MEMORANDUM

To: Mayor and Council
Marc Ott, City Manager

From: Patricia Link, Assistant City Attorney

Re: Senna Hills MUD and the City of Austin v. O'Leary/Weaver, Inc. and 10324, Inc.; and 12/11/08 Council Agenda Item No. 33.

The Senna Hills MUD, which is in the City's ETJ, has requested the City of Austin's consent to annex 0.7 acres of land into the MUD. This 0.7 acres is part of a 1.2 acre tract. The balance of the tract is already part of the MUD. City staff recommends the annexation based on the history of the property, and the terms and conditions detailed below.

In September, 2004, the Senna Hills MUD filed a lawsuit against the owner of the property in question. The MUD sued the property owner because, despite the fact that the land was designated as "irrigation land," the property owner was using the land for a landscaping and metal fabrication business. The City joined the lawsuit in June, 2005, both to support the MUD, and because the property owner had developed the property without a site plan.

In February, 2008, the parties participated in mediation. After the mediation, the property owner and the MUD entered into a settlement agreement, which hinges on the Property in question being annexed into the MUD. Because their agreement requires City Council consent to the annexation, they are motivated to comply with City requirements.

As such, City staff has negotiated with the property owner and the MUD to resolve all issues in the lawsuit. The property owner has now agreed to execute a Restrictive Covenant that requires the property owner to actively participate in the City's site plan process, to comply with the Comprehensive Watersheds Ordinance ("CWO"), to cease use of the septic tank on the property, and to implement additional water quality controls that will reduce the pollutant load attributable to the impervious cover added to the property after August, 1992 (the date of enactment of SOS). In exchange for these commitments, the City will dismiss its claim in the lawsuit and the suit will be completely resolved.