

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**

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THE RIVER PLACE MUNICIPAL UTILITY DISTRICT; and
AMENDMENT TO AGREEMENT FOR EMERGENCY WATER SERVICE**

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

WHEREAS, the City and the District previously entered into the 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 (collectively, the "Consent Agreement");

WHEREAS, the City and the District previously entered into the Agreement for Wholesale Wastewater Service Between City of Austin and River Place Municipal Utility District, executed on May 14, 1992, and the Agreement for Emergency Water Service, executed on May 30, 2001;

WHEREAS, the District entered into the First Amended Agreement for Water Supply and Effluent Disposal, executed on January 28, 1997, with First River Place Reserve, LTD; the First Amended Raw Water Diversion and Supply Contract, executed on March 1, 2005, with River Place Golf Group LP, Inc.; Water Sale Contract for Municipal Uses, executed on August 28, 1991, with the Lower Colorado River Authority ("LCRA"); 1st Amendment to Water Sale Contract No. 12569, executed on June 27, 1995, with LCRA; 2nd Amendment to Water Sale Contract No. 12569, executed on August 22, 1997, with LCRA; and 3rd Amendment to Water Sale Contract No. 12569, executed on September 24, 1999, with LCRA; regarding the water and wastewater utility operations of the District;

WHEREAS, the District entered into the Interlocal Agreement Regarding Water Storage, executed on August 23, 2007, with LCRA; Agreement Regarding Wholesale Water Service and Donation of Park Funds, executed on January 22, 2001, with LCRA; Wholesale Division, Treatment and Water Supply Contract between River Place Municipal Utility District and the Lower Colorado River Authority, executed on May, 1, 2001; and Wholesale Division, Treatment and Water Supply Contract, executed on March 31, 2000, with Glenlake Water Supply Corporation; and has received

authorization from the City to provide out-of-District water service to “Webb Estates” and “Slover Tract”, proposed subdivisions in Travis County, Texas;

WHEREAS, the City and the District desire to enter into a new agreement, prior to full purpose annexation by the City on December 31, 2017, to set out terms and conditions for the ownership, operation, and maintenance of the District’s water, wastewater, and reclaimed water facilities;

WHEREAS, the Austin City Council, by minutes dated August 27, 2009, has authorized the negotiation and execution of this Water and Wastewater Agreement with the District;

WHEREAS, the District, by minutes dated August 25, 2009, has authorized the negotiation and execution of a this Water and Wastewater Agreement with the City;

WHEREAS, 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.

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

ARTICLE I DEFINITIONS

The following terms shall have the meanings set out below:

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

1.02. Commission: means the Texas Commission on Environmental Quality or its successor agency.

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

1.04. Consent Agreement: means the Agreement Concerning Creation and Operation of River Place Municipal Utility District, executed on February 24, 1984, and the five amendments thereto, as listed above.

1.05. Default: means the omission or failure of a Party to perform its contractual duty under this Water and Wastewater Agreement.

1.06. District or Districts: means the District and its successors and assigns, in particular, upon conversion, the Limited District as authorized by the Strategic Partnership Agreement executed between the District and the City.

1.07. Director: means the Director of the Austin Water Utility or the Director's authorized designee.

1.08. Effective Date: means the last date of execution of this Water and Wastewater Agreement.

1.09. EPA: means the United States Environmental Protection Agency.

1.10. Full Purpose Annexation Date: means 12:01 a.m., December 31, 2017.

1.11. Industrial Waste: means industrial waste as defined in Chapter 15-10 of the 2009 Austin City Code, as amended.

1.12. Infiltration and Inflow: means water that has migrated from the ground or through direct sources into a Wastewater system.

1.13. O&M Transfer Date: means October 1, 2014.

1.14. Prior Out-of-District Agreements: means the Interlocal Agreement Regarding Water Storage, executed on August 23, 2007, with LCRA; Agreement Regarding Wholesale Water Service and Donation of Park Funds, executed on January 22, 2001, with LCRA; Wholesale Division, Treatment and Water Supply Contract between River Place Municipal Utility District and the Lower Colorado River Authority, executed on May, 1, 2001; and Wholesale Division, Treatment and Water Supply Contract, executed on March 31, 2000, with Glenlake Water Supply Corporation; and the City's authorization for the District to provide out-of-District water service to "Webb Estates" and "Slover Tract", proposed subdivisions in Travis County, Texas.

1.15. Prior Utility Agreements: means the First Amended Agreement for Water Supply and Effluent Disposal, executed on January 28, 1997, with First River Place Reserve, LTD; the First Amended Raw Water Diversion and Supply Contract, executed on March 1, 2005, with River Place Golf Group LP, Inc.; Water Sale Contract for Municipal Uses, executed on August 28, 1991, with the Lower Colorado River Authority ("LCRA"); 1st Amendment to Water Sale Contract No. 12569, executed on June 27, 1995, with LCRA; 2nd Amendment to Water Sale Contract No. 12569, executed on August 22, 1997, with LCRA; and 3rd Amendment to Water Sale Contract No. 12569, executed on September 24, 1999, with LCRA.

1.16. Reclaimed Water: means treated wastewater effluent for irrigation purposes.

1.17. Retail Wastewater System: means the collection lines; lift stations; mains; residential, commercial, and industrial connections; the District-owned facilities necessary for the storage and

transportation of reclaimed water; the areas within the fenced areas surrounding the various components of the wastewater system and any other parts or components that comprise the public wastewater system serving the retail customers located within the Service Area.

1.18. Retail Water System: means the lines; reservoirs; pump stations; mains; residential, commercial, and industrial connections; those facilities associated with the transportation of untreated water from Lake Austin to the water treatment plant; the areas within the fenced areas surrounding the various components of the water system and any other parts or components that comprise the public water system serving the retail customers of the Service Area.

1.19. Service Area: means a portion of District's boundaries and City approved out-of-district areas as more particularly designated on Attachment 1.

1.20. Service Plan: means the Annexation Service Plan, attached as Attachment F to the Strategic Partnership Agreement.

1.21. Sewage: means water-borne human excretae and gray water.

1.22. Strategic Partnership Agreement: means that certain Strategic Partnership Agreement Between the City of Austin and the River Place Municipal Utility District, executed simultaneously herewith on the Effective Date.

1.23. Waste or Wastewater: means liquid or water borne waste, including, without limitation, sewage, industrial waste, or other wastes, whether separate or commingled.

1.24. Water: means potable water meeting the requirements of the Commission for human consumption and other domestic uses.

ARTICLE II. WATER AND WASTEWATER SERVICE

2.01. Amendment to Emergency Water Service. On May 30, 2001, the District and the City entered into the Agreement for Emergency Water Service regarding the provision of emergency water service to the District from the City. Section 7.01 of the Agreement for Emergency Water Service shall be amended to read:

7.01 Term. The term of this Agreement shall be effective until October 1, 2014, upon which date the City assumes operation and maintenance of the District's water and wastewater facilities and this Agreement terminates.

Section 7.02 of the Agreement for Emergency Water Service is deleted. All other provisions of the Agreement for Emergency Water Service are in full force and effect.

2.02. Consent Agreement and Applicable Laws and Regulations. In accordance with the Strategic Partnership Agreement, the District's obligations under this Water and Wastewater Agreement shall be governed by the Consent Agreement; *provided however*, that to the extent there is any conflict between this Water and Wastewater Agreement and the Consent Agreement, the terms of this Water and Wastewater Agreement shall prevail. Moreover, the obligations of the District and the City under this Water and Wastewater Agreement shall be performed in accordance with all applicable federal, state and local laws and regulations.

2.03. Operation and Maintenance by the District. The Parties agree that before the O&M Transfer Date, the District shall be solely responsible for operation and maintenance of the Retail Water System and Retail Wastewater System, and except as modified by the section herein titled "City's Criticality Assessment", such responsibility shall be performed at the same level as before the Effective Date and in accordance with generally accepted industry standards in Texas and manufacturer's standards for property of that type.

2.04. Operation and Maintenance by the City. Beginning on the O&M Transfer Date, the City will assume all responsibility for operating and maintaining the Retail Water System and Retail Wastewater System. The City shall operate and maintain the Retail Water System and Retail Wastewater System and provide water and wastewater services to customers in the District pursuant to this Water and Wastewater Agreement and the Service Plan at the same level as in the District 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 this 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 this 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 Water and Wastewater Agreement, 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.

Beginning on the O&M Transfer Date, the City shall honor and assume all the District's utility obligations, specifically including, by way of example and not in limitation, those obligations to provide service as set forth in the Prior Utility Agreements.

2.05. Commission Orders or Violations. If the Commission issues any form of order or penalty for violations, of applicable law that occur before the O&M Transfer Date, and that result from operation, maintenance, or other program associated with the Retail Water System, the District is solely responsible for and will take all necessary action to comply with, or otherwise respond to, the order as it pertains to those violations. If the Commission issues any form of order or penalty for violations, of applicable law that occur on or after the O&M Transfer Date, and that result from operation, maintenance, or other program associated with the Retail Wastewater System, the City is solely responsible for and will take all necessary action to comply with, or otherwise respond to, the order as it pertains to those violations.

2.06. Water Conservation Program. The District shall adopt, within 90 days of the Effective Date, and enforce the City's water conservation program including measures and goals, as amended.

2.07. Provision of Water Service to Out-of-District Customers. The District shall continue to provide out-of-District water service to its current out-of-district customers until the O&M Transfer Date. Beginning on the O&M Transfer Date, the City shall honor and assume all the District's utility obligations, specifically including, by way of example and not in limitation, those obligations to provide service as set forth in the Prior Out-of-District Agreements.

ARTICLE III. COMPLIANCE WITH STATE LAWS AND CITY REGULATIONS

3.01. Service Outside District; Enlargement of District Boundaries or Service Area. Without prior written consent of the City, the District will not initiate any proceedings to enlarge its jurisdictional boundaries through any other agency or court of competent jurisdiction.

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

3.03. Cooperation to Assure Regulatory Compliance. Because both Parties must comply with all federal, state, and local requirements to obtain permits, grants, and assistance for system construction, studies, etc., the District and the City will cooperate in good faith at all times to assure

compliance with any such governmental requirements where noncompliance or noncooperation may subject the Parties to penalties, loss of grants or other funds, or other adverse regulatory action.

ARTICLE IV. RATES, CHARGES, AND BILLING

4.01. Rates and Charges. Prior to the O&M Transfer Date: (1) the District shall fix and collect rates and charges for water and wastewater service to its customers that are, in the opinion of the District's Board of Directors, sufficient, together with any other revenues and funds available to the District, to produce the amount necessary to operate, repair, and maintain the Retail Water System, Retail Wastewater System, pay its debt, and to pay the cost of emergency water service from City under the Agreement for Emergency Water Service; (2) the District shall be solely responsible for ensuring that its rates and charges are determined and collected in accordance with applicable law; and (3) the District shall continue to provide customer billing, collection, and customer inquiry services as was provided as of the Effective Date for all of its retail and out-of-district customers.

Commencing on the O&M Transfer Date, the City shall charge the customers in the District in-city rates for water and wastewater service, and the City shall provide customer billing, collection, and customer inquiry services for all retail and out-of-district customers within the Service Area at the same level as provided by the District before the O&M Transfer Date.

4.02. District Responsible for Approval of Connections. Prior to the O&M Transfer Date: (1) the District will be solely responsible for the appropriate allocation of water and wastewater capacity among its retail and out-of-district customers within the Service Area; and (2) the District will be responsible for ensuring compliance by its customers with the applicable terms of this Water and Wastewater Agreement and for the proper and lawful application of District policies and ordinances governing connection to the Retail Water System and Retail Wastewater System.

Commencing on the O&M Transfer Date: (1) the City will be solely responsible for the appropriate allocation of water and wastewater capacity among the retail and out-of-district customers within the Service Area; and (2) the City will be responsible for ensuring compliance by its customers with the applicable terms of this Water and Wastewater Agreement and for the proper and lawful application of City policies and ordinances governing connection to the Retail Water System and Retail Wastewater System.

4.03. Customer Fees. Prior to the O&M Transfer Date, the District shall be solely responsible for the proper exercise of its governmental power to assess and collect fees, rates, taxes, or other charges associated with the operation and maintenance of the Retail Water System and Retail Wastewater System and for ensuring that the assessment and collection of the same is in compliance with applicable law. Commencing on the O&M Transfer Date, the City shall be solely responsible for the proper exercise of its governmental power to assess and collect fees, rates, or other charges associated with operation and maintenance of the Retail Water System and Retail Wastewater System and for ensuring that the assessment and collection of the same is in compliance with applicable law.

4.04. District Fees Charged to the City. The District agrees that it shall not charge the City any fees or charges or require any licenses related to the City's ownership or the District's current and the City's future operations and maintenance of the Retail Water System and Retail Wastewater System located within the Service Area.

4.05. Transfer of Customer Records. The District agrees to provide, in an electronic form acceptable to the City and at no cost to the City, all necessary customer billing records and information in order for the City to assume billing responsibilities on the O&M Transfer Date, no later than 30 days from the receipt of the City's request.

ARTICLE V. CONSTRUCTION OF FACILITIES

5.01. District Responsibilities. Prior to the O&M Transfer Date, the District shall be solely responsible for design, engineering, financing, construction, installation, inspection, operation, maintenance, repair, and replacement of all facilities within the Retail Water System and Retail Wastewater System. After the O&M Transfer Date, the City shall be solely responsible for design, engineering, financing, construction, installation, inspection, operation, maintenance, repair, and replacement of all facilities within the Retail Water System and Retail Wastewater System.

5.02. No Private Lines; Reselling of Water. The District has no knowledge of any existing, and shall prohibit the installation of new, privately owned water lines, mains, or appurtenances installed, maintained, or utilized in the public right-of-way within the Service Area in this Water and Wastewater Agreement.

5.03. Acquisition of Rights-of-Way. The District represents and warrants that to the best of its knowledge, it has all required easements and access rights required to access, own, and operate the Retail Water System and Retail Wastewater System, either by instrument, plat dedication or by prescription, and the District transfers and assigns said rights to the City in accordance with the terms of this Water and Wastewater Agreement. In the event that any third person successfully challenges the City's exercise of any such rights prior to the O&M Transfer Date, the District agrees to fully cooperate with the City and take all reasonable actions at the District's expense to defend or establish such rights.

ARTICLE VI. SERVICE AREA AND LIMITATIONS ON SERVICE

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

(a) Except for the Prior Out-of-District Agreements, the District may not provide or construct or install facilities to provide Water, Reclaimed Water, or Wastewater service outside the Service Area without the prior approval of the Austin City Council;

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

(c) If the District provides Water, Reclaimed Water, or Wastewater service outside the Service Area in violation of subsection (a) above, the City may require the District to immediately terminate service to the land outside the Service Area; and

(d) Except as authorized before the Effective Date, the District may not connect any customer that the District knows provides Water, Reclaimed Water, or Wastewater service directly or indirectly to another person or entity outside the Service Area. The District will immediately terminate the service of any such customer once it discovers any such connection.

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

ARTICLE VII. OWNERSHIP OF FACILITIES

7.01. Transfer of Ownership.

(a) Upon the Effective Date of this Water and Wastewater Agreement, and except as otherwise provided below, the District will grant, bargain, sell, assign, and convey:

1. Vehicles, equipment, tools, and appurtenances more particularly described on Attachment 2 ("Conveyed Equipment");

2. The Retail Water System and the Retail Wastewater System ("Conveyed Water and Wastewater Facilities") more particularly shown on Attachment 3 (Water Facilities) and Attachment 4 (Wastewater Facilities); and all easements, plans and specifications, warranties, guaranties, license agreements, performance bonds, as-built plans, that are directly related to the Conveyed Water and Wastewater Facilities;

3. The existing easements ("Easements") to the lands situated in the County of Travis, State of Texas, as more particularly shown on Attachment 5 (Conveyed Easements); and

4. The lands ("Conveyed Property") situated in the County of Travis, State of Texas, described on Attachment 6 (Conveyed Property),

and all other such infrastructure, and personal and real property necessary to own, operate, and maintain the Retail Water System and Retail Wastewater System(collectively, "Utility Property"), to the City, together with all and singular the rights, interests, and appurtenances thereto in any wise belonging. The Parties specifically agree that the District shall retain full ownership of, and not convey its parklands and any areas not specifically conveyed hereby; or any other personal or real property interests not reasonably required for the City's operation and maintenance of the water, wastewater, and reclaimed water infrastructure being conveyed hereby. With respect to any untreated water, treated water, reclaimed water, or wastewater infrastructure located in the real property being retained by the District, the District agrees to convey to the City an easement, (Attachment 7), within such properties for the City to access, operate, replace, and maintain such infrastructure effective on the O&M Transfer Date. The District agrees to take no action that would impair or interfere with the City's easement rights or ability for the City to perform its duties and responsibilities.

(b) The District agrees that as part of the conveyance of the Utility Property, it is conveying to the City the portion of the tracts on which the Conveyed Water and Wastewater Facilities are located. The District agrees that none of the provisions in this Article shall be construed to relieve the District of any obligation to construct infrastructure improvements required by this Water and Wastewater Agreement, including by way of example, and without limitation, improvements required by maintenance in Section 7.02, as a result of the criticality assessment in Section 7.06, or by phosphorus removal in Section 7.07 hereof.

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

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

(e) Further, as to title to the Utility Property, the District warrants and represents to the City that: (1) it has no knowledge of any title defect; (2) to the best of its knowledge, its title is free and clear of the rights of persons other than the District; and (3) to the best of its knowledge, its interest is free and clear of all mechanic's liens, liens, mortgages, or encumbrances of any nature and no work has been performed or begun by the District, and no materials have been furnished which might give rise to mechanic's, materialman's, or other liens against the Utility Property, or the City's title therein, or any portion thereof; and (4) that it has neither assigned, pledged, or otherwise in any manner whatsoever sold or agreed to sell or transfer by an instrument in writing or otherwise the Utility Property to any other person or entity.

7.02. Utility Property During Period Prior to O&M Transfer Date. If the District replaces or purchases real or personal property, between the Effective Date of this Water and Wastewater Agreement and the O&M Transfer Date, that could be categorized as Conveyed Equipment, Conveyed Water and Wastewater Facilities, or Easements (or reasonably be considered for the use of operating and maintaining such water and wastewater facilities), the District agrees to provide to the City a list of these items prior to the O&M Transfer Date. All such replacements or purchases shall be conveyed to the City under the same terms hereto on the O&M Transfer Date, and such lists shall amend the attachments of Conveyed Equipment, Conveyed Water and Wastewater Facilities, or Easements. The District and the City agree that they will execute an amendment to this Water and Wastewater Agreement for that purpose, and only that purpose, prior to the O&M Transfer Date, without charge to or additional consideration from the City. The Parties agree that title changes, required by the State, for replacement or new Conveyed Equipment will occur within 30 days of the purchase or the Effective Date of this Water and Wastewater Agreement, whichever occurs last. The City shall pay title transfer fees but without any charge by the District or additional consideration from the City. The District agrees to promptly provide all necessary information and assistance to complete the title transfer transaction.

Within a reasonable time prior to the O&M Transfer Date, the District shall assign, transfer and convey to the City all specifications, warranties, guaranties, license agreements, performance bonds, maintenance records, correspondence, contracts, data, documents, customer accounts, customer records, and other assurances of performance, permits, consents, and other rights, if any, that are directly related to the Conveyed Equipment or the Conveyed Water and Wastewater Facilities.

The District agrees to notify, in September of each year, City staff of capital purchases or changes concerning the operation, maintenance, and management of the Retail Water System and Retail Wastewater System. The District agrees not to enter into any contracts with third parties that would have the effect of being inconsistent with this Water and Wastewater Agreement or would impair or interfere with the City's ownership of the Retail Water System and Retail Wastewater System or the City's future operation and maintenance of the Retail Water System and Retail Wastewater System.

7.03. Utility Property Upon O&M Transfer Date.

(a) Upon the O&M Transfer Date, the District is solely responsible for and will continue to provide, without charge to the City, ground maintenance for the Easements, areas outside of the fenced area for the Conveyed Water and Wastewater Facilities, and areas outside of the concrete pads for any unfenced area of the Conveyed Water and Wastewater Facilities. Beginning on the O&M Transfer Date, the City shall provide, at its own expense, ground maintenance inside the fenced areas surrounding the Conveyed Water and Wastewater Facilities.

(b) Upon the O&M Transfer Date, the City shall be solely responsible for road maintenance up to streets within the Conveyed Property. The City agrees to allow the District to retain ingress and egress rights of such roads within the Conveyed Property only to the extent that: 1) the District uses such roads responsibly and does not create any conditions for abnormal wear or erosion, 2) the District confines its ingress and egress to areas outside of the fenced areas of the Conveyed Property,

and 3) the District agrees not to access, operate, or maintain any of the Conveyed Equipment or Conveyed Water and Wastewater Facilities.

7.04. Transfer of Water Quality No-Discharge Permit. Within 30 days of the Effective Date of this Water and Wastewater Agreement, the District agrees to file, at the City's cost, a co-permittee transfer application to the Commission for the City and the District to be co-permittees for the wastewater treatment plant. The District agrees to maintain the water quality no-discharge permit (WQ0011514001) for its wastewater treatment plant until the City assumes operation and maintenance of the District's water and wastewater facilities on the O&M Transfer Date. The District agrees to pay all applicable fees associated with the permit. Within 30 days of the O&M Transfer Date, the City agrees to file, at its cost, a transfer application to the Commission for the City to be sole permittee for the wastewater treatment plant. The City agrees to maintain the water quality no-discharge permit (WQ0011514001) for its wastewater treatment plant after the O&M Transfer Date. The City agrees to pay all applicable fees associated with the permit after the O&M Transfer Date.

7.05. City's Use of Facilities. If the EPA or the Commission issues any form of order or penalty for violations of applicable law resulting from the City's use of Utility Property, the City is responsible for and will take all necessary action to comply with, or otherwise respond to, the order upon prior notice to the District, except for emergencies. To the extent permitted by law, the City agrees to hold the District harmless for violations that arise out of the actions or inactions of the City and which do not arise out of the actions or inactions of the District.

7.06. City's Criticality Assessment.

(a) The City, with the cooperation of the District, will conduct a criticality assessment of the Retail Water System and Retail Wastewater System no later than January 1, 2012. The City's criticality assessment report will specifically identify each area for improvement and a schedule for completion. The City will provide the District a written copy of the report.

(b) Subject to subsection (c) below, by July 1, 2014, the District agrees that all City-identified infrastructure improvements from the criticality assessment that are considered maintenance activities will be funded and completed. These may include, but are not limited to, such items as: pump overhauls; replacement of aging electrical wiring or electrical equipment; painting; repair of identified damaged or cracked water or wastewater mains, or manholes; additional portable generators; removal of silt and debris and repair of damaged liner at the Reclaimed Water holding pond; maintenance of water valves and fire hydrants, replacement/repair of water valves or fire hydrants not properly working; repair or replacement of plant equipment in accordance with generally accepted industry standards and practices; easements or modifications of lift station facilities to allow emergency equipment to access each lift station; and repair or replacement of plant equipment that has been deemed a risk to public health or safety. The City's criticality assessment will include a proposed schedule for completing infrastructure improvements. Upon receipt of the City's criticality assessment and proposed schedule for infrastructure improvements, the District shall prepare a proposed list and schedule of infrastructure improvements, which may or may not be identical to the City's schedule and list of infrastructure improvements within 60 days of receipt of

the City's criticality assessment. Any subsequent proposed modifications to a list and schedule of infrastructure improvements by either Party shall be responded to in writing within 60 days of receipt by the Party receiving such document.

(c) The improvements made by the District under this Section 7.06 shall only include any replacement of equipment, repairs, or improvements that show a need of repair in accordance with generally accepted industry standards and practices or are necessary to comply with Commission rules. If the District disagrees with the list of infrastructure improvements identified by the City, or if the City disagrees with the District's schedule for completion or list of infrastructure improvements, the Parties will first attempt to mediate with a mutually acceptable mediator a mutually acceptable resolution within 60 days of such disagreement. If mediation fails, a mutually acceptable arbitrator will meet with the Parties within 60 days of either Party's request and will make the final binding determination (either: (i) the District performs the improvement according to the City's schedule and assumes the cost of the improvement; (ii) the District performs the improvement according to the District's schedule; (iii) the District is not required to adopt the City's requested improvement); or (iv) as otherwise determined by the arbitrator within 3 business days of the joint meeting. The Parties agree the cost of the arbitrator shall be borne by the Party against whom the arbitrator makes the determination.

(d) The District agrees to use its best efforts at all times to complete the mutually agreed upon improvements by the dates set out in this Section. If any of the improvements will unavoidably not be completed by July 31, 2014, the City and the District may agree to modify the deadline date, but no later than September 30, 2014 for any item. If any of the improvements are not completed within the modified schedule, the City may, after notice to the District and opportunity to cure not less than 30 days, pursue the remedies available to the City under Article VIII of this Water and Wastewater Agreement; provided, however, that such remedies shall not be available if the delay is caused by force majeure.

7.07. Phosphorus Removal. By September 30, 2014, the District agrees to implement continuous treatment for phosphorus at the wastewater treatment plant so as to achieve a significant improvement in phosphorus removal. The Parties intend for the wastewater treatment plant to substantially achieve a 1 mg/l treatment level for phosphorus through introduction of a coagulant in the wastewater treatment process. Prior to the O&M Transfer Date, the water quality no-discharge permit shall not be amended to require such treatment and thereafter, the City shall have the sole discretion to modify the water quality no-discharge permit.

7.08. Water and Wastewater Funding. 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 as set forth in Section 3.03 of the SPA. The District shall continue to make timely payments for all debt owed by the District until October 1, 2017.

7.09. Post-Annexation Surcharge. The City may not charge the Limited District's residents a post-annexation surcharge for any purpose.

ARTICLE VIII. TERM, PERFORMANCE, AND FORCE MAJEURE

8.01. Term of Agreement. This Water and Wastewater Agreement shall commence on the Effective Date and terminate on the Full Purpose Annexation Date.

8.02 Default and Remedies. In the event that one Party believes that the other Party is in default of any of the provisions in this Water and Wastewater Agreement, the nondefaulting Party will make written demand to cure to the defaulting Party and give the defaulting Party up to thirty days to cure the default or, if the curative action cannot reasonably be completed within thirty days, the defaulting Party will commence the curative action within thirty days and thereafter diligently pursue the curative action to completion. This period must pass before the nondefaulting Party may initiate any remedies available to the nondefaulting Party due to such default. The nondefaulting Party shall mitigate direct or consequential damages arising from any default to the extent reasonably possible under the circumstances. The Parties agree that they will use their best efforts to resolve any disputes and may engage in nonbinding arbitration or other alternative dispute resolution methods as recommended by the laws of the State of Texas before initiating any lawsuit to enforce their rights under this Water and Wastewater Agreement. The Parties shall have all remedies available in law or in equity, and nothing in this Water and Wastewater Agreement shall be construed to limit either Party's right to recover damages or to seek other authorized and appropriate curative remedies if a breach of contract action is filed by a nondefaulting Party to this Water and Wastewater Agreement. The Parties agree that the remedies for a breach of this Water and Wastewater Agreement by either Party shall be controlled by the breach and remedy provisions set forth in this Water and Wastewater Agreement, and not by the breach and remedy provisions of the Strategic Partnership Agreement being executed by the Parties simultaneously herewith.

8.03. Effect of Force Majeure. In the event that either Party is rendered unable by force majeure to carry out any of its obligations under this Water and Wastewater Agreement, whether in whole or in part, then the obligations of that Party, to the extent affected by the force majeure, shall be suspended during the continuance of the inability, provided, however, that due diligence is exercised to resume performance at the earliest practicable time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the Party whose contractual obligations are affected thereby shall give notice and full particulars of the force majeure to the other Party. The cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure" includes 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. GENERAL PROVISIONS

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

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

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

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

With required copy to:
Phil Haag
600 Congress Avenue
Suite 2100
Austin, Texas 78701

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

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

9.03. Interlocal Cooperation. The City and the District shall cooperate with each other at all times so as to promote the efficient performance of the obligations of this Water and Wastewater Agreement.

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

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

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

9.07. Third Party Contracts. The City agrees to honor and assume all of the District's obligations under agreements with parties, other than the City, related to the provision of water, reclaimed water, and wastewater services to other entities, and the District represents and warrants that, to the best of its knowledge, the agreements identified as Prior Utility Agreements and Prior Out-of-District Agreements constitute all such agreements and a copy of each agreement has been provided to the City prior to the execution of this Water and Wastewater Agreement. The District agrees that the City may negotiate and execute any new agreements related to the Prior Utility Agreements and Prior Out-of-District Agreements, without the consent of the District, only if they would not be effective until after the O&M Transfer Date.

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

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

9.10. Independent Contractor. The District and City shall have the status of an independent contractor hereunder and shall be solely responsible for the proper direction of their respective employees hereunder, and the District's employees shall not be considered employees or borrowed servants of the City for any reason, and the City's employees shall not be considered employees or borrowed servants of the District for any reason.

9.11. No Third Party Beneficiary. This Water and Wastewater Agreement shall be construed as an interlocal contract respecting the performance of governmental services and nothing herein shall

be construed to confer any right, privilege, or benefit on any person or entity not a party hereto or otherwise creates any vested right or third party beneficiary relationship.

9.12. Governing Law. This Water and Wastewater Agreement shall be construed under the laws of the State of Texas and all obligations of the Parties are deemed performable in Travis County, Texas.

9.13. Venue. Venue for any suit arising under this Water and Wastewater Agreement shall be in Travis County.

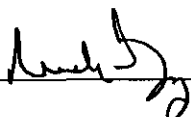
9.14. Assignment. This Water and Wastewater Agreement or any obligation hereunder, may not be assigned by either Party without the prior written consent of the other Party.

9.15. Multiple Originals. This Water and Wastewater Agreement may be executed in multiple originals, each of equal dignity.

9.16. Effective Date. This Water and Wastewater Agreement shall become effective upon the date last date of execution.

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

CITY OF AUSTIN:

By: 

Name: Rudy Garza

Title: Assistant City Manager

Date: 9/3/09

RIVER PLACE MUNICIPAL UTILITY DISTRICT:

By: _____

Name: James Casey

Title: President

Date: _____

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

CITY OF AUSTIN:

By: _____

Name: Rudy Garza

Title: Assistant City Manager

Date: _____

**RIVER PLACE MUNICIPAL UTILITY
DISTRICT:**

By:  _____

Name: James Casey

Title: President

Date: 9/7/2009

THE STATE OF TEXAS)

)

COUNTY OF TRAVIS)

THIS INSTRUMENT is acknowledged before me on this 3rd day of September, 2009, by Rudy Garza as Assistant City Manager of the City of Austin, Texas, a municipal corporation, on behalf of that municipal corporation.

Susan Palmer

Notary Public, State of Texas

Susan Palmer

Printed/Typed Name of Notary



My Commission Expires: 10/13/2009

THE STATE OF TEXAS)

)

COUNTY OF TRAVIS)

THIS INSTRUMENT was acknowledged before me on this ____ day of _____, 2009 by James Casey, President of the Board of Directors of River Place Municipal Utility District, a conservation and reclamation district created and operating as a municipal utility district, on behalf of that district.

Notary Public, State of Texas

Printed/Typed Name of Notary

My Commission Expires: _____

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

THIS INSTRUMENT is acknowledged before me on this ____ day of _____, 2009, by Rudy Garza as Assistant City Manager of the City of Austin, Texas, a municipal corporation, on behalf of that municipal corporation.

Notary Public, State of Texas

Printed/Typed Name of Notary

My Commission Expires: _____

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

THIS INSTRUMENT was acknowledged before me on this 7th day of September, 2009 by James Casey, President of the Board of Directors of River Place Municipal Utility District, a conservation and reclamation district created and operating as a municipal utility district, on behalf of that district.



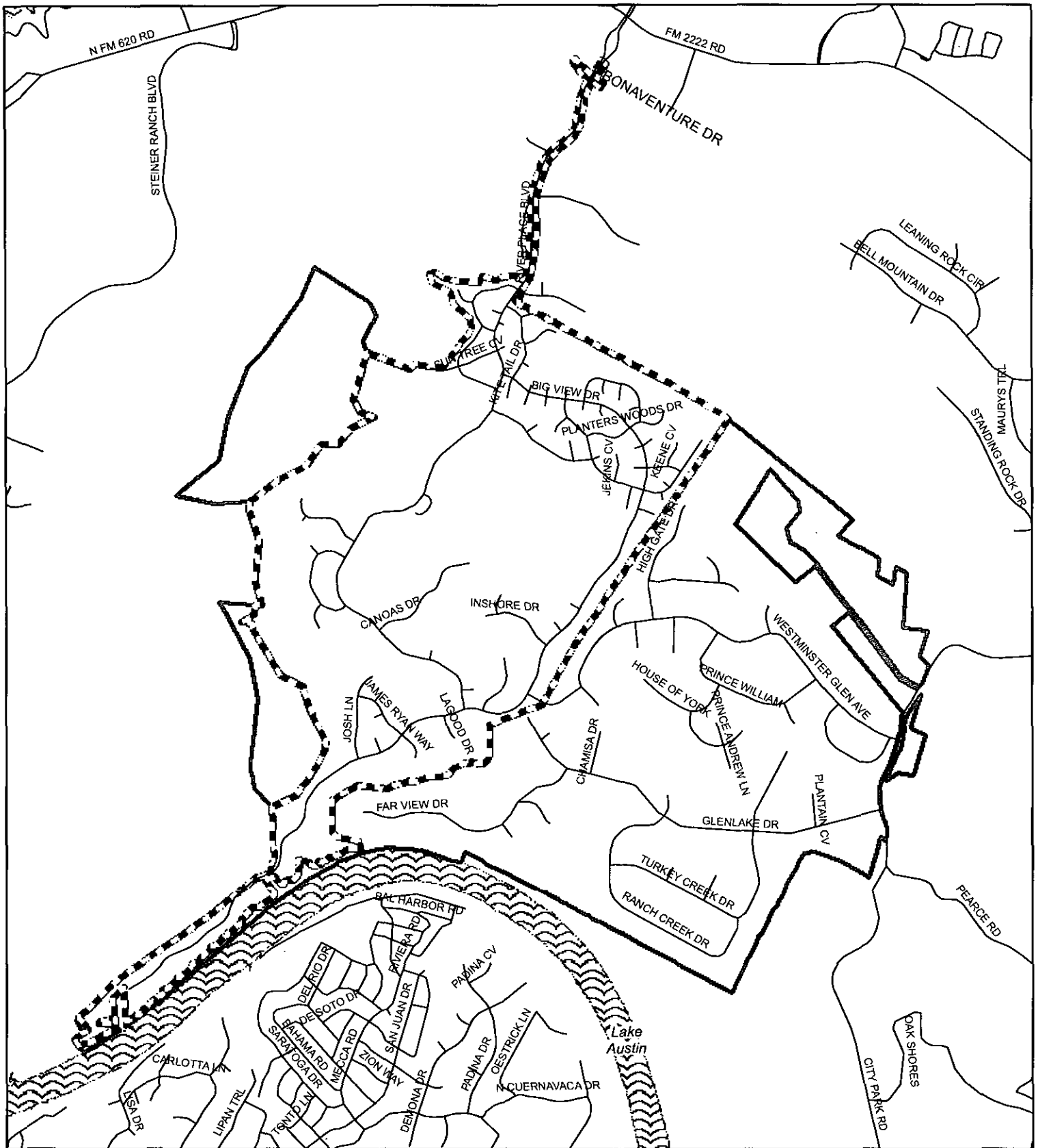
Notary Public, State of Texas

SUSAN E. HEIL

Printed/Typed Name of Notary

My Commission Expires: 8-24-10

ATTACHMENT 1
MAP OF SERVICE AREA



Attachment 1 Map of River Place Service Area



City of Austin
PDR
August 21, 2009

This map is for illustrative purposes only and does not reflect the results of an on-the-ground survey.

Legend

- River Place Service Area
- River Place MUD Boundary
- Lake

0 500 1,000 2,000 3,000 4,000 Feet



ATTACHMENT 2
CONVEYED EQUIPMENT TO THE CITY

**River Place Municipal Utility District
Mobile Equipment
As of September 3, 2009**

The District does not own automobiles, service vehicles, backhoes, trailers, mobile pumps or safety equipment.

The only mobile equipment owned by the District is a trailer mounted 50 KW Generec 94A052 Mobile Generator for the use of emergency power to operate the systems sewer lift stations.

The District contracts with Severn Trent Services for operations, maintenance and repair services. The contractor is required to provide all vehicles and equipment needed to provide the service.

ATTACHMENT 3
CONVEYED WATER FACILITIES TO THE CITY

River Place Municipal Utility District Water Facilities

Raw Water Treatment:

The District's Raw Water Pump Station is located along Big View within the limits of the district. The intake structure consists of two 200hp pumps and one reserve 250hp pump. The raw water is stored in one 132,000 gallon Raw Water Storage Tank.

Water Treatment Plant (WTP):

The WTP is located at 8825 Big View Drive and has a rated capacity of 4.6MGD. The WTP consists of two individual clarifier chambers and five media filters, an on-site basin, one 100gpm decant pump and two 150,000 gallon Clearwell Tanks.

High Service Pump Station:

The High Service Pump Station is located at 8825 Big View Drive. There are two 350hp pumps at this location.

Booster Pump Station (BPS):

The Booster Pump Station is located at the end of Range View Drive. The electrical service is noted as 4902 Range View Drive. The BPS site contains three 400hp pumps and one 750,000 gallon Ground Storage Tank

Elevated Tank:

The 500,000 gallon Elevated Tank is located at 10611 ½ Sun Tree Cove.

Glen Lakes Master Meter:

The Glen Lakes Master Meter is located at 5006 ½ High Gate Drive.

ATTACHMENT 4
CONVEYED WASTEWATER FACILITIES TO THE CITY

River Place Municipal Utility District Wastewater Facilities

Wastewater Treatment Plant (WWTP):

The WWTP is located at 8825 Big View Drive #B. The WWTP consists of one 140,000 gallon extended aeration basin, one 149,091 gallon clarifier, one 57,000 gallon aerobic digester, six media/sand filters totaling 384 square feet and one 43,000 gallon chlorine contact basin and two centrifugal blowers.

Treated Effluent Storage Pond:

The Treated Effluent Storage Pond is located at the end of Range View Drive. The pond was constructed to an approximate dimension of 1,200' x 300', providing 73.5 acre feet of storage with a maximum depth of 34' including 2' of freeboard and a 36mil reinforced high density polyethylene liner.

Lift Stations:

Lift Station #1 is located at 10806 Pelican Point.

Lift Station #2 is located at 8825 Big View Drive; electrical service is noted as 3964 ½ River Place Blvd.

Lift Station #3 is located at 10401 ½ Laurel Hill Cove.

Lift Station #4 is located at 9851 ½ Big View Drive.

Lift Station #5 is located at 4901 China Garden Drive.

Lift Station #6 is located at 10204 ½ Scull Creek.

Lift Station #7 is located on Canoas Drive; electrical service is noted as 3965 River Place Blvd.

Lift Station #8 is located 5000 River Place Blvd.