

#44

03-10-05

**RESOLUTION NO.**

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

That the City Manager is authorized to execute an agreement, attached as Exhibit A, with Balcones Country Club Membership Association, Inc. (BCCMA), regarding the provision of reuse water to BCCMA for the irrigation of its golf course, in conjunction with the terms of the lease, irrigation, and maintenance agreement assumed by the City of Austin between Northwest Travis County Municipal Utility District No. 2, BCCMA, and Technology Hydraulics, Inc., and

That the City Manager is authorized to execute an agreement regarding BCCMA's purchase of wastewater irrigation facilities owned by the City.

**ADOPTED:**                      , 2005      **ATTEST:** \_\_\_\_\_  
Shirley A. Brown  
City Clerk

## **EXHIBIT A**

**AGREEMENT FOR SALE OF  
TREATED WASTEWATER AND POTABLE WATER**

<b>THE STATE OF TEXAS</b>	<b>§</b>	<b>KNOW ALL PERSONS</b>
	<b>§</b>	
<b>COUNTY OF TRAVIS</b>	<b>§</b>	<b>BY THESE PRESENTS</b>

This "Agreement for Sale of Treated Wastewater and Potable Water" (the "Service Agreement") is between the City of Austin (the "City"), a Texas home-rule municipal corporation, and the Balcones Country Club Membership Association, Inc., a Texas non-profit corporation, and its successors, assigns, affiliates, or agents ("BOCMA"). The City and the BOCMA may each be individually referred to herein as a "Party" and are collectively referred to herein as the "Parties."

**ARTICLE 1**

**RECITALS**

1.01 The City owns and operates two wastewater treatment plants that together provide wastewater utility service to a geographical area generally depicted on Exhibit A. Specifically, the City owns and operates a wastewater treatment plant referred to herein as the "Balcones Water Reclamation Plant" pursuant to Texas Commission on Environmental Quality ("TCEQ") Permit No. 11363-001 and a wastewater treatment plant referred to herein as the "Pickfair Water Reclamation Plant" pursuant to TCEQ Permit No. 12929-001. These two plants are jointly referred to herein as the "Wastewater Treatment Plants".

1.02 The BOCMA owns certain real property near the Balcones Subdivisions in northwest Travis County, Texas, as more fully described in that certain deed recorded at \_\_\_\_\_ (the "Property"), on which Property the Balcones Golf Course and the Spicewood Golf Course are located. The BOCMA has heretofore leased from the City an interest in certain portions of the City's Irrigation Facilities (as defined below) used to irrigate the BOCMA's Balcones Golf Course and Spicewood Golf Course. The City currently has a perpetual easement for the disposal of wastewater effluent by irrigation on the Property. For purposes herein, the BOCMA's Balcones Golf Course and Spicewood Golf Course are defined to mean those lands owned by the BOCMA on the Property that are used for the primary purpose of playing golf, include fairways, tees, greens, hazards, maintenance facilities, and clubhouses and are referred to herein as "BOCMA's Golf Facilities".

1.03 The City owns the aforementioned Irrigation Facilities, which consist of irrigation pumps, transfer pumps, transfer lines, irrigation lines, irrigation control systems, the effluent holding pond herein referred to as the "Pickfair Holding Pond" and other facilities on the Property, as more particularly described in Exhibit B (the "Irrigation Facilities"). In addition, by instrument dated March 30, 1999, the City received whatever ownership rights Technology Hydraulics, Inc., may have held to a holding pond referred to as the Jolly Hollow Holding Pond. The City also owns other facilities outside of the Property that are

used for the collection, treatment, storage and transfer of wastewater from its service area near the Balcones Subdivision in northwest Travis County, Texas. The City uses the Wastewater Treatment Plants to deliver treated wastewater to the Pickfair Holding Pond that is used for holding the treated wastewater before it is irrigated on the BOCMA's Golf Facilities in accordance with the November 19, 1997 "Lease, Irrigation, and Maintenance Agreement" (the "1997 Agreement") between the City (as successor-in-interest to Northwest Travis County Municipal Utility District No. 2 and Technology Hydraulics, Inc.) and the BOCMA.

1.04 Pursuant to the terms and conditions of the "Agreement For Conveyance of Interest in Wastewater Facilities and Settlement of All Claims Regarding the Provision of Reuse Water to the Balcones Country Club Membership Association, Inc." (the "Conveyance Agreement") between the City and the BOCMA of even date herewith, the City will convey the Irrigation Facilities to the BOCMA on the Closing Date (as described in Article 2, below). The Conveyance Agreement is incorporated herein by reference for all purposes. As of the Closing Date, the City will continue to provide Treated Wastewater, as defined below, to the BOCMA at the Pickfair Holding Pond for the irrigation of the BOCMA's Golf Facilities under the terms and conditions of this Service Agreement. For purposes of this Service Agreement, "Treated Wastewater" shall mean wastewater effluent that meets all applicable requirements of the TCEQ for irrigation on golf courses, including the City's TCEQ permit.

1.05 The BOCMA desires to secure a reliable supply of Treated Wastewater, potable water and groundwater for the BOCMA's Golf Facilities and the City desires that the BOCMA use the irrigation areas on the Property for the disposal of Treated Wastewater from the City's Treatment Plants. Subject to the terms and conditions of this Service Agreement, the BOCMA will, among other things, irrigate the BOCMA's Golf Facilities with the Treated Wastewater delivered by the City to the Pickfair Holding Pond and the City will continue to deliver Treated Wastewater to the BOCMA at the Pickfair Holding Pond for the irrigation of the BOCMA's Golf Facilities.

1.06 This Service Agreement is authorized under Chapter 402 of the Local Government Code and the City's Charter.

NOW THEREFORE, in consideration of the premises and covenants herein and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the City and the BOCMA do hereby agree and covenant as follows:

## ARTICLE 2

### CONDITIONS

2.01 Conditions Precedent. This Article 2 and Section 12.08, below, are effective as of the Effective Date as defined in Section 12.21, below. Upon the satisfaction of the conditions set forth in both Section 2.02 and Section 2.03, below, the remaining provisions of this Service Agreement become effective.

**2.02 Groundwater Well Testing.** The City will fund and the BOCMA will conduct groundwater well testing as provided for in this Article 2.

(a) Within ten (10) days of the Effective Date, as defined in Section 12.21, below, the City will pay the BOCMA the sum total of \$70,000.00 (the "Test Payment") to be used by the BOCMA in accordance with this Section 2.02.

(b) The BOCMA will use the Test Payment to determine whether new groundwater well(s) capable of producing at least fifty (50) gallons per minute ("gpm") of groundwater meeting the standards set forth below can be established on the Property. In order to make such a determination, the BOCMA may engage professional consultants and well drillers to conduct appropriate hydrological and geologic testing, drilling, well testing and casing and other related functions (the "Tests"). The BOCMA intends to undertake Tests immediately upon execution of this Agreement and, as such, this statement serves as notice of this fact to the City. BOCMA will work in good faith to complete all Tests within sixty (60) days of the Effective Date and, in any event, will complete all Tests within five (5) months of the Effective Date. The City at its own cost may have a person (who may be an employee or an independent consultant) who is acceptable to both the City and BOCMA monitor the Tests during the testing period. BOCMA agrees to provide the City all information and documents related to the Tests upon BOCMA's receipt of such information for the City's monitoring of the Tests.

(c) If the BOCMA determines in its reasonable judgment that the Tests show that a groundwater well(s) can be drilled and maintained on the Property (1) that is of no greater depth than one-thousand (1000) feet, (2) that can produce a sustainable yield based on a 24-hour constant rate test of at least fifty (50) gallons per minute of water and (3) that meets water quality standards for total dissolved solids and other constituents that will allow the groundwater to be beneficially used as irrigation water on the BOCMA's Golf Facilities when blended with other water sources ("Test Conditions"), the conditions of this Section 2.02 shall be satisfied. Alternatively, the BOCMA may in its own discretion determine to waive one or more of the aforementioned three requirements and notify the City that these Test Conditions have been satisfied. Upon the City's receipt of such written notice, the conditions of this Section 2.02 shall be deemed to be waived.

(d) Within ten (10) days of the date that the Tests are completed, the BOCMA will provide the City with a summary of the results of the Tests and a full accounting of the expenses it has incurred in connection with the Tests showing the manner in which the Test Payment was expended.

**2.03 Permit Increase and Clarification.** Immediately upon the Effective Date, the City will submit a formal request to the TCEQ for authorization to operate its Balcones Water Reclamation Plant at a monthly average capacity of up to 262,800 gallons per day without having to comply with TCEQ rules and regulations that would require the City to submit plans to the TCEQ to increase the permitted treatment capacity of 292,000 gallons per day of its Balcones Water Reclamation Plant. In addition, immediately upon the Effective Date, the City will submit a formal request to the TCEQ to verify that the BOCMA may store groundwater in the Pickfair Holding Pond in any amount so long as the provisions of the TCEQ Permits (as defined below) pertaining to freeboard limitations are met and that the

Diversion Facilities (as defined in Section 3.04(b)) will obviate the need for the City to continue to operate the wastewater main near Hole No. 9 on the Balcones Golf Course (as more fully described in Section 3.04(g), below). Upon the date that the TCEQ documents in writing that the City may operate the Balcones Water Reclamation Plant at a monthly average capacity of 262,800 gallons per day without having to increase the permitted treatment capacity of the Balcones Water Reclamation Plant, documents that the BOCMA may store groundwater in the Pickfair Holding Pond in any amount so long as the provisions of the TCEQ Permits (as defined below) pertaining to freeboard limitations are met and documents that Diversion Facilities obviate the need for the above-referenced wastewater main, the conditions of this Section 2.03 ("Permit Conditions") shall be deemed to be satisfied. BOCMA agrees that the City is not obligated or required to increase the permitted treatment capacity of the Balcones Water Reclamation Plant beyond the current permit level of 292,000 gallons per day.

**2.04 Satisfaction of Conditions.** The time when the conditions set forth in Section 2.02 and 2.03 are satisfied shall be referred to herein as the "Closing Date".

**2.05 Conditions Not Satisfied.** In the event that the Test Conditions or Permit Condition are not satisfied, this Service Agreement shall be null and void and within 60 days of the Effective Date, BOCMA agrees to return to the City the full amount of the Test Payment not expended. In this case, the Parties agree to consider other possible ways to resolve their differences concerning the 1997 Agreement.

### **ARTICLE 3**

#### **SUPPLY OF TREATED WASTEWATER TO THE BOCMA**

**3.01 Maintenance of the Irrigation Facilities.** As more fully described in the Conveyance Agreement, the City will convey the Irrigation Facilities to the BOCMA on the Closing Date. Commencing on the Closing Date, the BOCMA shall own the Irrigation Facilities and shall be responsible for all costs to repair, refurbish, insure, operate, maintain, replace, improve or rebuild the Irrigation Facilities. The Parties acknowledge and agree that the BOCMA will not expand or make improvements to the Irrigation Facilities that adversely affect or interfere with the BOCMA's irrigation of the Treated Wastewater without coordinating with the City and receiving its express written approval, which approval shall not be unreasonably withheld. From and after the Closing Date, the City shall not be responsible for either of the following: (1) except as provided in Section 9.02, below, any costs associated with the construction, operation, maintenance, or expansion of the Irrigation Facilities; or (2) any costs associated with the maintenance and operation of the Property provided, however, that the City shall at its own expense and sole discretion clear the brush and debris within the fence enclosure of the Pickfair Holding Pond and the Jolly Hollow Holding Pond within ninety (90) days of the Effective Date.

**3.02 Perpetual Easement.** The Parties agree that the City has reserved and retained a perpetual easement for the disposal of wastewater effluent by irrigation on the irrigation areas on the Property in accordance with that certain Warranty Deed dated June 19, 1997 and recorded at Volume 12960, Page 0625 of the Real Property Records of Travis County, Texas and that certain Warranty Deed dated November 24, 1997 and recorded at Volume

13075, Page 1795 of the Real Property Records of Travis County. Immediately upon termination of this Service Agreement, the City will vacate the above-referenced perpetual easement. Notwithstanding Article 11 of this Service Agreement or any other contrary provision herein regarding the termination of this Service Agreement, this Section 3.02 shall survive the termination of the Service Agreement and shall remain in full force and effect for a period of four (4) years after the termination of the Service Agreement.

**3.03 Termination of Previous Agreement.** The 1997 Treated Wastewater Agreement is terminated and is of no further force or effect as of the Closing Date. The City also agrees to forgo any payments owed by BOCMA pursuant to Section 4.4 of the 1997 Agreement up to and including payments owed as of the Closing Date.

**3.04 Supply of Treated Wastewater to the BOCMA.**

(a) Subject to the terms and conditions of this Service Agreement and the City's TCEQ Permit No. 11363-001 and TCEQ Permit No. 12929-001 (the "TCEQ Permits"), and other applicable requirements of law, the City will provide to the BOCMA for irrigation on BOCMA's Golf Facilities all Treated Wastewater from the Balcones Village subdivision, the Balcones Greene subdivision, and the existing service area of the Balcones Water Reclamation Plant, all as generally depicted in Exhibit A. In addition, the City will provide to the BOCMA for irrigation on the BOCMA's Golf Facilities all Treated Wastewater from the former Northwest Travis County MUD No. 2 service area (as more fully depicted in Exhibit A) until such time that the City decommissions the Pickfair Water Reclamation Plant in accordance with the terms of this Service Agreement. For purposes of this Service Agreement, the foregoing service areas shall be collectively referred to as the "Service Area". The quantity of Treated Wastewater generated from the Service Area shall be hereinafter referred to as the "Total Service Area Delivery." The City shall be temporarily relieved from delivering that portion of the Total Service Area Delivery during wet weather conditions or wastewater treatment plant malfunctions or maintenance activities that unavoidably interfere with the City's ability to deliver to BOCMA Treated Wastewater. However, the City agrees that it shall immediately resume delivering the Total Service Area Delivery upon the cessation of such temporary conditions.

(b) By September 30, 2005, the City at its sole cost will complete the construction of and put into operation all wastewater facilities (including by way of example and not in limitation, the influent lift station to the Balcones Water Reclamation Plant and the Spring Lake lift station) necessary to divert the untreated wastewater delivered to the Balcones Water Reclamation Plant to the City's Regional Walnut Creek Wastewater Treatment Plant or other City designated regional wastewater treatment facilities (the "Diversion Facilities").

(c) The Parties acknowledge and agree that (1) the Wastewater Treatment Plants should treat a minimum amount of sewage on a regular basis in order to operate efficiently (2) the BOCMA's Golf Facilities should be kept in playable condition throughout the year and (3) the Treatment Plants must operate within the limits of the TCEQ Permits and all other applicable Federal, State and local rules and regulations. Accordingly, the Parties will communicate and cooperate on an ongoing basis concerning the operation of the Wastewater Treatment Plants to help ensure that these objectives are all met. Notwithstanding the foregoing, at times when the Pickfair Holding Pond is near capacity or

can reasonably be expected to reach capacity imminently, the BOCMA may decline to accept some or all of the Total Service Area Delivery treated at the Balcones Water Reclamation Plant by providing to the City 72-hour advance, written notice stating the estimated duration for this event. The BOCMA will also specify a resumption time and date on which the City may resume the Total Service Area Delivery. In turn, the City will notify the BOCMA of the time and date after the event, in the City's sole discretion, in which resumption of the delivery of the total amount of Treated Wastewater from the Balcones Water Reclamation Plant can be reasonably resumed provided that such date must not be more than thirty (30) days after the date of the event. The City will verify that the time and date is acceptable to the BOCMA. BOCMA acknowledges and agrees that conditions may arise in which the City, in its sole discretion, must resume its delivery of Treated Wastewater in order not to violate the City's TCEQ permit, or other rules and regulations, and in such cases, BOCMA agrees to immediately accept all of the Total Service Area Delivery.

(d) The City at its sole cost will decommission the Pickfair Water Reclamation Plant as soon as practicably possible but not before the construction described in Section 3.04 (f) is completed. At the time the decommissioning is complete, the City will be relieved of its obligations under this Service Agreement to provide BOCMA with the Treated Wastewater from the former Northwest Travis County MUD No. 2 service area and the amount of the Total Service Area Delivery shall be reduced accordingly.

(e) The delivery of Treated Wastewater in amounts less than the Total Service Area Delivery pursuant to Section 3.04 (a), Section 3.04 (c), or Section 3.04 (d) shall not give rise to any financial offsets or compensation to either Party.

(f) The City at its sole cost will construct the necessary wastewater facilities to deliver Treated Wastewater from the Balcones Water Reclamation Plant up to 262,800 gallons per day as soon as practicably possible.

(g) No later than thirty (30) days after the City has put into operation the Diversion Facilities, the BOCMA, at its own cost, will cut and plug, as approved by an Austin Water Utility engineer, the wastewater main near Hole No. 9 on the Balcones Golf Course that is connected to the City's wastewater main near the southeastern intersection of Oceanair Boulevard and Balcones Club Drive. The BOCMA agrees to provide written notice to the City of the completion of such actions.

**3.05 Quality of Treated Wastewater.** All of the Treated Wastewater provided by the City to the BOCMA and used by the BOCMA to irrigate the BOCMA's Golf Facilities shall satisfy the terms and conditions of the TCEQ Permits and all applicable TCEQ requirements for treated wastewater to be used for irrigation purposes as described in this Service Agreement, and the quality and manner of supply and disposal of such Treated Wastewater hereunder shall likewise be in accordance with all applicable TCEQ requirements.

**3.06 Rates for Treated Wastewater to The BOCMA.** During the first thirty (30) years after the Closing Date, the City will provide the Total Service Area Delivery to the BOCMA to the Pickfair Holding Pond at no cost to the BOCMA. For the period of time commencing at the conclusion of the said 30-year period and continuing for five (5) years



thereafter, the City shall provide the Total Service Area Delivery to the BOCMA by delivery to the Pickfair Holding Pond at the applicable rate set out below. For the first year after the 30-year period, the BOCMA will pay 17% of the City's then current treated wastewater rates to the City. For the second year after the 30-year period, the BOCMA will pay 34% of the City's then current treated wastewater rates to the City. For the third year after the 30-year period, the BOCMA will pay 51% of the City's then current treated wastewater rates to the City. For the fourth year after the 30-year period, the BOCMA will pay 68% of the City's then current treated wastewater rates to the City. For the fifth year after the 30-year period, the BOCMA will pay 85% of the City's then current treated wastewater rates to the City. The Parties further acknowledge and agree that the BOCMA will pay 100% of the City's treated wastewater rates over the remaining term of this Service Agreement. All treated wastewater rates referred to herein shall be those treated wastewater rates established by ordinance from time-to-time by the Austin City Council pursuant to the exercise of its original ratemaking jurisdiction for the BOCMA's customer classification.

### **3.07 Capital Expenses.**

(a) For purposes of this Section 3.07, a capital expense is defined to mean an expense greater than \$46,000.00 per project adjusted annually in accordance with the Consumer Price Index, as defined by the City's budget ordinance and policies.

(b) During the first twenty (20) years after the Closing Date, the City shall pay one hundred percent (100%) of all necessary capital expenses of the Balcones Water Reclamation Plant.

(c) Beginning with the twenty-first (21<sup>st</sup>) year after the Closing Date, the City shall pay sixty-seven percent (67%) and may charge the BOCMA for thirty-three percent (33%) of all necessary capital costs of the Balcones Water Reclamation Plant. Prior to charging the BOCMA for any such capital expenses, the City must provide the BOCMA with six-month advance notice. Upon receipt of a bill from the City for a required capital expense, the BOCMA must either (1) pay the amount owed to the City within thirty (30) days of receipt or (2) notify the City within the same thirty-day time period that it is exercising this option to terminate the Services Agreement as of 60 days after the payment due date. If the BOCMA notifies the City that it is terminating the Service Agreement, the City shall vacate the perpetual easement described in Section 3.02, above, within 60 days after the payment due date.

**3.08 Operation and Maintenance Expenses.** The City will pay all costs of operating and maintaining the Wastewater Treatment Plants and all of the City's facilities used for the collection, conveyance, treatment, pumping, storage, transportation and transfer of wastewater.

**3.09 Wastewater Effluent in Addition to the Total Service Area Delivery.** The City may construct new wastewater facilities through which it could provide to the BOCMA new sources of Treated Wastewater in addition to the Total Service Area Delivery or may otherwise seek to increase the amount of the Total Service Area Delivery. If such circumstances arise, the Parties may at that time choose to enter into a mutually agreeable amendment to this Services Agreement.

**3.10 No New Wastewater Facilities Required.** The City represents that upon the construction of the wastewater facilities described in Sections 3.04 (b), 3.04 (d), and 3.04 (f) all wastewater facilities required for the City to deliver to the BOCMA the Total Service Area Delivery pursuant to the terms and conditions of this Service Agreement are installed and no further construction is required by the City or the BOCMA to provide or meter the Treated Wastewater service as provided for herein. Notwithstanding the foregoing, the BOCMA may install or construct additional facilities at its own expense to connect, provide, receive, or meter Treated Wastewater service under this Service Agreement, such installation or construction of additional facilities being subject to the City's approval.

**3.11 Maintenance and Repair of Irrigation Facilities.** The BOCMA at its cost shall operate, maintain, repair, and continuously monitor the Irrigation Facilities, shall maintain the Irrigation Facilities in good working order and shall promptly make all necessary repairs. The City at its cost shall operate, maintain, repair, and continuously monitor the City's Wastewater Treatment Plants and other City wastewater collection, treatment and transportation facilities, shall maintain such facilities in good working order and shall promptly make all necessary repairs. From and after the Closing Date, the City will not have any responsibility or liability for any costs associated with agreements for facility operation and maintenance, employment services, or other similar services, between the BOCMA and third parties. If the City determines that any of the above-mentioned the BOCMA Irrigation Facilities require maintenance and repair, the City shall promptly notify the BOCMA of such determination, and the BOCMA shall use reasonable diligence to investigate, maintain, and repair the Irrigation Facilities.

**3.12 Compliance with Permits.**

(a) In diverting Treated Wastewater from its holding ponds, disposing of such Treated Wastewater by irrigation on the BOCMA's Golf Facilities, and in maintaining the quantity and quality of Treated Wastewater in its holding ponds, the BOCMA will use its best efforts to comply with all applicable requirements of the TCEQ Permits, as they may be amended from time to time, including, by way of example and not in limitation, permit requirements related to chlorine residuals, irrigation application rates, operational maintenance of the required storage capacity, maintenance of the freeboard in the Pickfair Holding Pond, and maintenance and repair of the Pickfair Holding Pond. In like manner, the City will use its best efforts to comply with all applicable requirements of the TCEQ Permits, as they may be amended from time to time, including by way of example and not in limitation, permit requirements related to treatment levels, and the quantity of Treated Wastewater. If changed TCEQ rules or permitting conditions would result in significantly increased holding pond capacity, or other storage, requirements, the City and the BOCMA will work together to determine alternative means of compliance, including, for example, increased diversion of influent before the Balcones Water Reclamation Plant.

(b) The City will be solely responsible for all costs necessary to comply with all existing and new requirements of the TCEQ and the TCEQ Permits from the point of generation of the wastewater to the delivery of the Treated Wastewater to the Irrigation Facilities including any existing or new requirements related to the Wastewater Treatment Plants. The BOCMA will be solely responsible for all costs necessary to comply with all existing and new requirements of the TCEQ and the TCEQ Permits related to the Irrigation Facilities.

(c) The City must timely provide the BOCMA with copies of all notices and communications concerning the TCEQ Permits that could impact or affect the operation of the Irrigation System or the BOCMA's Golf Facilities. The City may renew the TCEQ Permits without the BOCMA's consent if nonsubstantive changes are made to the TCEQ Permits. However, the City must not apply to amend or modify any substantive portion of the TCEQ Permits without first consulting with the BOCMA and, except as provided below, must not seek or agree to change any substantive provision of the TCEQ Permits without the prior written consent of the BOCMA. Notwithstanding the foregoing, the City may agree to a substantive change to the TCEQ Permits without first obtaining the written consent of the BOCMA if the change is required by the TCEQ. In such a case, the BOCMA may protest or oppose the proposed permit change and may pursue all legal remedies available to it to protest, oppose and appeal any such change.

(d) The City shall provide current copies of all applicable permits and other requirements to the BOCMA and interpret the permits and requirements, as they relate to the treatment and disposal of Treated Wastewater on the BOCMA's Golf Facilities, and convey such interpretation to the BOCMA upon the BOCMA's request. The City may take samples of the Treated Wastewater in the BOCMA's holding ponds and may take soil samples from the BOCMA's Golf Facilities for regulatory purposes or compliance with other applicable law. The City and the BOCMA agree to cooperate in connection with the foregoing activities. The City agrees, to the extent possible, to conduct such activities in such a manner as not to disrupt events and activities on the BOCMA's Golf Facilities.

**3.13 Recordkeeping.** The BOCMA will maintain logs and records, as may be reasonably required by both the City and TCEQ, to record the quantity of Treated Wastewater, ground water and Potable Water used for the BOCMA's Golf Facilities, to record flow meter readings, pump run times and readings, and any other information reasonably required by the City and TCEQ. Copies of such logs and records shall be made available to the City and TCEQ monthly, or more frequently if required by law. The BOCMA shall maintain such records for as long as may be required by all local, state, and federal governmental entities with jurisdiction.

#### **3.14 Ownership and Sale of the Irrigation Facilities.**

(a) The City and the BOCMA acknowledge and agree that as of the Closing Date, the BOCMA will own the Irrigation Facilities and that the City's access to the Property and use of the Irrigation Facilities will at that time derive solely from the existing perpetual easement and rights described in this Service Agreement.

(b) If the BOCMA dissolves or sells either itself, all its assets, or its Property or Irrigation Facilities to an entity that will continue to use such facilities, the BOCMA shall notify the City of that determination in writing at least sixty (60) days in advance of the date the BOCMA estimates it will dissolve or sell such facilities.

(c) The BOCMA agrees and covenants that any dissolution of its corporation or sale of a controlling interest in its stock or a sale or transfer of assets that includes its Property or Irrigation Facilities shall be made subject to and without limitation of the rights of the City under this Service Agreement, the perpetual easement of the City, and obligations of the

BOCMA, as stated in this Service Agreement, to access and use such property and facilities in the manner provided for in this Service Agreement unless the City and the BOCMA have otherwise agreed in writing.

**3.15 Irrigation of Groundwater and Potable Water.** The BOCMA may use groundwater as well as a mixture of groundwater, Potable Water and/or Treated Wastewater for the irrigation of the BOCMA's Golf Facilities and may use its Irrigation Facilities for the storage, transfer, distribution, and irrigation of the same on the BOCMA's Golf Facilities if such use by the BOCMA does not adversely affect or interfere with the operation and maintenance of the Wastewater Treatment Plants by the City and does not cause or contribute to a violation of the City's TCEQ permits or other applicable Federal, State, or local rules and regulations. The BOCMA shall install, maintain, and perform calibration of properly sized flow meters in order to meter the amount of potable water and ground water added to the Pickfair Holding Pond from any present or future points of origin. Such calibration shall be performed as often as reasonably necessary to ensure the accuracy of the meters and, in no event, less than once each year. The City may request that the BOCMA perform calibration of a flow meter more than once each year at the City's cost.

**3.16 Access to and Use of Irrigation Facilities.** The City shall have a right of entry onto the Property to access the Irrigation Facilities without charge or cost imposed by the BOCMA in order to ensure compliance with the City ordinances and rules and TCEQ Permits. In the event that the City determines that the BOCMA is not operating its Irrigation Facilities within the parameters of the TCEQ Permits, the City will notify the BOCMA and request that the BOCMA immediately bring such operations into compliance. If the BOCMA fails to do so, the City may, upon the City's notification to the BOCMA and request for attendance by the BOCMA representatives, operate the Irrigation Facilities in a manner and for the time necessary to bring the operation of the Irrigation Facilities into compliance with the TCEQ Permits.

## **ARTICLE 4**

### **WASTEWATER DELIVERY POINTS AND METERS**

**4.01 Delivery Points.** The Parties agree that the delivery points for Treated Wastewater delivered by the City to the BOCMA under this Service Agreement shall be (i) for the Pickfair Water Reclamation Plant, the end of the final pipe section delivering Treated Wastewater from the City's wastewater facilities into the Pickfair Holding Pond as schematically shown on Exhibit C (also generally depicting pipelines and facilities owned or to be conveyed), (ii) for the Balcones Water Reclamation Plant, the end of the final pipe section crossing the boundary of the Property as schematically shown on Exhibit C, and (iii) such other points as the parties may agree to in writing. The location of the delivery points shall not be changed except upon sixty (60) days written notice to the other Party. The Party changing the location of an existing delivery point shall be responsible for the cost of any engineering and construction work incurred in making the change, unless the Parties agree otherwise in writing.

**4.02 Wastewater Meters.**

(a) All wastewater delivered hereunder shall be metered. The meters shall be only those meters currently in place at the Wastewater Treatment Plants unless the City replaces them. The existing meters are owned by the City and shall be maintained by the City at its sole expense. The City agrees to test the wastewater meters for accuracy at least once every 12 months.

(b) The BOCMA may request that the City remove and have tested a wastewater meter owned by the City more than once every 12 months. If the meter test shows that the meter is measuring wastewater flow within the agreed accuracy standard of 10% or less, then the BOCMA shall pay the actual costs incurred by the City in testing, and reinstalling the meter. If the meter does not meet this agreed accuracy standard, the City will pay the cost of removing, testing, and reinstalling the meter.

## ARTICLE 5

### SUPPLY OF POTABLE WATER TO THE BOCMA

**5.01 Potable Water Supply And Price.** The City agrees to sell and the BOCMA agrees to buy potable water produced by the City ("Potable Water") at City approved points of connections to the City's water system as needed by the BOCMA to supplement the Treated Wastewater provided to the BOCMA under this Service Agreement for irrigation of the BOCMA's Golf Facilities. For the term of this Service Agreement, the price of the Potable Water purchased by the BOCMA shall be the retail rate for the customer class that includes golf courses as established by City ordinance from time-to-time by the Austin City Council pursuant to the exercise of its original ratemaking jurisdiction in accordance with the City's policies and procedures.

**5.02 No New Potable Water Facilities Required.** The City represents that all water facilities required for the BOCMA to receive Potable Water service and the City to provide Potable Water service under this Service Agreement have been previously installed and no further construction is required by the BOCMA or the City to connect, provide, receive, or meter the Potable Water service to be provided under this Service Agreement; provided, however, the foregoing representations shall not be construed to restrict the BOCMA from installing or constructing additional facilities at its own expense to connect, provide, receive, or meter Potable Water service under this Service Agreement, such installation or construction of additional facilities being subject to the City's approval.

**5.03 Maintenance and Repair of Facilities.** The City shall be responsible for maintaining and repairing the water facilities on the City's side of the City meters described in this Service Agreement that are used to provide Potable Water to the BOCMA's Golf Facilities. The BOCMA shall be responsible for maintaining and repairing its water facilities on the BOCMA's side of the City meters that are used to provide Potable Water to the BOCMA's Golf Facilities.

**5.04 Water Quality and Pressure.** Potable Water supplied hereunder shall satisfy the TCEQ's requirements for water used for human consumption and domestic uses and shall be supplied at a minimum pressure of 35 pounds per square inch at the meters under normal operating conditions.

#### **5.05 Curtailment of Service.**

(a) The City may curtail or ration retail Potable Water service to the BOCMA under this Service Agreement in times of high demand on the City's system in the same manner and to the same extent that the City imposes a curtailment or water rationing on other retail customers of the City in the same customer class as the BOCMA.

(b) The BOCMA agrees that the City may impose a curtailment on retail Potable Water service to the BOCMA under this Service Agreement if required due to a maintenance, operation, capital replacement, or emergency condition, provided that the curtailment is only for the reasonable period necessary to complete the maintenance, operation, or capital replacement, or to respond to the emergency condition.

### **ARTICLE 6**

#### **WATER DELIVERY POINTS AND METERS**

**6.01 Delivery Points.** The Parties agree that the delivery points for Potable Water delivered pursuant to this Service Agreement shall be the existing meters, described in Section 6.02 below, used to serve the BOCMA's Golf Facilities as well as any additional meters installed in connection with the installation or construction of additional facilities in accordance with Section 5.02 above.

#### **6.02 Water Meters.**

(a) All Potable Water delivered hereunder shall be metered. The meters shall be only those meters currently in place, City installed replacement meters or other meters installed in connection with the installation or construction of additional facilities in accordance with Section 5.02 above. All such meters shall be owned and maintained by the City at its sole expense.

(b) The BOCMA may request that the City remove and have a meter tested in accordance with the City's Utility Service Regulations in Chapter 15-9 of the Austin City Code, as amended.

(c) Any billing concerns of The BOCMA shall be addressed in accordance with the City's Utility Service Regulations in Chapter 15-9 of the Austin City Code, as amended.

## ARTICLE 7

### GROUNDWATER

#### 7.01 Development of Groundwater Wells.

(a) Within thirty (30) days of the Closing Date, the City will pay the BOCMA \$200,000.00. BOCMA may use the \$200,000.00 for completing its groundwater well(s), developing more groundwater wells, purchasing potable water or for any purpose related to the irrigation of the BOCMA's Golf Facilities.

7.02 (b) Except as provided for in this Service Agreement, the BOCMA agrees the City is not liable nor responsible for additional consideration or compensation to BOCMA concerning: ground water site testing, well construction cost, distribution or irrigation expenses, associated well and Irrigation Facilities, operating and maintenance expenses, the water quality or productivity of any BOCMA ground water wells or groundwater quality or quantity and any other related expenses.

## ARTICLE 8

### BILLING METHODOLOGY

8.01 **Monthly Statement.** The City will send the BOCMA monthly bills, setting forth the total charges due to the City for retail Potable Water service and Treated Wastewater service during the preceding billing period and specifying the due date of the bill. The BOCMA agrees to make timely payment to the City for the retail Potable Water service and Treated Wastewater service provided under this Service Agreement. Payment will be considered past due if not received by the City within thirty (30) calendar days from the due date specified on the bill. The City may apply a late charge on any past due payments in accordance with its utility service regulations.

8.02 **Monthly Billing Calculations.** The City will compute the monthly billings for retail Potable Water service and Treated Wastewater service on the basis of the City's monthly readings of the metering facilities described above and the applicable retail water and wastewater rate for the BOCMA's customer class as determined from time to time by the Austin City Council pursuant to its original ratemaking jurisdiction. The City's bills shall include sufficient detail so that the BOCMA can determine how much Potable Water and Treated Wastewater was delivered to the Pickfair Holding Pond, and shall be billed in accordance with this Service Agreement.

8.03 **Effect of Nonpayment.** If payment by the BOCMA on a monthly bill is past due, the bill will be considered delinquent. In the event of any delinquent bill, the City will give written notice to the BOCMA of such delinquency and, if the BOCMA fails to make payment of the delinquent amount within thirty (30) calendar days from the date of receipt of the written notice, then the City may temporarily terminate Potable Water and Treated Wastewater service to the BOCMA until payment is made.

## **ARTICLE 9**

### **LIABILITY, INDEMNIFICATION, RELEASE & TERMINATION**

#### **9.01 Liability Between the City and the BOCMA.**

(a) Except as provided in Section 9.02 (a) and (c) below, the City shall not be liable to the BOCMA in tort, contract, or otherwise for any damages, costs, or claims, whether direct or consequential, that the BOCMA incurs as a result of, or arising out of: (1) the termination of the 1997 Treated Wastewater Agreement; (2) the purchase of the Irrigation Facilities from the City; (3) other agreements related to the Irrigation Facilities between the BOCMA and third parties; or (4) the BOCMA's inability to pump water or Treated Wastewater into and out of its holding ponds and thus, inability to irrigate the BOCMA's Golf Facilities, due to acts or omissions of the BOCMA or its contractors, agents, or employees in operating, maintaining, refurbishing, repairing, or replacing the Irrigation Facilities or in failing to perform such activities regarding such facilities.

(b) Except as provided in Section 9.02(b) and (c) below, the BOCMA shall not be liable to the City in tort, contract, or otherwise for any damages, costs, or claims, whether direct or consequential, that the City incurs as a result of, or arising out of: (1) the termination of the 1997 Treated Wastewater Agreement; or (2) the City's inability to pump Treated Wastewater into the delivery points due to acts or omissions of the City or its contractors, agents, or employees in operating, maintaining, repairing, or replacing the City's Wastewater Treatment Plants and other wastewater facilities in accordance with the terms of this Service Agreement.

#### **9.02 Mutual Indemnification of the City and the BOCMA.**

(a) To the extent allowed by law, the City agrees to repair or replace at its sole cost, and to the satisfaction of the BOCMA, the Irrigation Facilities of the BOCMA, that are damaged or destroyed as a result, in whole or in part, of the acts or omissions of the City or its contractors, agents or employees, regardless of whether such acts or omissions were negligent or not, in operating, maintaining, repairing, or replacing the City's Wastewater Treatment Plants and other wastewater facilities, or in using the Irrigation Facilities. To the extent allowed by law, the City further agrees to hold the BOCMA harmless from any and all damages, costs and claims of any kind whatsoever, including but not limited to costs for attorneys and experts to investigate and defend claims, arising out of or resulting from personal injuries or deaths that result, in whole or in part, from the acts or omissions of the City or its contractors, agents, or employees, regardless of whether such acts or omissions were negligent or not, in operating maintaining, repairing, refurbishing, or replacing the City's Wastewater Treatment Plants and other wastewater facilities.

(b) The BOCMA hereby agrees to repair or replace at its sole cost, and to the satisfaction of the City, the Wastewater Treatment Plant and any other wastewater equipment or facilities used by the City that are damaged or destroyed, if they are damaged or destroyed as a result of the acts or omissions of the BOCMA or its contractors, agents or employees, regardless of whether such acts or omissions were negligent or not, in operating, maintaining, repairing, refurbishing, or replacing the Irrigation Facilities. The BOCMA



further agrees to indemnify and hold the City harmless from any and all damages, costs and claims of any kind whatsoever, including but not limited to costs for attorneys and experts to investigate and defend claims, arising out of or resulting from personal injuries or deaths that result, in whole or in part, from the acts or omissions of the BOCMA or its contractors, agents, or employees, regardless of whether such acts or omissions were negligent or not, in operating maintaining, repairing, refurbishing, or replacing its Irrigation Facilities.

(c) The indemnities stated above in Subsections 9.02(a) and (b) shall not apply if and only if there are personal injuries or deaths due to or are a result of the joint negligence of: (1) the City or its contractors, agents, or employees; and (2) the BOCMA or its contractors, agents, or employees.

### **9.03 Termination of this Service Agreement by the City.**

In the event that the BOCMA, by any actions or omissions of itself or its agents that arise out of or is related to this Service Agreement, causes the TCEQ to initiate any formal or informal administrative enforcement action or other action against the City, the City shall give the BOCMA written notice of such action and alleged violation(s) caused by the BOCMA. If the BOCMA fails to timely cure the alleged violation(s), the City may terminate this Service Agreement and pursue all remedies available under applicable law. If this Service Agreement is terminated in accordance with the provisions of this Agreement, the BOCMA agrees to be solely responsible for any costs, fines, penalties, or fees, including reasonable attorney's fees, that result from the actions of the TCEQ that were caused by the BOCMA and the BOCMA agrees that the City will not be liable to the BOCMA for any remaining credits, financial compensation or rate discounts not used.

**9.04 Mutual Release.** The City and the BOCMA agree to mutually release each other from all claims related to the 1997 Agreement. The City and the BOCMA agree that the 1997 Agreement, upon execution of this Service Agreement, is null and void and no further in effect.

## **ARTICLE 10**

### **FORCE MAJEURE**

**10.01 Definition of Force Majeure.** For purposes of this Service Agreement, "force majeure" means: 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 or 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 or sewer system; and any other inability of either Party, whether similar to those enumerated or otherwise, that are not within the control of the Party claiming its inability and that could not have been avoided by the exercise of due diligence. The settlement of strikes, lockouts, and other industrial or labor disturbances will be entirely within the discretion of the Party having the difficulty, and the requirement that any force majeure be remedied with all reasonable dispatch will not require the settlement of strikes, lockouts, or other industrial or

labor disturbances by acceding to the demands of the opponent in such dispute if the settlement is unfavorable to the Party in the judgment of the Party having the difficulty.

**10.02 Force Majeure Events.** If either Party is rendered unable by a force majeure event to carry out any of its obligations under this Service Agreement, whether in whole or in part, then the obligations of that Party, to the extent affected by the force majeure event, will be suspended and no liability thereof shall accrue 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 event relied upon to suspend performance, the Party whose contractual obligations are affected must give written notice and the full particulars of the force majeure event to the other Party. The cause, as far as possible, must be remedied with all reasonable diligence. A force majeure event will not relieve the BOCMA of its obligation to make payment to the City for retail utility service provided to the BOCMA under this Service Agreement.

## **ARTICLE 11**

### **TERM**

**11.01 Term.** The term of this Service Agreement shall be forty (40) years beginning on the Closing Date and subject to earlier termination in accordance with any applicable provision hereunder.

## **ARTICLE 12**

### **GENERAL PROVISIONS**

**12.01 Statement of Purpose.** This Service Agreement is intended to: (1) set forth a comprehensive statement of all terms and conditions applicable to the provision of retail Potable Water service and Treated Wastewater service by the City to the BOCMA; and (2) set forth all conditions concerning the City's use of the Irrigation Facilities.

**12.02 Compliance With Code.** The City and the BOCMA acknowledge and agree that the BOCMA and the City shall remain subject to all applicable provisions. In cases of conflict, the provisions in the Austin City Code shall prevail.

**12.03 Service To Other Persons and Entities.** The BOCMA may not sell Potable Water or Treated Wastewater purchased hereunder to any other person or entities or deliver Potable Water or Treated Wastewater purchased hereunder to any person or entity, for irrigation purposes, or otherwise, without the express written consent of the City.

**12.04 Retail Service Commitment Non-Transferable.** The BOCMA may not assign or transfer, in whole or in part, the City's commitment to provide retail Potable Water service and Treated Wastewater service under this Service Agreement without the prior written approval of the City, which shall not be unreasonably withheld.

**12.05 Potable Water Service and Reclaimed Water Service to the Club.** The BOCMA shall be solely responsible for any and all payments due to the City for Potable Water service

and Treated Wastewater service provided to the BOCMA by the City. The City is solely responsible for the quantity and quality of the Treated Effluent until it reaches the Pickfair Holding Pond. After the Treated Effluent reaches the Pickfair Holding Pond, the BOCMA shall be solely responsible for the quantity and quality of irrigation water used for irrigation of the BOCMA's Golf Facilities.

**12.06 Service Agreement Subject to Applicable Law.** This Service Agreement will be subject to all applicable rules, regulations, and laws of the United States of America, the State of Texas, the City, and any other governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

**12.07 Cooperation to Assure Regulatory Compliance.** Since the Parties must comply with all federal, state, and local requirements to obtain permits, grants, and assistance for system construction and studies and for other utility-related purposes, the City and the BOCMA will cooperate in good faith at all times to assure compliance with any applicable governmental requirements including obtaining all necessary permit renewals, especially where noncompliance or non-cooperation may subject a Party to penalties, loss of grants or other funds, or other adverse regulatory action.

**12.08 Default Process.** Except as otherwise provided in this Service Agreement, if a Party believes that the other Party is in default regarding any other provision of this Service Agreement, the non-defaulting Party will give written notice to the defaulting Party, specifying the event of default and extending the defaulting Party thirty (30) days to cure the default or, if curative action cannot reasonably be completed within thirty (30) days, sixty (60) days to commence the curative action and thereafter to diligently pursue the curative action to completion (an "Opportunity to Cure"). This Opportunity to Cure must pass before the non-defaulting Party may initiate any remedies available to the non-defaulting Party due to an alleged default; provided, however, that this provision shall not prevent the City from exercising its rights under Section 8.03. The non-defaulting Party must mitigate any direct or consequential damages arising from any default to the extent reasonably possible under the circumstances. The Parties agree that they will use good faith and reasonable efforts to resolve any dispute by agreement, which may include engaging in non-binding arbitration, mediation or other non-binding alternative dispute resolution methods as recommended by the laws of the State of Texas, before initiating any lawsuit to enforce their respective rights under this Service Agreement. If the default is not cured within the 30-day period, or if curative action is not commenced or diligently pursued in the case of curative action that cannot reasonably be completed within 30 days, the non-defaulting Party may pursue all remedies, at law or in equity, that it deems appropriate to redress such default. Nothing in this Service Agreement will be construed to limit any Party's right to recover damages or to seek other appropriate curative remedies if a non-defaulting Party files a breach of contract action relating to this Service Agreement. Nothing herein shall be construed as a waiver of a Party's right to seek emergency relief in the event of neither an emergency nor a waiver of the Party's rights existing under the laws of the State of Texas.

**12.09 Covenant of Good Faith and Fair Dealing.** The Parties agree to cooperate and to deal with one another fairly and in good faith at all times to effectuate the purposes and intent of this Service Agreement.

**12.10 Notice.** Any notice required or permitted to be given, made, or accepted by any Party to the other under this Service Agreement ("Notice") must be in writing. Notice may, unless otherwise provided herein, be given or served: (a) by depositing the Notice in the United States Mail, postage paid, certified, and addressed to the Party to be notified with return receipt requested; or (b) by hand-delivering the Notice to the Party, or an agent of the Party. Notice deposited in the mail in the manner specified will be effective three days after such deposit. Notice given in any other manner will be effective only if and when received by the Party to be notified. For the purposes of notice, the addresses of the Parties will, until changed as provided below, be as follows:

**BOCMA:**

Balcones Country Club Membership Association  
C/O: General Manager  
8600 Balcones Club Drive  
Austin, Texas 78750-3002

**City:**

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

The Parties may change their respective addresses for purposes of Notice by giving at least five days written notice of the new address to the other Party. If any date or any period provided in this Service Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period will be extended to the next business day.

**12.11 Further Documents.** The Parties agree to execute and deliver such further legal documents or instruments and to perform such further acts as are reasonably necessary to effectuate the purposes and intent of this Service Agreement.

**12.12 Severability.** The provisions of this Service Agreement are severable, and if any provision of this Service Agreement or the application thereof to any person or circumstance is ever held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Service Agreement and the application of that provision to other persons or circumstances will not be affected, and this Service Agreement will be construed as if the invalid or unconstitutional portion had never been contained herein.

**12.13 Entire Agreement.** This Service Agreement, including all exhibits, constitutes the entire agreement between the Parties relating to the subject matter of this Service Agreement and supersedes all prior or contemporaneous agreements, representations, covenants or warranties, whether oral or written, respecting the subject matter.

**12.14 Amendment.** No amendment of this Service Agreement will be effective unless and until it is reduced to a writing signed by the authorized representatives of the City and the

BOCMA and, if required by law, duly approved by the governing bodies of regulatory authorities having jurisdiction over the Parties, or over the subject matter of the amendment.

**12.15 Independent Contractors and No Partnership or Joint Venture.**

(a) The City will have the status of an independent contractor hereunder and will be solely responsible for the proper direction of its employees and contractors. The City's employees and contractors will not be considered employees, borrowed servants, or agents of the BOCMA for any reason. Similarly, the BOCMA will have the status of an independent contractor hereunder and will be solely responsible for the proper direction of its employees and contractors, and its employees and contractors will not be considered employees, borrowed servants, or agents of the City for any reason.

(b) This Service Agreement does not create or establish a partnership, joint venture, or agency, express or implied, and should not be construed to do so in any form or manner. In addition, the Parties expressly disavow the existence of any fiduciary relationships or duties as between and among the Parties arising out of or as a result of this Service Agreement or otherwise.

**12.16 No Third-Party Beneficiary.** Nothing in this Service Agreement will be construed to confer any right, privilege, or benefit on any person or entity not a party hereto or otherwise to create any vested right or third-party beneficiary relationship.

**12.17 Governing Law.** This Service Agreement will be construed under the laws of the State of Texas, and all obligations of the Parties are deemed performable in Travis County, Texas.

**12.18 Venue.** Venue for any suit arising under this Service Agreement will be in Travis County, Texas.

**12.19 Interpretation.** The Parties have been represented by legal counsel who have participated, or had the opportunity to participate equally in the formulation, drafting, and approval of this Service Agreement. Wherever appropriate, the masculine gender may include the feminine or neuter, and the singular may include the plural, and *vice versa*. Since the Parties have participated in the negotiation and drafting of this Service Agreement, in the event of any ambiguity, the provisions of this Service Agreement will not be construed more favorably for or against any Party.

**12.20 Duplicate Originals.** This Service Agreement may be executed in duplicate originals, each of which shall be of equal effect.

**12.21 Effective Date.** The "Effective Date" of this Service Agreement shall be the date of signature of the last Party to sign below.

SIGNED on the dates set forth below:

CITY OF AUSTIN

APPROVED AS TO FORM:

A municipal corporation:

By: \_\_\_\_\_  
Joe C. Canales  
Deputy City Manager

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

By: \_\_\_\_\_  
Assistant City Attorney

**BALCONES COUNTRY CLUB MEMBERSHIP  
ASSOCIATION, INC.**  
A Texas non-profit corporation

By: \_\_\_\_\_  
[name]  
[title]

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Attorney for Balcones  
Country Club Membership  
Association, Inc.

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

THIS INSTRUMENT was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_\_, 2005, by Joe C. Canales, Deputy City Manager of the City of Austin, Texas, a municipal corporation, on behalf of said municipal corporation.

\_\_\_\_\_  
Notary Public for the State of Texas

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

THIS INSTRUMENT was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_\_, 2005, by \_\_\_\_\_, [title] of the Balcones Country Club Membership Association, Inc., a Texas non-profit corporation, on behalf of said non-profit corporation.

\_\_\_\_\_  
Notary Public for the State of Texas

## **EXHIBIT A**

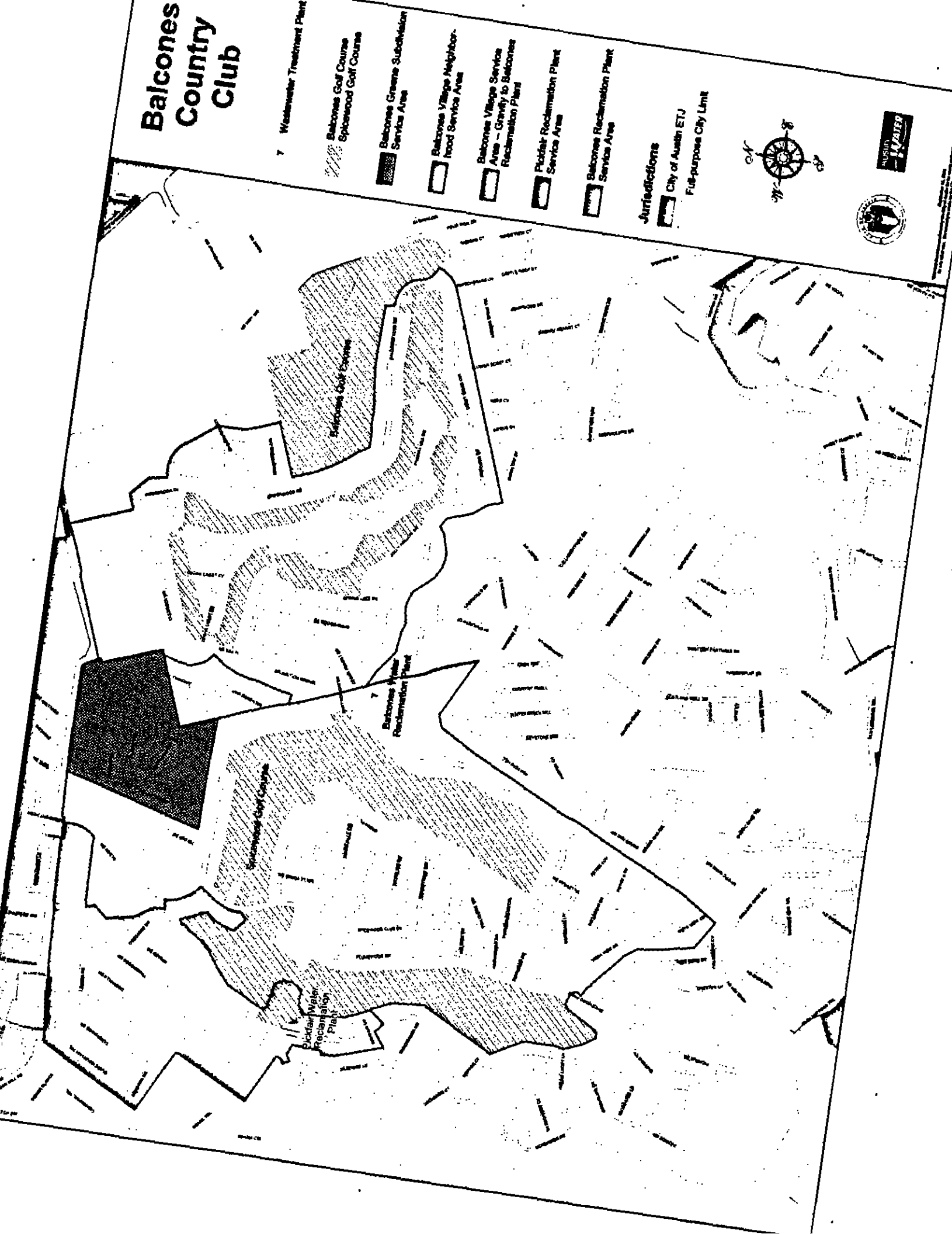


# Balcones Country Club

- 7 Wastewater Treatment Plant
- Balcones Golf Course  
Spoonwood Golf Course
- Balcones Greene Subdivision  
Service Area
- Balcones Village Neighbor-  
hood Service Area
- Balcones Village Service  
Area - Gravity to Balcones  
Reclamation Plant
- Plattler Reclamation Plant  
Service Area
- Balcones Reclamation Plant  
Service Area

## Jurisdictions

- City of Austin ETJ
- Full-purpose City Unit



## **EXHIBIT B**

**EXHIBIT B**  
**PERSONAL PROPERTY – THE IRRIGATION FACILITIES**

[THE QUANTITIES BELOW ARE APPROXIMATE]

**Wastewater Effluent Transfer Main from Balcones Water Reclamation Plant to the Pickfair Holding Pond**

- 3,800 LF of 8" PVC Effluent Force Main.

**Wastewater Effluent Transfer Main from the Pickfair Holding Pond to the Jolly Hollow Holding Pond**

- 6,200 LF of 4" PVC Transfer Main.

**Wastewater Effluent Storage and Pumping**

- Pickfair Effluent Holding Pond, 6 MG, 4 Surface Acres
- Jolly Hollow Effluent Holding Pond, 0.5 MG
- Effluent Transfer Pump Station @ Pickfair Storage Pond with two - 50 HP, 360 GPM Pumps

**Effluent Irrigation**

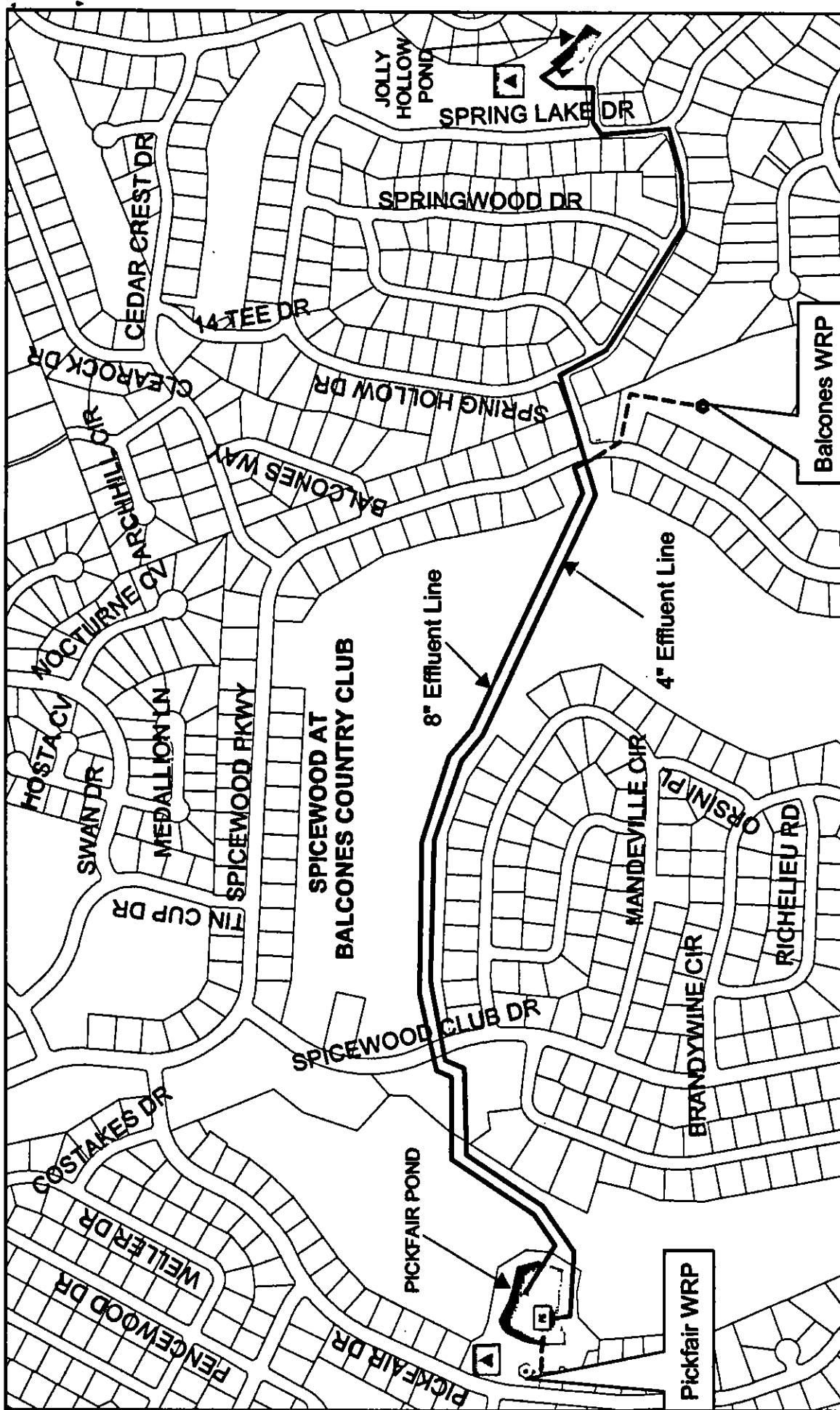
**Balcones Golf Course**

- Irrigation Pump Station w/2 - 75 HP 750 GPM Pumps, 1-25 HP Jockey Pump, Pressure Tank and CMU Building. 1 EA
- 6-inch PVC Lines 5,770 LF
- 4-inch PVC Lines 18,415 LF
- 1.5- 2 PVC Inch Lines 41,235 LF
- Gate Valves (6", 4", 1.5", 0.5") 69 EA
- Sprinkler Heads 467 EA
- Central Irrigation Controller and Wiring 1 EA
- Chlorination Equipment 1 EA

**Spicewood Golf Course**

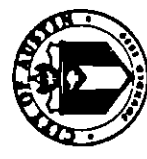
- Irrigation Pump Station w/2 - 75 HP 750 GPM Pumps, 1 - 23 HP Jockey Pump, and Pressure Tank 1 EA
- Portion of Building Containing the Irrigation Pump Station and Pressure Tank 1 EA
- 6-inch PVC Line 390 LF
- 4-inch PVC Line 4,190 LF
- 1.5, 2 and 2.5 inch PVC Line 68,040 LF
- 1-inch PVC Line 8,735 LF
- Hydraulic Pumping Unit 1 EA
- Hydraulic Tubing 7,350 LF
- Hydraulic Valves 41 EA
- Quick Couplers 7 EA
- Satellite Controllers 2 EA
- Sprinkler Heads 493 EA
- Central Irrigation Controller 1 EA
- Chlorination Equipment 1 EA

## **EXHIBIT C**



City of Austin  
Austin Water Utility

March 7, 2005



- Balcones Water Reclamation Plant
- Pickfair Water Reclamation Plant
- Effluent Transfer Pump Station Conveyed to BCCMA
- ▲ Irrigation Pump Conveyed to BCCMA
- Pipelines Conveyed to BCCMA
- - - City Retained Ownership Pipeline
- Building Conveyed to BCCMA



This map has been prepared by the City of Austin for its records and purposes and is not intended for any other use. No warranty is made by the City regarding its accuracy or completeness.

Produced by Systems Analysis Division