

**STRATEGIC PARTNERSHIP AGREEMENT BETWEEN
THE CITY OF AUSTIN AND
THE RIVER PLACE MUNICIPAL UTILITY DISTRICT**

This Strategic Partnership Agreement Between the City of Austin, Texas and the River Place Municipal Utility District, Travis County, Texas (“SPA”) is entered into by the City of Austin (“City”), a municipal corporation, acting by and through its City Manager, and the River Place Municipal Utility District (“District”), acting by and through its 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 and operating pursuant to Chapters 49 and 54 of the Texas Water Code. The District encompasses approximately 1,040 acres, more or less. Its boundaries are described in Exhibit “A” and depicted on Exhibit “B” attached to this SPA.

2. The District under normal circumstances does not use ad valorem taxes to fund the operation and maintenance of its Retail Water System and Retail Wastewater System and the District sets its utility rates in such a way that the utility revenues it receives from its Retail Water System and Retail Wastewater System are sufficient to pay its expenses of operating and maintaining the said Retail Water System and Retail Wastewater System.

3. The City is a municipal corporation established by and chartered under Chapter 90, Page 634, of the Special Laws of Texas, 1909, 31st Legislature.

4. On December 31, 2008, the City added the District to its Municipal Annexation Plan with the intention to annex 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.

5. The District and its residents and property owners desire to postpone the City’s annexation of the District and to provide benefits to each party that are reasonable and equitable with regard to the other party.

6. The purpose of this SPA is to enter into a strategic partnership agreement regarding the terms and conditions of the annexation of the District by the City in accordance with Section 43.0751 of the Local Government Code and the terms and conditions pursuant to which the District will convert into a limited district at the time of full purpose annexation of the District by the City.

7. The District provided notice of two public hearings concerning the adoption of this SPA in accordance with the procedural requirements of Section 43.0751 of the Local Government Code.

8. The District conducted two public hearings regarding this SPA in accordance with procedural requirements of Section 43.0751 of the Local Government Code on _____, 2009, at _____ o'clock p.m., at _____ and on _____, 2009 at _____ o'clock p.m. at _____.

9. The City provided notice of two public hearings concerning the adoption of this SPA in accordance with the procedural requirements of Section 43.0751 of the Local Government Code.

10. The City conducted two public hearings regarding this SPA and the limited and full-purpose annexations in accordance with procedural requirements of Section 43.0751 of the Local Government Code on _____, 2009 at _____ o'clock p.m., at the City Council Chambers and on _____, 2009 at _____ o'clock p.m., at the City Council Chambers.

11. The District has, by formal action, after public hearings approved this SPA on _____, 2009 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 SPA on _____, 2009 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 SPA have been met.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained in this SPA, 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, the following terms shall have the meanings indicated:

- (a) "City" means the City of Austin, Texas.

- (b) “Consent Agreement” means, collectively, Agreement Concerning Creation and Operation of River Place Municipal Utility District, executed on February 24, 1984; the First Amendment Agreement Concerning Creation and Operation of River Place Municipal Utility District, executed on August 22, 1984; the Second Amendment to Agreement Concerning Creation and Operation of River Place Municipal Utility District, executed on May 14, 1992; the Third Amendment to Agreement Concerning Creation and Operation of River Place Municipal Utility District, executed on April 8, 1993; the Fourth Amendment to Agreement Concerning Creation and Operation of River Place Municipal Utility District, executed on June 19, 1995; and the Fifth Amendment to Agreement Concerning Creation and Operation of River Place Municipal Utility District, executed on February 3, 2000. The Consent Agreement and all amendments thereto are incorporated herein for the purposes specified in Section 4.01 of this Agreement.
- (c) “District” means the River Place Municipal Utility District, Travis County, Texas.
- (d) “District Boundaries” means the boundaries of the District as they now exist and as more particularly described in Exhibit “A” and depicted on Exhibit “B” attached to this Agreement.
- (e) “Effective Date” means the date of approval of this Agreement, as defined in Section 2.02 of this Agreement.
- (f) “Force Majeure” means conditions and occurrences as defined in Section 7.13 of this Agreement.
- (g) “Full-Purpose Annexation Date” means 12:01 a.m., December 31, 2017.
- (h) “Limited District” means the River Place Limited District resulting from the conversion of the River Place Municipal Utility District under Section 43.0751 of the Local Government Code.
- (i) “Notice” means any formal notice or communication required or authorized to be given by one Party to another by this SPA.
- (j) “O&M Transfer Date” means October 1, 2014.
- (k) “Party or Parties” means the City and/or the District, as the case may be.
- (l) “Period of Limited Purpose Annexation” means that period commencing on the Effective Date of this SPA and ending on the Full-Purpose Annexation Date.
- (m) “Prior Out-of-District Agreements” means, collectively, the agreement, as amended, for the provision of out-of-District wholesale water service to the Lower

Colorado River Authority (the “LCRA Agreement”) and the City’s authorizations to provide out-of-District service to “Webb Estates” and “Slover Tract.”

- (n) “Prior Utility Agreements” means the First Revised Agreement for the Ownership and Operation of the River Place Water Plant, executed on July 10, 1995; the First Amended Agreement for Water Supply and Effluent Disposal, executed on January 28, 1997; and the First Amendment to First Amended Agreement for Water Supply and Effluent Disposal, executed on January 28, 1997, with First River Place Reserve, LTD(
- (o) “Service Plan” means the Annexation Service Plan attached hereto as Exhibit F.
- (p) “SPA” means this Strategic Partnership Agreement Between the City of Austin and the River Place Municipal Utility District, including all Exhibits attached hereto.
- (q) “Water and Wastewater Agreement” means the Agreement for Water and Wastewater Service and Operations Management of Facilities Between the City of Austin and the River Place Municipal Utility District; and Amendment to Agreement for Emergency Water Service, attached hereto as Exhibit D.

Section 1.02 Purposes of the SPA.

The purpose of this SPA 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 Limited District upon conversion of the District to the Limited District at the time full purpose annexation of the entire District is completed, all in accordance with Section 43.0751 of the 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 SPA and prior to full purpose annexation pursuant to this SPA, the District and the City conducted public hearings and complied with all procedural requirements for the purpose of considering the adoption of this SPA and annexation of the District in accordance with the terms of this SPA.

Section 2.02 Effective Date of Agreement.

Under the provisions of Section 43.0751(c) of the Local Government Code, this SPA shall become effective on _____, 2009, the date of adoption of this SPA by the

City. Upon adoption, the SPA shall be filed by the City in the Real Property Records of Travis County, Texas.

Section 2.03 Annexation of the Property Within the District.

(a) Annexation of Property.

(i) All land within the District 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. The Annexation Service Plan attached as Exhibit “F” is approved as the service plan for this area and shall be effective for a period of ten years from the Full-Purpose Annexation Date.

(ii) The City and the District further agree that all property within the District that is not already in the City’s limited purpose or full-purpose jurisdiction shall be annexed by the City for the limited purposes of planning and zoning on the Effective Date of this SPA, and such limited purpose annexation will extend the full range of City regulatory authority regarding development, construction, land use, and environmental quality to the area. This authority includes the application of all regulations pertaining to planning and zoning including, but not limited to, regulations within the City’s Land Development Code including Title 30 Austin/Travis County Subdivision Regulations and related technical manuals, and all rules adopted pursuant thereto. [Moved from 2.04(a)(iv)]

(b) Consent by District to Annexation. 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 Service Plan and agrees not to seek arbitration, other legal actions, or legislative remedies to challenge the Service Plan. Notwithstanding the foregoing, the District or the Limited District may take authorized actions, if any, to enforce the terms of the Service Plan. The terms of this Agreement are binding on the City, 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), and the consent to annexation granted herein.

(c) Consent by District to Actions by City. The District agrees that the City may take any and all steps required by the Local Government Code to assure that full-purpose and limited purpose annexation of all appropriate land within the District becomes effective in accordance with the timeframes and procedures set forth in this Agreement.

Section 2.04 District Residents to Become Citizens During Limited Purpose Annexation and Full-Purpose Annexation.

- (a) **Citizenship Rights During the Period of Limited Purpose Annexation.**
 - (i) **Voting Rights.** As provided in Article 1, Section 7 of the City's Charter, upon limited purpose annexation any resident of that portion of the District annexed for limited purposes shall be deemed to be a citizen of the City and shall be entitled to vote in city elections on every issue where the question before the electorate is the election of or recall of a City Council member, or the amendment of the City's Charter.
 - (ii) **Limitation on Running for Office.** As provided by Article 1, Section 7 of the City's Charter, no resident of that portion of the District annexed for limited purposes is eligible to run for office in the City during the Period of Limited Purpose Annexation.
 - (iii) **Applicability of Ordinances, Rules, and Regulations.** As provided by Article 1, Section 7 of the City's Charter, upon limited purpose annexation any resident of that portion of the District annexed for limited purposes of planning and zoning shall be deemed to be a citizen of the City in connection with ordinances, rules, or regulations which are applicable to the citizen by virtue of the limited purpose annexation.
- (b) **Citizenship Rights Upon Full-Purpose Annexation.** 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 Limited District.

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

Within 60 days of the Effective Date, the District shall file the following notice concerning this SPA in the Real Property Records of Travis County for the property within the District:

All of the property within the boundaries of River Place 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 ("SPA") between the District and the City of Austin, dated _____, 2009. The SPA establishes a timetable for the annexation by the City of Austin of property in the District, which will be annexed initially for limited purposes and subsequently for full purposes. The SPA also provides for the conversion and the timing for

conversion of the District to a Limited District and establishes the governmental and operational relationship between the City and the District while the District or the Limited District continues in existence, all as authorized by Section 43.0751, Texas Local Government Code. A copy of the SPA may be obtained by contacting the offices of the District, and questions concerning the SPA may be directed to the District or the City of Austin Neighborhood Planning and Zoning 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 Limited and Full-Purpose Annexation of an Area of the District.

During the Period of Limited Purpose Annexation the District shall continue to have and thereafter the Limited District shall have within the District Boundaries all of the authority and power, including taxation authority, of a municipal utility district, except as limited and modified by the terms and provisions of this SPA and applicable law, so long as the District or Limited District exists. Upon full purpose annexation of an area of the District not previously annexed by the City for full purposes, the City shall have all the authority and power, including taxation authority, within the full-purpose annexed area that the City enjoys in all other areas that the City has annexed or does annex for full purposes.

ARTICLE III.

SERVICES TO THE DISTRICT AND OTHER TRANSITIONAL MATTERS

Section 3.01 Municipal Services Prior to the Full-Purpose Annexation Date.

- (a) **Limitation on Services.** During that period of time beginning on the Effective Date and ending on the Full-Purpose Annexation Date, the City and the District will provide water and wastewater service to the District pursuant to the terms and conditions of the Water and Wastewater Agreement. Except as provided in the preceding sentence or as may be provided in subsequent agreements between the Parties, the District acknowledges and agrees that no City services (including by way of example and not in limitation, police services, fire protection services, emergency medical responder services, and road maintenance) will be provided to the District until the Full-Purpose Annexation Date, upon which the City shall provide full services to the District unless specifically provided otherwise.
- (b) **Continuity of Services.** Commencing on the Full-Purpose Annexation Date, the City will provide full City services to areas within the District Boundaries in accordance with the Service Plan, except that the City shall not be responsible for

those services to be provided by the Limited District. City services shall include, for example, but not in limitation, water and wastewater services. The Parties understand and agree that the portion of the Service Plan addressing services to be provided in the event of the dissolution or termination of the District or the Limited District for any reason shall be performed by the City upon dissolution or termination as provided by the Service Plan and Section 7.02 of this SPA.

Section 3.02 Capital Improvements During the Period Prior to the Full-Purpose Annexation Date.

- (a) District's Responsibility for Continued Improvements.
 - (i) Except as provided in the Water and Wastewater Agreement, the District will be responsible for operating and maintaining all District facilities and properties during that period of time beginning on the Effective date and ending on the Full-Purpose Annexation Date. By way of example and not in limitation, the aforementioned operation and maintenance responsibilities shall include the responsibility to operate and maintain parks facilities, and for drainage, prevention of erosion, remediation of storm damage and channel dredging.
 - (ii) The District may also continue to make capital improvements during this same time period in accordance with the terms and provisions of the Consent Agreement. In this regard, the Parties agree that except as otherwise authorized by the Water and Wastewater Agreement or the City, any such improvements shall not materially affect the level of services the City will be required to provide after the Full-Purpose Annexation Date.
 - (iii) Notwithstanding the foregoing provisions, the District may construct trails or trail improvements subject to approval by the City's Parks and Recreation Department, which shall not be withheld unless a proposed trail or trail improvement would materially impact the level-of service the City will be required to provide after the Full-Purpose Annexation Date.

Section 3.03 District Tax and Utility Rate.

- (a) District's Tax Rate. The District agrees to set its annual debt tax rate and operations and maintenance tax rate in an amount deemed sufficient by the District, to report such rate to the District's tax collector in Travis County, and to perform all acts required by law for the tax rates to be effective.
- (b) Use of Excess Monies. The District agrees to allocate a sufficient amount of utility revenues and ad valorem taxes, if necessary, to maintain its Retail Water System and Retail Wastewater System until the O&M Transfer Date. Any existing or future utility revenues collected through an increase in utility rates and

such ad valorem taxes, if applicable, in excess of the District's annual operation and maintenance expenses shall only be used (1) to help pay down the District's outstanding indebtedness prior to the Full-Purpose Annexation Date or (2) transferred to the Austin Water Utility on the Full-Purpose Annexation Date. The District shall separate such funds from its general fund and place them in a special fund account reflecting the source of these funds.

- (c) Park Fund. All monies in the District's park fund on the Full-Purpose Annexation Date will be retained by the Limited District.

Section 3.04 Transfer of Assets and Employment and Services Contractual Obligations of the District.

Except for the construction of trails in accordance with Section 3.02(a)(iii) of this Agreement, or as otherwise may be authorized by the Water and Wastewater Agreement or by prior written agreement of the City Manager, the District may not do the following:

- (1) transfer any of its assets to a third party without reasonable consideration; or
- (2) acquire additional assets, other than those required for the normal and customary operations of the District provided that such required assets do not increase the City's costs or responsibilities after the Full-Purpose Annexation Date; 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.

Section 3.05 Separate Transition Agreements.

The Parties contemplate that they may negotiate and execute separate transition agreements concerning their relationship during the term of this SPA. Such transition agreements may supplement or amend this SPA.

ARTICLE IV.

DISTRICT ASSETS, LIABILITIES, OBLIGATIONS, DEBT

AND DEBT SERVICE AND THE CONSENT AGREEMENT

Section 4.01 Assets, Liabilities, Indebtedness, and Obligations During the Period of Limited Purpose Annexation.

- (a) Continuation of Consent Agreement.

- (i) Except as provided in subsection (ii) immediately following, the Consent Agreement and any subsequent transition agreements shall remain in effect until the Full-Purpose Annexation Date, at which time they shall terminate.
 - (ii) To the extent there is any conflict between this SPA or any subsequent transition agreements and the Consent Agreement, the terms of this SPA shall prevail.
- (b) Responsibility for District Assets, Liabilities, and Obligations Prior to the Full-Purpose Annexation Date. Except as specifically provided elsewhere in this SPA, the Water and Wastewater Agreement or any subsequent transition agreements, the District shall remain solely responsible for all District contracts, assets, liabilities and obligations of the District and shall be subject to the terms and conditions of the Consent Agreement until the Full-Purpose Annexation Date. As set forth in the Water and Wastewater Agreement, the District shall remain responsible for payments on all existing bond obligations until October 1, 2017, after which time the City shall assume all remaining debt obligations of the District. Except as specifically provided elsewhere in this SPA, the Water and Wastewater Agreement or any subsequent transition agreements, the City shall become solely responsible for all the District's contracts, assets, liabilities, and other obligations on the Full-Purpose Annexation Date.

Section 4.02 No Liability for Operations Performed by Others.

- (a) Mutual Limitations on Liability.
 - (i) 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 or the Limited District in the performance of the District's or Limited District's functions as described in this SPA. 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.
 - (ii) The Parties agree that the District and Limited 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 SPA. The Parties further agree that 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.

- (b) City to be an Additional Insured. The District shall add the City of Austin as an additional insured on its general liability insurance, which the District shall carry each year until the O&M Transfer Date. At the request of the City, the District shall continue to include the City as an additional insured following the O&M Transfer Date, provided that the City shall be responsible for any additional direct costs to the District for continuing to include the City as an additional insured.

Section 4.03 Additional Bonds and Indebtedness by District.

- (a) Consent by City Required for Bond Issuance. Neither the District nor the Limited District shall issue bonds for any purpose without the prior written consent of the City Council.
- (b) Limitation on Additional Debt or Leases. Except as may be required for normal operation and maintenance of the District or as may be authorized by prior written consent of the City Manager, the District may not after the Effective Date incur any new indebtedness or execute any new lease that extends beyond the Full-Purpose Annexation Date.

ARTICLE V.

DISTRICT WATER AND WASTEWATER FACILITIES; FUNCTIONS

Section 5.01 District Functions.

Except as modified by this SPA and the Water and Wastewater Agreement, prior to the Full-Purpose Annexation Date, the District shall solely 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. If the District or the City 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 SPA, the other Party may proceed as provided in Article VIII of this SPA.

Section 5.02 Transfer of Ownership.

The District shall convey ownership of its Retail Water System and Retail Wastewater System (as described in the Water and Wastewater Agreement) and all associated assets and easements to the City on the Effective Date of this SPA pursuant to the terms and conditions of the Water and Wastewater Agreement.

Section 5.03 Provision of Water and Wastewater Service.

- (a) From the Effective Date to the Full-Purpose Annexation Date, provision of water and wastewater service to the District shall be made pursuant to the terms and conditions

of the Water and Wastewater Agreement, including that the City may not charge the Limited District's residents a post-annexation surcharge for any purpose.

- (b) Effective on the O&M Transfer Date, the City will provide water and wastewater services to the land and customers within the District Boundaries pursuant to the Service Plan and the Water and Wastewater Agreement and to the same level as before the Effective Date, and the City further agrees to the following:
 - (i) The City will not increase the permitted volume limits of the wastewater treatment plant currently owned by the District without the advance written agreement of the District. Further, without the advance written agreement of the District, the City will not expand the physical components of either the water treatment plant or wastewater treatment plant outside of the property to be conveyed to the City pursuant to the Water and Wastewater Agreement or operate the Retail Water System and Retail Wastewater System in a manner that would materially impair the water and wastewater service existing in the District as of the O&M Transfer Date.
 - (ii) The City will maintain all facilities described in the Water and Wastewater Agreement at the same level as on the O&M Transfer Date and otherwise (1) maintain the aesthetic quality of such facilities and (2) maintain such facilities in a manner consistent with Firewise principles and guidelines as established by the National Fire Protection Association. The City agrees that any repainting of facilities, including but not limited to the elevated storage tank, shall be in colors substantially similar to those in use on the Effective Date of this SPA, and prior to any such repainting, the City will first confer with the District on the color to be used.
 - (iii) The City will not add writing or symbols of any kind to the elevated storage tank.
 - (iv) The City will not allow any extraneous equipment to be attached to or otherwise placed on the elevated storage tank, including but not limited to antennae unless such equipment is used for the City's operation and maintenance of the Retail Water System or Retail Wastewater System. The City agrees not to place equipment on the elevated storage tank that would be used for third party benefit.
- (c) Effective on the Full-Purpose Annexation Date, the City shall honor and assume all obligations to provide service as set forth in the Prior Utility Agreements and the Prior Out-of-District Agreements.

Section 5.04 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. OPEN SPACE

Section 6.01 Balcones Canyonland Preserve Land

- (a) The District is the current owner of approximately 310 acres of land (the "BCCP Land") that is a part of the Balcones Canyonland Conservation Plan. The District will remain responsible for the ownership, operation and maintenance of the BCCP Land until the Full-Purpose Annexation Date; provided however, that the Parties expressly the District is not responsible to build any fences on or around the BCCP Land unless required of the District pursuant to its federal permit.
- (b) On the Full-Purpose Annexation Date, the District shall convey the BCCP Land to the City at which time the City shall assume responsibility for all operation and maintenance costs for the same.
- (c) The District and subsequently the Limited District shall retain full ownership of its open space, parklands, greenbelt areas and other tangible assets not conveyed to the City pursuant to the Water and Wastewater Agreement.

ARTICLE VII. DISTRICT CONTINUATION AS A LIMITED DISTRICT FOR CERTAIN MAINTENANCE, OPERATIONS AND ENFORCEMENT PURPOSES

Section 7.01 Continuation as a Limited District.

- (a) Conversion of District to Limited District. Pursuant to Section 43.0751(f)(6) of the Local Government Code, the District shall automatically convert into a limited district on the Full-Purpose Annexation Date and shall thereafter be known as the "River Place Limited District."
- (b) Boundaries of Limited District. The boundaries of the Limited District shall be coextensive with the District Boundaries.
- (c) Term of Limited District. The Limited District shall exist for an initial term of ten years. The term of the Limited District may be renewed successively by mutual agreement of the governing bodies of the City and the Limited District.

Section 7.02 Functions and Responsibilities of the Limited District.

Subject to future amendments by the Parties, the functions and responsibilities of the Limited District shall be limited to the following:

- (a) Operation, maintenance and control of additional security for the Limited District;
- (b) Operation, maintenance and control of residential and commercial solid waste pick-up and disposal services;
- (c) Ownership, operation, maintenance and control of parkland, open space, greenspace and other areas owned by the Limited District; and

The City will not provide, or charge or bill the Limited District or its residents for, services the Limited District provides.

Section 7.03 Amenities.

- (a) Availability of Amenities to All Residents. All Amenities described in Exhibit “E” shall be available for the benefit, use and enjoyment of all of the residents of the River Place Limited District and the public.
- (b) Fees and Charges. The Limited District may assess those fees and charges for the use of the Amenities that it deems reasonable and necessary and may charge users who reside outside the Limited District separate fees and charges if such fees and charges are reasonably related to the Limited District’s actual costs of operation and maintenance.
- (c) Limitation on City’s Obligations. The Parties agree that the City shall have no obligation during the existence of the Limited District to perform the functions undertaken by the Limited District, provided, however, the Limited District’s rights to provide security for the Amenities shall not diminish the City’s obligations to provide adequate police protection in accordance with the requirements of State law.
- (d) Limitation on Actions by Limited District.
 - (i) The Limited District may not sell, convey, lease, mortgage, transfer, assign, or otherwise alienate any of its Amenities to a third party. The Limited District may not approve a program or project that requires the use or taking of its Amenities or that would otherwise require findings under Section 26.001 of the Texas Parks and Wildlife Code. However, this subsection (d) shall not prohibit the Limited District from contracting with management and operating firms to manage and operate any of the District’s Amenities.

- (ii) The Limited District may not sell, convey, lease, mortgage, transfer, assign, or otherwise alienate any of its surplus assets to a third party without the prior approval of the City Manager or his designee, which approval shall not be unreasonably withheld or delayed.
- (iii) The Limited District may acquire, purchase, or lease additional Amenities and expand any existing Amenities and may purchase necessary equipment, materials and facilities to maintain, replace or upgrade the level of Amenities available at the time of this SPA.
- (iv) The Limited District may hire employees, agents, representatives, and consultants to manage, operate and maintain the Amenities and perform services related to the Limited District's operations and activities.

Section 7.04 Limited District Approval and Election.

- (a) Action by Board. The Board of Directors for the Limited District shall place the adoption and ratification of this SPA on the agenda of its first meeting following the conversion of the District into the Limited District.
 - (i) If the Board of Directors of the Limited District fails to adopt and ratify this SPA within sixty days of the conversion of the District into the Limited District, the Limited District shall be automatically dissolved sixty days after the date of conversion without the necessity of any further action by the City, whether through litigation or otherwise, and all assets, obligations, indebtedness, and liabilities of the District shall be assumed by the City.
 - (ii) The Limited District shall continue to exist after the failure to adopt or ratify this SPA for the sole purpose of doing any and all acts or things necessary to transfer the assets, obligations, indebtedness, and liabilities to the City. Upon the completion of the transfer of all assets, obligations, indebtedness, and liabilities to the City, the Limited District shall cease to exist.
- (b) Ratification and Election. If the Board of Directors of the Limited District adopts and ratifies this SPA pursuant to Section 7.04(a) of this SPA, the Board of Directors of the Limited District shall call an election no later than the first practicable uniform election date, as determined in the reasonable judgment of the Board of Directors, after such adoption and ratification at which time the Limited District shall place a proposition before the qualified voters of the Limited District to consider ratification of the creation of the Limited District and to authorize an ad valorem tax for operation and maintenance of the Limited District. The Board of Directors at its option may call the election at the same meeting at which it acts on the adoption and ratification of this SPA or at a subsequent meeting, provided

that the election date is no later than the first practicable election date after adoption and ratification of this SPA, as determined in the reasonable judgment of the Board of Directors.

- (i) The maximum tax rate to be included within the proposition shall be at the discretion of the Board of Directors of the Limited District provided that it is not greater than \$0.50 per \$100 of assessed valuation. The proposition shall also provide that any District maintenance tax authorization in existence before the tax election provided for in this subsection b shall be rescinded upon approval of the proposition by the voters.
- (ii) If a majority of the qualified voters voting at this election do not approve the proposition, the Limited District shall be automatically dissolved sixty days after the date of the election without the necessity of any further action by the City, whether litigation or otherwise, and all assets, obligations, indebtedness, and liabilities of the District shall be assumed by the city.
- (iii) If the election fails, the Limited District shall continue to exist after such failure for the sole purpose of doing any and all acts or things necessary to transfer the assets, obligations, indebtedness, and liabilities to the City.

ARTICLE VIII.

MISCELLANEOUS PROVISIONS

Section 8.01 Effective Date and Multiple Counterparts.

This SPA may be executed in multiple identical counterparts but shall not be effective unless executed by the City and the District on or before _____, 2009.

Section 8.02 Entire Agreement/Conflicting Provisions.

- (a) This SPA 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 SPA. This SPA, together with all of the attachments to this SPA, 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 SPA shall be binding on either the City or the District.

- (c) Prior to the Full-Purpose Annexation Date, to the extent that any provision in this SPA conflicts with a term in the Water and Wastewater Agreement, the Water and Wastewater Agreement shall prevail.

Section 8.03 Notice.

- (a) Any Notice given under this SPA 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

River Place Municipal Utility District:

River Place Municipal Utility District
c/o Severn Trent Services
14050 Summit Drive, Suite 113
Austin, Texas 78728

with required copy to
District's Attorney:

Phil Haag
McGinnis, Lochridge & Kilgore
600 Congress Avenue, Suite 2100
Austin, Texas 78701

- (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 SPA 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 8.04 Time.

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

Section 8.05 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 part of this SPA, or the application of this SPA 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 SPA 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 SPA pertaining to or affecting the rights and authority of the Parties in areas of the District annexed by the City pursuant to this SPA, or proposed to be annexed.
- (b) If part of this SPA is nullified or modified in whole or in part as a result of amendments to the underlying state law and statutory authority for this SPA, the Parties agree and understand that such modification may frustrate the purpose of this SPA. The parties agree that they will attempt to amend or revise this SPA to accomplish to the greatest degree practical (i) the same purpose and objective of the part of this SPA affected by the amendment of the underlying state law and statutory authority and (ii) the original intent and purpose of this SPA.
- (c) Neither the District nor the City will initiate or support any legislation to modify the City's or the District's rights under the SPA or the Consent Agreement. 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

Section 8.06 Waiver.

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

Section 8.07 Applicable Law and Venue.

The construction and validity of the SPA 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 8.08 Reservation of Rights.

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

Section 8.09 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 SPA.

Section 8.10 Incorporation of Exhibits and Other Documents by Reference.

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

Section 8.11 Assignability, Successors, and Assigns.

- (a) This SPA shall not be assignable by either Party without the prior written consent of the other Party.
- (b) This SPA shall be binding upon and inure to the benefit of the Parties and their respective representatives, successors, and assigns.

Section 8.12 Amendment.

This SPA may only be amended in writing upon the approval of the governing bodies of the City and the District or Limited District, as applicable.

Section 8.13 Force Majeure.

In the event that either Party is rendered unable by force majeure to carry out any of its obligations under this SPA, 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 events or occurrences 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, and may include 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 is 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.

ARTICLE IX.

DEFAULT AND REMEDIES FOR DEFAULT

Section 9.01 Default.

- (a) Upon the occurrence, or alleged occurrence, of an event of default under or violation of this SPA, the nondefaulting Party shall send the defaulting Party Notice of its default or violation or alleged default or violation. Except as otherwise specifically provided in this SPA 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 SPA. 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. Unless otherwise agreed to, the Parties shall share equally in the costs of the mediation or arbitration. The Parties further agree that neither the City nor the District is obligated to resolve any dispute based on an arbitration decision under this SPA 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 nondefaulting Party shall have the right to enforce the terms and provisions of this SPA by specific performance or by such other legal or equitable relief to which the nondefaulting Party maybe entitled. Any remedy or relief described in this SPA 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 nondefaulting Party shall have all rights and remedies available in law and equity and all rights and remedies provided in this SPA.
- (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 9.02(a) of this SPA is limited solely to the circumstances described therein, and shall not be available for any other circumstances under this SPA. The parties agree that none of the remedies specified in this SPA shall apply to a breach of the Water and Wastewater Agreement, and that the remedies available for a breach of that Water and Wastewater Agreement shall be controlled by the remedy provisions of that agreement.

Section 9.02 Dissolution of the District

- (a) If the District is dissolved for any reason prior to the Full-Purpose Annexation Date, this SPA 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 SPA consisting of ____ pages and Exhibits A-F is executed in multiple identical counterparts.

CITY OF AUSTIN, TEXAS

Attest: _____
Shirley Gentry
City Clerk

By: _____
Marc Ott
City Manager

**RIVER PLACE MUNICIPAL
UTILITY DISTRICT**

Attest: _____

Secretary

By: _____

President, Board of Directors

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the ____ day of _____, 2009, by Marc Ott, 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 _____, 2009, by _____, President of the Board of Directors River Place Municipal Utility District, for and on behalf of the River Place 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
RIVER PLACE MUNICIPAL UTILITY DISTRICT**

LIST OF EXHIBITS

The following are the exhibits for this Agreement:

Exhibit A	District Boundaries
Exhibit B	Map of District Boundaries
Exhibit C	Map of Limited and Full-Purpose Annexation Areas
Exhibit D	Agreement for Water and Wastewater Service and Operations Management of Facilities Between the City of Austin and the River Place Municipal Utility District; and Amendment to Agreement for Emergency Water Service
Exhibit E	List of Amenities to be Maintained by Limited District
Exhibit F	Annexation Service Plan