipal corporation, situated in the Counties of Travis, Hays, and Williamson, State of Texas, and whose address is P O Box 1088, Austin, Texas 78767-8839, ATTN: Director, Austin Water Utility and its successors and assigns ("Grantee") an easement for the construction, operation, maintenance, repair, replacement, upgrade, decommissioning and removal of water and wastewater facilities and appurtenances and making connections therewith in, upon, over, and across the following described land

That tract, piece, or parcel of land, situated in Travis County, Texas, described in **EXHIBIT A** attached hereto and made a part hereof for all purposes ("Easement Tract")

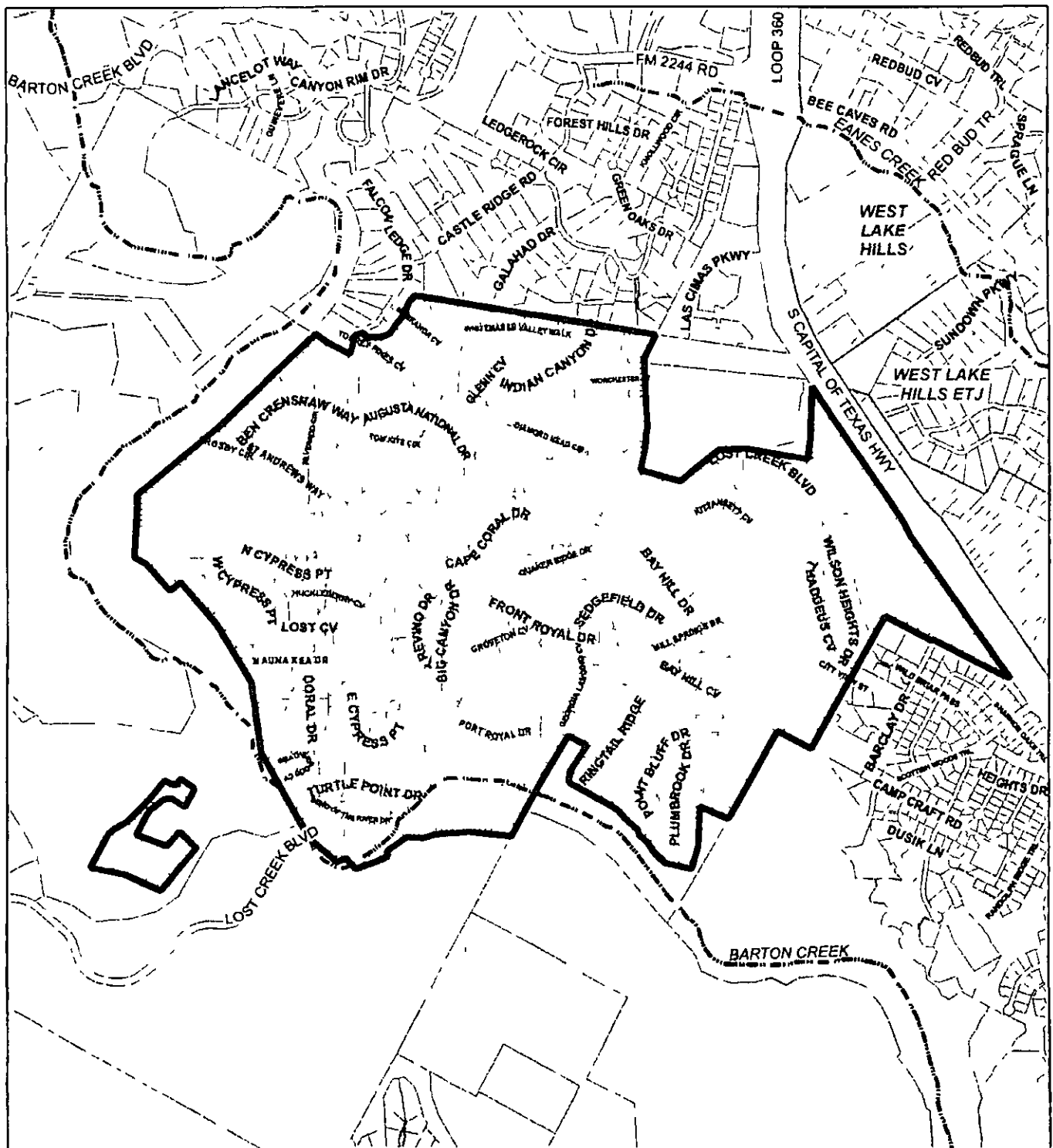
**TO HAVE AND TO HOLD** the same perpetually to the City of Austin and its successors and assigns together with the right and privilege at all times to enter the Easement Tract, or any part thereof, for the purpose of construction, ownership, operation, maintenance, repair, replacement, upgrade, decommissioning and removal of water and wastewater facilities and appurtenances and making connections therewith provided, however, that Grantor reserves the right to enter upon and use the Easement Tract but in no event shall Grantor (i) use the Easement Tract in any manner that materially interferes or is materially inconsistent with the rights granted hereunder, or (ii) erect or permit to be erected a building, structure or irrigation systems on any portion of the Easement Tract that would materially interfere or materially impair Grantee's use of the water and wastewater facilities and appurtenances located on the Easement Tract, except as otherwise agreed in writing by the parties. Grantee shall be obligated to restore the surface of the Easement Tract at Grantee's sole cost and expense, including the restoration of any sidewalks, driveways, or similar surface improvements located upon or adjacent to the Easement Tract which have been removed, relocated, altered, damaged, or destroyed as a result of Grantee's use of the Easement granted here provided, however, that Grantee shall not be obligated to restore or replace irrigation systems or other improvements installed after the date of this instrument in violation of the provisions of this Easement

Grantor covenants and agrees to WARRANT AND FOREVER DEFEND title to the Easement granted to the Grantee and its successors and assigns against every person lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise subject to the



**EASEMENT EXHIBIT A  
PROPERTY DESCRIPTION**

[TO BE ATTACHED]



**Lost Creek Municipal Utility District**  
 Exhibit F to the Strategic Partnership Agreement  
 Approx 788 acres

0 1 000 2 000 4 000 Feet



City of Austin NPZD  
 February 22 2007  
 J. Chuter



**Legend**

Lost Creek MUD

Lot Line

Creek

**Jurisdiction**

Austin Full Purpose

Austin Limited Purpose

Austin ETJ

Other City

Other City's ETJ

## EXHIBIT G



# CITY OF AUSTIN ANNEXATION SERVICE PLAN

**Case Name:** Lost Creek Area  
**Case Number:** C7a-08-004  
**Date:** March, 2007

## INTRODUCTION

This Service Plan ("Plan") is made by the City of Austin, Texas ("City") pursuant to Chapter 43 of the Texas Local Government Code. This Plan relates to the annexation to the City of a tract of land ("annexation area") known as the Lost Creek Annexation Area. The Lost Creek annexation area is comprised of the Lost Creek Municipal Utility District (MUD), created in 1972 and expanded in 1977. The Lost Creek annexation area encompasses approximately 789 acres. It is located west of Capital of Texas Highway west of the intersection of Lost Creek Boulevard and Capital of Texas Highway. This area is adjacent to the City's full-purpose jurisdiction on the south and is bounded by Barton Creek on the south and west.

Several properties along Capital of Texas Highway (Loop 360), totaling approximately 1,303 acres, were annexed for limited purposes in 1983. As a result, approximately 44 acres of land in this annexation area are currently within the limited purpose jurisdiction. The remainder is in the City's extraterritorial jurisdiction.

The Lost Creek annexation area was included in the City of Austin's Municipal Annexation Plan effective December 31, 2005. The City and the Lost Creek Municipality Utility District entered into a Strategic Partnership Agreement in June, 2007, agreeing to this annexation service plan, and to certain dates for the full purpose annexation of the "Commercial Property", and the "Remaining Property", as defined in that Agreement, and other terms and conditions.

The Commercial Property includes approximately 44 acres and includes several office complexes along Capital of Texas Highway. The Remaining Property includes approximately 744 acres and includes the Lost Creek, Hills of Lost Creek, and Bluffs of Lost Creek.

subdivisions, three townhouse/condominium complexes, and part of the Barton Creek Greenbelt, owned by the City of Austin, extends into the annexation area, which is located in the Barton Creek and Eanes Creek watersheds

## **EFFECTIVE TERM**

This Plan shall be in effect for a ten-year period commencing on the effective date of the annexation for the Commercial Property, and for a ten-year period from the effective date of the annexation of the Remaining Property, respectively, as defined in the Strategic Partnership Agreement, unless otherwise stated in this Plan. Renewal of the Plan shall be at the option of the City. Such option may be exercised by the adoption of an ordinance by the City Council which refers to this Plan and specifically renews this Plan for a stated period of time.

## **INTENT**

It is the intent of the City of Austin that services under this Plan shall provide full municipal services as required and defined by the Texas Local Government Code.

The City reserves the right guaranteed to it by the Texas Local Government Code to amend this Plan if the City Council determines that changed conditions or subsequent occurrence, or any other legally sufficient circumstances, exist under the Local Government Code or other Texas laws to make this Plan unworkable, obsolete, or unlawful.

Notwithstanding any other provision of this service plan, the City shall provide not less than the types and levels of services required by Chapter 43 of the Local Government Code, as that law existed on the Effective Date of the Strategic Partnership Agreement between the City and the Lost Creek Municipal Utility District, for services as provided as of the year 2005.

## **SERVICE COMPONENTS**

This Plan includes three service components: (1) the Early Action Program, (2) Additional Services, and (3) a Capital Improvement Program.

As used in this Plan, providing services includes having services provided by any method or means by which the City extends municipal services to any other area of the City. This may include causing or allowing private utilities, governmental entities, and other public service organizations to provide such services by contract, in whole or in part. It may also include separate agreements with associations or similar entities.

### **1. EARLY ACTION PROGRAM**

The following services will be provided in the annexation area commencing on the effective date of the annexation, unless otherwise noted:

- a. Police Protection. The Austin Police Department ("APD") will provide protection and law enforcement services in the annexation area. These services include:



- normal patrols and responses,
- handling of complaints and incident reports, and
- special units, such as, traffic enforcement, criminal investigations, narcotics, gang suppression, and special weapons and tactics team

b Fire Protection The Austin Fire Department (‘AFD”) will provide emergency and fire prevention services in the annexation area. These services include

- fire suppression and rescue,
- emergency medical services first response for Austin Emergency Medical Services Department on life threatening medical emergencies,
- hazardous materials mitigation and regulation,
- emergency prevention and public education efforts,
- dive rescue,
- technical rescue,
- aircraft/rescue/firefighting,
- construction plan review,
- inspections, and
- rescue/hazardous materials unit

AFD serves as the first responder on life threatening emergencies for Austin EMS. All AFD personnel are certified at an Emergency Medical Technician (“EMT”) level or higher. All engines (pumpers), ladder trucks, and rescue units carry Automatic External Defibrillators for use with heart attack victims.

c Emergency Medical Service The City of Austin/Travis County Emergency Medical Services (“EMS”) Department will provide services in the annexation area.

Austin/Travis County EMS will provide the following emergency and safety services to the annexation area:

- emergency dispatch, pre-arrival First Aid instructions, and coordination of other public safety support agencies,
- emergency Advanced Life Support (ALS) ambulance response, and
- medical rescue services

Austin/Travis County EMS is a mobile service provider, with units constantly moving throughout the system area. An ambulance is frequently dispatched from a location outside the station.

The Austin Fire Department will provide emergency medical first response to all patients in a life-threatening situation. All Austin Fire Department personnel are certified at the Emergency Medical Technician (EMT) level or higher and assist EMS personnel providing patient care.

d Solid Waste Collection The Austin Solid Waste Services Department will provide services in the area. Services will be provided by City personnel or by solid waste

service providers under contract with the City. Services currently provided in the City for single family residences including duplex, triplex, and fourplex dwelling units, include

- garbage collection – scheduled cart collection in accordance with City Pay-As-You-Throw guidelines,
- recycling collection – scheduled curbside collection, materials collected include newspaper, magazines, catalogs, junk mail, corrugated cardboard, tin, steel, and aluminum cans, glass bottles and jars, plastic bottles and containers (#1 and #2), and
- yard trimmings collection – scheduled residential collection in paper bags or reusable containers

Commercial garbage collection service for businesses is available on a subscription basis from the City or private service providers

For the first two years following annexation, residents who lived in the area prior to the effective date of the annexation may continue to utilize the services of privately owned solid waste service providers in accordance with provisions of the Texas Local Government Code

- e Maintenance of Water and Wastewater Facilities Water and wastewater service will be provided to areas that are not within the certificated service area of another utility through existing facilities located within or adjacent to the area. For the Commercial Property annexed in 2007, these services will be provided by the Lost Creek Municipal Utility District. After annexation of the Remaining Property and dissolution of the District, the City will assume maintenance and operation of the District facilities, and services will be provided and facilities will be maintained and operated by the City's Austin Water Utility as governed by standard policies and procedures, and under the provisions of the attached City service extension policy

- f Maintenance of Roads and Streets, Including Street Lighting The Street and Bridge Division of the Public Works Department will maintain public streets over which the City has jurisdiction. These services include

- emergency pavement repair,
- ice and snow monitoring of major thoroughfares,
- street maintenance. Maintenance activities include crack seal, sealcoat, slurry seal, and PM overlay, and
- repair maintenance of public streets on an as-needed basis. Repair maintenance operations include pothole repair, filling depressions (level up), spot surface replacement, spot full-depth repair, and utility cut repairs

The area is fully developed with existing residential streets. Any necessary street or bridge rehabilitation or reconstruction will be considered on a City-wide priority basis. The existing streets are performing adequately to serve the area at a comparable level of service to other City of Austin residential areas. Streets that have been dedicated and

accepted for maintenance will be included in the City's preventative maintenance program. Preventative maintenance projects are prioritized on a City-wide basis and scheduled based on a variety of factors, including surface condition (distresses), rideability (smoothness), age, traffic volume, functional classification, and available funding.

If necessary, the Transportation Division of the Transportation and Public Works Department will also provide regulatory signage services in the annexation area. Traffic signal, stop, and all other regulatory studies are conducted in conjunction with growth of traffic volumes. All regulatory signs and signals are installed when warranted following an engineering study. Faded, vandalized, or missing signs are replaced as needed. "CALL BACK" service is provided 24 hours a day, 365 days a year for emergency repair of critical regulatory signs.

Street lighting will be maintained in accordance with state law.

- g. Maintenance of Parks, Playgrounds, and Swimming Pools. The City currently owns and maintains the Barton Creek Greenbelt, a portion of which extends into the annexation area.

Recreational facilities and area amenities, including parks, pools, and medians, that are privately owned, maintained, or operated will be unaffected by the annexation.

- h. Maintenance of Any Other Publicly-Owned Facility, Building, or Service. Should the City acquire any other facilities, buildings, or services necessary for municipal services located within the annexation area, an appropriate City department will provide maintenance services for them.

## **2. ADDITIONAL SERVICES**

Certain services, in addition to the above services, will be provided within the annexation area. They are as follows:

a. Watershed Protection and Development Review Department. The City of Austin's Watershed Protection and Development Review Department will provide drainage maintenance services in the annexation area. Drainage planning and maintenance are fee-based services. Services currently provided by the department, in accordance with and as limited by applicable codes, laws, ordinances and special agreements, include:

- water quality protection, environmental impact assessments, aquatic endangered species protection, city compliance with state and federal water quality regulations, pollution detection, tracking, and forecasting, stormwater quality education, stormwater treatment, water quality education, pollution prevention and reduction,
- watershed protection master planning for flood hazard mitigation, streambank restoration and erosion control, and water quality protection,

- land development review and inspection land development review and assistance, environmental inspection,
  - building development regulations commercial building plan review, permit center, permit inspections,
  - flood hazard mitigation voluntary floodplain home buyout program, regional stormwater management evaluation, creek flood hazard mitigation, localized flood hazard mitigation, flood early warning system, floodplain management,
  - streambank restoration and erosion management streambank restoration and erosion management services, and
  - infrastructure and waterway maintenance creek vegetation control, erosion repair open waterway maintenance, pond inspection and maintenance, storm drain cleaning, storm drain rehabilitation, Town Lake cleanup
- b Library Upon annexation, residents may utilize all Austin Public Library facilities
- c Austin Health and Human Services Department/Travis County Health Department Upon annexation, the following additional services will be available from the Department
- investigation of public health related complaints including food-borne illness, recreational water quality, tall weeds and grass, litter abatement, and public swimming pools and spas,
  - enforcement of the City's smoking in public places ordinance and the minor's access to tobacco ordinance,
  - inspection of food establishments and child care facilities,
  - investigation of reported elevated blood lead levels in children,
  - animal services including leash law, pet licensing, and rabies control,
  - access to community health clinics,
  - Medical Assistance Program benefits, and
  - rodent and vector control consultation
- d Austin Energy Austin Energy will continue to provide electric utility service to all areas which the City is authorized to serve by the Public Utility Commission of Texas
- e Anti-litter Services The Austin Solid Waste Services Department will provide anti-litter services in the annexed area Anti-litter is a fee-based service Services currently provided in the City include
- bulky item collection – twice per year, a notice to customers is provided in advance of the pickup date,
  - large brush collection – twice per year, a notice to customers is provided in advance of the pickup date,
  - street sweeping service – approximately six (6) times per year for streets with curb and gutter,
  - dead animal collection – dead animals are removed from roadways upon request,
  - household hazardous waste drop-off facility – use of facility on regularly scheduled days of operation, and
  - tall weed and grass and litter abatement programs

- f Other Services All other City Departments with jurisdiction in the area will provide services according to City policy and procedure

### **3 CAPITAL IMPROVEMENTS PROGRAM**

The City will initiate the construction of capital improvements necessary for providing municipal services for the annexation area as necessary

Each component of the Capital Improvement Program is subject to the City providing the related service directly. In the event that the related service is provided through a contract service provider, the capital improvement may not be constructed or acquired by the City but may be provided by the contract provider. The City may also lease buildings in lieu of construction of any necessary buildings.

- a Police Protection No capital improvements are necessary at this time to provide police services
- b Fire Protection No capital improvements are necessary at this time to provide fire services
- c Emergency Medical Service No capital improvements are necessary at this time to provide EMS services
- d Solid Waste Collection No capital improvements are necessary at this time to provide solid waste collection services
- e Water and Wastewater Facilities For the Commercial Property annexed in 2007, water and wastewater services to existing development and any new development and subdivisions will be provided through the Lost Creek Municipal Utility District, pursuant to a contract with the City. Upon annexation of the Remaining Property and dissolution of the Lost Creek Municipal Utility District, water and wastewater services to all development within the District will be provided according to the standard policies and procedures of the Austin Water Utility, which may require the developer of a new subdivision to install water and wastewater lines. The extension of water and sewer service will be provided in accordance with the attached water and wastewater service extension policy.
- f Roads and Streets No road or street related capital improvements are necessary at this time
- g Parks, Playgrounds and Swimming Pools No capital improvements are necessary at this time to provide services
- h Watershed Protection Department No capital improvements are necessary at this time to provide services

- i Street Lighting No capital improvements are necessary at this time to provide services. Street lighting in new and existing subdivisions will be installed and maintained in accordance with the applicable standard policies and procedures.
- j Other Publicly Owned Facilities, Building or Services Additional Services In general, other City functions and services and the additional services described above, can be provided for the annexation area by using existing capital improvements. Additional capital improvements are not necessary to provide such City services.
- k Capital Improvements Planning The annexation area will be included with other territory in connection with planning for new or expanded facilities, functions, and services.

#### **AMENDMENT: GOVERNING LAW**

This Plan may not be amended or repealed except as provided by the Texas Local Government Code or other controlling law. Neither changes in the methods or means of implementing any part of the service programs nor changes in the responsibilities of the various departments of the City shall constitute amendments to this Plan, and the City reserves the right to make such changes. This Plan is subject to and shall be interpreted in accordance with the Constitution and laws of the United States of America and the State of Texas, the Texas Local Government Code, and the orders, rules, and regulations of governmental bodies and officers having jurisdiction.

#### **FORCE MAJEURE**

In case of an emergency, such as Force Majeure as that term is defined in this Plan, in which the City is forced to temporarily divert its personnel and resources away from the annexation area for humanitarian purposes or protection of the general public, the City obligates itself to take all reasonable measures to restore services to the annexation area of the level described in this Plan as soon as possible. Force Majeure shall include, but not be limited to, acts of God, acts of the public enemy, war, blockages, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrest and restraint of government, explosions, collisions, and other inability of the City, whether similar to those enumerated or otherwise, which is not within the control of the City. Unavailability or shortage of funds shall not constitute Force Majeure for purposes of this Plan.

#### **SUMMARY OF THE WATER AND WASTEWATER UTILITY SERVICE EXTENSION POLICY**

The following information is a summary of the Austin Water Utility Service Extension Policy, Chapters 25-1 through 25-5 and 25-9 of the 2006 Austin Code of Ordinances, in conformance with the Texas Local Government Code requirement that the Plan have a summary of the service extension policy.

Water and wastewater service is only provided to lots that have been properly subdivided and platted or are a legal lot. For property that is required by subdivision regulations to construct

water or wastewater facilities connecting to the City system, funding and construction of those facilities will remain the responsibility of the developer. If the specific undeveloped property does not have City water or wastewater service fronting the property, the owner may make an application for an extension of service to the Director of the Austin Water Utility for review. If the Director determines that adequate capacity is available, or will be, and if the project does not include City cost participation or reimbursement, and if the proposed facilities are a logical extension of the City's water and wastewater system and the requested extension otherwise meets the requirements of Chapter 25-9, the extension size, capacity, and routing may be approved by the Director for funding and construction by the developer.

Depending on the size of the new facilities and other conditions, with City Council approval, the City may reimburse the developer for part of the cost of constructing certain facilities. With City Council approval, the City may cost participate by reimbursing costs associated with the oversize capacity of wastewater mains larger than 8 inches but less than 18 inches in diameter, and of water mains greater than 12 inches but less than 24 inches in diameter. With City Council approval, the City may reimburse to the developer the construction cost of the full capacity of wastewater facilities 18 inches in diameter or larger, and water facilities 24 inches in diameter or larger, as well as other facilities such as reservoirs or pumps. The actual calculation of the cost participation and reimbursement amounts, including limits and the schedules for the payments, are included in the Land Development Code.

For lots that have water or wastewater lines in the street fronting the lot, the owner may receive water or wastewater service by applying for a tap permit and paying any required fees. The new customers will be required to pay the impact fees and all connection fees. However, if the tap is purchased within two years of the completion of the line by the City, the impact fee will be waived.

As long as a property is using a septic system, the property owner remains responsible for the operation and maintenance of the septic system. If the septic system fails before the City sewer service is extended to the property, the property owner must repair the system. Under certain circumstances the Austin/Travis County Health and Human Services Department may require connection to the City sewer facilities.

This policy is set by the City Council and can be amended in the future by ordinance.