

EXHIBIT E

**AMENDED AND RESTATED
AGREEMENT FOR WHOLESALE WATER SERVICE
AND OPERATIONS MANAGEMENT OF FACILITIES BETWEEN THE
CITY OF AUSTIN AND THE LOST CREEK MUNICIPAL UTILITY DISTRICT**

THE STATE OF TEXAS)
) KNOW ALL BY THESE PRESENTS:
COUNTY OF TRAVIS)

THIS AMENDED AND RESTATED AGREEMENT ("Agreement") is made and entered into between the of City of Austin, Texas ("City"), a Texas home rule municipal corporation, and the Lost Creek Municipal Utility 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 ("District"), collectively "Parties".

WHEREAS, the City and the District previously entered into the Revised Agreement on Lost Creek Municipal Utility District, executed on July 7, 1977, the Water and Wastewater Contract, executed on July 7, 1977, and the First Supplement to Revised Agreement on Lost Creek Municipal Utility District, executed on June 22, 1990 ("Prior City Agreements");

WHEREAS, the District entered into those certain agreements with Hill Country Golf, Inc., Barton Creek Country Club, Stratus Properties, Inc., and/or Travis County Municipal Utility District #4, listed hereto in Exhibit 1 (collectively, the "Prior Irrigation Agreements") regarding the disposal of treated effluent from the District's wastewater treatment plant;

WHEREAS, on December 31, 2005, the City amended its Municipal Annexation Plan to include the District. The District and the City subsequently negotiated the terms of a strategic partnership agreement. 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." The Original Strategic Partnership Agreement included, as Exhibit "E" thereto, an "Agreement for Wholesale Water Service and Operations Management of Facilities Between the City of Austin and the Lost Creek Municipal Utility District (the "Prior Wholesale Agreement");

WHEREAS, the Parties have negotiated that certain “Amended and Restated Strategic Partnership Agreement Between the City of Austin and Lost Creek Municipal Utility District” (the “Amended and Restated SPA”) to be executed simultaneously herewith to provide, among other matters, 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;

WHEREAS, the City and the District desire to enter into this Agreement, which shall amend and restate the Prior Wholesale Agreement, to set out revised terms and conditions for the City's continued provision of wholesale water service to the District for its distribution system, for the ownership, operation, and maintenance of the District's water, wastewater, and reclaimed water facilities; to supersede all Prior City Agreements; and to otherwise modify the terms and conditions of the Prior Wholesale Agreement for consistency with the Amended and Restated SPA being executed simultaneously herewith;

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. Amended and Restated SPA: means that certain “Amended and Restated Strategic Partnership Agreement Between the City of Austin and Lost Creek Municipal Utility District” (the “Amended and Restated SPA”) to be executed by the Parties simultaneously herewith.

1.02. 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.

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

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

1.05. Default: means the omission or failure of a party to perform its contractual duty under this Agreement.

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

1.07. Effective Date: means the last date of execution of this Agreement.

1.08. EPA: the United States Environmental Protection Agency.

1.09. Industrial Waste: industrial waste as defined in Chapter 15-10 of the 2006 Austin City Code, as amended.

1.10. Infiltration and Inflow: water that has migrated from the ground or through direct sources into a wastewater system.

1.11. Master Meter: means a water meter that serves more than one residential, commercial, or industrial customer.

1.12. Original Strategic Partnership Agreement: means the strategic partnership agreement adopted by the Third Court of Appeals in its Agreed Final Judgment dated February 14, 2008.

1.13. Point of Delivery: means the point designated and approved under this Agreement at which the District may withdraw water from the City Water System for distribution as more particularly described in Exhibit 2.

1.14. Prior Wholesale Agreement: means that certain “Agreement for Wholesale Water Service and Operations Management of Facilities Between The City of Austin and the Lost Creek Municipal Utility District” attached as Exhibit “E” to the Original Strategic Partnership Agreement, which Prior Wholesale Agreement is being amended and restated by this Agreement.

1.15. Replacement Irrigation Agreements: means any agreements entered into by the City regarding the storage and disposal of treated wastewater effluent generated within the Service Area, as more particularly described in Section 12.08.

1.16. Retail Wastewater System: means the collection lines, lift stations, mains, residential, commercial, and industrial connections and any other parts or components that comprise the public wastewater system serving the retail customers located within the Service Area and also includes the District’s ownership interest in any facilities necessary for the storage and transfer of treated effluent for irrigation purposes.

1.17. Retail Water System: means the lines, reservoirs, pump stations, mains, residential, commercial, and industrial connections, and any other parts or components that comprise the public water system serving the retail customers of the Service Area.

1.18. Service Area: means a portion of District’s boundaries and City approved out-of-district areas as more particularly designated on Exhibit 2.

1.19. Sewage: water-borne human excretae and gray water.

1.20. Termination Date: means December 1, 2014, if the City commences retail water service within the District's boundaries on such date in accordance with the terms and conditions of the Amended and Restated SPA. Otherwise, the Termination Date shall be December 15, 2015.

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

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

1.23. Wholesale Water Service: means City's provision of a potable water supply to the District for its distribution system that serves retail connections in the Service Area.

ARTICLE II. DELIVERY OF WATER

2.01. Maximum Volume and Rate of Flow. Subject to all the terms and conditions set forth in this Agreement, the City agrees to sell and the District agrees to buy potable water for the operation of the Retail Water System for domestic, commercial, and industrial uses on an as-needed basis in an amount not to exceed a monthly average of 1.8 million gallons per day ("MGD"), at a rate not exceeding the capacity of the existing City pumping infrastructure, and at a minimum pressure of 35 pounds per square inch ("psi") under normal operating conditions at the Master Meter located at the agreed Point of Delivery. The parties agree that a monthly average of 1.8 MGD is the maximum level of service to which the District is entitled under this Agreement.

2.02. Sole Water Supply Intended. The District and the City agree that the City shall provide the sole source of water for the operation of the Retail Water System during the term of this Agreement and the Parties do not construe this agreement to provide for supplemental, backup, peak-load, or as-available service. Notwithstanding the foregoing, if the City cannot provide 1.8 MGD of potable wholesale water supply in accordance with Section 2.01 above, then the District may, after written notice to the City, obtain a supplemental supply of water from an alternative service provider, and the District will assume all costs associated with such alternative supply, including backflow prevention to protect the City Water System.

2.03. Manner of Water Delivery. During the term of this Agreement, the District shall provide retail water service to the connections within the Service Area in this Agreement by means of the Retail Water System connected to the City Water System at the Point of Delivery.

2.04. Nondiscrimination. Water service to the District by the City shall be nondiscriminatory and consistent with City policies, ordinances, and regulations applicable to wholesale water services as established by the Austin City Council and amended from time to time.

2.05. Backflow Prevention.

The District shall be solely responsible for adopting and enforcing appropriate regulations for the control and elimination of cross-connections and conditions of backflow and back siphonage within the Retail Water System in accordance with applicable federal, state, and local laws and regulations.

2.06. Curtailment and Conservation Restrictions. Delivery, volume, and pressure of potable water to the District under this Agreement is subject to and limited by the City's available water supply and water system treatment and transportation capabilities. The City shall have the right to curtail or ration wholesale service to the District in times of high system demand in the same manner and to the same extent that the City imposes such curtailment or water rationing on other wholesale customers of the City. The City will give written notice to the District of the implementation and termination of any conservation and user restrictions it imposes on its wholesale customers.

2.07. Temporary Curtailment of Service for Maintenance, Capital Replacement or Emergency Operations. The City shall have the right at all times to curtail water service hereunder in the event of a required maintenance operation, replacement of capital facilities, or emergency for a reasonable period necessary to complete such maintenance operations or capital replacement, effect emergency repairs, or otherwise respond to emergency conditions necessitating the temporary suspension of water service or decreased volume or pressure. For any curtailment other than one caused by an emergency, the City, if possible, will give at least 72 hours telephonic notice to the District. In the event of an emergency curtailment, the City will give telephonic notice as soon as possible.

2.08. Cooperation During Maintenance or Emergency. The District shall cooperate with the City during periods of emergency or required maintenance or replacement of equipment and, if necessary, the District shall, at its sole expense, discontinue, cycle, test, inspect, or otherwise operate and maintain its pumps or the Retail Water System in a manner to be necessary to the safe and efficient completion of such operations.

2.09. Operation and Maintenance. Unless otherwise agreed in writing, the District shall be responsible for operation, maintenance, and leakage of water of the Retail Water System.

ARTICLE III. WATER CONSERVATION

3.01. Water Conservation Program. The District will adopt and enforce a water conservation program sufficient to meet the requirements of Commission water conservation rules, as amended. The District shall also adopt and enforce water conservation measures and goals that are similar to the measures and goals within the City's water conservation program, as amended.

ARTICLE IV. WASTEWATER SERVICE

4.01. Operation and Maintenance. The District shall be responsible for operation, maintenance, and overflow, if any, of wastewater of the Retail Wastewater System. The City agrees that the District may adopt and enforce reasonable rules and regulations applicable to all customers, including those in the commercial area, required for the protection and proper operation of the Retail Wastewater System.

4.02. Condition of Wastewater.

The District shall require all persons discharging wastewater containing industrial waste or other prohibited waste to the Retail Wastewater System to comply with applicable EPA, Commission, or the District's pretreatment regulations. The District agrees to pay for the cost of required repairs to the Retail Wastewater System that is caused by such wastewater. The District agrees that the City shall have the right, at its option and expense, to sample wastewater discharges within the Retail Wastewater System at the site of discharge, and other locations as required for the purpose of determining the source, type, and strength of discharge.

4.03. District Prevention of Infiltration and Inflow. The District will undertake reasonable measures to minimize infiltration and inflow to the Retail Wastewater System.

The District agrees that it will maintain supervision and maintenance of the Retail Wastewater System to prevent connections such as roof drains or any other means by which surface drainage can enter the Retail Wastewater System.

ARTICLE V. COMPLIANCE WITH STATE LAWS AND CITY REGULATIONS

5.01. Legal Lots Required. The District shall not sell taps or otherwise permit the connection of water or wastewater service to any customer within the Service Area unless the property is exempt from or in compliance with the provisions of Chapter 212, Texas Local Government Code, as amended.

5.02. Service Outside District; Enlargement of District Boundaries or Service Area. The District agrees that it shall not construct or install water or wastewater facilities to serve areas outside the Service Area in this Agreement, nor sell, resell, or deliver water or reclaimed water to areas outside the Service Area as of the Effective Date unless it first obtains the prior written consent of the City. The District further agrees that it will not initiate any proceedings to enlarge its jurisdictional boundaries through any other agency or court of competent jurisdiction. This section shall not prevent the District from delivering reclaimed water under the Prior Irrigation Agreements for so long as such agreements remain in effect. Moreover, any Replacement Irrigation Agreements shall not restrict or interfere with the proper disposal of all wastewater generated from the Service Area.

5.03. Agreement Subject to Applicable Law. This 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.

5.04. District 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.

5.05. Sewer System Overflows. The District will immediately notify the City of any sewer system overflows originating inside the Service Area. The District is responsible for timely providing any required notice to the EPA and the Commission regarding any overflows. If the EPA or the Commission issues any form of order or penalty for violations of applicable law resulting from operation, maintenance, or other program associated with the Retail Wastewater System, the District will take all necessary action to comply with, or otherwise respond to, the order. To the extent permitted by law, the District agrees to hold the City harmless for violations that occur within the Retail Wastewater System that arise out of the actions or inactions of the District, and which do not arise out of the actions or inactions of the City.

5.06. Water Line Breaks. The District shall notify City of any water line breaks inside the Service Area in this Agreement. The District is responsible for timely providing any required notice to Federal, State, and/or local government officials regarding water line breaks. If the Commission issues any form of order or penalty for violations of applicable law resulting from operation, maintenance, or other program associated with the Retail Water System, the District will take all necessary action to comply with, or otherwise respond to, the order. To the extent permitted by law, the District agrees to hold the City harmless for violations that occur within the Retail Water System that arise out of the actions or inactions of the District, and which do not arise out of the actions or inactions of the City.

5.07. Right of Entry. In cooperation with and after notice to the District, the City shall have the right of entry and access to the Retail Water System and the Retail Wastewater System at all times in order to inspect those facilities, to investigate the source of operational or maintenance problems, for preventive purposes intended to detect, minimize, or avert operational or maintenance problems, or for any other purpose reasonably related to the provision of service. The District shall make all arrangements reasonably required to provide such access, provided that the City provides at least one (1) working day's written notice or, in the event of an emergency, prior notice by telephone or confirmed facsimile, to a District representative describing the City's need for emergency access. This Agreement shall not affect the City's access for inspections conducted under the provisions of Federal or State law, or the City's EPA required program governing the pretreatment, monitoring, and discharge of industrial waste.

5.08. Verification of Connections. The District will make available for inspection and copying during regular business hours, at the City's expense, all records for retail connections to the Retail Water System and Retail Wastewater System. In addition, the City will have the right to inspect the Retail Water System and Retail Wastewater System at any time to verify the type and amount of retail connections made, and District will provide lawful access to the City for this purpose.

ARTICLE VI. RATES, CHARGES, AND BILLING

6.01. Wholesale Water Rates. The District agrees to pay the City for all wholesale water delivered to the District under this Agreement, in accordance with the wholesale water rate established and amended from time to time by the Austin City Council for the District's customer class.

6.02. Wholesale Billing and Payment. The City shall send a bill to the District once per month setting forth the quantity of water delivered to the District as determined by the City's periodic readings of the Master Meter installed at the Point of Delivery. Each bill shall include a due date and the total amount owed to the City based on the metered quantity of wholesale water delivered multiplied by the City's wholesale water rate for District's customer class, as amended from time to time by the Austin City Council. The District shall pay the total amount owed to the City by the due date on each bill for Wholesale Water Service. If the District in good faith questions the amount of the bill, the District shall follow the procedures therefore established in the City's Utility Customer Service Regulations in Chapter 15-9 of the 2006 Austin City Code, as amended. In the event of a conflict between this Agreement and the terms of the City's Utility Service Regulations, the provisions of this Agreement shall prevail.

The District agrees to make timely payments to the City for Wholesale Water Service. Payments shall be considered past due 30 days after the date of receipt of each bill for Wholesale Water Service. The City may apply a late charge on past due payments in accordance with its policies and ordinances applicable to other customers of the City.

6.03. Effect of Default for Non-Payment. With respect to monthly wholesale water billings and monthly remittance of Commercial Revenues (as defined in Section 6.04 below), if the City has not received payment from the District by the due date, the bill shall be considered delinquent, unless contested in good faith. In such event, the City shall notify the District of such delinquency in writing, if the District fails to make payment of the delinquent billing within 30 days from the date of transmittal of a written notice of delinquency from the City, then the City may, at its discretion, temporarily terminate service to the District until payment is made, subject to the District's right of continuity of service during a good faith appeal or a disputed bill as provided by applicable state laws and regulations and the City's Utility Service Regulations, Chapter 15-9 of the 2006 Austin City Code, as amended.

If the District has not paid a delinquent bill within 30 days of the above notice and there is no good faith appeal of a disputed bill pending, then the City shall have the right, at the City's sole option, to (i) reduce service to the District under this Agreement (and the District shall not invoke remedies in Section 2.02), (ii) require the District to terminate service to non-paying customers in accordance with the City's Utility Service Regulations, or (iii) pursue such other and further remedies as the City shall deem appropriate. The remedy of full purpose annexation shall not be available to the

City for any default or dispute arising out of or relating to this Agreement except as provided in Section 10.05 herein.

6.04. District's Budget and Rates. The District agrees to adopt and manage its own budget, tax rate, and water and wastewater utility rates and fees. The District agrees to manage such in a manner to ensure that all contractual and regulatory obligations and requirements are promptly and timely met.

Notwithstanding any statement herein, the District agrees to charge the commercial area, identified in Exhibit 2, the City's water and wastewater rates and fees, as amended, for inside City customers ("Commercial Revenues") as of December 31, 2007. The District shall remit such amounts on a monthly basis, with supporting documentation, to the Austin Water Utility and shall not charge the City any District fees or charges or retain any amount from the Commercial Revenues. To ensure that the customers in the commercial area will be subject to the in-City commercial rates adopted by the City pursuant to its ordinance powers, the Customers in the commercial area will be considered retail customers of the City for the term of this Agreement; provided, however, the District shall perform billing, collection, operation, maintenance and other services specified in this Agreement on behalf of the City by contract. The City agrees to provide timely written notice to the District of all rates applicable to the commercial area, and the District shall not be responsible for any payments to the City for shortfalls because the City failed to provide such notice to the District.

The District agrees to provide the City a copy of its proposed budget, tax rate, and water and wastewater utility rates and fees at least 60 days prior to the District's adoption of such. The information provided to the City will be of sufficient detail in order for the City to identify and understand each specific proposed capital improvement that will be made to the facilities. The City will review and provide input on the District's proposed budget, tax rate, and water and wastewater utility rates and fees, which may be subject to revision based upon final Travis County Appraisal District values. The District agrees to respond to all reasonable City inquiries and input prior to the District's adoption of its proposed budget, tax rate, and water and wastewater utility rates and fees and give the City's input serious consideration.

The District agrees to provide the City 30-day written notice of the date, time, and location of the District meeting to adopt its proposed budget, tax rate, and water and wastewater utility rates and fees.

6.06. District Water Rates and Charges. During the term of this agreement, the District shall fix and collect rates and charges for retail 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, and to pay the cost of Wholesale Water Service from City under this Agreement.

The District shall be solely responsible for ensuring that its retail rates and charges are determined and collected in accordance with applicable law.

6.07. District's Water and Wastewater Billing and Collection Services. 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.

6.08. District Responsible for Approval of Retail Connections. The District will be solely responsible for the appropriate allocation of water and wastewater capacity among its retail customers within the Service Area. The District will be responsible for ensuring compliance by its retail customers with the applicable terms of this Agreement and for the proper and lawful application of District policies and ordinances governing connection to the Retail Water System and Retail Wastewater System.

6.09. Customer Connection Fees. The District shall be solely responsible for the proper exercise of its governmental power to assess and collect fees, rates, taxes, or other charges and for ensuring that the assessment and collection of the same is in compliance with applicable law.

6.10. 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 operations and maintenance of the Retail Water System and Retail Wastewater System located within the Service Area.

6.11. Obligation of District. The Parties agree that the District's obligations under this Agreement to make payments to the City for Wholesale Water Service and Commercial Revenues in any fiscal year are a current expense for that fiscal year payable solely from the revenues of the Retail Water System and Retail Wastewater System for that fiscal year. The obligation of the District to make payments to the City does not constitute a general obligation or indebtedness of the District for which the District is obligated to levy or pledge any form of taxation.

ARTICLE VII. METERS

7.01. Master Water Meters Required. All water consumed by the District shall be measured by Master Meters of a design, size, location and configuration approved by the Director and District's Engineer. The parties agree that the existing Master Meter(s) located at the Point of Delivery in Exhibit 2 shall be deemed approved under this Section upon the Effective Date.

7.02. Master Water Meter Requirements. The City shall operate and maintain the Master Meters and related equipment and appurtenances and shall calibrate the metering equipment annually and more frequently upon request by the District provided, however, that the additional cost of calibrating the metering equipment shall be borne by the District if the meter is deemed to be reading accurately. Any meter registering within American Water Works Association, or its successor, standards for that type and size of meter shall be deemed to be accurate. Unless otherwise agreed in writing, if any meter fails to register accurately for any period, the City's charge for the amount of water furnished during such period shall be determined in accordance with the City's

Utility Service Regulations as in effect on the effective date of this Agreement. The City shall read the metering equipment at least once for each monthly billing cycle.

7.03. Wastewater Flow Meter. The District shall continuously measure treated wastewater discharged from the wastewater treatment plant. The District shall calibrate the metering equipment annually and more frequently upon request by the City provided, however, that the additional cost of calibrating the metering equipment shall be borne by the City if the meter is deemed to be reading accurately. A wastewater meter registering within 10% of accurate flow measurements shall be deemed to be accurate.

ARTICLE VIII. CONSTRUCTION OF FACILITIES

8.01. Construction by District. Unless otherwise agreed in writing, 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.

8.02. 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 Agreement. The District shall not permit the resale of potable water provided by the City, even if mixed with other water sources, under this Agreement.

8.03. Approval of Plans and Specifications. All new water and wastewater facilities installed after the Effective Date shall be constructed or installed to the City's standards and design criteria and in accordance with plans and specifications approved by the City, the Commission, the Texas Department of State Health Services, and any other agency having jurisdiction thereof. The review and approval requirement shall not apply to the repair or replacement of existing facilities where circumstances require prompt action including, without limitation, the repair or replacement of line breaks or any actual or threatened release of potable water or wastewater into the environment, but all such repairs and replacements must be accomplished in accordance with the City's standards and design criteria, and all applicable requirements of any other governmental entity with jurisdiction.

The Director will review and approve or disapprove any plans submitted under this subsection within 30 days of submittal. Upon request by the Director, District shall timely submit all documents that are needed for the review and approval of plans and specifications. If any plans are not approved, the Director will provide written comments to District specifying in detail the changes that will be required for approval of the plans and specifications. District agrees not to advertise for bids until approval from the Director has been secured with respect to the plans and specifications.

If after approval of the plans and specifications by the City, the District fails to enter a construction contract for those facilities within two years, the District must resubmit the plans and specifications for review and approval by the Director to assure their conformity with City's then current

specifications, and current laws, ordinances, and regulations. If such plans and specifications do not conform to the then existing standards, then, upon the request of the Director, the District agrees to revise the plans and specifications to meet the City's standards before commencement of construction.

The City may inspect all phases of the construction.

8.04. Notification of Commencement of Construction. After all required approvals for construction is obtained but prior to commencement of construction, the District shall provide written notice to the Director of the date on which construction of the facilities is scheduled to commence to allow the City to assign an inspector.

8.05. As-Built or Record Drawings Upon Completion of Construction. Upon completion of construction or any portion thereof, the District shall within 14 days provide, at the District's expense, to the Director as-built drawings or record drawings of each such completed project.

8.06. 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 has transferred and assigned said rights to the City in accordance with the terms of the Prior Wholesale Agreement and the Original Strategic Partnership Agreement. In the event that any third person challenges the City's exercise of any such rights prior to the Termination Date, then 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. Notwithstanding the foregoing, in the event the District is unable to demonstrate to the City that the District has legal access rights to the District's wastewater lift station facilities, then the District agrees to secure such access rights prior to the Termination Date at the sole cost and expense of the District. If the District has not secured such access rights by the Termination Date, then the District or Limited District (as applicable) agrees to promptly reimburse all reasonable and necessary costs and expenses incurred by the City in connection with securing such access rights.

ARTICLE IX.

SERVICE AREA AND LIMITATIONS ON SERVICE

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

(a) This agreement is for a specific level of Wholesale Water Service for the Service Area. The District may not expand the level of Wholesale Water Service, or provide 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 or wastewater service outside the Service Area, without the approval of City, as reflected by an amendment to this Agreement, the City may require the District to immediately terminate service to the land outside the Service Area;

(d) The District may not connect any customer that the District knows provides 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; and

(e) The District will notify the City within three business days if the District receives a request to serve outside of the Service Area.

9.02. 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.

9.03. Septic Tank Regulations. The District will enforce its existing regulations relating to septic tank inspection.

ARTICLE X. OWNERSHIP OF FACILITIES

10.01. Transfer of Ownership.

(a) The Parties acknowledge and agree that the District granted, bargained, sold, assigned, and conveyed all of its water, wastewater, and reclaimed water infrastructure, and personal and real property containing such infrastructure ("Utility Property") to the City, together with all and singular the rights, interests, and appurtenances thereto in any wise belonging, pursuant to the Prior Wholesale Agreement and the Original Strategic Partnership Agreement. With respect to any water or wastewater infrastructure located in the real property retained by the District, the District agrees to convey to the City an easement, within 30 days of notification by the City, (in the form attached hereto as Exhibit 4) within said properties for the facilities and equipment as installed as necessary for the City to access, own, operate, and maintain the facilities. The easements shall reserve to the District full authority with respect to the real property interests being retained by the District, provided the District takes no action that would materially impair or interfere with the City's easement rights.

(b) The District agrees that as part of the conveyance of the Utility Property, it conveyed to the City the lot on which the District's wastewater treatment plant facilities are located. The City agrees that the District shall have free use and unrestricted access to all facilities, equipment, parking areas, storage facilities, and other buildings located on said property. The City specifically agrees that prior to the Termination Date, it shall not construct any improvements whatsoever on the wastewater

treatment plant site, or take any other actions that would materially impair or interfere with the District's access, operation or use of facilities, equipment, buildings, and parking. By way of example and without limitation, the City shall take no action whatsoever that would lessen or compromise the available sludge removal truck parking areas. The District agrees that none of the foregoing provisions shall be construed to relieve the District of any obligation to construct infrastructure improvements required by this Agreement, including by way of example, and without limitation, improvements required by maintenance in Section 10.04, as a result of the criticality assessment in Section 10.05, or by phosphorus removal in Section 10.06 hereof.

10.02. Transfer of Water Quality No-Discharge Permit. The Parties agree that the water quality no-discharge permit (WQ0011319001) for the District's wastewater treatment plant was transferred to the City.

10.03. City's Use of Facilities.

(a) Until the Termination Date, the City may use the Utility Property to provide water and wastewater utility service to other portions of the City so long as it does not impair the service provided to the District residents, result in the need for the District to fund any expansion of facilities, or to incur any material additional operating costs. Thereafter, the City may use the Utility Property without limitation in its sole discretion in accordance with the applicable regulations. 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 will take all necessary action to comply with, or otherwise respond to, the order. 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.

(b) The ownership and use of Utility Property granted to the City in this Agreement shall not be construed to authorize, and the City agrees that it shall not, expand the existing wastewater treatment capacity of the District's wastewater treatment plant, whether or not through rehabilitation or replacement of former wastewater treatment units, prior to the Termination Date. This provision shall not be construed to prevent the District from performing any repairs or replacement of facilities required as a result of the criticality assessment (rather than any expansion of capacity for providing service to other portions of the City) to be performed in accordance with Section 10.05 below.

(c) The City agrees that it shall not take any action in connection with its use of the Utility Property that impairs the availability and sufficiency of capacity required for the provision of retail water and wastewater service by the District within the Service Area.

10.04. District's Operations and Maintenance of City Facilities. The District agrees to provide for the full operation, maintenance, emergency services, ongoing inspection, and management of the Retail Water System, Retail Wastewater System, and customer services to the District and existing out-of-district customers, as shown on Exhibit 2, until the Termination Date, on a continuous basis. The District shall not reduce the level of service that is currently being provided by the District for the term of this Agreement. The District agrees to meet regularly with the City and reasonably cooperate with City staff concerning the operation, maintenance, and management of the Retail

Water System and Retail Wastewater System. The District agrees to use its best efforts in the operation, maintenance, and management of Retail Water System, Retail Wastewater System, and customer services to meet all applicable regulations and requirements. Moreover, the City shall not be responsible for any fees, damages, or claims related to the Retail Water System and Retail Wastewater System and the violation of any permits or legal requirements that arise out of actions taken by the District prior to the Termination Date. The City agrees that in connection with its ownership of the Retail Water System and Retail Wastewater System, it shall take no action inconsistent with this Agreement that would materially impair or interfere with the District's operation and maintenance of the Retail Water System and Retail Wastewater System prior to termination of this Agreement.

10.05. City's Criticality Assessment. The City, with the cooperation of the District, previously conducted a criticality assessment of the Retail Water System and Retail Wastewater System in accordance with the Prior Wholesale Agreement. The Parties agree that all improvements identified under the criticality assessment have been completed by the District, except as specifically set forth in the Amended and Restated SPA.

10.06. Phosphorus Removal. The Parties agree that the District implemented 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 Termination 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 in its sole discretion.

ARTICLE XI. TERM, PERFORMANCE, AND FORCE MAJEURE

11.01. Term of Agreement. This Agreement shall be effective upon execution by the authorized representatives of the City and the District and shall continue in effect until the Termination Date, unless earlier terminated in accordance with the provisions herein or upon full purpose annexation of the District.

11.02. Default. This provision is in addition to all other default provisions in this Agreement; provided, however, the Parties agree that the remedy of full purpose annexation set forth in Section 10.05 shall be available only for a breach under that section. In the event that one party believes that the other party is in default of any of the provisions in this agreement, the non-defaulting 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 agreement. Nothing in this agreement shall be construed to limit either party's right to recover damages or to seek other appropriate curative remedies if a breach of contract action is filed by a nondefaulting party to this agreement. The parties agree that the remedies for a breach of this agreement by either party shall be controlled by the breach and remedy provisions set forth in this agreement, and not by the breach and remedy provisions of the Strategic Partnership Agreement being executed by the parties simultaneously herewith.

11.03. 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 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 customer of the District for failure to provide water 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.

ARTICLE XII. GENERAL PROVISIONS

12.01. Notices. Any notice required or permitted to be delivered under this 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

Lost Creek Municipal Utility District
1305 Quaker Ridge Road
Austin, Texas 78746

City, Texas 78767-8828
Attn: Director

Attn: General Manager

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

With required copy to:
Tony Corbett
Freeman & Corbett, LLP
8500 Bluffstone Cove, Suite B-104
Austin, Texas 78759

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 Agreement, whether directly or indirectly.

12.02. 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.

12.03. Interlocal Cooperation. The City and the District shall cooperate with each other at all times so as to promote the efficient performance of the utility services provided hereunder.

12.04. Provision of Data, Documents. The District agrees to timely provide to the City at the City's expense all data, records, plans, and specifications, computer tapes, or other documents or information necessary or incidental to the terms of this Agreement.

12.05. Provision of Further Documents. The District 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 Agreement.

12.06. Severability. The provisions of this Agreement are severable, and if any part of this 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 Agreement and the application of such part of this Agreement to other persons or circumstances shall not be affected thereby and this Agreement shall be construed as if such invalid or unconstitutional portion had never been contained herein.

12.07. Entire Agreement. This Agreement, including any exhibits 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 Agreement and supersedes all prior or contemporaneous agreements, representations, covenants, or warranties, whether oral or in writing, respecting the subject matter hereof.

12.08. Previous Contracts.

(a) This Agreement by the Parties supersedes the Prior Wholesale Agreement and all Prior City Agreements and upon the execution of this Agreement, all Prior City Agreements shall be void.

(b) The District agrees that the City may contract for the storage and disposal of treated effluent from the wastewater treatment plant (the “Replacement Irrigation Agreements”, whether one or more) , and the District agrees to execute any documents necessary to terminate the Prior Irrigation Agreements, under the following terms and conditions:

(i) All parties to the Prior Irrigation Agreements (or their successors in interest) must contractually agree that the Prior Irrigation Agreements are terminated for all purposes and the District has no further responsibility or liability of any kind whatsoever under said Prior Irrigation Agreements;

(ii) The Replacement Irrigation Agreements must not materially increase the District’s costs of operation; restrict or impair the District’s ability to operate the Retail Water System, the Retail Wastewater System, or provide retail water or wastewater service. This prohibition shall not be construed to relieve the District from performing any infrastructure improvements required as a result of the criticality assessment in Section 10.05 hereof; and

(iii) If any of the Replacement Irrigation Agreements provide for the ownership or operation or maintenance of any wastewater effluent storage, pumping, transmission or disposal facilities, then the District shall have no further responsibility for the operation, maintenance or repair of said facilities under this Agreement, and all references to the Retail Wastewater System or Utility Property under this Agreement shall be deemed, for all purposes, to exclude the facilities owned, operated or maintained by any third parties under the Replacement Irrigation Agreements. This provision shall not be construed to relieve the District from performing any infrastructure improvements required as a result of the criticality assessment in Section 10.05 hereof. The City of Austin specifically agrees that the District shall have no responsibility or liability of any kind for any costs or expenses related to, or arising out of, the actions or inactions taken by any third persons with respect to the storage, transmission or disposal of wastewater effluent under the Replacement Irrigation Agreements.

12.09. Compliance with Rules. The District agrees to file a copy of this 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.

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

12.12. Independent Contractor. The District shall have the status of an independent contractor hereunder and shall be solely responsible for the proper direction of its employees hereunder and the District’s employees shall not be considered employees or borrowed servants of the City for any reason.

12.13. No Third Party Beneficiary. This 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.

12.14. Governing Law. This 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.

12.15. Venue. Venue for any suit arising under this Agreement shall be in Travis County.

12.16. Assignment. Neither party may assign its rights and obligations hereunder without the prior written consent of the other.

12.17. Multiple Originals. This Agreement may be executed in multiple originals, each of equal dignity.

12.18. Effective Date. This Agreement shall become effective upon the Effective Date.

12.19 Conflict with Amended and Restated SPA. In the event of a conflict between the terms of this Agreement and the Amended and Restated SPA, the terms of the Amended and Restated SPA shall control.

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

CITY OF AUSTIN:

By: _____

Name: Robert Goode, P.E.

Title: Assistant City Manager

Date: _____

**LOST CREEK MUNICIPAL UTILITY
DISTRICT:**

By: _____

Name: Steve Veregge

Title: President

Date: _____

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

THIS INSTRUMENT is acknowledged before me on this ____ day of _____, 2013, by Robert Goode, P.E., 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 ____ day of _____, 2013 by Steve Veregge, President of the Board of Directors of Lost Creek 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: _____

EXHIBIT 1
PRIOR IRRIGATION AGREEMENTS

1. Settlement Agreement dated as of September 21, 2001 between Lost Creek MUD; Travis County MUD No. 4; Barton Creek Resort & Clubs, Inc.; and Stratus Properties Operating Co., L.P.
2. Agreement dated January 28, 1986 between Lost Creek MUD and Lost Creek Municipal Utility District.
3. Easement dated November 3, 1986 conveyed by Hill Country Golf, Inc., d/b/a Lost Creek Country Club to Lost Creek MUD, recorded at Volume 09967, Page 0892 of the Real Property Records of Travis County, Texas.
4. That certain instrument recorded in Volume 7233, Page 2383 of the Deed Records of Travis County, Texas (the “38-acre lease”).
5. That certain instrument recorded in Volume 7481, Page 418 of the Deed Records of Travis County, Texas (the “131-acre lease”).
6. That certain “Modification of Leases” recorded as Document No. 90011262 of the Deed Records of Travis County, Texas.

EXHIBIT 2
MAP OF SERVICE AREA

[TO BE ATTACHED]

EXHIBIT 3
UTILITY PROPERTY RETAINED BY MUD

[TO BE ATTACHED]

EXHIBIT 4
EASEMENT CONVEYED TO CITY

WATER AND WASTEWATER EASEMENT

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

KNOW ALL BY THESE PRESENTS:

THAT LOST CREEK MUNICIPAL UTILITY DISTRICT, of Travis County Texas, “Grantor” whether one or more, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, to Grantor in hand paid by the CITY OF AUSTIN, TEXAS, the receipt and sufficiency of which is acknowledged and confessed and for which no lien, express or implied, is retained, hereby GRANTS, SELLS, and CONVEYS to the **CITY OF AUSTIN**, a municipal corporation, situated in the Counties of Travis, Hays, and Williamson, State of Texas, and whose address is P.O. Box 1088, Austin, Texas 78767-8839, ATTN: Director, Austin Water Utility and its successors and assigns (“Grantee”) an easement for the construction, operation, maintenance, repair, replacement, upgrade, decommissioning and removal of water and wastewater facilities and appurtenances and making connections therewith in, upon, over, and across the land that the Grantor has ownership or ownership interest within the boundaries of the Grantor and within the out-of-district utility service area described:

That tract, piece, or parcel of land, situated in Travis County, Texas, described in **EXHIBIT A** attached hereto and made a part hereof for all purposes (“Easement Tract”).

TO HAVE AND TO HOLD the same perpetually to the City of Austin and its successors and assigns together with the right and privilege at all times to enter the Easement Tract, or any part thereof, for the purpose of construction, ownership, operation, maintenance, repair, replacement, upgrade, decommissioning and removal of water and wastewater facilities and appurtenances and making connections therewith provided, however, that Grantor reserves the right to enter upon and use the Easement Tract but in no event shall Grantor (i) use the Easement Tract in any manner that materially interferes or is materially inconsistent with the rights granted hereunder, or (ii) erect or permit to be erected a building, structure or irrigation systems on any portion of the Easement Tract that would materially interfere or materially impair Grantee's use of the water and wastewater facilities and appurtenances located on the Easement Tract, except as otherwise agreed in writing by the parties. Grantee shall be obligated to restore the surface of the Easement Tract at Grantee's sole cost and expense, including the restoration of any sidewalks, driveways, or similar surface improvements located upon or adjacent to the Easement Tract which have been removed, relocated, altered, damaged, or destroyed as a result of Grantee's use of the Easement granted here provided, however, that Grantee shall not be obligated to restore or replace irrigation systems or other improvements installed after the date of this instrument in violation of the provisions of this Easement.

Grantor covenants and agrees to WARRANT AND FOREVER DEFEND title to the Easement granted to the Grantee and its successors and assigns against every person lawfully claiming or to

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on this ____ day of _____, ____.

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS)

COUNTY OF TRAVIS)

NOTARY PUBLIC, STATE OF TEXAS

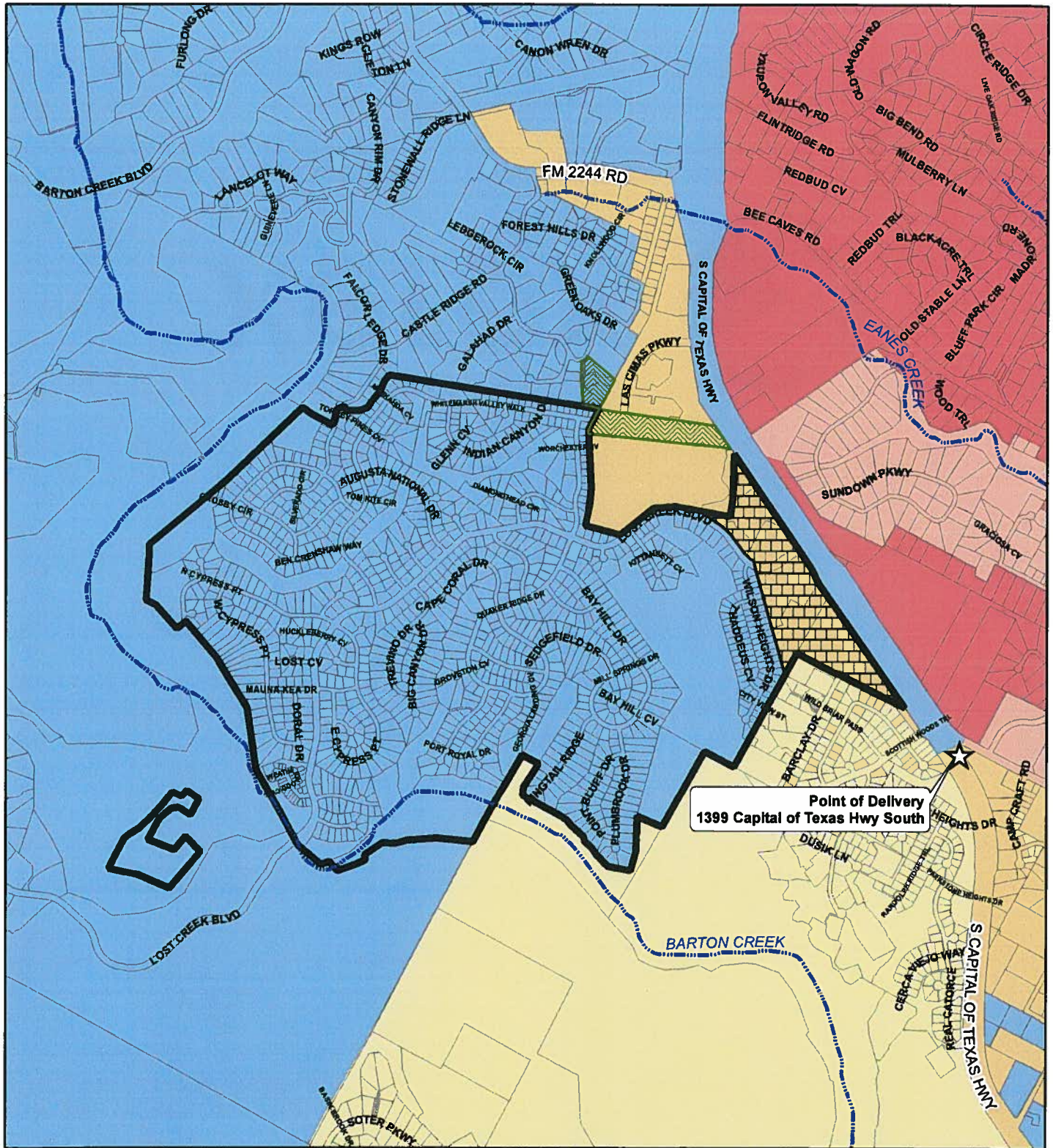
MY COMMISSION EXPIRES:

Sharon Smith
City of Austin Law Department
P.O. Box 1088
Austin, Texas 78767-1088

By: _____
Robert Goode, P.E., Assistant City Manager
City of Austin

Date: _____
EASEMENT EXHIBIT A
PROPERTY DESCRIPTION

[TO BE ATTACHED]



Lost Creek Municipal Utility District Exhibit 2

0 1,000 2,000
Feet

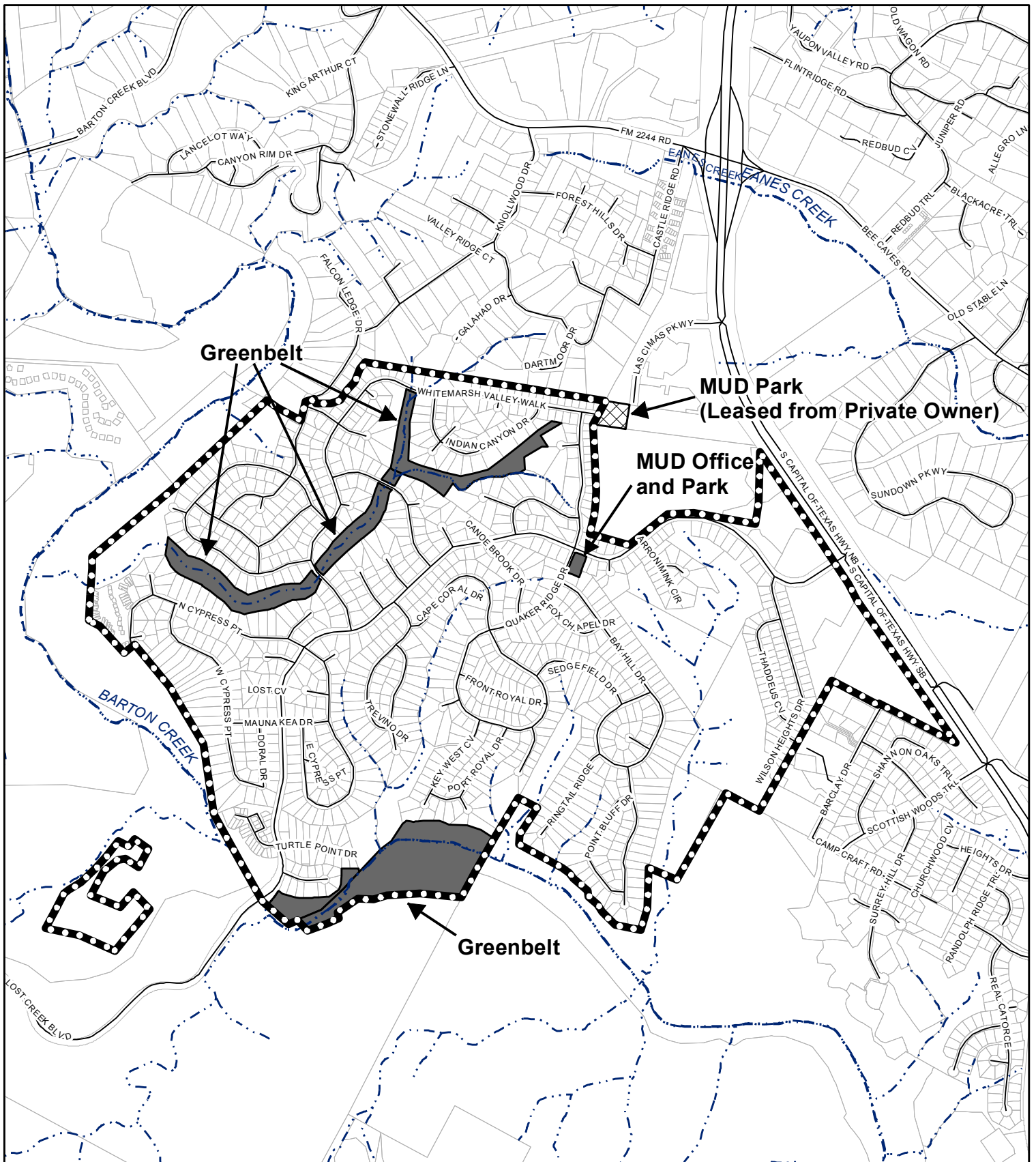


City of Austin NPZD
February 22, 2007
J. Chuter



Legend







- | | |
|------------------------------|------------------------|
| Lost Creek MUD | Austin Full Purpose |
| Commercial Area | Austin Limited Purpose |
| Out-of-District Service Area | Austin 2 Mile ETJ |
| Lot Line | Austin 5 Mile ETJ |
| Creek | Other City |
| | Other ETJ |



Real Property District Retains Full Ownership of per Operations Contract

Exhibit 3

Legend

-  Property Owned by MUD to be Retained
-  Property Leased by MUD to be Retained
-  Lost Creek MUD Boundary
-  Travis County Parcel
-  Street
-  Creek



City of Austin NPZD
February 14, 2008
J. Chuter

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