

**COSHENA III AND IV**  
**ANNEXATION AND DEVELOPMENT AGREEMENT**

December 13, 2007

**COSHENA III AND IV ANNEXATION AND DEVELOPMENT  
AGREEMENT**

THE STATE OF TEXAS                   §  
  §  
COUNTY OF TRAVIS                   §

This Coshena III and IV Annexation and Development Agreement (the “Agreement”) is made and entered into by and among the CITY OF AUSTIN, TEXAS, a home-rule municipal corporation, acting by and through its duly authorized City Manager (the “City”); and Coshena III Ltd., and Coshena IV Ltd., Texas limited partnerships, including without limitation their successors, assigns, agents, and affiliated entities (herein referred to as “Coshena” or “Coshena III and IV”), and the undersigned entities as owners of Coshena III and IV, including without limitation their respective successors, assigns, agents, and affiliated entities (collectively, Coshena III and IV, and the undersigned entities will be known as “Owners”). By the signatures of their respective authorized representatives below, Owners warrant and represent that there are no other owners of any portion of Coshena III and IV and no other third-parties holding an interest therein.

**RECITALS**

**A.** Owners own a total of approximately 10.217 acres of land located in Travis County, Texas contained within the area described in the attached Exhibit “A” (“Coshena III and IV ”). Coshena III and IV is located within the City’s limited purpose jurisdiction, and is subject to the City’s planning, zoning, health and safety regulations.

**B.** The City commenced the process of annexing an area including the Coshena III and IV tracts for full purposes, provided notice, and on November 1 and 8, 2007, held hearings on the proposed annexation, all in accordance with state law. The Parties wish to enter into this Agreement to postpone annexation for approximately ten years and provide that the area shall remain within the limited purpose jurisdiction for such period of approximately ten years, and then be automatically converted to full purpose jurisdiction.

**C.** The Parties desire to (i) establish, define, protect and clarify the City’s jurisdictional and regulatory authority over Coshena III and IV , and (ii) provide for a delay in the full purpose annexation of Coshena III and IV by the City.

Owners are entering into this Agreement and are requesting and consenting to the annexation of Coshena III and IV in accordance with the terms set out herein.

**D.** This City is acting under its home-rule authority and other applicable law, specifically including but not limited to Section 212.172 of the Texas Local Government Code.

**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 Owners agree as follows:

## **ARTICLE I**

### **RECITALS AND DEFINITIONS**

**Section 1.01. Recitals.** The above recitals are adopted and incorporated into this agreement.

**Section 1.02 Definitions.** In this Agreement, each of the following terms shall have the meanings indicated:

“**City Code**” shall mean the City Code of Austin, together with all its related administrative rules and technical criteria manuals.

“**City Council**” shall mean the City Council of the City or any successor governing body.

“**Effective Date**” shall mean December 13, 2007.

“**Land Development Code**” shall mean the Land Development Code of the City, codified as Titles 25 and 30 of the City Code.

“**Notice**” shall have the meaning set forth in Section 8.08.

“**Ordinances**” shall mean the ordinances of the City.

“**Coshena III and IV**” shall have the meaning set forth in the recitals to this Agreement, and

“**Term**” shall have the meaning set forth in Section 8.02.

**Section 1.03. Other Definitions.** All capitalized terms used but not defined in this Agreement shall have the meaning given to them in the City Code.

## ARTICLE II

### LAND USE, APPLICABLE ORDINANCES AND RELATED MATTERS

**Section 2.01 Uses, Development, and Applications for Change of Zoning or Development.** Land use and development are subject to all of the City's laws, ordinances, regulations and administrative rules (including the Land Development Code) regarding development. Coshena III and IV are zoned CS- "Commercial Services," and are currently used and have been developed in conformity with the requirements applicable to that zoning classification. Any change to a use not allowed in "CS" zoning requires an application requesting a change in zoning, following standard City zoning review and approval. Any change in development at Coshena that requires City approval shall be processed through the standard process for review and approval of such change(s), including the filing of the appropriate application(s) by the Owners.

**Section 2.02 No Creation of Districts.** No special districts or municipalities of any kind, including but not limited to any type of water district, road district, library district, or other district, shall be created in the Coshena III and IV area, nor shall they be included within the area of any such districts, without the prior written approval of City Council. Owners shall not apply for, support, sponsor, or seek third party sponsorship for any such district without prior written approval of City Council.

## ARTICLE III

### AMENDMENTS

**Section 3.01 Amendments to Agreement.** This Agreement may be amended only by a written agreement signed by the City and Owners; provided, however, an Owner of a portion of Coshena III and IV (other than an individual owner of an occupied single family, duplex, townhouse or attached single family residential lot) and the City may amend this Agreement as it relates solely to such Owner's parcel without the joinder of any other Owner.

## ARTICLE IV

### ANNEXATION

**Section 4.01 Annexation.** By the execution and in consideration of the mutual covenants of this Agreement, Owners and the City agree as follows:

a. Owners and the City agree to defer full purpose annexation and to continue the limited purpose status of the Coshena III and IV tracts for the period expiring December 31, 2017.

b. Owners hereby consent to and request, on behalf of themselves and their successors and assigns, the annexation of the entire area of the Coshena III and IV tracts into the City for full purposes on December 31, 2017, without the requirement for any further procedural action of any kind by the City. On December 31, 2017, the area within Coshena III and IV will be automatically included within the City's full purpose jurisdiction, with all associated rights, duties and obligations applying to the land and its residents.

c. Owners and City agree that the Service Plan attached hereto as Exhibit "B" is approved as the annexation service plan for the area, to be effective upon the date of full purpose annexation. No negotiation, arbitration or amendment of the service plan shall be required.

## ARTICLE V

### **REPRESENTATIONS AND WARRANTIES**

#### **Section 5.01 Representations and Warranties of Owners.**

a. **Organization and Good Standing.** Owners are two Texas limited partnerships, each of which is duly organized and validly existing in good standing under the laws of the State of Texas, with full power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under this Agreement.

b. **Authority; No Conflict.** This Agreement constitutes the legal, valid and binding obligation of Owners, enforceable against Owners in accordance with its terms. Owners have the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and to perform their obligations under this Agreement.

#### **Section 5.02 Representations and Warranties of the City.**

a. **Organization and Good Standing.** The City is a duly organized and validly existing home-rule municipal corporation in good standing under the laws of the State of Texas, with full power and authority to conduct its business as it is

now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under this Agreement.

**b. Authority; No Conflict.** This Agreement constitutes the legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms. The City has the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and to perform its obligations under this Agreement.

## ARTICLE VI

### FRUSTRATION OF PURPOSE

**Section 6.01 Frustration of Purpose.** If any word, phrase, clause, sentence, paragraph, section or other part of this Agreement is affected in whole or in part as a result of amendments to the underlying statutory authority for this Agreement, or a final judicial decree for which all appeals have expired or been exhausted, or if the Texas Legislature amends state law in a manner having the effect of limiting or curtailing any right or obligation of the parties under this Agreement, then the parties agree and understand that the purpose of this Agreement may be frustrated. In such case, the parties agree to work in good faith to amend this Agreement so that the purpose of this Agreement may be fully realized, including full purpose annexation if necessary. Owners agree not to protest the inclusion of any portion of Coshena III and IV within the City in accordance with this Agreement, and further agree not to sponsor or support legislation that would hinder the City's ability to include any portion of Coshena III and IV in accordance with the provisions hereof.

## ARTICLE VII

### DEFAULT AND REMEDIES FOR DEFAULT

**Section 7.01 Default.** It shall be a default under this Agreement by a party, if such party shall fail to perform any of its obligations under this Agreement and such failure shall remain uncured following the expiration of thirty (30) calendar days after written notice of such failure. However, in the event the default is of a nature that cannot be cured within such thirty (30) calendar day period, the defaulting party shall have a longer period of time as may be reasonably necessary to cure the default in question, but in no event more than sixty (60) calendar days.

**Section 7.02 Remedies between the City and Owners.** Should any default between Owners and the City remain uncured after Notice to the other as provided in Section 7.01, the non-defaulting party, whether Owners or the City, may pursue any remedy that is available at law or in equity at the time of the breach.

**Section 7.03 No Liability For Actions of Others.** Except as expressly set forth herein, (a) the liabilities, obligations and responsibilities of each Owner, their successors and assigns, under this Agreement are several, and not joint; and (b) no Owner, or successor or assign, of any portion of Coshena III and IV will be in default under this Agreement or otherwise liable or responsible for any default which is not caused by such Owner or by any person acting by, through or under such Owner or successor or assign.

**Section 7.04 Force Majeure.** If, by reasons of Force Majeure, a party will be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party will give written notice of the particulars of such Force Majeure to the other party within a reasonable time after the occurrence of it. The obligations of the party giving such notice, to the extent affected by such Force Majeure, shall be suspended during the continuance of the inability claimed and for no longer period, and such party will in good faith exercise its best efforts to remove and overcome such inability.

The term "Force Majeure" as utilized in this Agreement will mean and refer to acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States, the State of Texas, or any other civil or military authority; insurrections; riots; epidemics; landslides; earthquakes; lightning; fires; hurricanes; storms; floods; washouts; other natural disasters; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines or canals; or other causes not reasonably within the control of the party claiming such inability.

## **ARTICLE VIII**

### **MISCELLANEOUS PROVISIONS**

**Section 8.01 Effective Date.** The Parties agree that, notwithstanding the dates of signatures to this Agreement, the "**Effective Date**" of this Agreement shall be the date set forth in Section 1.02.

**Section 8.02** **Term.** This Agreement shall commence and bind the parties on the Effective Date and continue until December 31, 2022, unless sooner terminated by express written agreement executed by both parties (the “**Term**”).

**Section 8.03** **Termination.** This Agreement may be terminated as to all of Coshena III and IV only by express written agreement executed by the City and Owners. This Agreement may be terminated as to a portion of Coshena III and IV only by express written agreement executed by the City and the Owners of the portion of land affected by the termination. In the event this Agreement is terminated by mutual agreement of the parties or by its terms, the parties shall promptly execute and file of record in the Official Public Records of Travis County, Texas, a document confirming the termination of this Agreement, and such other documents as may be appropriate to reflect the basis upon which such termination occurs.

**Section 8.04** **Agreement Binds Successors and Runs with the Land.** This Agreement shall bind and inure to the benefit of the parties, their successors and assigns. The terms of this Agreement shall constitute covenants running with the lands comprising Coshena III and IV and shall be binding on all Owners of property in Coshena III and. After the Effective Date hereof, this Agreement, at the City’s cost, shall be recorded in the Official Public Records of Travis County, Texas.

**Section 8.05** **Restrictive Covenants and Notice to Lot Buyers.** Within 30 days after the Effective Date, Owners shall execute and record a restrictive covenant, in substantially the form attached as Exhibit C, that expressly restricts Coshena III and IV to the terms of this Agreement, and a restriction that the Owner and successors and assigns request and consent to automatic conversion of Coshena to the full purpose jurisdiction of the City on December 31, 2017. OWNERS FURTHER AGREE THAT EACH DEED TO ANY BUYER SHALL INCLUDE A NOTICE TO SUCH OWNER OF THE AUTOMATIC CONVERSION OF THE PROPERTY TO FULL PURPOSE JURISDICTION. If, prior to December 31, 2017, any Owner, heir, successor or assign shall object to this Agreement or annexation in accordance with the terms hereof, this Agreement shall also constitute an irrevocable and unconditional request for, and Owners specifically waive any objection to, conversion to full-purpose annexation without additional notice or hearing. City may treat such objection as a default under the Agreement and adopt an ordinance immediately annexing the entire area.

**Section 8.06** **Assignment.** Owners may assign its rights and obligations under this Agreement with respect to all or part of Coshena III and IV

from time to time to any party. In any such event Owners shall require its assignee to assume in writing and agree to be bound by the requirements of this Agreement, and shall provide the City a copy of such assignment.

**Section 8.07**      **Entire Agreement.** This Agreement and the agreements between the parties referenced in this Agreement, contain the entire agreement of the parties. There are no other agreements or promises, oral or written, among the parties regarding the subject matter of this Agreement. This Agreement can be amended only by written agreement signed by the parties as provided for in this Agreement. This Agreement and the agreements between the parties referenced in this Agreement, supersede all prior agreements between the parties concerning the subject matter of this Agreement.

**Section 8.08**      **Notice.** It is contemplated that the parties will engage in informal communications with respect to the subject matter of this Agreement. However, any formal notices or other communications (“**Notice**”) required to be given by one party to another by this Agreement shall be given in writing addressed to the party to be notified at the address set forth below for such party, (i) by delivering same in person, (ii) by depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the party to be notified, (iii) by depositing the same with Federal Express or another nationally recognized courier service guaranteeing “next day delivery”, addressed to the party to be notified, or (iv) by sending same by telefax with confirming copy sent by mail. Notice deposited in the United States mail in the manner described above shall be deemed effective from and after the earlier of the date of actual receipt or three (3) 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. For the purposes of notice, the addresses of the parties shall, until changed as provided below, be as follows:

Owners:            c/o Mr. Larry Niemann  
                         Coshena III Ltd. And Coshena IV Ltd.  
                         3301 Greenlee Drive  
                         Austin, Texas 78703  
                         Fax: (512) 476-5921

With copy to:    Connie Niemann Heyer  
                         Niemann & Niemann, Attorneys  
                         1122 Colorado Street, Suite 313  
                         Austin, Texas 78701

City: City of Austin  
Attn: City Manager  
P.O. Box 1088  
Austin, Texas 78767  
Fax: (512) 974-2964

With copy to: City of Austin  
Attn: City Attorney  
P.O. Box 1088  
Austin, Texas 78767  
Fax: (512) 974-6490

The parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by at least five (5) days written notice to the other party. If any date or any period provided in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday or legal holiday.

**Section 8.09**      **No Joint Venture.** It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, and its past, present and future officers, elected officials, employees and agents, do not assume any responsibilities or liabilities to any third party in connection with the development of Coshena III and IV.

**Section 8.10**      **Time.** Time is of the essence in all things pertaining to the performance of this Agreement.

**Section 8.11**      **Severability.** If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected.

**Section 8.12**      **Waiver.** Any failure by a party hereto to insist upon strict performance by the other party of any material provision of this Agreement shall not be deemed a waiver of such provision or of any other provision of this Agreement, and such party shall have the right at any time(s) thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

**Section 8.13** **Attorney's Fees and Court Costs.** In the event that any matter relating to this Agreement results in the institution of legal proceedings by any party to this Agreement, the prevailing party in such proceeding shall be entitled to recover all costs and expenses incurred by it in connection with such proceedings, including, without limitation, reasonable court costs and reasonable attorneys' fees.

**Section 8.14** **Applicable Law and Venue.** THE CONSTRUCTION AND VALIDITY OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS (WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES). Venue for any dispute arising from or related to this Agreement shall be in Travis County.

**Section 8.15** **Reservation of Rights.** To the extent not inconsistent with this Agreement, each party reserves all rights, privileges and immunities under applicable laws.

**Section 8.16** **Further Assurances.** Both parties agree that at any time after execution of this Agreement, they will, upon request of the other party, execute and deliver such further documents and do such further acts and things as may be reasonably necessary or desirable to effectuate the terms of this Agreement.

**Section 8.17** **Incorporation of Exhibits and Other Documents by Reference.** All Exhibits and other documents attached to or referred to in this Agreement are incorporated by reference for the purposes set forth in this Agreement.

**Section 8.18** **Counterparts.** This Agreement may be executed in multiple counterparts which shall be construed together as a single original instrument as though all parties had signed one instrument, and, when executed, each counterpart shall be binding upon and inure to the benefit of each of the parties executing the instrument whether or not all other parties have executed same.

**Section 8.19** **Exhibits.** The following exhibits are attached and incorporated into this Agreement.

Exhibit "A" – Legal Description of Coshena III and IV and map

Exhibit "B" – Annexation Service Plan

Exhibit "C" – Restrictive Covenant

EXECUTED in multiple counterparts, each of which shall constitute an original, to be effective as of the Effective Date.

**CITY:**

**CITY OF AUSTIN,**  
a Texas home-rule municipality

By: \_\_\_\_\_  
Toby Hammett Futrell  
City Manager

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

**OWNERS:**

**Coshena III, Ltd.,**  
a Texas limited partnership

By: LC, Inc.,  
A Texas corporation,  
Its General Partner

By: \_\_\_\_\_  
Larry Niemann, President

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

**Coshena IV, Ltd.,**  
a Texas limited partnership

By: LC, Inc.,  
A Texas corporation,  
Its General Partner

By: \_\_\_\_\_  
Larry Niemann, President

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

**THE STATE OF TEXAS     §**  
**COUNTY OF TRAVIS       §**

This instrument was acknowledged before me on this the \_\_\_\_ day of December, 2007, by Toby Hammett Futrell, as City Manager of the City of Austin, a municipal corporation, on behalf of the corporation.

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

**THE STATE OF TEXAS     §**  
**COUNTY OF TRAVIS       §**

This instrument was acknowledged before me on this the \_\_\_\_ day of December, 2007, by Larry Niemann, President of LC, Inc., General Partner of Coshena III, Ltd., a Texas limited partnership, on behalf of said partnership.

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

**THE STATE OF TEXAS       §**

**COUNTY OF TRAVIS       §**

This instrument was acknowledged before me on this the \_\_\_\_ day of December, 2007, by Larry Niemann, President of LC, Inc., General Partner of Coshena IV, Ltd., a Texas limited partnership, on behalf of said partnership.

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Notary Public, State of Texas

Exhibit "A"

Map and Legal Description; and List of Plats and Preliminary Plans

1. Coshena III and IV – attached

## **Exhibit B**



### **CITY OF AUSTIN ANNEXATION SERVICE PLAN**

**Case Name:** Coshena Tracts

**Case Number:** C7a-07-027

**Date:** November 14, 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 Coshena Tracts Annexation Area. The Coshena Tracts Annexation Area is the subject of an Annexation and Development Agreement between the City and the owners of the Coshena Tracts, and pursuant to the Agreement, this service plan has been accepted and approved as the service plan for the area. The annexation area includes approximately 10 acres located in northern Travis County west of the intersection of IH 35 and Grand Avenue Parkway. This area is currently in the City’s limited purpose jurisdiction (annexed September 13, 1984) and includes Travis Central Appraisal District parcels 0276261001 and 0276261101. The annexation area is described by metes and bounds in Exhibit A, which is attached to this Plan and to the annexation ordinance of which this Plan is a part. The annexation area is also shown on the map in Exhibit A.

#### **EFFECTIVE TERM**

This Plan shall be in effect for a ten-year period commencing on the effective date of the annexation, 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 or obsolete or unlawful.

## **SERVICE COMPONENTS**

In General. 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;
  - 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;
  - 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 emergency medical 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 paramedic ambulance response
- 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 (#1 and #2);
- 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.

- 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. The 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 Transportation and 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.
  - 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;

As streets in the area are dedicated and accepted for maintenance they 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 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. At this time there are no public recreation facilities in the 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.
- 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 services will be available from the Department.

- investigation of public health related complaints including foodborne illness, recreational water quality 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, child care facilities;
- investigation of reported elevated blood lead levels in children;
- animal services including leash law, pet licensing and rabies control;
- 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. A portion of this area is located in TXU's service area.

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
  - 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. No capital improvements are necessary to provide water and wastewater service.

Water and wastewater services to new development and subdivisions 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 City road or street related capital improvements are necessary at this time. In general, the City will acquire control of all public roads and jurisdiction in,

over and under all public roads and public streets within the annexation area upon annexation. Future extensions of roads or streets and future installation of related facilities, such as traffic control devices, will be governed by the City's standard policies and procedures.

- g. Parks, Playgrounds and Swimming Pools. No capital improvements are necessary at this time to provide services.
- h. Watershed Protection and Development Review Department. No capital improvements are necessary at this time to provide services.
- i. Street Lighting. It is anticipated that the developer of new subdivisions in the area will install public street lighting. 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 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.

## **EXHIBIT C**

### **RESTRICTIVE COVENANT**

**OWNERS:** Coshena III, Ltd., and Coshena IV, Ltd. Texas limited partnerships (collectively "Owners").

**ADDRESS:** LC, Inc. c/o Larry Niemann  
3301 Greenlee Drive  
Austin, Texas 78703

**CONSIDERATION:** Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged.

**PROPERTY:** Two tracts totaling approximately 10.217 acres of land located in Travis County, Texas, described on Exhibit "A" attached hereto ("Coshena").

**RECITALS:** Owners and the City of Austin ("City") have entered into that certain Annexation and Development Agreement ("Agreement") dated effective December 13, 2007, pertaining to Coshena. Pursuant to the Agreement, Owners have agreed to restrict Coshena as set forth herein.

NOW, THEREFORE, it is declared that Owners, for the consideration, shall hold, sell and convey Coshena subject to the following covenants and restrictions, which shall be impressed upon Coshena by this restrictive covenant. These covenants and restrictions shall run with the land and shall be binding on Owners and their respective successors and assigns.

1. Restrictions. Coshena, and each of its Owners, and their successors and assigns, are hereby restricted to the terms of the Agreement, a copy of which is attached hereto. Each Owner, on behalf of himself and his successors and assigns, consents to and requests full purpose annexation by the City of Austin, and agrees that Coshena shall automatically become a part of the full purpose jurisdiction of the City on December 31,

2017, without any further procedural action of any kind by the City, and that the service plan attached to the Agreement shall serve as the annexation service plan for Coshena.

2. Violation. If any person or entity shall violate or attempt to violate this covenant, it shall be lawful for the City to prosecute proceedings at law or in equity (including injunctive action) against such person or entity violating or attempting to violate such agreement or covenant, to prevent and enjoin the person or entity from such actions, and to collect damages for such actions.
3. Invalidity. If any part of this covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this covenant , and such remaining portion of this agreement shall remain in full effect.
4. Waiver. If at any time the City fails to enforce this covenant , whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
5. Amendment. This covenant may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City and (b) the owners of the portion of Coshena subject to the modification, amendment, or termination at the time of such modification, amendment, or termination.

IN WITNESS WHEREOF, Owners have caused this instrument to be executed on the dates of their respective acknowledgements, to be effective the date this Restrictive Covenant is recorded in the Official Public Records of Travis County, Texas.

**Coshena III, Ltd.,**  
a Texas limited partnership

By: LC, Inc.,  
A Texas corporation,  
Its General Partner

By: \_\_\_\_\_  
Larry Niemann, President

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

**Coshena IV, Ltd.,**  
a Texas limited partnership

By: LC, Inc.,  
A Texas corporation,  
Its General Partner

By: \_\_\_\_\_  
Larry Niemann, President

**THE STATE OF TEXAS       §**

**COUNTY OF TRAVIS       §**

This instrument was acknowledged before me on this the \_\_\_\_\_ day of December, 2007, by Larry Niemann, President of LC, Inc., General Partner of Coshena III, Ltd., a Texas limited partnership, on behalf of said partnership.

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

**THE STATE OF TEXAS       §**

**COUNTY OF TRAVIS       §**

This instrument was acknowledged before me on this the \_\_\_\_ day of December, 2007, by Larry Niemann, President of LC, Inc., General Partner of Coshena IV, Ltd., a Texas limited partnership, on behalf of said partnership.

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Notary Public, State of Texas