

**ORDINANCE NO. 20131121-070**

**AN ORDINANCE ADOPTING A STRATEGIC PARTNERSHIP AGREEMENT  
WITH THE SHADY HOLLOW MUNICIPAL UTILITY DISTRICT.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** The City Council finds that:

- (A) The City of Austin and the Shady Hollow Municipal Utility District ("District") negotiated a Strategic Partnership Agreement ("Agreement"), attached as Exhibit 1 to this ordinance, specifying the terms of full-purpose annexation of territory within the District, as described in Exhibit 2 to this ordinance.
- (B) The Agreement, and the Service Plan attached as Exhibit D to the Agreement, serve the interests of the current and future residents of the City of Austin.
- (C) Notices for two public hearings concerning adoption of the Agreement and the annexation of territory within the District for full purposes were published in a newspaper of general circulation in the District and in the City.
- (D) The City conducted public hearings regarding the Agreement and the annexation of territory within the District for full purposes at Austin City Hall on September 26, 2013, and on October 3, 2013.
- (E) The District conducted two public hearings regarding the Agreement on August 11, 2013, and on September 3, 2013.
- (F) The Agreement and the Service Plan were made available prior to the public hearings in accordance with the annexation requirements of the Local Government Code.
- (G) The Service Plan was explained at the public hearings regarding the Agreement.
- (H) The Agreement was adopted by the Board of Directors of the District on September 3, 2013, in accordance with Section 43.0751 of the Local Government Code.
- (I) All procedural requirements imposed by state law have been met for the adoption of the Agreement and the Service Plan and for the full-purpose annexation.

**PART 2.** The Agreement is adopted by the Council and the City Manager is authorized to execute the Agreement on behalf of the City.

**PART 3.** The City Council declares that its purpose is to include within the City of Austin each part of the area described in Exhibit 2 as provided in this ordinance, regardless of whether any other part of the described area is effectively annexed to the City. If this ordinance is held invalid as to any part of the area annexed to the City of Austin, that invalidity does not affect the effectiveness of this ordinance as to the remainder of the area.

If any area or lands included within the description of the area set out in Exhibit 2 are: (1) presently part of and included within the general limits of the City of Austin; (2) presently part of and included within the limits of any other city, town, or village; or (3) are not within the jurisdiction or power of the City of Austin to include within the City, then that area is excluded and excepted from the area covered by this ordinance.

**PART 4.** This ordinance takes effect on December 2, 2013.

**PASSED AND APPROVED**

<u>November 21</u> , 2013	§ § § <u>Lee Leffingwell</u> Lee Leffingwell Mayor
<b>APPROVED:</b> <u>Karen M. Kennard</u> Karen M. Kennard City Attorney	<b>ATTEST:</b> <u>Jannette S. Goodall</u> Jannette S. Goodall City Clerk

## **EXHIBIT 1**

### **STRATEGIC PARTNERSHIP AGREEMENT BETWEEN THE CITY OF AUSTIN AND SHADY HOLLOW MUNICIPAL UTILITY DISTRICT**

THE STATE OF TEXAS     §  
                                      §  
COUNTY OF TRAVIS     §

**KNOW ALL MEN BY THESE PRESENTS:**

This Strategic Partnership Agreement Between the City of Austin, Texas and the Shady Hollow Municipal Utility District, Travis County, Texas ("SPA") is made and entered into by and between the City of Austin, a municipal corporation, acting by and through its duly authorized City Manager ("City"); and Shady Hollow 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 and operating pursuant to Chapters 49 and 54 of the Texas Water Code. All of the territory within the District is located within the extraterritorial jurisdiction of the City in Travis County, Texas. The District encompasses approximately 451 acres, more or less. Its boundaries are described in Exhibit "A" and depicted on Exhibit "B" attached to this SPA.
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 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.
4. The District and its residents and property owners desire to postpone the City's annexation of the District and to enter into this SPA to provide benefits to each party that are reasonable and equitable with regard to the other party.
5. The purpose of this SPA is to enter into a strategic partnership agreement between the City and the District regarding the terms and conditions of annexation of the District by the City in accordance with Section 43.0751 of the Local Government Code.
6. Representatives of the City and the District met to negotiate an annexation service plan in October 2012 and December 2012.

7. The District provided notice of two public hearings concerning the adoption of this SPA in accordance with the procedural requirements of Section 43.0751 of the Local Government Code.
8. The District conducted two public hearings regarding this SPA in accordance with procedural requirements of Section 43.0751 of the Local Government Code on August 11, 2013, at 2:00 p.m., at the David C. Ellis Community Center, 3303 Doe Run, Austin, Texas 78748 and on September 3, 2013 at 6:30 p.m. at the Shady Hollow Municipal Utility District, 3910 Capistrano Trail, Austin, Texas 78748.
9. The City provided notice of two public hearings concerning the adoption of this SPA in accordance with the procedural requirements of Section 43.0751 of the Local Government Code.
10. The City conducted two public hearings regarding this SPA in accordance with procedural requirements of Section 43.0751 of the Local Government Code on September 26, 2013 at 4:00 p.m., at the City Council Chambers and on October 3, 2013 at 4:00 p.m., at the City Council Chambers.
11. The District has, by formal action, after public hearings approved this SPA on September 3, 2013 in open session at a meeting held in accordance with the Open Meetings Act.
12. The City has, by formal action, after public hearings approved this SPA on November 21, 2013 in open session at a meeting held in accordance with the Open Meetings Act.
13. All procedural requirements imposed by state law for the adoption of this SPA have been met.

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

## **ARTICLE I.**

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

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

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

- (a) "City" means the City of Austin, Texas.
- (b) "Consent Agreement" means the agreement between the City and the District titled "Agreement Concerning Creation and Operation of Southwest Travis County Municipal Utility District No. 1", executed on November 7, 1980; the First Supplement to the Agreement Concerning Creation and Operation of Southwest Travis County Municipal Utility District No. 1, executed on June 22, 1990; the Second Supplement to the Agreement Concerning Creation and Operation of Southwest Travis County Municipal Utility District No. 1, executed on June 24, 2008.

- (c) "District" means the Shady Hollow Municipal Utility District, Travis County, Texas, formerly known as Southwest Travis County Municipal Utility District No. 1.
- (d) "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 "B" attached to this SPA.
- (e) "Effective Date" means the means the date of approval of this SPA, as defined in Section 2.02 of this SPA.
- (f) "Force Majeure" means conditions and occurrences as defined in Section 6.13 of this SPA.
- (g) "Full Purpose Annexation Date" means 12:01 a.m., December 15, 2020.
- (h) "O&M Transfer Date" means April 2, 2018.
- (i) "Notice" means any formal notice or communication required or authorized to be given by one Party to another by this SPA.
- (j) "Party or Parties" means the City and/or the District, as the case may be.
- (k) "SPA" means this Strategic Partnership Agreement Between the City of Austin and the Shady Hollow Municipal Utility District, including all Exhibits attached hereto, specifically including by way of example and not in limitation, the Water and Wastewater Agreement.
- (l) "Water and Wastewater Agreement" means the Agreement for Water and Wastewater Service and Operations Management of Facilities Between the City of Austin and the Shady Hollow Municipal Utility District, attached hereto as Exhibit C.

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

The purpose of this SPA is to define and clarify, through contractual agreement, the terms and conditions of annexation of property in the District by the City and the relationship between the City and the District during the period between approval of this SPA and the date of full purpose annexation of the entire District, all in accordance with Section 43.0751 of the Texas Local Government Code.

## **ARTICLE II.**

### **ADOPTION OF THE AGREEMENT AND ANNEXATION OF THE DISTRICT**

#### **Section 2.01 Conduct of Public Hearings and Procedure for Adoption.**

The District and the City acknowledge and agree that prior to the execution of this SPA and prior to full purpose annexation pursuant to this SPA, the District and the City conducted public hearings and complied with all procedural requirements for the purpose of considering the adoption of this SPA and annexation of the District in accordance with the terms of this SPA.

## **Section 2.02 Effective Date of SPA.**

Under the provisions of Section 43.0751(c) of the Local Government Code, this SPA shall become effective on November 21, 2013, the date of adoption of this SPA by the City Council. Upon adoption, the SPA shall be filed by the City in the Real Property Records of Travis County, Texas.

## **Section 2.03 Full-Purpose Annexation of the Property Within the District.**

- (a) All land within the District shall be automatically annexed by the City for full purposes effective on the Full-Purpose Annexation Date, without further procedural action of any kind by either party, in accordance with Sections 43.0751(f)(5) and 43.0751(h) of the Texas Local Government Code. The District will not contest the annexation service plan attached as Exhibit D, 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.
- (b) For a period of 60 calendar 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 to the City's full-purpose jurisdiction. At the end of the 60 calendar day period, the District shall be dissolved without further action of any party.
- (c) The District hereby consents to the City's annexation of all the land in the District in accordance with this SPA. The District accepts the annexation service plan in the form attached to this SPA as Exhibit D, and agrees not to seek arbitration, other legal actions, or legislative remedies to challenge the City's annexation service plan. Notwithstanding the foregoing, the District may take authorized actions, if any, to enforce the terms of the Service Plan. This SPA, 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).
- (d) 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 SPA. The City agrees that nothing in this SPA 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, as that law existed on the Effective Date of this SPA, for services as provided as of the year 2021.

## **Section 2.04 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 2.05 Notice to Landowners of Full Purpose Annexation of Land Within the District.**

- (a) The District agrees to file the following notice concerning this SPA in the Real Property Records of Travis County for the property within the District:

All of the property within the boundaries of Shady Hollow Municipal Utility District of Travis County, Texas (the "District"), as depicted on the map attached hereto, is subject to the terms and conditions of a Strategic Partnership Agreement ("Agreement") between the District and the City of Austin, dated \_\_\_\_, 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.

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

**Section 2.06 Regulatory and Taxation Authority of the City and the District Upon Full Purpose Annexation of an Area of the District.**

Upon full purpose annexation, 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. 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 SPA and applicable law, so long as the District exists.

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

**Section 3.01 Capital Improvements During the Period Prior to Full Purpose Annexation.**

Except as provided in the Water and Wastewater Agreement, the District will be responsible for operating and maintaining all District facilities and properties during that period of time beginning on the Effective Date and ending on the Full Purpose Annexation Date. By way of example and not in limitation, the aforementioned operation and maintenance responsibilities shall include the District's portion of the responsibility shared with Travis County for drainage, prevention of erosion, remediation of storm damage, and pond and channel maintenance.

### **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 SPA, it will not, without the prior written consent of the City Manager:

- (a) transfer any of its assets to any third party without reasonable consideration, or
  - (b) 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
  - (c) 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, or after the O&M Transfer Date for those obligations, fees, or charges specifically related to the District's water and wastewater systems.
- Notwithstanding the foregoing, the District may contract for normal administration and management services and other professional services up through, but not beyond, the Full Proposed Annexation Date.

### **Section 3.04 Coordination**

The District agrees to coordinate with the City in its efforts to negotiate annexation agreements with the District's Out-of-District service areas, including Shady Hollow Sections 1 & 2, the Estates of Shady Hollow, the Enclave at Shady Hollow and Shady Hollow West.

### **Section 3.05 District Administrative Office Building**

The District agrees to sell its administrative office building, located at 3910 Capistrano Trail, Austin, Texas, on or before October 1, 2019. The District may use proceeds of the sale to pay for any expense within the District's legal authority and in accordance with this SPA.

## **ARTICLE IV.**

### **DISTRICT ASSETS, LIABILITIES, OBLIGATIONS, DEBT AND DEBT SERVICE AND THE CONSENT SPA**

### **Section 4.01 Consent Agreement; Assets, Liabilities, Indebtedness, and Obligations**

- (a) The Consent Agreement is terminated on the Full Purpose Annexation Date.
- (b) Except for the ownership of the Retail Water System and the Retail Wastewater System, which are defined in Exhibit "C" and which shall be transferred to the City upon the



O&M Transfer Date in accordance with Article V of this SPA, 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 SPA and the laws of the State of Texas.

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

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 and the annexation service plan. The ownership and operation of the District's water and wastewater system assets shall be according to the terms of the Water and Wastewater Agreement attached hereto as Exhibit C.

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

**Section 4.04 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 SPA. However, District operations and maintenance after the Effective Date of this SPA shall not be construed to increase the level of services

required after full-purpose annexation. Any such obligations or debts incurred by the District may not extend beyond the Full Purpose Annexation Date or beyond the O&M Transfer Date for obligations or debts related to the District's water and wastewater systems.

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

**Section 5.01 District Functions.**

Except as modified by this SPA and the Water and Wastewater Agreement, prior to the Full-Purpose Annexation Date the District shall solely have those functions, purposes, and authorities specifically exercised or performed by the District prior to the Effective Date, or otherwise authorized under the laws of the State of Texas. If the District or the City takes any formal action to discharge a function or to exercise authority that is not directly related to those functions and purposes specifically exercised or performed prior to the Effective Date or otherwise authorized by this SPA, the other Party may proceed as provided in Article VII of this SPA. 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 5.02 Transfer of Ownership.**

The District shall convey ownership of its water and wastewater system assets to the City in accordance with the terms of the Water and Wastewater Agreement attached hereto as Exhibit C on the O&M Transfer Date. In this regard, the Parties agree that the various documents associated with the conveyance shall be executed as of the Effective Date and shall be held in escrow until the O&M Transfer Date at which time they will become effective. The Parties agree that the District shall retain full ownership of its other assets not conveyed to the City in accordance with Exhibit C, until the Full-Purpose Annexation Date.

**Section 5.03 Retail Water and Wastewater Service; Wholesale Water Service and Operations Agreement**

- (a) As more fully described in the attached Water and Wastewater Service Agreement, the District shall provide retail water and wastewater service to all lands within the District and all lands previously approved by the City Council for the District to provide Out-of-District retail water and/or wastewater services until the O&M Transfer Date. After the O&M Transfer Date, the City shall be responsible for providing retail water service and retail wastewater service to the District and all such Out-of-District areas.
- (b) The City and the District agree to concurrently execute, with this SPA, the Water and Wastewater Agreement, attached as Exhibit C, to address multiple issues concerning the ownership, capital improvement, operations, and maintenance of certain District facilities prior to the O&M Transfer Date. If there is a conflict between this SPA and the Water and Wastewater Agreement, the Parties agree that the Water and Wastewater Agreement will apply.

#### **Section 5.04 Audit; Review of District Records.**

The District shall conduct an annual audit each year, at its sole expense, to be performed by an independent certified public accountant. The District shall file a copy of the completed audit with the City's Director of Financial Services. The District shall make its financial records available to the City for inspection during normal business hours upon prior reasonable notice by the City.

### **ARTICLE VI. MISCELLANEOUS PROVISIONS**

#### **Section 6.01 Annexation of Nearby Properties**

The City intends to plan for and ultimately annex additional nearby properties that are closely related to the Shady Hollow Subdivision but not subject to this agreement because they are not located within the boundary of the District. These properties include, by way of example and not in limitation, Shady Hollow Sections 1 & 2, the Estates of Shady Hollow, the Enclave at Shady Hollow and Shady Hollow West. Annexation of these areas in addition to the District will provide a contiguous and more logical city limit boundary. City staff will recommend that Council initiate annexation of these areas consistent with state law requirements so that they will become part of the city no later than the District.

#### **Section 6.02 Entire Agreement/Conflicting Provisions.**

- (a) This SPA is not intended to waive or limit the applicability of laws, regulations, and ordinances applicable to the District or the City, nor does it waive the jurisdiction or sovereignty of any governmental body with respect to the District or the City.
- (b) As of this date there are no agreements, oral or written, between the Parties which are in conflict with this SPA. This SPA, together with all of the attachments to this SPA, constitutes the entire agreement between the Parties with respect to the terms and conditions governing the annexation of the District. No representations or agreements other than those specifically included in this SPA shall be binding on either the City or the District.

#### **Section 6.03 Notice.**

- (a) Any Notice given under this SPA shall be given in accordance with this Section.
- (b) Notice may be given by:
  - (i) delivering the Notice to the Party to be notified;
  - (ii) by depositing the Notice in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified; or

- (iii) by sending the Notice by telefax (or electronic mail) with confirming copy sent by mail to the Party to be notified.
- (c) Notice deposited in the United States mail in the manner herein described shall be deemed effective upon the earlier of the date of actual receipt or three days after the date of such deposit. Notice given in any other manner shall be effective only if and when received by the Party to be notified.
- (d) For purposes of Notice, the addresses of the Parties shall, until changed as provided in this Section, be as follows:

City of Austin:

Director, Planning & Development Review  
Department  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767  
E-mail: \_\_\_\_\_

with required copy to  
City Attorney:

City Attorney  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767  
E-mail: \_\_\_\_\_

Shady Hollow Municipal Utility District:

General Manager  
Shady Hollow Municipal Utility District  
3910 Capistrano Trail  
Austin, Texas 78745  
E-mail: \_\_\_\_\_

with required copy to  
District's Attorney:

Phil Haag  
McGinnis Lochridge & Kilgore  
600 Congress Avenue, Suite 2100  
Austin, TX 78701  
E-mail: \_\_\_\_\_

- (e) The Parties may change their addresses for Notice purposes by providing five days written notice of the changed address to the other Party.
- (f) If any date or period provided in this SPA ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating Notice is extended to the first business day following the Saturday, Sunday, or legal holiday.

#### **Section 6.04 Time.**

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

#### **Section 6.05 Severability or Modification of SPA as a Result of Court Action, or Amendment of State Law or Statutory Authority for the SPA; No Legislative or Litigative Efforts by District.**

- (a) If any part of this SPA, or the application of the part of this SPA to any person or circumstance is held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the Parties agree that they will amend or revise this SPA to accomplish to the greatest degree practical the same purpose and objective of the part determined to be invalid or unconstitutional, including without limitation amendments or revisions to the terms and conditions of this SPA pertaining to or affecting the rights and authority of the Parties in areas of the District annexed by the City pursuant to this SPA, or proposed to be annexed.
- (b) If any part of this SPA is nullified or modified in whole or in part as a result of amendments to the underlying state law and statutory authority for this SPA, the Parties agree and understand that such modification may frustrate the purpose of this SPA. The parties agree that they will attempt to amend or revise this SPA to accomplish to the greatest degree practical (i) the same purpose and objective of the part of this SPA affected by the amendment of the underlying state law and statutory authority and (ii) the original intent and purpose of this SPA.
- (c) The District will not engage in litigation or legislative processes to challenge this SPA, 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 SPA 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 SPA.

#### **Section 6.06 Waiver.**

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

#### **Section 6.07 Applicable Law and Venue.**

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

#### **Section 6.08 Reservation of Rights.**

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

#### **Section 6.09 Further Agreement and Documents.**

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

#### **Section 6.10 Incorporation of Exhibits and Other Documents by Reference.**

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

#### **Section 6.11 Assignability, Successors, and Assigns.**

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

#### **Section 6.12 Amendment.**

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

#### **Section 6.13 Force Majeure.**

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

- (b) 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 SPA and the Water and Wastewater Agreement.

## **ARTICLE VII.**

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

#### **Section 7.01 Default.**

- (a) Upon the occurrence, or alleged occurrence, of an event of default under or violation of this SPA, 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 SPA and subject to force majeure, the defaulting Party must cure its default or violation within thirty days following receipt of the Notice of default or violation.
- (b) If the default or violation is not cured within the thirty day period, the non-defaulting Party may sue for enforcement or cancellation of this SPA. However, prior to bringing any proceeding in a court of law or before a court of competent jurisdiction, the Parties may (but are not required to) resolve the issue through alternative dispute resolution. If the Parties agree to seek alternative dispute resolution, they must participate in good faith. 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 SPA if the arbitration decision compromises the City's or District's sovereign immunity.
- (c) If the Parties are unable to resolve their dispute through mediation or arbitration, if any, the non-defaulting Party shall have the right to enforce the terms and provisions of this SPA by specific performance or by such other legal or equitable relief to which the non-defaulting Party maybe entitled. Any remedy or relief described in this SPA shall be cumulative of, and in addition to, any other remedies and relief available at law or in equity.
- (d) If the defaulting Party fails to abide by these deadlines, the non-defaulting Party shall have all rights and remedies available in law and equity and all rights and remedies provided in this SPA.
- (e) All of these rights and remedies shall be cumulative.
- (f) The parties agree that none of the remedies specified in this SPA shall apply to a breach of the agreement attached hereto as Exhibit D, and that the remedies available for a breach of said agreement shall be controlled by the remedy provisions of the agreement.

**Section 7.02 Dissolution of the District**

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

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

**CITY OF AUSTIN, TEXAS**

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

By: \_\_\_\_\_  
Marc Ott  
City Manager

**SHADY HOLLOW MUNICIPAL  
UTILITY DISTRICT**

Attest: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Ronald O. Stried  
President, Board of Directors

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Marc Ott, City Manager for the City of Austin, Texas, for and on behalf of the City of Austin, Texas.

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

STATE OF TEXAS

COUNTY OF TRAVIS



This instrument was acknowledged before me on the \_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
Ronald O. Stried, President of the Board of Directors Shady Hollow Municipal Utility District,  
for and on behalf of the Shady Hollow Municipal Utility District.

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

**STRATEGIC PARTNERSHIP AGREEMENT  
BETWEEN THE CITY OF AUSTIN AND THE  
SHADY HOLLOW MUNICIPAL UTILITY DISTRICT**

**LIST OF EXHIBITS**

The following are the exhibits for this SPA:

<b>Exhibit A</b>	<b>District Boundaries Field Notes</b>
<b>Exhibit B</b>	<b>District Map</b>
<b>Exhibit C</b>	<b>Agreement for Water and Wastewater Service and Operations Management of Facilities Between the City of Austin and the Shady Hollow Municipal Utility District</b>
<b>Exhibit D</b>	<b>Annexation Service Plan</b>

## EXHIBIT A

Shady Hollow  
M.U.D. Field Notes  
See Plat No. 36

FN 0095 R<sup>2</sup>  
June 12, 1979  
Job #619  
Revised May 20, 1980  
Revised June 13, 1980

FIELD NOTE DESCRIPTION PREPARED IN THE OFFICE ACCORDING TO A COMBINATION OF PUBLIC RECORDS AND VARIOUS PREVIOUS SURVEYS OF 451 ACRES, MORE OR LESS, IN THE WALKER WILSON SURVEY NO. 2 AND THE JOHN G. MC GEHEE SURVEY NO. 6, TRAVIS COUNTY, TEXAS, SAID 451 ACRES CONSISTING OF PORTIONS OF THE FOLLOWING TRACTS:

1. THAT 150.898 ACRE TRACT CONVEYED TO AUSTIN SAVINGS AND LOAN BY DEED RECORDED IN VOLUME 4589 PAGE 1847 OF THE TRAVIS COUNTY DEED RECORDS,
2. THAT 83.087 ACRE TRACT CONVEYED TO AUSTIN SAVINGS AND LOAN BY DEED RECORDED IN VOLUME 4551 PAGE 1049 OF THE TRAVIS COUNTY DEED RECORDS,
3. THAT 216.913 ACRE TRACT CONVEYED TO AUSTIN SAVINGS AND LOAN BY DEED RECORDED IN VOLUME 4551 PAGE 1043 OF THE TRAVIS COUNTY DEED RECORDS, AND
4. THAT 100.00 ACRE TRACT CONVEYED TO AUSTIN SAVINGS AND LOAN BY WARRENTY DEED IN VOLUME 6939, PAGE 420 OF THE TRAVIS COUNTY PLAT RECORDS,

AND SAID 451 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at the intersection of the west line of Brodie Lane (presently 85 feet wide) and the south line of Shady Hollow Addition Section 2 Phase 1, a subdivision of record in Book 67 Page 1 of the Travis County Plat Records, and in the north line of that tract called "Tract Two" conveyed to First Service Corporation by deed recorded in Volume 4371 Page 1339 of the Travis County Deed Records;

THENCE leaving the First Service Corporation 61.65 acre tract with the present west line of Brodie Lane the following two (2) calls:

1. N 00° 54' W a distance of 1870.28 feet, and
2. a distance of 136.02 feet with the arc of a curve to the right having a central angle = 12° 04' 29", radius = 645.00 feet, and a chord bearing N 05° 08' E a distance of 135.77 feet to a point in the north line of Shady Hollow Addition Section 2 Phase 1;

THENCE leaving Brodie Lane with the north line of Shady Hollow Addition, Section 2, Phase 1 the following three (3) calls:

1. N 89° 26' W a distance of 1715.71 feet to a point for the northerly northwest corner of Shady Hollow Section 2 Phase 1,
2. S 00° 30' W a distance of 430.75 feet to a point for a reentrant northwest corner of Shady Hollow Addition Section 2 Phase 1, and
3. N 89° 26' W a distance of 409.78 feet to a point for the southerly northwest corner of Shady Hollow Addition Section 2 Phase 1;

THENCE with the west line of Shady Hollow Section 2 Phase 1 S 00° 30' W a distance of 1575.00 feet to a point for the southwest corner of Shady Hollow Section 2 Phase 1, the southeast corner of that 100.00 acre tract conveyed by a Warrenty

EXHIBIT "A"

Deed to Austin Savings and Loan recorded in Volume 6939, Page 420 of the Travis County Plat Records, and in the north line of that tract conveyed to Robert E. Barker by deed recorded in Volume 715 Page 106 of the Travis County Deed Records;

THENCE with the common line of the Austin Savings and Loan 100.00 acre tract and the Barker tract the following two (2) calls:

1. N 89° 25' W a distance of 793.68 feet, and
2. N 89° 26' W a distance of 332.91 feet to a point for the southwest corner of the Austin Savings and Loan 100.00 acre tract;

THENCE leaving the Barker tract with the west line of the Austin Savings and Loan 100.00 acre tract N 00° 30' E a distance of 3842.17 feet to a point for the northwest corner of the Austin Savings and Loan 100.00 acre tract in a south line of that tract called "Tract 4" conveyed to Polly B. Brooks, et al by deed recorded in Volume 3862 Page 1442 of the Travis County Deed Records;

THENCE with the common line of the Brooks tract and the Austin Savings and Loan 100.00 acre tract the following three (3) calls:

1. EAST a distance of 103.05 feet,
2. N 89° 32' E a distance of 40.08 feet, and
3. N 30° 36' E a distance of 20.19 feet to a point for the southwest corner of Kellywood Estates Section Two, a subdivision of record in Book 75 Page 184 of the Travis County Plat Records;

THENCE leaving the Brooks tract with the south line of Kellywood Estates Section Two the following two (2) calls:

1. S 89° 57' E a distance of 973.16 feet, and
2. S 89° 52' E a distance of 1125.15 feet to a point, pass it at 1105.5 feet the southeast corner of Lot Six (6) of Kellywood Estates Section Two;

THENCE with the north line of the Austin Savings and Loan 216.913 acre tract the following eleven (11) calls:

1. N 89° 59' E a distance of 195.61 feet,
2. S 89° 40' E a distance of 161.74 feet to the southeast corner of that tract conveyed to Alfred J. Kelly by instrument recorded in Volume 5557 Page 1120 of the Travis County Deed Records and the southwest corner of that tract conveyed to Alfred J. Kelly by instrument recorded in Volume 2690 Page 216 of the Travis County Deed Records;
3. N 89° 58' E a distance of 95.75 feet,
4. S 82° 11' E a distance of 79.20 feet,
5. S 88° 58' E a distance of 66.86 feet,
6. S 89° 32' E a distance of 38.62 feet,
7. N 84° 08' E a distance of 118.79 feet,
8. S 89° 11' E a distance of 103.60 feet,
9. S 89° 55' E a distance of 313.43 feet, pass at 281.03 feet the southwest corner of Kellywood Estates, a subdivision

of record in Book 68 Page 93 of the Travis County Deed Records,

10. with the south line of Kellywood Estates S 89° 58' E a distance of 608.01 feet, and

11. N 89° 57' E a distance of 439.62 feet;

THENCE crossing Brodie Lane N 89° 57' E a distance of 104.17 feet to a point in the east line of Brodie Lane and in the west terminus line of a 60 foot wide road (known as Squirrel Hollow) of record in Volume 2604 Page 487 of the Travis County Deed Records;

THENCE with the west terminus line of Squirrel Hollow and the east line of Brodie Lane, and continuing on with the west line of Lots 32, 42, 43, 46, and 58 of Shady Hollow Addition, a subdivision of record in Book 60 Page 22 of the Travis County Plat Records, S 30° 11' W a distance of 856.97 feet;

THENCE leaving Shady Hollow Addition and severing Brodie Lane (65 feet wide at this point) N 59° 49' W a distance of 65.00 feet;

THENCE with the west line of Brodie Lane a distance of 110.22 feet with the arc of a curve to the right having a chord bearing S 35° 40' W a distance of 110.05 feet;

THENCE leaving Brodie Lane the following eight (8) calls:

1. N 59° 49' W a distance of 264.54 feet,
2. a distance of 395.94 feet with the arc of a curve to the left having a chord bearing N 74° 56' W a distance of 391.36 feet,
3. S 89° 56' W a distance of 152.58 feet,
4. S 00° 04' E a distance of 460.88 feet,
5. N 89° 57' E a distance of 125.00 feet,
6. a distance of 154.90 feet with the arc of a curve to the right having a chord bearing S 72° 23' E a distance of 152.46 feet,
7. S 54° 43' E a distance of 40.50 feet, and
8. a distance of 30.12 feet with the arc of a curve to the left having a chord bearing N 82° 48' E a distance of 27.43 feet to a point in the west line of Brodie Lane (90 feet wide at this point).

THENCE with the west line of Brodie Lane the following four (4) calls:

1. a distance of 285.03 feet with the arc of a curve to the right having a chord bearing N 52° 46' E a distance of 282.79 feet to a point of reverse curvature,
2. a distance of 228.51 feet with the arc of a curve to the left having a chord bearing N 53° 21' E a distance of 226.87 feet,
3. with a narrowing of the width of Brodie Lane from a 90 foot width to a 65 foot width S 59° 49' E a distance of 25.19 feet, and
4. a distance of 110.22 feet with the arc of a curve to the

left having a chord bearing N 35° 40' E a distance of 110.05 feet;

THENCE severing Brodie Lane S 59° 49' E a distance of 65.00 feet to a point of curvature in the west line of Lot 59 of Shady Hollow Addition;

THENCE with the west line of Lots 59, 77, and 1 of said subdivision and the east line of Brodie Lane the following three (3) calls:

1. a distance of 392.03 feet with the arc of a curve to the right having a chord bearing S 47° 42' 30" W a distance of 385.95 feet,
2. a distance of 410.55 feet with the arc of a curve to the left having a chord bearing S 44° 25' W a distance of 401.58 feet, and
3. S 23° 36' W a distance of 207.86 feet to the southwest corner of Lot One (1) of said subdivision;

THENCE leaving Brodie Lane with the southerly line of Shady Hollow Addition the following eight (8) calls:

1. S 89° 36' E a distance of 282.26 feet,
2. S 63° 26' E a distance of 206.80 feet,
3. S 68° 11' E a distance of 258.00 feet,
4. S 57° 35' E a distance of 174.93 feet,
5. S 45° 22' E a distance of 237.55 feet,
6. S 29° 13' E a distance of 392.53 feet,
7. S 39° 00' E a distance of 382.81 feet, and
8. S 54° 12' E a distance of 198.30 feet to the south corner of Lot Fourteen (14) of said subdivision and the south corner of that tract conveyed to Herbert Schimsk by instrument recorded in Volume 5030 Page 667 of the Travis County Deed Records;

THENCE leaving Shady Hollow Addition with the southeast line of the Schimsk tract the following three (3) calls:

1. N 78° 37' E a distance of 116.97 feet,
2. N 35° 41' E a distance of 110.96 feet, and
3. N 19° 39' E a distance of 518.87 feet, pass on this line the east corner of the Schimsk tract and the south corner of that tract conveyed to Eugene M. Reeder by instrument recorded in Volume 4919 Page 1395 of the Travis County Deed Records;

THENCE with the east line of the Reeder tract and the east line of that tract conveyed to Alton Stewart by instrument recorded in Volume 5078 Page 2173 of the Travis County Deed Records the following two (2) calls:

1. N 25° 11' E a distance of 178.55 feet, pass on this line the northeast corner of the Reeder tract and the southeast corner of the Stewart tract, and
2. N 58° 05' W a distance of 387.46 feet to a point in the

east line of Shady Hollow Addition, pass on this line the  
northeast corner of the Stewart tract;

THENCE with the east line of Shady Hollow Addition and the west line of that  
150.898 acre tract conveyed to Austin Savings and Loan by instrument recorded in  
Volume 4589 Page 1847 of the Travis County Deed Records the following two (2)  
calls:

1. N 05° 15' E a distance of 400.00 feet, and
2. N 00° 13' E a distance of 1272.69 feet to a point for the  
northeast corner of Lot 29 of said subdivision, the north-  
west corner of the Austin Savings and Loan 150.898 acre  
tract in the south line of the aforementioned 60 foot road  
of record in Volume 2604 Page 487 of the Travis County  
Deed Records;

THENCE leaving Shady Hollow Addition with the common line of the Austin Savings  
and Loan 150.898 acre tract and said 60 foot road S 89° 57' E a distance of  
1191.82 feet to the northeast corner of said 150.898 acre tract;

THENCE with the east line of said 150.898 acre tract S 00° 20' W a distance of  
5171.05 feet to the southeast corner of said 150.898 acre tract in the north  
line of that tract conveyed to Jacob Bauerle by instrument recorded in Volume  
3433 Page 902 of the Travis County Deed Records;

THENCE with the common line of said 150.898 acre tract and the Jacob Bauerle  
tract the following two (2) calls:

1. N 89° 45' W a distance of 596.80 feet, and
2. N 89° 53' W a distance of 722.42 feet to the southwest  
corner of said 150.898 acre tract and the southeast corner  
of Southland Oaks, Section One, a subdivision of record  
in Book 76 Page 329 of the Travis County Plat Records;

THENCE leaving the Jacob Bauerle tract with the common line of said subdivision  
and said 150.989 acre tract the following two (2) calls:

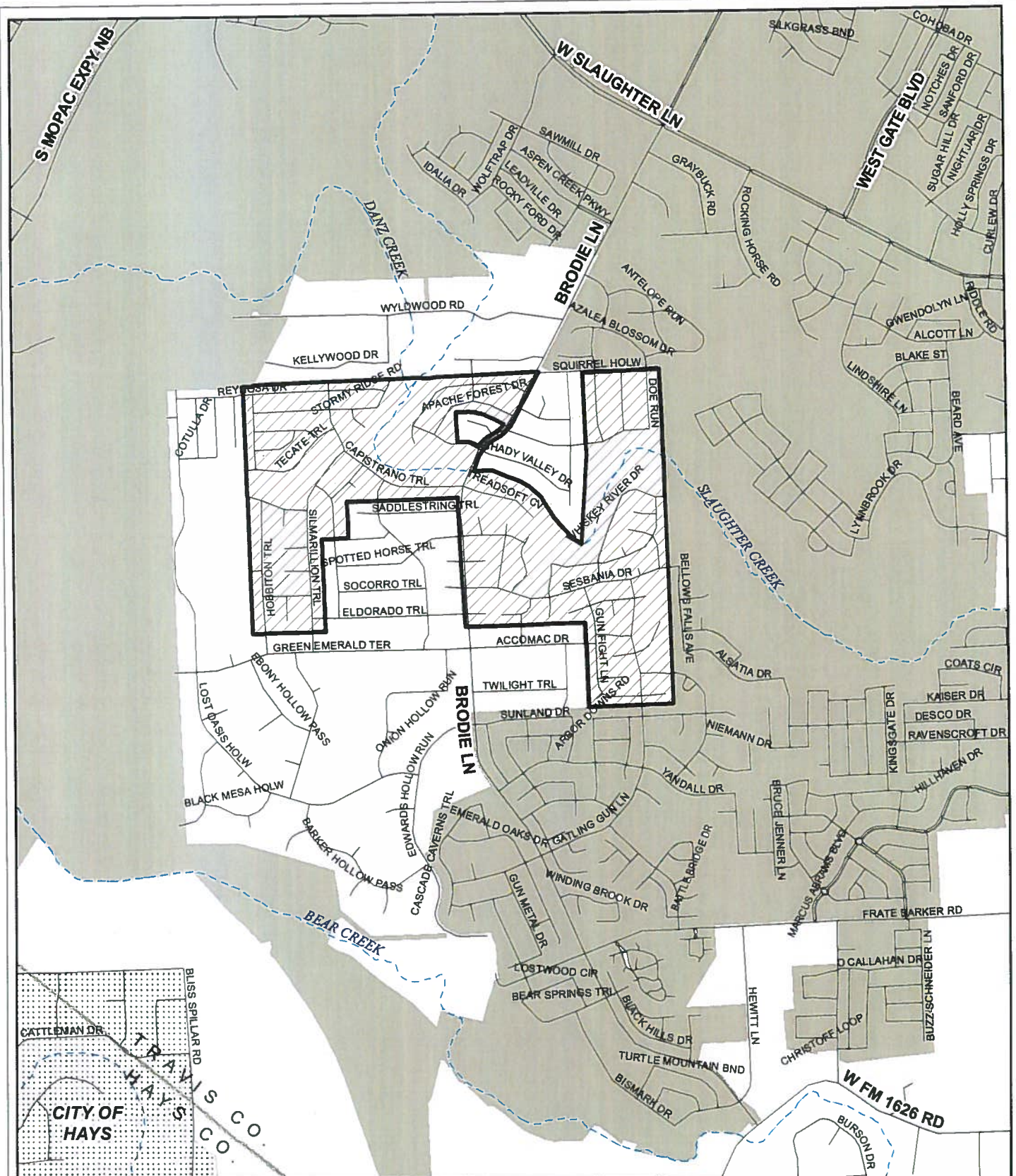
1. N 00° 16' E a distance of 697.28 feet, and
2. N 00° 22' E a distance of 617.28 feet to the northeast  
corner of said subdivision and the southeast corner of that  
83.087 acre tract conveyed to Austin Savings and Loan by  
instrument recorded in Volume 4551 Page 1049 of the Travis  
County Deed Records;

THENCE leaving said 150.898 acre tract with the common line of Southland Oaks  
Section One and said 83.087 acre tract the following two (2) calls:

1. N 89° 41' W a distance of 1307.23 feet, and
2. N 89° 26' W a distance of 456.69 feet to the northwest  
corner of Lot One (1) Block C of said subdivision;

THENCE leaving said subdivision and severing Brodie Lane N 89° 26' W a distance  
of 90.04 feet to the POINT OF BEGINNING, containing 451 acres, more or less, as  
determined in the office according to a combination of public records and various  
previous surveys.

# EXHIBIT B



## Shady Hollow Municipal Utility District (MUD)

### LEGEND

- Shady Hollow MUD
- Street
- Major Creek

### JURISDICTION

- Austin Full Purpose
- Austin ETJ
- Other City
- County

0 500 1,000 2,000 Feet

1 in = 2,000 feet



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by the Planning and Development Review for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



City of Austin PDRD  
J. Chuter  
September 11, 2013



## **EXHIBIT C**

### **AGREEMENT FOR WATER AND WASTEWATER SERVICE AND OPERATIONS MANAGEMENT OF FACILITIES BETWEEN THE CITY OF AUSTIN AND THE SHADY HOLLOW MUNICIPAL UTILITY DISTRICT**

THIS AGREEMENT ("Water and Wastewater Agreement") is made and entered into between the City of Austin, Texas ("City"), a Texas home rule municipal corporation, and the Shady Hollow Municipal Utility District (formerly known as the Southwest Travis County Municipal Utility District No. 1), ("District"), a conservation and reclamation district created and operating as a municipal utility district pursuant to the provisions of Chapters 49 and 54, Texas Water Code, collectively "Parties."

**WHEREAS**, the City and the District previously entered into the Agreement Concerning Creation and Operation of Southwest Travis County Municipal Utility District No. 1, executed on November 7, 1980; the First Supplement to the Agreement Concerning Creation and Operation of Southwest Travis County Municipal Utility District No. 1, executed on June 22, 1990; the Agreement for Wholesale Wastewater Service Between City of Austin and Southwest Travis County Municipal Utility District No. 1, executed on October 9, 1993; the First Amendment to Agreement for Wholesale Wastewater Service, executed on April 25, 1996; the Second Supplement to the Agreement Concerning Creation and Operation of Southwest Travis County Municipal Utility District No. 1, executed on June 24, 2008 (collectively, the "Consent Agreement");

**WHEREAS**, the Southwest Travis County Municipal Utility District No. 1 formally changed its name to the Shady Hollow Municipal Utility District on October 20, 1995 and is hereinafter referred to as the Shady Hollow Municipal Utility District;

**WHEREAS**, the City and the District previously entered into the Agreement for Wholesale Water Supply Between City of Austin and Shady Hollow Municipal Utility District, executed on September 15, 1980;

**WHEREAS**, the City and the District previously entered into the Agreement for Wholesale Wastewater Service Between City of Austin and Shady Hollow Municipal Utility District, executed on October 9, 1993;

**WHEREAS**, the District is party to agreements, as amended, or is otherwise providing Out-of-District water and/or wastewater service to various areas, referred to herein as the "Out-of-District Service Area" including a) Shady Hollow Addition (Shady Hollow Section 1) and Shady Hollow Addition Section 2, Phase 1 (Shady Hollow Section 2, Phase 1) (for water service); b) the Shady Hollow Estates (for wastewater service); c) the Southland Oaks Section 2 (for wastewater service); d) the Enclave at Shady Hollow (for water and wastewater service) and Shady Hollow West (for water and wastewater service);

**WHEREAS**, the City and the District desire to enter into a new agreement, prior to full purpose annexation by the City on December 31, 2020, to set out terms and conditions for the ownership, operation, and maintenance of the District's water and wastewater facilities;

**WHEREAS**, the Austin City Council has, by formal action, approved this Agreement as an Exhibit to the Strategic Partnership Agreement Between the City of Austin and Shady Hollow Municipal Utility District on November 21, 2013, in open session at a meeting held in accordance with the Open Meetings Act;

**WHEREAS**, the District has, by formal action, approved this Agreement as an Exhibit to the Strategic Partnership Agreement Between the City of Austin and Shady Hollow Municipal Utility District on September 3, 2013, in open session at a meeting held in accordance with the Open Meetings Act;

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

## **ARTICLE I DEFINITIONS**

The following terms shall have the meanings set out below:

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

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

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

**1.04. Consent Agreement:** means the Agreement Concerning Creation and Operation of Southwest Travis County Municipal Utility District No. 1, executed on November 7, 1980, and the supplements thereto, as listed above.

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

**1.06. District:** means the Shady Hollow Municipal Utility District.

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

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

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

**1.10. Full Purpose Annexation Date:** means 12:01 a.m., December 15, 2020.

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

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

**1.13. O&M Transfer Date:** means April 2, 2018.

**1.14. Retail Wastewater System:** means the collection lines; lift stations; mains; residential, commercial, and industrial connections; the areas within the fenced areas surrounding the various components of the wastewater system and any other parts or components that comprise the public wastewater system serving the retail customers located within the Service Area.

**1.15. Retail Water System:** means the lines; mains; residential, commercial, and industrial connections; those facilities associated with the transportation of treated water from City of Austin; the areas within the fenced areas surrounding the various components of the water system and any other parts or components that comprise the public water system serving the retail customers located within the Service Area.

**1.16. Service Area:** means the District's boundaries and City approved Out-of-District Service Area as more particularly designated on Exhibit 1.

**1.17. Service Plan:** means the Annexation Service Plan, attached as Exhibit D to the Strategic Partnership Agreement.

**1.18. Sewage:** means water-borne human excreta and gray water.

**1.19. Strategic Partnership Agreement:** means that certain Strategic Partnership Agreement Between the City of Austin and the Shady Hollow Municipal Utility District, executed simultaneously herewith on the Effective Date.

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

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

## **ARTICLE II. WATER AND WASTEWATER SERVICE**

**2.01. Term.** The term of this Agreement shall be effective from \_\_\_\_\_ until O & M Transfer Date, upon which date the City assumes operation and maintenance of the District's water and wastewater facilities and this Agreement terminates.

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

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

**2.04. Operation and Maintenance by the City.** Beginning on the O&M Transfer Date, the City will assume all responsibility for operating and maintaining the Retail Water System and Retail Wastewater System and shall honor and assume all the District's utility obligations. The City shall operate and maintain the Retail Water System and Retail Wastewater System and provide water and wastewater services to customers in the District and to the Out-of-District Service Area customers pursuant to this Water and Wastewater Agreement and the Service Plan at the same level as in the District before the Effective Date. In addition, the City will maintain all facilities described in this Water and Wastewater Agreement at the level required by State law regarding municipal annexation as of the Effective Date.

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

**2.06. Provision of Water and Wastewater Service to Out-of-District Service Area Customers.** The District shall continue to provide Out-of-District service to its current Out-of-District Service Area until the O&M Transfer Date. Beginning on the O&M Transfer Date, the City shall honor and assume all the District's utility obligations including the obligation to provide service to the Out-of-District Service Area as described in the Out-of-District service agreement for each respective area.

### **ARTICLE III. COMPLIANCE WITH STATE LAWS AND CITY REGULATIONS**

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

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

**3.03. Cooperation to Assure Regulatory Compliance.** Because both Parties must comply with all federal, state, and local requirements to obtain permits, grants, and assistance for system construction, studies, etc., the District and the City will cooperate in good faith at all times to assure compliance with any such governmental requirements where noncompliance or noncooperation may subject the Parties to penalties, loss of grants or other funds, or other adverse regulatory action.

### **ARTICLE IV. RATES, CHARGES, AND BILLING**

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

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

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

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

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

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

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

## **ARTICLE V. CONSTRUCTION OF FACILITIES**

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

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

**5.03. Acquisition of Rights-of-Way.** The District represents and warrants that to the best of its knowledge, it has all required easements and access rights required to access, own, and operate the Retail Water System and Retail Wastewater System, either by instrument, plat dedication or by prescription, and the District transfers and assigns said rights to the City in accordance with the terms of this Water and Wastewater Agreement. In the event that any third person successfully challenges the City's exercise of any such rights prior to the O&M Transfer Date, the District agrees to fully cooperate with the City and take all reasonable actions at the District's expense to defend or establish such rights. As part of the Criticality Assessment described in Section 7.04 of the Water and Wastewater Agreement, in the event that the District does not have an easement or access rights for a particular portion of its Retail Water System or Retail Wastewater System, the District will obtain such at its own cost.

## **ARTICLE VI. SERVICE AREA AND LIMITATIONS ON SERVICE**

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

**6.01.1.** Except for the Out-of-District Service Area, the District may not provide or construct or install facilities to provide Water or Wastewater service outside the Service Area without the prior approval of the Austin City Council;

**6.01.2.** The Austin City Council reserves the right to deny for any reason any requests by the District for approval under subsection 6.01.1 above;

**6.01.3.** If the District provides Water or Wastewater service outside the Service Area in violation of subsection 6.01.1 above, the City may require the District to immediately terminate service to the land outside the Service Area; and

**6.01.4.** Except as authorized before the Effective Date, 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.

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

**ARTICLE VII.  
OWNERSHIP OF FACILITIES**

**7.01. Transfer of Ownership.** The Parties agree to the following:

**7.01.1** Upon the O&M Transfer Date of this Water and Wastewater Agreement, and except as otherwise provided below, the District will grant, bargain, sell, assign, and convey:

**7.01.1.1** The Retail Water System and the Retail Wastewater System (“Conveyed Water and Wastewater Facilities”) as generally shown on Exhibit 2 (Water Facilities) and Exhibit 3 (Wastewater Facilities); and all easements, plans and specifications, warranties, guaranties, license agreements, performance bonds, as-built plans, that are directly related to the Conveyed Water and Wastewater Facilities;

**7.01.1.2** The existing easements (“Easements”) to the lands situated in the County of Travis, State of Texas, as more generally shown on Exhibit 4 (Conveyed Easements); and

**7.01.1.3** The lands (“Conveyed Property”) situated in the County of Travis, State of Texas, generally described on Exhibit 5 (Conveyed Property), and all other such infrastructure, and personal and real property necessary to own, operate, and maintain the Retail Water System and Retail Wastewater System (collectively, “Utility Property”), to the City, together with all and singular the rights, interests, and appurtenances thereto in any way belonging. The Parties specifically agree that the District shall retain full ownership of, and not convey any areas not specifically conveyed hereby; or any other personal or real property interests not reasonably required for the City’s operation and maintenance of the water and wastewater infrastructure being conveyed hereby.

**7.01.2** The District agrees that as part of the conveyance of the Utility Property, it is conveying to the City the easement rights, if applicable, on which the Conveyed Water and Wastewater Facilities are located. The District agrees that none of the provisions in this Article shall be construed to relieve the District of any obligation to construct infrastructure improvements required by this Water and Wastewater Agreement, including by way of example, and without limitation, improvements required by maintenance in Section 7.01, as a result of the criticality assessment in Section 7.04 hereof.

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



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

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

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

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

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

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

**7.04. City's Criticality Assessment.**

**7.04.1** The City, with the cooperation of the District, will conduct a criticality assessment of the Retail Water System and Retail Wastewater System no later than January 5, 2015. The City's criticality assessment report will specifically identify each area for improvement and a schedule for completion. The City will provide the District a written copy of the report.

**7.04.2** Subject to subsection 7.04.3 below, by July 1, 2017, the District agrees that all City-identified infrastructure improvements from the criticality assessment that are considered maintenance activities will be funded and completed. These may include, but are not limited to, such items as: pump overhauls; replacement of aging electrical wiring or electrical equipment; painting; repair of identified damaged or cracked water or wastewater mains, or manholes; additional portable generators; maintenance of water valves and fire hydrants, replacement/repair of water valves and fire hydrants not properly working; repair or replacement of plant equipment in accordance with TCEQ standards and practices; easements or modifications of lift station facilities and mains to allow emergency equipment to access each lift station and main; and repair or replacement of plant equipment that has been deemed a risk to public health or safety. The City's criticality assessment will include a proposed schedule for completing infrastructure improvements. Upon receipt of the City's criticality assessment and proposed schedule for infrastructure improvements, the District shall prepare a proposed list and schedule of infrastructure improvements, which may or may not be identical to the City's schedule and list of infrastructure improvements within 60 days of receipt of the City's criticality assessment. Any subsequent proposed modifications to a list and schedule of infrastructure improvements by either Party shall be responded to in writing within 60 days of receipt by the Party receiving such document.

**7.04.3** The improvements or repairs made by the District under this Section 7.04 shall only include the replacement or repair of equipment that is in need of repair in order to comply with TCEQ standards, practices and rules. If the District disagrees with the list

of infrastructure improvements identified by the City, or if the City disagrees with the District's schedule for completion or list of infrastructure improvements, the Parties will first attempt to mediate with a mutually acceptable mediator a mutually acceptable resolution within 60 days of such disagreement. If mediation fails, a mutually acceptable arbitrator will meet with the Parties within 60 days of either Party's request and will make the final binding determination (either: (i) the District performs the improvement according to the City's schedule and assumes the cost of the improvement; (ii) the District performs the improvement according to the District's schedule; (iii) the District is not required to adopt the City's requested improvement); or (iv) as otherwise determined by the arbitrator within 3 business days of the joint meeting. The Parties agree the cost of the arbitrator shall be borne by the Party against whom the arbitrator makes the determination.

**7.04.4** The District agrees to use its best efforts at all times to complete the mutually agreed upon improvements by the dates set out in this Section. If any of the improvements will unavoidably not be completed by July 1, 2017, the City and the District may agree to modify the deadline date, but no later than September 30, 2017 for any item. If any of the improvements are not completed within the modified schedule, the City may, after notice to the District and opportunity to cure not less than 30 days, pursue the remedies available to the City under Article VIII of this Water and Wastewater Agreement; provided, however, that such remedies shall not be available if the delay is caused by force majeure.

## **ARTICLE VIII. TERM, PERFORMANCE, AND FORCE MAJEURE**

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

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

remedies for a breach of this Water and Wastewater Agreement by either Party shall be controlled by the breach and remedy provisions set forth in this Water and Wastewater Agreement, and not by the breach and remedy provisions of the Strategic Partnership Agreement being executed by the Parties simultaneously herewith.

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

## **ARTICLE IX. GENERAL PROVISIONS**

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

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

Shady Hollow Municipal Utility District  
3910 Capistrano Trail  
Austin, Texas 78739  
Attn: Board President

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

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

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

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

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

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

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

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

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

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

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

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

**9.11. No Third Party Beneficiary.** This Water and Wastewater Agreement shall be construed as an interlocal contract respecting the performance of governmental services and nothing herein shall be construed to confer any right, privilege, or benefit on any person or entity not a party hereto or otherwise creates any vested right or third party beneficiary relationship.

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

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

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

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

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

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

**CITY OF AUSTIN:**

**By:** \_\_\_\_\_

**Name:** Robert Goode

**Title:** Assistant City Manager

**Date:** \_\_\_\_\_

**SHADY HOLLOW MUNICIPAL UTILITY  
DISTRICT:**

**By:** \_\_\_\_\_

**Name:** Ronald O. Stried

**Title:** President

**Date:** \_\_\_\_\_

**THE STATE OF TEXAS    )**  
**)**  
**COUNTY OF TRAVIS     )**

**THIS INSTRUMENT** is acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2013, by Robert Goode 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 Ronald O. Stried, President of the Board of Directors of Shady Hollow Municipal Utility District, a conservation and reclamation district created and operating as a municipal utility district, on behalf of that district.

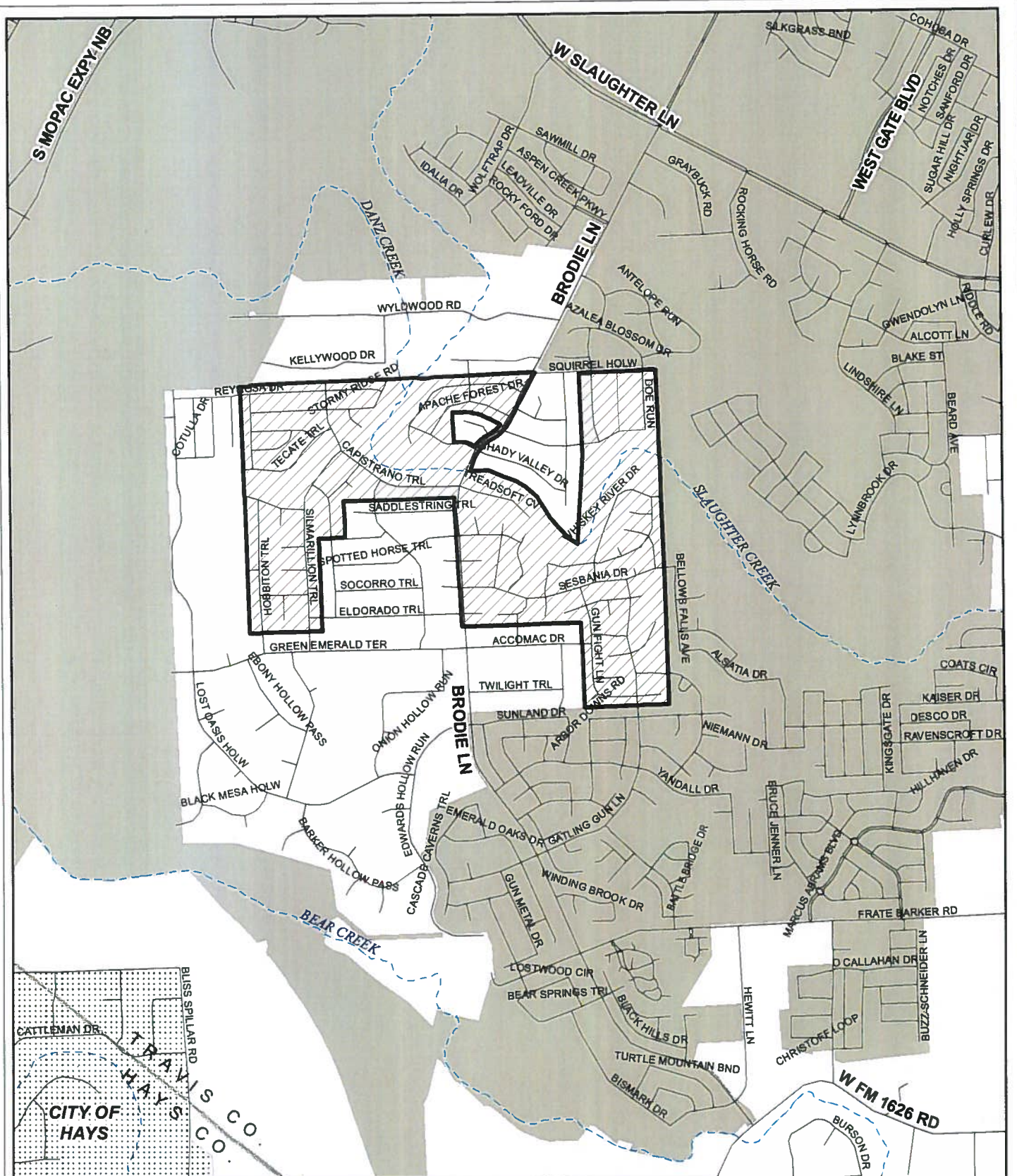
\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Printed/Typed Name of Notary

My Commission Expires: \_\_\_\_\_



# EXHIBIT 1 - Map of Service Area



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by the Planning and Development Review for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

**EXHIBIT 2**  
**CONVEYED WATER FACILITIES TO THE CITY**

The District's water facilities, equipment, pumps, lines, appurtenances and any all related property located in easements and right of ways of sections in the District and of specific subdivisions in the Out of District Service Area are referenced in the recorded documents listed below. The list of documents is organized based on reference to facilities located within the District and facilities located within the Out of District Service Area.

**Facilities and related Equipment in the District**

- A. Shady Hollow Section 2A, Phase 1; Shady Hollow Section 5, Phase 1; Shady Hollow Section 5, Phase 2: Travis County Real Property Records, Travis County, Texas, Volume 8553, Page 393 (Deed/Bill of Sale, Executed March 28, 1984).
- B. Shady Hollow Section 2, Phase 2A: Real Property Records, Travis County, Texas, Volume 10098; Page 0407 (Ratification of Conveyance of Facilities, Executed January 20, 1987; Deed of the Facilities at Real Property Records, Travis County, Texas, Volume 10073, Page 0770 and Contract for Sale of the Water and Wastewater Facilities at Volume 10073, Page 0760.)
- C. Shady Hollow Section 3B; Shady Hollow Section 2A, Phase 2: Travis County Real Property Records, Travis County, Texas, Volume 10011, Page 0839. (Deed/Bill of Sale, December 10, 2006).
- D. Shady Hollow Section 3A, Phase 1, Section 3A, Phase 2; Section 3A, Phase 3 and Section 4: Real Property Records Travis County, Texas Volume 10126, Page 0378 (Deed/Bill of Sale, January 2, 1987); Travis County Real Property Records, Volume 10126 Page 0368, Instrument No. 1012600368 (Contract for Sale of Water, Wastewater and Drainage Facilities, March 2, 1987.)
- E. Shady Hollow Section 6, Phase A, Section 6, Phase B, Section 6, Phase C: Real Property Records, Travis, County, Texas Volume 10014, Page 0253 (Deed/Bill of Sale, December 5, 1986)

- F. Shady Hollow Section 6, Phase D: Real Property Records, Travis County, Texas Volume 10724, Page 0492 (Deed, May 24, 1988).

**Facilities and Related Equipment in these subdivisions of the Out of District Service Area**

- A. Shady Hollow West: All Water Facilities pipes, equipment and any and all related personal property used in connection with water service located on map or plat recorded at 102, Page 58-60 Real Property Records; Bill of Sale and Conveyance, Real Property Records, Travis County, Texas Volume 13363, Page 0549.
- B. The Enclave at Shady Hollow: All Water Facilities pipes, equipment and any and all related personal property used in connection with water service located in easements or right of way identified on map or plat of record in Volume 86, Page 133D in Plat Records of Travis County, Texas.

**EXHIBIT 3**  
**CONVEYED WASTEWATER FACILITIES TO THE CITY**

The District's facilities, equipment, pumps, lines, appurtenances and any all related property located in easements and right of ways of sections in the District and of the subdivisions in the Out of District Service Area are referenced in the recorded documents listed below. The list of documents is organized based on reference to facilities located within the District and facilities located within the Out of District Service Area.

**Facilities and Related Equipment in the District**

- A. Shady Hollow Section 2A, Phase 1; Shady Hollow Section 5, Phase 1; Shady Hollow Section 5, Phase 2: Travis County Real Property Records, Travis County, Texas, Volume 8553, Page 393 (Deed/Bill of Sale, Executed March 28, 1984).
- B. Shady Hollow Section 2A, Phase 2: Real Property Records, Travis County, Texas, Volume 10098; Page 0407 (Ratification of Conveyance of Facilities, Executed January 20, 1987; Deed of the Facilities at Real Property Records, Travis County, Texas, Volume 10073, Page 0770 and Contract for Sale of the Water and Wastewater Facilities at Volume 10073, Page 0760.)
- C. Shady Hollow Section 3B; Shady Hollow Section 2A, Phase 2: Travis County Real Property Records, Travis County, Texas, Volume 10011, Page 0839. (Deed/Bill of Sale, December 10, 2006).
- D. Shady Hollow Section 3A, Phase 1, Section 3A, Phase 2; Section 3A, Phase 3 and Section 4: Real Property Records Travis County, Texas Volume 10126, Page 0378 (Deed/Bill of Sale, January 2, 1987); Travis County Real Property Records, Volume 10126 Page 0368, Instrument No. 1012600368 (Contract for Sale of Water, Wastewater and Drainage Facilities, March 2, 1987.)
- E. Shady Hollow Section 6, Phase A, Section 6, Phase B, Section 6, Phase C: Real Property Records, Travis, County, Texas Volume 10014, Page 0253 (Deed/Bill of Sale, December

5, 1986)

F. Shady Hollow Section 6, Phase D: Real Property Records, Travis County, Texas Volume 10724, Page 0492 (Deed, May 24, 1988).

G. Lift Stations.

a) Lift Station #1 SH Sect. 5 Lot 13.

**Facilities and Related Equipment in these subdivisions in Out of District Service Area**

A. Shady Hollow West. All Wastewater facilities, pipes, equipment and any and all related personal property used in connection with wastewater service located on map or plat recorded at 102, Page 58-60 Real Property Records; Bill of Sale and Conveyance, Real Property Records, Travis County, Texas Volume 13363, Page 0549.

B. Shady Hollow Estates. All Wastewater Facilities pipes, equipment and any and all related personal property used in connection with wastewater service located in easements or right of way according to the map or plat record for: a) Shady Hollow Estates, Section One, Volume 84, Page 49A, Plat Records; b) Shady Hollow Estates, Section Two Amended, Volume 85, Page 126A, Plat Records; c) Shady Hollow Estates Section Three, Volume 85, Page 35A, Plat Records; and d) Shady Hollow Estates Phase B, Volume 84, Page 136C, Plat Records of Travis County Texas.

C. The Enclave at Shady Hollow. All Wastewater Facilities pipes, equipment and any and all related personal property used in connection with wastewater service located in easements or right of ways according to the map or plat of record in Volume 86, Page 133D in Plat Records of Travis County, Texas.

D. Southland Oaks Section 2. All Wastewater Facilities pipes, equipment and any and all related personal property used in connection with wastewater service located in easements or right of according to the map or plat of record in Volume 85, Page 33D,

34A-34B in Plat Records of Travis County, Texas.

**E. Lift Stations.**

- b) Lift Station #2 at 11908 Onion Hollow Run
- c) Lift Station #3 at 3314 Lost Oasis Hollow
- d) Lift Station #4 at River Rock Court
- e) Lift Station #5 at 12005 Corner Brook Pass

**EXHIBIT 4**  
**CONVEYED EASEMENTS TO THE CITY**

All interests in water, wastewater and public utility easement as shown on the City of Austin approved subdivision plats.

1. All easements identified and described in the following Exhibit 4A. [Any missing or unidentified easements will be addressed by the District through the Criticality Assessment described in Section 7.04 of this Agreement.]

#### EXHIBIT 4A

- A. Public Utility and Access Easements. Real Property Records, Travis County, Texas Volume 11533, Page 335; and, Real Property Records, Travis County, Document No. 1999141358 (Addition to Public Utility and Access Easement November 12, 1999):
1. Lost Oasis
  2. River Rock
  3. Hobbiton Trail
  4. Corner Brook
  5. Bears Den Court
- B. Addition to Public Utility and Access Easements. Real Property Records, Travis County, Document No. 1999141358.
- C. Addition to Public Utility and Access Easement. Real Property Records, Travis County, Texas, Volume 13029, Page 0187.
- D. Lift Station Easement (Onion Hollow). Real Property Records, Travis County, Texas Volume 11879, Pages 0087.
- E. Public Utility Easement (Split Rock Trail). Real Property Records, Travis County, Texas Document No. 2002191559.
- F. Easements for Wastewater Transmission Line and Access. Real Property Records, Travis County, Texas Volume 12630, Page 0186
- G. Easement for Wastewater Transmission Line. Real Property Records, Travis County, Texas Volume 11994, Page 0714



**EXHIBIT 5**  
**DISTRICT PROPERTY CONVEYED TO THE CITY**

All interests in land owned by the District for the water and wastewater system excluding the property housing the management offices at 3910 Capistrano Trail, Austin, Texas 78739 and the real property and improvements for the District's fire station.

## **EXHIBIT D**



### **CITY OF AUSTIN ANNEXATION SERVICE PLAN**

**Case Name:** Shady Hollow MUD  
Subject to the Strategic  
Partnership Agreement  
**Case Number:** C7a-2020-0001  
**Date:** February 21, 2013

#### **INTRODUCTION**

This Service Plan ("Plan") is made by the City of Austin, Texas ("City") in accordance with a Strategic Partnership Agreement ("SPA") between the City of Austin and Shady Hollow Municipal Utility District ("MUD") pursuant to Texas Local Government Code Section 43.0751. This Plan relates to the annexation to the City of land ("annexation area") known as the Shady Hollow MUD annexation area. The Shady Hollow MUD was created in 1980 and consists of approximately 455 acres located in southern Travis County south of the intersection of Brodie Lane and Squirrel Hollow. This area is currently in the city's extraterritorial jurisdiction and is adjacent the city's full purpose jurisdiction.

The MUD is entirely developed and the predominant land use in the area is single-family residential.

The annexation area is described by metes and bounds in Exhibit A of the SPA, of which this Plan is a part. The annexation area is also shown on the map in Exhibit A.

#### **EFFECTIVE TERM**

This Plan shall be in effect for a ten-year period commencing on the effective date of the annexation, 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 or obsolete or unlawful.

## **SERVICE COMPONENTS**

In General. 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; and
  - special units, such as, traffic enforcement, criminal investigations, narcotics, gang suppression, and special weapons and tactics team.

Public safety is a high priority issue for residents and property owners in the Shady Hollow MUD. The Austin Police Department operates on real-time crime data and analysis to provide law enforcement services customized to the specific needs of the neighborhoods they serve and as such will provide law enforcement services to the Shady Hollow MUD upon annexation tailored to meet their specific needs.

- 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/Travis County 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; and
  - rescue/hazardous materials unit.

AFD serves as the first responder on life threatening emergencies for Austin/Travis County 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 emergency medical services in the annexation area.

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

- medical 911 communications including dispatch, pre-arrival first aid instructions and coordination of other public safety support agencies;
- emergency Advanced Life Support (ALS) ambulance response, treatment and transport;
- medical rescue services; and
- medical support during large scale emergency events.

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 Resource Recovery Department will provide services in the annexation 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 paper, boxboard and cardboard, aluminum and metal cans, glass bottles and jars, plastic bottles (#1 through #7); and
  - 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 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. The 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 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 activities including crack seal, sealcoat, slurry seal, and preventative maintenance overlay; and
  - repair maintenance operations of public streets on an as-needed basis including 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. 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 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 provided 24 hours a day, 365 days a year for emergency repair of critical regulatory signs.

Street lighting will be maintained in accordance with the City of Austin ordinances, Austin Energy criteria and state law.

- g. Maintenance of Parks, Playgrounds, and Swimming Pools. At this time there are no public recreation facilities in 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. The Watershed Protection 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;
  - watershed protection master planning for flood hazard mitigation, streambank restoration and erosion control, and water quality protection;
  - flood hazard mitigation;
  - streambank restoration and erosion management; and
  - infrastructure and waterway maintenance.
- b. Planning and Development Review. The Planning and Development Review Department will provide comprehensive planning, land development and building review and inspection services in accordance with and as limited by applicable codes, laws, ordinances and special agreements.
- c. Code Compliance. In order to attain compliance with City codes regarding land use regulations and the maintenance of structures, the City's Code Compliance Department will provide education, cooperation, enforcement and abatement relating to code violations
- d. Library. Upon annexation residents may utilize all Austin Public Library facilities.
- e. Public Health, Social, and Environmental Health Services. Upon annexation, the following services will be available from the Austin/Travis County Health and Human Services Department:
  - investigation of public health related complaints including foodborne illness, recreational water quality 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, child care facilities;
  - investigation of reported elevated blood lead levels in children;
  - animal services including leash law and rabies control; and
  - rodent and vector control consultation.
- f. 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.
- g. Clean Community Services. The Austin Resource Recovery Department will provide clean community services in the annexed area. Clean Community is a fee-based service. Services currently provided in the City include:
  - bulk and brush collection;
  - street and boulevard sweeping;

- litter collection and abatement;
- household hazardous waste collection;
- Austin Resource Recovery Center;
- Austin reuse and recycling centers;
- dead animal collection; and
- zero waste program development.

- h. 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. No capital improvements are necessary at this time to provide water and wastewater services.

Water and wastewater services to new development and subdivisions will be provided according to the standard policies and procedures of the Austin Water Utility, which may require the developer of a new subdivision or site plan 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. In general, the City will acquire control of all public roads and jurisdiction in, over and under all public roads and public streets within the annexation area upon annexation. Future extensions of roads or streets and future installation of related facilities, such as traffic control devices, will be governed by the City's standard policies and procedures.

- g. Parks, Playgrounds and Swimming Pools. No capital improvements are necessary at this time to provide services.
- h. Watershed Protection. 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 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, as set out in Chapters 25-1 through 25-5 and 25-9 of the Austin City Code, 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.

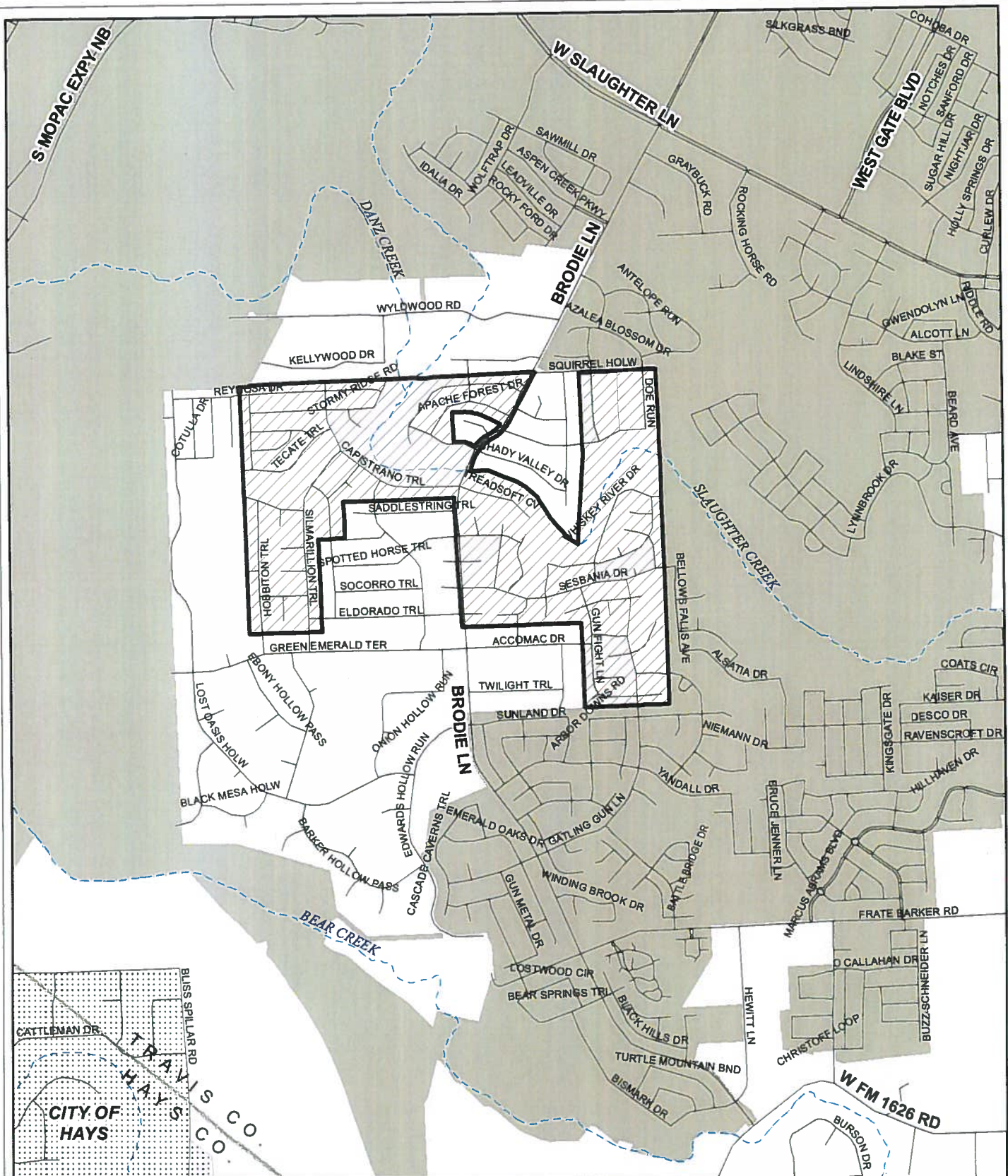
Depending on the size of the new facilities and other conditions, with City Council approval, the City may reimburse the developer for part of the cost of constructing certain facilities. With City Council approval, the City may cost participate by reimbursing costs associated with the oversize capacity 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 served by an existing on-site well or septic system that have water or wastewater lines within 100 feet of the lot at the time of annexation, the owner will not be required to pay the impact fees if a tap permit is obtained by the property owner on or before the second anniversary of the date of annexation. For lots served by an existing well or septic system that do not have water or wastewater lines within 100 feet of the lot, the owner will not be required to pay the impact fees if a tap permit is obtained by the property owner on or before the second anniversary of the date of acceptance of the water or sewer line to within 100 feet of their lot. In either case the owner will still be required to pay other applicable connection fees.

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.

# EXHIBIT 2



## Shady Hollow Municipal Utility District (MUD)

### LEGEND

- Shady Hollow MUD
- Street
- Major Creek

### JURISDICTION

- Austin Full Purpose
- Austin ETJ
- Other City
- County

0 500 1,000 2,000 Feet

1 in = 2,000 feet



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by the Planning and Development Review for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



City of Austin PDRD  
J. Chuter  
September 11, 2013