

**AMENDED AND RESTATED  
STRATEGIC PARTNERSHIP AGREEMENT BETWEEN  
THE CITY OF AUSTIN AND  
LOST CREEK MUNICIPAL UTILITY DISTRICT**

THE STATE OF TEXAS           §

COUNTY OF TRAVIS           §

KNOW ALL MEN BY THESE PRESENTS:

This Amended and Restated Strategic Partnership Agreement Between the City of Austin, Texas and the Lost Creek Municipal Utility District, Travis County, Texas (“Agreement”) is made and entered into by and among the City of Austin, a municipal corporation, acting by and through its duly authorized City Manager (“City”); and Lost Creek Municipal Utility District (“District”), acting by and through its duly authorized Board of Directors, under the authority of Section 43.0751 of the Texas Local Government Code (“Local Government Code”).

**RECITALS**

1. The District is a municipal utility district created under Chapter 54 of the Texas Water Code. All of the territory within the District is located within the corporate boundaries or extraterritorial jurisdiction of the City in Travis County, Texas. The District encompasses approximately 789 acres, more or less. Its boundaries are described in Exhibit “A” and depicted on Exhibit “F” attached to this Agreement.
2. The City is a municipal corporation established by and chartered under Chapter 90, Page 634, of the Special Laws of Texas, 1909, 31st Legislature.
3. The City amended its Municipal Annexation Plan on December, 31 2005, to include the District and desires to annex all of the District, which would result in the dissolution of the District and the City succeeding to all of the District’s powers, duties, assets, and obligations. The City provided public notice and held two public hearings on the full purpose annexation of the District on August 10, 2006, and August 14, 2006, at which all interested persons were given the opportunity to speak.
4. Representatives of the City and the District met to negotiate an annexation service plan in September and October of 2006. In accordance with Section 43.0751(a) of the Local Government Code, the District submitted a written request to the City for negotiation of a strategic partnership agreement on October 12, 2006. A copy of the request is attached to this Agreement as Exhibit “B.” Thereafter, the parties negotiated the terms of a strategic partnership agreement.
5. The District provided notice and conducted two public hearings regarding the proposed strategic partnership agreement in accordance with procedural requirements of Section 43.0751 of the Local Government Code on May 12, 2007, at the District’s Administrative Office and on May 19, 2007, at the District’s Administrative Office.

6. The City provided notice and conducted two public hearings regarding the proposed strategic partnership agreement in accordance with procedural requirements of Section 43.0751 of the Local Government Code on May 3, 2007, at the City Council Chambers and on May 17, 2007, at the City Council Chambers.
7. On June 19, 2007, the Board of Directors of the District elected not to approve the proposed strategic partnership agreement. Thereafter, in accordance with Section 43.0752 of the Texas Local Government Code, the City and the District participated in arbitration regarding the terms and conditions of the proposed strategic partnership agreement. On August 31, 2007, the arbitrator entered a "Summary Award in Arbitration" approving the form of the strategic partnership agreement proposed by the City. The District subsequently appealed the arbitrator's decision to the Third Court of Appeals, and on February 14, 2008, the court entered that certain "Agreed Final Judgment" adopting the form of the strategic partnership agreement proposed by the City with certain modifications thereto agreed upon by the parties. The form of the strategic partnership agreement approved by the Agreed Final Judgment is hereinafter referred to as the "Original Strategic Partnership Agreement."
8. The parties now desire to amend and restate the terms of the Original Strategic Partnership Agreement to, among other matters, provide for conversion of the District into a limited district in accordance with Section 43.0751(f)(6) of the Texas Local Government Code, and to provide for the expedited transfer of water and wastewater operations from the District to the City.
9. The District has, by formal action, approved this Agreement on \_\_\_\_\_, 2013 in open session at a meeting held in accordance with the Open Meetings Act.
10. The City has, by formal action, approved this Agreement on \_\_\_\_\_, 2013 in open session at a meeting held in accordance with the Open Meetings Act.
11. All procedural requirements imposed by state law for the adoption of this Agreement have been met.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained in this Agreement, and other good and valuable consideration, the City and the District agree as follows:

## **ARTICLE I**

### **DEFINITIONS, PURPOSE, AND LEGAL AUTHORITY**

#### **Section 1.01 Terms Defined in this Agreement.**

In this Agreement, each of the following terms shall have the meaning indicated:

- a. "Agreement" means this Amended and Restated Strategic Partnership Agreement Between the City of Austin and the Lost Creek Municipal Utility District.
- b. "City" means the City of Austin, Texas.
- c. "Commercial Property" means the property identified on Exhibit "C".
- d. "Consent Agreement" means the agreement between the City and the original developers of the District, entitled "Agreement on Lost Creek Municipal Utility District," executed 07/24/1972,

which was superseded by that certain “Revised Agreement on Lost Creek Municipal Utility District,” executed 07/07/1977, which was supplemented and amended by that certain “First Supplement to Revised Agreement on Lost Creek Municipal Utility District” executed on 06/22/1990 (the “First Supplement”), which are incorporated for all purposes herein.

- e. “Conversion Date” means the date of conversion of the District into the Limited District, which shall be the Full Purpose Annexation Date, provided the Limited District Election Proposition is approved by a majority of voters at the Limited District Election.
- f. “District” means the Lost Creek Municipal Utility District, Travis County, Texas.
- g. “District Boundaries” means the boundaries of the District as they now exist, as such boundaries are more particularly described in Exhibit “A” and depicted on Exhibit “F” attached to this Agreement.
- h. “District Office Tract” means Lot 1, Block C, of the Hills of Lost Creek Section 1 Subdivision, a subdivision in Travis County according to the map or plat recorded in Volume 76, Page 36 of the Travis County Public Records, on which is located the District’s administrative offices and certain water system improvements.
- i. “Effective Date” means the last date of execution of this Agreement by the parties.
- j. “Force Majeure” means conditions and occurrences as defined in Section 7.13 of this Agreement.
- j. “Full Purpose Annexation Date” means 12:01 a.m., December 15, 2015.
- k. “Limited District” means the limited district into which the District shall convert on the Conversion Date, provided the Limited District Election Proposition is approved at the Limited District Election, in accordance with Section 43.0751(f)(6) of the Texas Local Government Code.
- l. “Limited District Election” means the election to be held by the District on a uniform election date prior to the Utility Operations Transfer Date at which the voters within the District shall consider the Limited District Election Proposition.
- m. “Limited District Election Proposition” means the proposition to be considered by the voters within the District at the Limited District Election with respect to the following: (i) the approval of creation of the Limited District to be effective as of the Conversion Date; and (ii) authorization for the Limited District to levy and collect an operations and maintenance tax to fund its operations as limited and stated herein.
- n. “Limited District Facilities” means the facilities, improvements, and properties for which the Limited District shall assume operational control and responsibility upon the Conversion Date in accordance with terms and conditions of this Agreement, as more particularly identified in Exhibit “H” of this Agreement.
- o. “Notice” means any formal notice or communication required or authorized to be given by one Party to another by this Agreement.
- p. “Original Strategic Partnership Agreement” means that certain Strategic Partnership Agreement that is the subject of the Agreed Final Judgment dated February 14, 2008.

- q. “Party or Parties” means the City and/or the District, as the case may be.
- r. “PDRD” Director means the Director of the City’s Planning and Development Review Department.
- s. “Remaining Property” means the property identified on Exhibit “D”.
- t. “Retail Wastewater System” shall have the meaning set forth in the Wholesale Service and Operations Agreement.
- u. “Retail Water System” shall have the meaning set forth in the Wholesale Service and Operations Agreement.
- v. “Utility Operations Transfer Date” means the date on which the City shall commence and assume responsibility for the provision of water and wastewater service to all lands within the District, which shall be December 1, 2014, provided the Limited District Election Proposition is approved by a majority of voters at the Limited District Election. In the event that the Limited District Election Proposition is not approved by a majority of the District voters voting at the election, then the Utility Operations Transfer Date shall be the Full Purpose Annexation Date.
- w. “Criticality Assessment Water Storage Facilities” means the 500,000 gallon and 750,000 gallon water storage tanks located adjacent to the District’s administrative offices at 1305 Quaker Ridge Drive.
- x. “Water Tank Improvement Payment” means the payment to be made by the District to the City to fund the costs of painting and repairs to the Criticality Assessment Water Storage Facilities, as more particularly described in Section 6.02.
- y. “Wholesale Service and Operations Agreement” means that certain Agreement for Wholesale Water Service and Operations Management of Facilities entered into by the District and the City simultaneously with the Original Strategic Partnership Agreement, a copy of which is attached hereto as Exhibit “E.”

## **Section 1.02 Purpose of the Agreement.**

The primary purpose of this Agreement is to amend and restate, through contractual agreement, the following: (i) the terms and conditions of annexation of property in the District by the City; (ii) the relationship between the City and the District during the period between approval of this Agreement and the date of full purpose annexation of the entire District; (iii) the conversion of the District into the Limited District; and (iv) the transfer of water and sewer service responsibility from the District to the City, all in accordance with Section 43.0751 of the Texas Local Government Code.

## **Section 1.03 Effect on Original Strategic Partnership Agreement.**

As of the Effective Date, this Agreement amends, replaces and supersedes the Original Strategic Partnership Agreement for all purposes.

# **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 the District and the City conducted public hearings and have otherwise complied with all procedural requirements for the purpose of considering the adoption of the Original Strategic Partnership Agreement and this Agreement and annexation of the District in accordance with the terms of this Agreement.

**Section 2.02 Full-Purpose Annexation of the Property Within the District.**

- a. Commercial Property. The District and the City agree that the Commercial Property was previously annexed by the City for full purposes effective December 31, 2008, under Section 43.0751(f)(4) of the Texas Local Government Code. The full purpose annexation of the Commercial Property became effective at 12:01 a.m. on December 31, 2008. The annexation service plan attached as Exhibit "G" is the service plan for the Commercial Property, and shall remain effective for ten years from the date of full-purpose annexation of the Commercial Property. The Parties agree that all of the Commercial Property upon full purpose annexation of the same by the City continued to be a part of the District following such annexation and shall continue to receive the same services from the District as it now receives until, as applicable, the dissolution of the District, the Utility Operations Transfer Date, or until the District acts to exclude the Commercial Property from its boundaries. The District may continue to levy an ad valorem tax in all areas within the District Boundaries as long as the District continues to exist, irrespective of annexations for full purposes by the City of any areas within the District Boundaries. The City agrees that the District may exclude the Commercial Property from the District's corporate boundaries in accordance with the procedures set forth in Section 49.303 *et seq.* of the Texas Water Code.
- b. Remaining Property. All remaining land within the District which has not been previously annexed for full-purposes shall be automatically annexed by the City for full purposes effective on the Full-Purpose Annexation Date, without further procedural action of any kind by either party, in accordance with Sections 43.0751(f)(5) and 43.0751(h) of the Texas Local Government Code. The District will not contest the annexation service plan attached as Exhibit "G" (as modified under Section 7.01 below), which the City represents to be the service plan for this area, and which shall be effective for a period of ten years from the Full Purpose Annexation Date.
- c. Dissolution of District. Provided the Limited District Election Proposition is approved at the Limited District Election, the District shall automatically convert into the Limited District on the Conversion Date in accordance with the terms and conditions of this Agreement, without further action of any party. In the event the Limited District Election Proposition is not approved at the Limited District Election, then for a period of 10 business days after the Full Purpose Annexation Date, the District shall remain in existence solely for the purpose of doing all things necessary to assist in the transition of the Remaining Property to the City's full-purpose jurisdiction. At the end of the 10 business day period, the District shall be dissolved without further action of any party.
- d. The District hereby consents to the City's annexation of all the land in the District in accordance with this Agreement. The District accepts the annexation service plan in the form attached to this Agreement as Exhibit "G" (except as modified by Section 7.01), and agrees not to seek arbitration, other legal actions, or legislative remedies to challenge the City's annexation service plan. This Agreement, and the consent to annexation granted herein, are binding on the District and each owner and future owner of land within the District's boundaries, in accordance with Texas Local Government Code Section 43.0751(c).

- e. The District agrees that the City may take any and all steps required by the Local Government Code to assure that full purpose annexation of all of the land within the District may be completed in accordance with the timeframes and procedures set forth in this Agreement. The City agrees that nothing in this Agreement shall alter or impair the rights of any landowner or resident within the former District to enforce the City's service obligations under the laws of the State of Texas and the annexation service plan after dissolution of the District.

**Section 2.03 District Residents as Citizens of the City Upon Full Purpose Annexation of an Area of the District.**

A resident of an area of the District annexed for full purposes by the City becomes a citizen of the City for all purposes and shall have all the rights, privileges, and responsibilities accorded to the citizens residing in all other areas that the City has annexed for full purposes. However, such citizens shall continue to also be citizens of the District until it is dissolved.

**Section 2.04 Notice to Landowners of Full Purpose Annexation of Land Within the District.**

The District agrees to file the following notice concerning this Agreement in the Real Property Records of Travis County for the property within the District:

All of the property within the boundaries of Lost Creek Municipal Utility District of Travis County, Texas (the "District"), as depicted on the map attached hereto, is subject to the terms and conditions of an Amended and Restated Strategic Partnership Agreement ("Agreement") between the District and the City of Austin, dated [REDACTED], 2013. The Agreement establishes a timetable for the annexation by the City of Austin of the property in the District. The Agreement is binding on the District and each owner and future owner of land within the District's boundaries. A copy of the Agreement may be obtained by contacting the offices of the District, and questions concerning the Agreement may be directed to the District or the City of Austin Planning and Development Review Department, or its successor department.

This notice with appropriate modifications shall also be included in the notice to purchasers of real property in the District in each future edition of the District's Information Form required to be recorded in the Real Property Records of Travis County, Texas, pursuant to Section 49.455 of the Texas Water Code.

**Section 2.05 Regulatory and Taxation Authority of the City and the District Upon Full Purpose Annexation of an Area of the District.**

Upon full purpose annexation of an area within the District, the City shall have all the authority and power, including taxation authority, that the City enjoys in all other areas that the City has annexed or does annex for full purposes. During the period before the Full-Purpose Annexation Date, the District shall continue to exist within the District Boundaries and have all of the authority and power, including taxation authority, of a municipal utility district, except as modified by the terms and provisions of this Agreement and applicable law, so long as the District exists. Without limitation, the District shall continue to have the authority to finance, develop and maintain parks, landscaping, greenbelt, sidewalk, public right-of-way beautification projects, and recreational facilities and equipment pursuant to Sections 49.461 – 49.463 of the Texas Water Code. The District and the Limited District must obtain approval from the Director of the City of Austin Parks and Recreation Department prior to acquiring or improving any parks, greenbelts, or recreational facilities, provided such approval shall not be unreasonably withheld. The District and Limited District must also obtain such approval prior to performing

maintenance activities in greenbelt areas, but shall not be required to obtain such approval for performing routine maintenance activities in park, landscaping and median areas.

**ARTICLE III**  
**SERVICES TO THE DISTRICT AND OTHER TRANSITIONAL MATTERS**

**Section 3.01 Capital Improvements During the Period Prior to Utility Operations Transfer Date.**

- (a) Prior to the Utility Operations Transfer Date, the District shall continue to be responsible for making capital improvements to the Retail Water System and the Retail Wastewater System, and for any other municipal services which the District is now providing and shall continue to provide to its inhabitants within the District Boundaries. The District shall operate the Retail Water System and Retail Wastewater System according to the terms of the Wholesale Service and Operations Agreement until the Utility Operations Transfer Date.
- (b) Prior to the Utility Operations Transfer Date, the City shall be responsible for the provision of municipal services to the Commercial Property; provided, however, that the District shall continue to provide retail water and wastewater services to such property on behalf of the City, as more particularly described in Article V below and as provided in the Wholesale Service and Operations Agreement.
- (c) Effective as of the Utility Operations Transfer Date, the City shall be solely responsible for the provision of retail water and wastewater services, including but not limited to the billing and collection of water and wastewater utility revenues, to all property in the District, including the Commercial Property. Without limitation, commencing as of the Utility Operations Transfer Date, the City shall be responsible for making capital improvements to the Retail Water System and the Retail Wastewater System.
- (d) Immediately prior to the Utility Operations Transfer Date, on a date mutually agreed upon by the City and the District, the District shall cause all water meters to be read (the "Final Meter Reading Date") and shall send bills to all District customers based on such meter reading. The District agrees to provide all final readings, and other information requested by the City in which the District possesses, for each address in an electronic format acceptable to the City and that is available in the District's existing billing software system. The District is solely responsible for the collection of all revenue for services rendered prior to the Utility Operations Transfer Date. The City shall be entitled to all revenues received by the City for service rendered after the Final Meter Reading Date and those revenues as identified in Section 4.01(b) in this Agreement.
- (e) The District shall be responsible for all bills and invoices associated with the provision of water and wastewater service by the District prior to the Final Meter Reading Date. In the event the City receives any such bills and invoices, it shall forward the bills and invoices to the District, which shall provide payment within ten (10) working days of receipt. The City shall be responsible for all bills and invoices for water and wastewater services rendered after the Final Meter Reading Date except for those services provided by the District related to Subsection 3.01 (d) in this Agreement.
- (f) The City acknowledges and agrees that the District will return to its customers prior to the Utility Operations Transfer Date all service deposits held by the District. After the Utility Operations Transfer Date, the City shall determine, in its sole discretion, whether to collect service deposits from customers within the District.

### **Section 3.02 District Tax Rate.**

The District agrees to report the annual debt tax rate and operations and maintenance tax rate set by the District to the District's tax collector in Travis County, and to perform all acts required by law for the tax rates to be effective.

### **Section 3.03 Transfer of Assets, Employment and Services Contractual Obligations of the District.**

The District agrees that as of the effective date of this Agreement, it will not, without the prior written consent of the City Manager:

- (1) transfer any of its assets to any third party without reasonable consideration, or
- (2) acquire additional assets, other than those required for the normal and customary operations of the District and excluding any assets that would not increase the City's costs or responsibilities upon full purpose annexation of the District, or
- (3) enter into any contracts for employment or services that will result in the creation or continuation of a contractual obligation or fees and charges for the City after the Full-Purpose Annexation Date.

## **ARTICLE IV** **DISTRICT ASSETS, LIABILITIES, OBLIGATIONS, DEBT** **AND DEBT SERVICE AND THE CONSENT AGREEMENT**

### **Section 4.01 Consent Agreement; Assets, Liabilities, Indebtedness, and Obligations During the Period Prior to Annexation of Remaining Property.**

- a. The Parties hereby confirm the prior termination of the Consent Agreement as of the effective date of the Original Strategic Partnership Agreement.
- b. Except for:
  1. the ownership of the Retail Water System and the Retail Wastewater System, ownership of which was transferred to the City upon the effective date of the Original Strategic Partnership Agreement,
  2. the unspent District revenues and funds related to the collection of water and wastewater rates and fees which shall transfer from the District to the City's Austin Water Utility on the Utility Operations Transfer Date (provided the Limited District Election Proposition is approved),
  3. the Water Tank Improvement Payment, which shall be paid by the District to the City in accordance with the terms and conditions of Section 6.02,
  4. the transfer of a portion of the District Office Tract to the City prior to the Utility Operations Transfer Date in accordance with the terms and conditions of Section 5.05 (provided the Limited District Election Proposition is approved), and



5. operation and maintenance responsibility of the Retail Water System and the Retail Wastewater System for which shall transfer from the District to the City on the Utility Operations Transfer Date (provided the Limited District Election Proposition is approved),

and except as otherwise specified in this Agreement or the Wholesale Service and Operations Agreement, the District's contracts, assets, liabilities, indebtedness, and obligations will all remain the responsibility of the District until the Full Purpose Annexation Date. Prior to that date, disposition or acquisition of additional contracts, assets, liabilities, indebtedness, and obligations shall be governed by this Agreement and the laws of the State of Texas. If there is a conflict between this Agreement and the Wholesale Service and Operations Agreement, this Agreement shall control.

**Section 4.02 Assumption of the District's Outstanding Obligations, Assets, Debts, and Liabilities by the City.**

- a. Except as set forth in subsection 4.02(b) – (e) below, the City shall assume all of the District's debts, liabilities, obligations, property and assets, and shall perform all of the functions of the District which a municipality may perform under state law, on the Full Purpose Annexation Date in accordance with Section 43.075(d) of the Local Government Code.
- b. The City shall assume the District's obligations with respect to the provision of retail water and wastewater service, and operation and maintenance of the Retail Water System and Retail Wastewater System assets, effective as of the Utility Operations Transfer Date (provided the Limited District Election Proposition is approved). The unspent District revenues and funds related to the collection of water and wastewater rates and fees shall transfer from the District to the City's Austin Water Utility on the Utility Operations Transfer Date (provided the Limited District Election Proposition is approved). The transfer of a portion of the District Office Tract to the City shall be executed and recorded prior to the Utility Operations Transfer Date (provided the Limited District Election Proposition is approved).
- c. On the Conversion Date and provided the Limited District Election Proposition is approved, the Limited District shall assume operational responsibility for the Limited District Facilities, as more particularly described in Article VIII of this Agreement.
- d. Provided the Limited District Election Proposition is approved at the Limited District Election, the City agrees to remit to the Limited District all tax revenues received by the City after the Conversion Date arising out of the tax levied by the Board of Directors of the District in September 2015. If the Limited District Election Proposition is not approved at the Limited District Election, then the City shall be entitled to all tax revenues received by the City after the Full Purpose Annexation Date, including any taxes levied by the Board of Directors of the District in September, 2015.

**Section 4.03 No Liability for Operations Performed by Others.**

- a. The Parties agree that the City shall not be liable for any claims or causes of action arising out of, or resulting from the maintenance, operations, or ownership of the facilities owned by the District in the performance of the District's functions as described in this Agreement. The Parties agree that the District shall not be liable for any claims or causes of action arising out of, or resulting from the maintenance, operations, or ownership of the facilities owned by the City in the performance of the City's functions as described in this Agreement.

- b. The Parties further agree the City shall not be liable for any or all claims or causes of actions arising out of or resulting from the maintenance, operations, or other activities of the District on any property owned by the City. The District shall not be liable for any or all claims or causes of action arising out of or resulting from the maintenance, operations or other activities of the City.
- c. The District shall add the City of Austin as an added insured on its general liability insurance, which the District shall carry each year for the duration of the existence of the District.
- d. Effective as of the Utility Operations Transfer Date, the District shall no longer have any responsibility for the operation or maintenance of the Retail Water System and Retail Wastewater System serving the District, or any claims or causes of action relating to, arising out of, or resulting from such operations and facilities, and the City shall be solely responsible for all matters relating to, or arising out of, the Retail Water System and Retail Wastewater System, including the provision of retail water and wastewater service. Provided, however, that the City shall not be responsible for any claims or causes of action relating to, arising out of, or resulting from the District's operation of the facilities. As specified in Section 3.01 above, the District shall be responsible for all bills and invoices associated with the provision of water and wastewater service by the District prior to the District's final meter reading, and shall be responsible for all invoices and bills associated with the provision of service by the District prior to such final meter reading. Moreover, the District agrees that it shall tender the Water Tank Improvements Payment to the City in accordance with the terms and conditions set forth in Section 6.02 of this Agreement.

#### **Section 4.04 Additional Bonds and Indebtedness by District.**

- a. The District shall not issue bonds for any purpose without the prior written consent of the City Council.
- b. The District may not issue notes, incur indebtedness, or enter into lease agreements, other than for normal operation and maintenance of the District and for the purposes authorized in Section 4.01 of this Agreement. However, District operations and maintenance after the Effective Date of this Agreement shall not be construed to increase the level of services required after full-purpose annexation of the Remaining Property. Any such obligations or debts incurred by the District may not extend beyond the Full Purpose Annexation Date.

#### **Section 4.05 Segregation of District Tax and Revenue Funds**

- a. Commencing as of the Effective Date, the District will segregate existing and future tax revenues, and water and wastewater system revenues, into separate bank accounts. The District shall use the revenues associated with water and wastewater solely for the administration, operation and maintenance of the Retail Water System and Retail Wastewater System.
- b. On the Utility Operations Transfer Date, the District shall transfer any water and wastewater system fund balances to the City's Austin Water Utility.
- c. The District will retain any tax fund balances until the Full Purpose Annexation Date, at which time they will transfer to the Limited District, provided the Limited District Election Proposition is approved at the Limited District Election. If the Limited District Election Proposition is not approved, then the tax fund balances shall pass to the City on the Full-Purpose Annexation Date along with all other District funds and assets.

Except as stated in this Section, the segregation of funds set forth herein will not restrict the District's right or authority to pay its obligations from any lawful source of funds as the obligations become due in the ordinary course of business.

**ARTICLE V**  
**DISTRICT WATER, WASTEWATER, AND RECLAIMED WATER FACILITIES; PAYMENTS**  
**TO CITY; FUNCTIONS**

**Section 5.01    Transfer of Ownership.**

The parties confirm the prior transfer of ownership of the Retail Water System assets and Retail Wastewater System assets to the City as of the effective date of the Original Strategic Partnership Agreement. The Parties agree that the District shall retain full ownership of all other assets not previously conveyed to the City (or to be conveyed to the City as stated herein) until the Full-Purpose Annexation Date, at which time ownership of all District assets, shall pass to the City. Notwithstanding the foregoing, if the Limited District Election Proposition is approved by a majority of the District voters at the Limited District Election, ownership of certain Limited District Facilities shall automatically pass to the Limited District, and not to the City, as of the Conversion Date in accordance with Section 8.03 of this Agreement. If the Limited District Election Proposition is not approved at the Limited District Election, then ownership of the Limited District Facilities, along with all other District assets, shall automatically pass to the City as of the Full-Purpose Annexation Date.

**Section 5.02    Payments to City for Services and Improvements**

- a.     The Parties confirm the prior annual payment by the District to the City, beginning on December 31, 2008, of the sum of \$272,000 in consideration for the City providing a year of unfunded full purpose municipal services in the year beginning on the Full Purpose Annexation Date, and for current and future benefits, improvements and services available to residents from within the corporate City limits, and in consideration for the other terms and covenants in this Agreement. Except as provided in subsection 5.03(b) below, the District shall continue to make the annual payment by December 31 of each year thereafter through December 31, 2014 (for seven total payments),
- b.     In the event the Limited District Election Proposition is approved at the Limited District Election and the City commences operation of the Retail Water System and Retail Wastewater System on December 1, 2014, then the District's obligation to provide any revenues collected for water and wastewater services provided to the Commercial Property shall cease on December 31, 2013, in consideration of this Agreement. As of such date, the District shall be entitled to retain all revenues for services rendered to such property, and shall deposit such monies in its utility revenue fund.
- c.     The Parties agree that the payment required under this section is not made for the purpose of foregoing annexation. The City shall provide an invoice for payment not later than 30 days prior to the due date each year for District accounting and audit purposes. If payment is not made, the City may, after written notice of default to the District and opportunity to cure within 30 days, accelerate the Full Purpose Annexation Date to a date 60 days after the written notice of default is given to the District, or exercise other remedies authorized by this Agreement.

**Section 5.03    District Functions.**

Prior to the Full Purpose Annexation Date, the District shall have those functions, purposes, and authorities specifically exercised or performed by the District prior to the Effective Date, or otherwise authorized under the laws of the State of Texas, except as modified by this Agreement. Notwithstanding the foregoing, upon the Utility Operations Transfer Date, the District shall no longer provide retail water or sewer services, and the City shall provide such services within the District. If the District takes any formal action to discharge a function or to exercise authority that is not directly related to those functions and purposes specifically exercised or performed prior to the Effective Date or otherwise authorized by this Agreement, the City may proceed as provided in Article X of this Agreement. The parties agree that any increased level of services performed by the District after the Effective Date will not affect the City's service obligations under the Annexation Service Plan.

#### **Section 5.04     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.

#### **Section 5.05     Subdivision of District Office Tract.**

- a.     After the Limited District Election and not later than 180 days prior to the Utility Operations Transfer Date, and provided the Limited District Election Proposition is approved at the Limited District Election, the District shall prepare and file at its sole cost and expense an application for subdivision of the District Office Tract into two lots, referred to herein as the "Administrative Office Lot" and the "Water Tank Lot," as generally identified in the schematic attached hereto as Exhibit "I."
- b.     If the City does not approve the subdivision of the District Office Tract, then ownership thereof shall transfer to the City on the Full-Purpose Annexation Date. Under such circumstances, the City shall convey to the Limited District an easement that grants the Limited District with the right to operate and maintain the lands, office building, park, parking, recreational improvements, landscaping and other improvements (excluding any and all assets that comprise the Retail Water System and Retail Wastewater System) within the proposed Administrative Office Lot for the duration of existence of the Limited District. The District agrees that such right shall not impair, condition, damage, or interfere with the City's ownership, operation, and maintenance of the Retail Water System and the Retail Wastewater System. Such easement shall be prepared, executed, and recorded by the City prior to the Full-Purpose Annexation Date, and shall be dated effective as of the Full Purpose Annexation Date. The parties agree that the Limited District shall have the sole and exclusive right to operate the administrative office building located on the Administrative Office Lot for the duration of existence of the Limited District.
- c.     Prior to the Utility Operations Transfer Date and upon request of the City, the District agrees to grant to the City easements for any and all water and wastewater assets located within the District Office Tract. Such easement(s) shall be in a form specified by the City.

### **ARTICLE VI WHOLESALE SERVICE AND OPERATIONS AGREEMENT**

#### **Section 6.01     Criticality Assessment Improvements.**

The Parties acknowledge that the City previously undertook a Criticality Assessment of the water and wastewater system infrastructure serving the District in accordance with the terms of the Wholesale Service and Operations Agreement, and that the District has completed the improvements identified by the City except as set forth in Section 6.02 below with respect to the Criticality Assessment Water Storage Facilities, and except for the following improvements, which shall be undertaken by the District prior to the Utility Operations Transfer Date:

- (i) a sewer line repair at Manhole Station No. 4858.

**Section 6.02 Criticality Assessment Water Storage Facilities.**

- a. On or before the Utility Operations Transfer Date, the District shall tender payment to the City in the amount of \$245,000 (the "Water Tank Improvement Payment"). Upon the Utility Operations Transfer Date, the City shall be solely responsible for repair, repainting, operation, and maintenance of the Water Storage Facilities, and the District shall be released of any and all responsibility with respect thereto.
- b. The City agrees that the District may utilize any of its revenue accounts to fund the Water Tank Improvement Payment.
- c. If the Limited District Election Proposition is not approved at the Limited District Election, then the District shall tender the Water Tank Improvement Payment to the City on or prior to the Full Purpose Annexation Date.

**Section 6.03 Termination of Wholesale Service and Operations Agreement.**

- a. Upon the Utility Operations Transfer Date, the Wholesale Service and Operations Agreement shall terminate and become null and void.

**ARTICLE VII  
SERVICE PLAN**

**Section 7.01 Service Plan.** The parties agree that the Annexation Service Plan attached hereto as **Exhibit "G"** (the "Service Plan") shall remain in effect according to its terms; provided, however, that the City shall not be required to provide any municipal services identified thereon that are functions or responsibilities of the Limited District under this Agreement.

**ARTICLE VIII  
DISTRICT CONTINUATION AS A LIMITED DISTRICT**

**Section 8.01 Continuation as a Limited District.**

- a. Subject to approval of the Limited District Election Proposition at the Limited District Election, the District shall automatically convert upon the Conversion Date to a limited district under Section 43.075(f)(6) of the Local Government Code and shall be known as the "Lost Creek Limited District." If that the Limited District Election Proposition is not approved at the Limited District Election, then the District shall not automatically convert to the Limited District and instead shall dissolve in accordance with the provisions of Section 2.03 of this Agreement.

- b. The boundaries of the Limited District shall be coextensive with the District Boundaries.
- c. The Limited District shall exist for an initial term of 10 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.
- d. If the Limited District Election results are invalidated by a final nonappealable judgment of a court of law finding that the election date was premature, then an election may again be held concerning the Limited District Election Proposition on the first available uniform election date subsequent to such final judgment. All costs associated with defending the validity of the Limited District Election, or relating to the validity of the Limited District, shall be paid by the District and/or the Limited District.

#### **Section 8.02 Functions and Responsibilities of the Limited District.**

- a. The functions and responsibilities of the Limited District shall be limited to the following, which may be changed from time to time only by written agreement of the governing bodies of the Limited District and the City:
  - i. maintaining, operating, controlling, and assuming responsibility for the Limited District Facilities located within the District Boundaries;
  - ii. developing and maintaining park and recreational facilities and services for the residents of the Limited District in accordance with Sections 49.461 – 49.466 of the Texas Water Code;
  - iii. enforcing deed restrictions within the District Boundaries pursuant to Section 54.237 of the Water Code (including exercising the architectural control powers of the District); and
  - iv. landscape debris collection for fire protection, consisting of the following: (i) residential brush and tree trimming “chipper” services for the residents of the Limited District; and (ii) brush clearing and disposal within the Limited District Facilities areas for fire mitigation, provided all such actions shall be coordinated with the City’s Parks and Recreation Department Ranger and Austin Fire Department’s Wildfire Mitigation Section. The City will provide all other solid waste services within the District effective as of the Full-Purpose Annexation Date.
- b. The City shall provide all solid waste collection services in accordance with the Service Plan. As provided in such Service Plan, the residents of the District may continue to utilize private solid waste collection services for a period of two years after the Full Purpose Annexation Date.
- c. The Parties agree that the Limited District shall have the power of the annexation in accordance with Section 49.301 – 49.302 of the Texas Water Code, but shall be required to secure the written consent of the City prior to annexing any property into the boundaries of the Limited District.

#### **Section 8.03 Transfer of Assets to Limited District.**

- a. Subject to approval of the Limited District Election Proposition at the Limited District Election, the parties agree that ownership of the Limited District Facilities identified in Exhibit “H” shall automatically transfer from the District to the Limited District on the Conversion Date. All other assets owned by the District as of such date shall automatically transfer to the City effective as of full purpose annexation of the property within the District.

- b. The parties agree that if the City does not approve the subdivision of the District Office Tract, then the District Office Tract shall automatically transfer to the City as of the Full Purpose Annexation Date. Under such circumstances, the City will have conveyed an easement to the District for the proposed Administrative Office Lot in accordance with Section 5.06 of this Agreement.

**Section 8.04 Limited District Information to be Provided to City.**

- a. The Limited District will provide the PDRD Director with a copy of the agenda for each meeting of its Board concurrently with the posting of the agenda at the Travis County Courthouse. The Limited District will also provide the PDRD Director with a copy of the minutes of all meetings of the Limited District's Board within five business days of the date of approval of such minutes.
- b. The Limited District will file a copy of its approved budget for each fiscal year with the PDRD Director within 30 days after approval by the Limited District's Board.
- c. The Limited District will obtain an annual audit, prepared by an independent certified public accountant, and will file a copy of its annual audit with the PDRD Director within 30 days after approval by the Limited District's Board.

**Section 8.05 No City Liability for Limited District Operations.**

The City will not be liable for any claims or causes of action which arise out of, or result from, the Limited District's ownership, operation, or maintenance of the Limited District Facilities, nor will the City be liable for any claims or causes of action arising out of or resulting from the Limited District's operations, maintenance, or other activities on any property owned by the City. To the extent authorized by law, the Limited District will indemnify, defend, and hold harmless the City from any claims, demands, actions, and causes of action whatsoever arising out of or resulting from the Limited District's maintenance, operation, or ownership of the Limited District Facilities, the Limited District's performance of its functions described in this Agreement, or the Limited District's maintenance, operations, or other activities on any property owned by the City. The Limited District agrees to cause the City to be added as an additional insured on its general liability insurance, which the Limited District agrees to obtain and maintain in full force and effect for each year of its existence.

**Section 8.06 Bonds and Indebtedness of Limited District.**

The Limited District may not issue bonds or notes for any purpose without the prior written consent of the City. The Limited District may not incur indebtedness or enter into lease agreements other than in connection with the normal functions and operations of the Limited District, for the operation, maintenance and repair of the Limited District Facilities, or for other purposes authorized in this Agreement.

**Section 8.07 Limitations on Employment Obligations.**

The Limited District will not, without the prior written approval of the City, enter into any contracts for employment that will result in a contractual obligation binding on the City after the date of dissolution of the Limited District.

**Section 8.08 Limitation on Limited District Facilities and Related Debt.**

After the Conversion Date, the Limited District may not acquire, purchase, construct, or lease additional Limited District Facilities, expand any existing Limited District Facilities, or incur debt, liabilities, or obligations to construct additional Limited District Facilities, other than Limited District Facilities which are provided for under this Agreement, without the prior approval of the City, which approval will not be unreasonably withheld, conditioned, or delayed. Nothing in this Agreement will be construed to prohibit the Limited District from repairing or replacing any Limited District Facilities, from installing landscaping or park and recreational improvements, or from modifying or upgrading any Limited District Facilities as may be required by applicable law or a regulation of any governmental entity with jurisdiction. Any repair, replacement or improvements undertaken by the Limited District shall be subject to the terms and conditions of this Agreement, including those provisions that require prior approval of the City.

#### **Section 8.09                      Restrictive Covenants.**

The Limited District may not, without the prior written approval of the City, impose any restrictive covenants on property owned by the Limited District, other than restrictive covenants approved by the City. All restrictive covenants imposed by the Limited District on its property will be submitted to the PDRD Director and will be subject to his or her review and approval prior to execution and recordation, which approval will not be unreasonably withheld, conditioned, or delayed.

#### **Section 8.10                      Dissolution of the Limited District.**

If, in any year, the Limited District fails to levy an operation and maintenance tax sufficient to perform its duties and functions as provided in this Agreement, after taking into account its then existing fund balances, the Limited District may be unilaterally dissolved by the City, and no consent of the Limited District or any property owner in the Limited District will be required. Upon the adoption of a resolution by City Council dissolving the Limited District under this Section, the City will assume all obligations, liabilities, indebtedness, and assets of the Limited District. The Board of Directors of the Limited District will cooperate with the City to ensure an orderly transition, and will execute any documents necessary to transfer the assets, obligations, indebtedness and liability of the Limited District to the City in a manner reasonably acceptable to the City Attorney. If any transfer has not been completed for any reason by the dissolution date, the Limited District agrees that the City will be authorized to finalize such conveyances as the District's successor-in-interest.

### **ARTICLE IX** **MISCELLANEOUS PROVISIONS**

#### **Section 9.01      Effective Date and Multiple Counterparts.**

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

#### **Section 9.02      Entire Agreement/Conflicting Provisions.**

- a.        This Agreement is not intended to waive or limit the applicability of laws, regulations, and ordinances applicable to the District or the City, nor does it waive the jurisdiction or sovereignty of any governmental body with respect to the District or the City.
- b.        As of this date there are no agreements, oral or written, between the Parties which are in conflict with this Agreement. This Agreement, together with all of the attachments to this Agreement,





- f. If any date or period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating Notice is extended to the first business day following the Saturday, Sunday, or legal holiday.

#### **Section 9.04 Time.**

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

#### **Section 9.05 Severability or Modification of Agreement as a Result of Court Action, or Amendment of State Law or Statutory Authority for the Agreement; No Legislative or Litigative Efforts by District.**

- a. If any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement, or the application of the word, phrase, clause, sentence, paragraph, section or other part of this Agreement to any person or circumstance is held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the Parties agree that they will amend or revise this Agreement to accomplish to the greatest degree practical the same purpose and objective of the part determined to be invalid or unconstitutional, including without limitation amendments or revisions to the terms and conditions of this Agreement pertaining to or affecting the rights and authority of the Parties in areas of the District annexed by the City pursuant to this Agreement, or proposed to be annexed .
- b. If any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement is nullified or modified in whole or in part as a result of amendments to the underlying state law and statutory authority for this Agreement, the Parties agree and understand that such modification may frustrate the purpose of this Agreement. The parties agree that they will attempt to amend or revise this Agreement to accomplish to the greatest degree practical (i) the same purpose and objective of the part of this Agreement affected by the amendment of the underlying state law and statutory authority and (ii) the original intent and purpose of this Agreement
- c. The District will not engage in litigation or legislative processes to challenge this Agreement, or to resolve any disputes related to the agreed annexation process or service plan. If future legislation would have the effect of prohibiting annexation or requiring further approval of residents for annexation, it is the intent of the Parties that annexation will take place in accordance with this Agreement irrespective of any such legislation. Further, the District will not seek or support legislation to incorporate all or a portion of itself as a municipality. The District will not contest the City in its efforts to assure that future legislation does not prohibit, or impose additional requirements affecting, the City's right and ability to annex the District in accordance with the terms of this Agreement.

#### **Section 9.06 Waiver.**

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

#### **Section 9.07 Applicable Law and Venue.**

The construction and validity of the Agreement shall be governed by the laws of the State of Texas (without regard to conflict of laws principles). Venue shall be in Travis County, Texas.

#### **Section 9.08      Reservation of Rights.**

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

#### **Section 9.09      Further Agreement and Documents.**

Both Parties also agree that they will perform any further acts as the other Party may reasonably request to effectuate the terms of this Agreement.

#### **Section 9.10      Incorporation of Exhibits and Other Documents by Reference.**

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

#### **Section 9.11      Assignability, Successors, and Assigns.**

This Agreement shall not be assignable by the District without the prior written consent of the City Council of the City.

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective representatives, successors, and assigns.

#### **Section 9.12      Amendment.**

This Agreement may only be amended in writing upon the approval of the governing bodies of the City and the District.

#### **Section 9.13      Force Majeure.**

If that either Party is rendered unable by force majeure to carry out any of its obligations under this Agreement, whether in whole or in part, then the obligations of that Party, to the extent affected by the force majeure, shall be suspended during the continuance of the inability, provided, however, that due diligence is exercised to resume performance at the earliest practicable time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the Party whose contractual obligations are affected thereby shall give notice and full particulars of the force majeure to the other Party. The cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure" includes acts of God, strikes, lockouts or other industrial disturbances, criminal conduct or sabotage, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and civil disturbances, explosions, breakage, or accidents to equipment, pipelines, or canals, partial or complete failure of water supply, and any other inability of either Party, whether similar to those enumerated or otherwise, that are not within the control of the Party claiming their ability and that could not have been avoided by the exercise of due diligence. It is understood and agreed that the settlement of strikes, lockouts and other industrial or labor disturbances shall be entirely within the discretion of the party having the difficulty and that the requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes, lockouts or other industrial or labor disturbances by acceding to the demands of the opposing party if the settlement is unfavorable to it in the judgment of the Party having the difficulty. Force majeure shall relieve City from liability to the District or any water or wastewater customer of the District for failure to provide water or wastewater service due to an inability covered by this Article.

Force majeure shall not relieve the District of its obligation to make payment to the City as provided in this Agreement or the Wholesale Service and Operations Agreement.

## **ARTICLE X**

### **DEFAULT AND REMEDIES FOR DEFAULT**

#### **Section 10.01 Default.**

- a. Upon the occurrence, or alleged occurrence, of an event of default under or violation of this Agreement, the non-defaulting Party shall send the defaulting Party Notice of its default or violation or alleged default or violation. Except as otherwise specifically provided in this Agreement and subject to force majeure, the defaulting Party must cure its default or violation within thirty days following receipt of the Notice of default or violation.
- b. If the default or violation is not cured within the thirty day period, the non-defaulting Party may sue for enforcement or cancellation of this Agreement. However, prior to bringing any proceeding in a court of law or before a court of competent jurisdiction, the Parties may (but are not required to) resolve the issue through alternative dispute resolution. If the Parties agree to seek alternative dispute resolution, they must participate in good faith. The Parties shall share the costs of the mediation or arbitration equally. The Parties further agree that neither the City nor the District is not obligated to resolve any dispute based on an arbitration decision under this Agreement if the arbitration decision compromises the City's or District's sovereign immunity.
- c. If the Parties are unable to resolve their dispute through mediation or arbitration, if any, the non-defaulting Party shall have the right to enforce the terms and provisions of this Agreement by specific performance or by such other legal or equitable relief to which the non-defaulting Party maybe entitled. Any remedy or relief described in this Agreement shall be cumulative of, and in addition to, any other remedies and relief available at law or in equity.
- d. If the defaulting Party fails to abide by these deadlines, the non-defaulting Party shall have all rights and remedies available in law and equity and all rights and remedies provided in this Agreement.
- e. All of these rights and remedies shall be cumulative.
- f. The Parties agree that the remedy of accelerated full purpose annexation of the District set forth in Section 5.03 of this Agreement is limited solely to the breach described therein, and shall not be available for any other breach under this Agreement. The parties agree that none of the remedies specified in this agreement shall apply to a breach of the agreement attached hereto as Exhibit "E", and that the remedies available for a breach of said agreement shall be controlled by the remedy provisions of the agreement.

#### **Section 10.02 Dissolution of the District**

- a. If the District is dissolved for any reason prior to the Full Purpose Annexation Date, this Agreement shall automatically terminate and the City shall have the right to accelerate the Full Purpose Annexation Date without restriction.
- b. If the District is dissolved, the Board of Directors for the District shall continue to exist after the dissolution for the sole purpose of doing any and all acts or things necessary to transfer the assets, obligations, indebtedness, and liabilities to the City.

**IN WITNESS WHEREOF**, this Agreement consisting of \_\_\_\_ pages and Exhibits A-I is executed in multiple identical counterparts.

**CITY OF AUSTIN, TEXAS**

Attest: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
**City Manager**

**LOST CREEK 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 \_\_\_\_\_, 2013, by \_\_\_\_\_, 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 \_\_\_\_\_, 2013, by Steve Veregge, President of the Board of Directors Lost Creek Municipal Utility District, for and on behalf of the Lost Creek Municipal Utility District.

Notary Public in and for the State of Texas  
My Commission Expires: \_\_\_\_\_

AMENDED AND RESTATED STRATEGIC PARTNERSHIP AGREEMENT  
BETWEEN THE CITY OF AUSTIN AND THE  
LOST CREEK MUNICIPAL UTILITY DISTRICT

LIST OF EXHIBITS

The following are the exhibits for this Agreement:

Exhibit A	District Boundaries
Exhibit B	District Request for SPA Negotiation
Exhibit C	Commercial Property Description
Exhibit D	Remaining Property Description
Exhibit E	Agreement for Wholesale Water Service and Operation of Facilities
Exhibit F	Map of District
Exhibit G	Annexation Service Plan
Exhibit H	Limited District Facilities
Exhibit I	Proposed Subdivision of District Office Tract

## EXHIBIT G



# CITY OF AUSTIN ANNEXATION SERVICE PLAN

**Case Name:** Lost Creek Area  
**Case Number:** C7a-08-004  
**Date:** November 2012

## INTRODUCTION

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

The Lost Creek annexation area was included in the City of Austin’s Municipal Annexation Plan effective December 31, 2005. The City and the Lost Creek Municipality Utility District entered into a Strategic Partnership Agreement in February 2008, agreeing to this annexation service plan, and to certain dates for the full purpose annexation of the “Commercial Property,” and the “Remaining Property,” as defined in that Agreement, and other terms and conditions. In February 2013, the City and the MUD entered into an Amended and Restated Strategic Partnership Agreement (the “Amended and Restated SPA”) revising

certain terms and conditions of the Strategic Partnership Agreement previously entered into by the parties.

The Commercial Property includes approximately 45 acres and includes several office complexes along Capital of Texas Highway. The Remaining Property includes approximately 744 acres and includes the Lost Creek, Hills of Lost Creek, and Bluffs of Lost Creek subdivisions; three townhouse/condominium complexes; and part of the Barton Creek Greenbelt, owned by the City of Austin, extends into the annexation area, which is located in the Barton Creek and Eanes Creek watersheds.

## **EFFECTIVE TERM**

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

## **INTENT**

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

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

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



## **SERVICE COMPONENTS**

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

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

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

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

- a. Police Protection. The Austin Police Department (“APD”) will provide protection and law enforcement services in the annexation area. These services include:
  - normal patrols and responses;
  - handling of complaints and incident reports;
  - special units, such as, traffic enforcement, criminal investigations, narcotics, gang suppression, and special weapons and tactics team.
- b. Fire Protection. The Austin Fire Department (“AFD”) will provide emergency and fire prevention services in the annexation area. These services include:
  - fire suppression and rescue;
  - emergency medical services first response for Austin Emergency Medical Services Department on life threatening medical emergencies;
  - hazardous materials mitigation and regulation;
  - emergency prevention and public education efforts;
  - dive rescue;
  - technical rescue;
  - aircraft/rescue/ firefighting;
  - construction plan review;
  - inspections;
  - rescue/hazardous materials unit.

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

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

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

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

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

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

- d. Solid Waste Collection. The Austin Solid Waste Services Department will provide services in the area. Services will be provided by City personnel or by solid waste service providers under contract with the City. Services currently provided in the City for single family residences, including duplex, triplex, and fourplex dwelling units, include:

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

- yard trimmings collection – scheduled residential collection in paper bags or reusable containers.

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

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

- e. Maintenance of Water and Wastewater Facilities. Water and wastewater service will be provided to areas that are not within the certificated service area of another utility through existing facilities located within or adjacent to the area. For the Commercial Property annexed in 2007, these services will be provided by the Lost Creek Municipal Utility District on behalf of the City. At such time as the City assumes responsibility for the provision of retail water and sewer service within the District in accordance with the Amended and Restated SPA (and not later than the date of full purpose annexation of the Remaining Property), the City will assume maintenance and operation of the all water and wastewater facilities, and services will be provided and facilities will be maintained and operated by the City's Austin Water Utility as governed by standard policies and procedures, and under the provisions of the attached City service extension policy.
- f. Maintenance of Roads and Streets, Including Street Lighting. The Street and Bridge Division of the Public Works Department will maintain public streets over which the City has jurisdiction. These services include:
  - emergency pavement repair;
  - ice and snow monitoring of major thoroughfares;
  - street maintenance. Maintenance activities include crack seal, sealcoat, slurry seal, and PM overlay;
  - repair maintenance of public streets on an as-needed basis. Repair maintenance operations include pothole repair, filling depressions (level up), spot surface replacement, spot full-depth repair, and utility cut repairs.

The area is fully developed with existing residential streets. Any necessary street or bridge rehabilitation or reconstruction will be considered on a City-wide priority basis. The existing streets are performing adequately to serve the area at a comparable level of service to other City of Austin residential areas. Streets that have been dedicated and accepted for maintenance will be included in the City's preventative maintenance program. Preventative maintenance projects are prioritized on a City-wide basis and scheduled based on a variety of factors, including surface condition (distresses), rideability (smoothness), age, traffic volume, functional classification, and available funding.

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

Street lighting will be maintained in accordance with state law.

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

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

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

## **2. ADDITIONAL SERVICES**

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

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

- water quality protection: environmental impact assessments; aquatic endangered species protection; city compliance with state and federal water quality regulations; pollution detection, tracking, and forecasting; stormwater quality education; stormwater treatment; water quality education; pollution prevention and reduction;
- watershed protection master planning for flood hazard mitigation, streambank restoration and erosion control, and water quality protection;
- land development review and inspection: land development review and assistance; environmental inspection;
- building development regulations: commercial building plan review; permit center; permit inspections;
- flood hazard mitigation: voluntary floodplain home buyout program; regional stormwater management evaluation; creek flood hazard mitigation; localized flood hazard mitigation; flood early warning system; floodplain management;
- streambank restoration and erosion management: streambank restoration and erosion management services;
- infrastructure and waterway maintenance: creek vegetation control; erosion repair; open waterway maintenance; pond inspection and maintenance; storm drain cleaning; storm drain rehabilitation; Town Lake cleanup.

b. Library. Upon annexation, residents may utilize all Austin Public Library facilities.

c. Austin Health and Human Services Department/Travis County Health Department. Upon annexation, the following additional services will be available from the Department.

- investigation of public health related complaints including food-borne illness, recreational water quality, tall weeds and grass, litter abatement, and public swimming pools and spas;

- enforcement of the City's smoking in public places ordinance and the minor's access to tobacco ordinance;
  - inspection of food establishments and child care facilities;
  - investigation of reported elevated blood lead levels in children;
  - animal services including leash law, pet licensing, and rabies control;
  - access to community health clinics;
  - Medical Assistance Program benefits;
  - rodent and vector control consultation.
- d. Austin Energy. Austin Energy will continue to provide electric utility service to all areas which the City is authorized to serve by the Public Utility Commission of Texas.
- e. Anti-litter Services. The Austin Solid Waste Services Department will provide anti-litter services in the annexed area. Anti-litter is a fee-based service. Services currently provided in the City include:
- bulky item collection – twice per year; a notice to customers is provided in advance of the pickup date;
  - large brush collection – twice per year; a notice to customers is provided in advance of the pickup date;
  - street sweeping service – approximately six (6) times per year for streets with curb and gutter;
  - dead animal collection – dead animals are removed from roadways upon request;
  - household hazardous waste drop-off facility – use of facility on regularly scheduled days of operation;
  - tall weed and grass and litter abatement programs.
- f. Other Services. All other City Departments with jurisdiction in the area will provide services according to City policy and procedure.

### **3. CAPITAL IMPROVEMENTS PROGRAM**

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

Each component of the Capital Improvement Program is subject to the City providing the related service directly. In the event that the related service is

provided through a contract service provider, the capital improvement may not be constructed or acquired by the City but may be provided by the contract provider. The City may also lease buildings in lieu of construction of any necessary buildings.

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

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

## **AMENDMENT: GOVERNING LAW**

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

## **FORCE MAJEURE**

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



of the City. Unavailability or shortage of funds shall not constitute Force Majeure for purposes of this Plan.

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

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

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

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

actual calculation of the cost participation and reimbursement amounts, including limits and the schedules for the payments, are included in the Land Development Code.

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

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

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