

ORDINANCE NO. 20061214-016

AN ORDINANCE ADOPTING THE SIXTH SUPPLEMENT TO THE REVISED AGREEMENT CONCERNING SPRINGWOODS MUNICIPAL UTILITY DISTRICT BETWEEN THE CITY OF AUSTIN AND SPRINGWOODS MUNICIPAL UTILITY DISTRICT.

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

PART 1. The City Council approves the Sixth Supplement to the Revised Agreement Concerning Springwoods Municipal Utility District between the City of Austin and Springwoods Municipal Utility District, in substantially the format attached as Exhibit "A"

PART 2. This ordinance takes effect on December 25, 2006

PASSED AND APPROVED

_____, December 14, 2006

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§
§

Will Wynn
Mayor

APPROVED:

David Allan Smith
City Attorney

ATTEST:

Shirley A Gentry
City Clerk

EXHIBIT A

SIXTH SUPPLEMENT TO REVISED AGREEMENT CONCERNING SPRINGWOODS MUNICIPAL UTILITY DISTRICT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

KNOW ALL BY THESE PRESENTS.

THIS SIXTH SUPPLEMENT to the Revised Agreement Concerning Springwoods Municipal Utility District (the "**Sixth Supplement**") is made by and between the City of Austin, Texas, a Texas home rule municipality ("**City**"), and Springwoods Municipal Utility District, a conservation and reclamation district created and operating as a municipal utility district within the extraterritorial jurisdiction of the City pursuant to the provisions of Article 16, Section 59 of the Texas Constitution and Chapters 49 and 54, Texas Water Code (the "**District**")

WHEREAS, on August 9, 1979, the City Council adopted a certain "Consent Resolution" setting forth terms and conditions for the City's consent to creation of the District and authorizing execution of a certain "Agreement Concerning Springwoods Municipal Utility District" that was executed on or about September 12, 1979, but later superseded in its entirety by that certain "Revised Agreement Concerning Springwoods Municipal Utility District" (the "**Original Consent Agreement**") that was executed by and between the City, the District, and Raymond E. Mitchell, Trustee, Springwoods Joint Venture, C G C Development, Ltd., the developers of the District, on May 1, 1981, and

WHEREAS, the Original Consent Agreement was later amended by that certain "First Supplement to Revised Agreement Concerning Springwoods Municipal Utility District" executed on May 25, 1981 (the "**First Supplement**"), by that certain "Second Supplement to Revised Agreement Concerning Springwoods Municipal Utility District" executed on or about March 18, 1982 (the "**Second Supplement**"), by that certain "Third Amendment to Revised Agreement Concerning Springwoods Municipal Utility District" executed on August 21, 1990 (the "**Third Supplement**"), by that certain "Fourth Supplement to Revised Agreement Concerning Springwoods Municipal Utility District" executed to be effective as of December 18, 1997 (the "**Fourth Supplement**"), and by that certain "Fifth Supplement to Revised Agreement Concerning Springwoods Municipal Utility District" executed to be effective as of December 16, 2002 (the "**Fifth Supplement**") (the Original Consent Agreement, as amended by the First Supplement, the Second Supplement, the Third Supplement, the Fourth Supplement, and the Fifth Supplement is referred to as the "**Consent Agreement**"), and

WHEREAS, on or about December 1, 2000, the District issued bonds in the amount of \$1,995,000.00 (the "**Bonds**") as contemplated by Section 11.07 of the Consent Agreement (as added by the Fourth Supplement) to fund certain Deferral Period Capital Improvements, as defined in the Fourth Supplement, including certain regional storm water drainage channel improvements, and

WHEREAS, the Fourth Supplement contemplated that the District would achieve certain benchmarks pursuant to time schedules therein related to the issuance of the Bonds and the construction of certain Deferral Period Capital Improvements consisting of certain regional storm water drainage projects referenced in Section 11 03 (a) (1), (2), (3), and (4) of the Fourth Supplement (referred to herein as the “**Regional Channel Project**”), and

WHEREAS, the Fifth Supplement, among other things, (i) extended certain time deadlines for construction of the Regional Channel Project, (ii) refined the design of the Regional Channel Project, and (iii) addressed certain environmental concerns associated with the Regional Channel Project, and

WHEREAS, the District and the City anticipate that the Regional Channel Project is beneficial and desire to enter into this Sixth Supplement (i) to further redefine the scope of the Regional Channel Project, and (ii) to extend certain time deadlines in the Fifth Supplement for the completion of the Regional Channel Project, and

WHEREAS, on or about the date hereof, the City and the District are entering into that certain First Amendment to Strategic Partnership Agreement between the City of Austin and the Springwoods Municipal Utility District (the “**First Amendment**”), which amends that certain Strategic Partnership Agreement between the City of Austin and the Springwoods Municipal Utility District (collectively with the First Amendment, the “**SPA**”) pursuant to which the City and the District have agreed upon several matters related to the annexation of the District and the timing thereof and the creation of a Limited District (as defined therein) which may exist after annexation of the District, and

WHEREAS, in accordance with Section 2 12 of the Fifth Supplement, the City and the District desire to amend the Fifth Supplement and the Consent Agreement as more particularly described below

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and undertakings set forth below, the City and the District agree as follows

PART ONE

AMENDMENTS TO CONSENT AGREEMENT/FIFTH SUPPLEMENT

1 01 Deferral Period Construction Any reference to the Deferral Period or the date of annexation of the District means the period ending on the Full Purpose Annexation Date defined in the SPA Section 11 03 (a) of the Consent Agreement (as amended by the Fifth Supplement) is hereby amended to read in its entirety as follows

11 03 Deferral Period Construction of Regional Channel Project Improvements.

(a) The District has requested deferral of the City’s full purpose annexation, among other things, to complete the following capital improvements during the Deferral Period

(1) The South Lake Creek Branch Channel Improvements, the Upper South Lake Creek Branch

Channel Improvements, the Morris Road Drainage Project, and the Extension of Upper South Lake Creek Branch Channel Improvements, which have been revised and combined into one project, as more particularly described on Exhibit "A", attached hereto and incorporated herein and called the "Regional Channel Project "

1 02 Schedule for Completion of Regional Channel Project Improvements The schedule and deadlines set forth in Section 11 03 (c) of the Consent Agreement (as amended by the Fifth Supplement) is hereby deleted in its entirety since the Regional Channel Project will be constructed in accordance with the schedule set forth in Section 11 03(c) of the Consent Agreement (as amended by the Fifth Supplement and as modified hereby) Section 11 03 (c) of the Consent Agreement (as amended by the Fifth Supplement) is hereby amended to read in its entirety as follows

- (c) The District agrees to be substantially complete on the following deadlines with the Regional Channel Project
 - (1) Before November 15, 2006, the District will have initiated all necessary permitting
 - a initiated all necessary permitting, and
 - b finalized acquisition of easements and rights-of-way,
 - (2) Before July 31, 2007, the District will have
 - a finalized permits and construction bidding documents,
 - b finalized acquisition of easements and rights-of-way,
 - c completed the advertisement, bid, award, and execution of the construction contracts, and
 - d initiated construction of the improvements
 - (3) Before October 31, 2007, the District will have
 - a completed construction of the improvements, and
 - b initiated the warranty period

1 03 Director Approval of Certain Changes Section 11 03 (d) of the Consent Agreement (as amended by the Fifth Supplement) is hereby amended to read in its entirety as follows

- (d) The City has entered into this Sixth Supplement in part because of the agreement of the District to complete the above projects on schedule. In the event any new or unusual circumstance arises that limit the District's ability to meet the foregoing deadlines, the District will notify the Director of the City's Watershed Protection and Development Review Department (the "**Director**") of those circumstances and request additional time to meet the deadlines. The District's request must include an estimate of what additional time will be needed. The Director may issue an extension in writing if the District has provided a reasonable grounds for the extension. Additionally, after the District completes the preliminary engineering report, the District may request that the applicable project be modified to reduce the cost of such project as long as the resulting project is a reasonable and effective extension of the drainage improvements. The Director may allow for a change in scope of a project based on sound engineering judgment.

PART TWO GENERAL PROVISIONS

2 01 Conflicting Provisions in Consent Agreement and SPA Any conflict with the provisions of this Sixth Supplement and the SPA, the Original Consent Agreement, the First Supplement, the Second Supplement, the Third Supplement, the Fourth Supplement, the Fifth Supplement and/or the Sixth Supplement, will be resolved in the following order of priority

- 1 the SPA,
- 2 the Sixth Supplement,
- 3 the Fifth Supplement,
- 4 the Fourth Supplement,
- 5 the Third Supplement,
- 6 the Second Supplement,
- 7 the First Supplement, and
- 8 the Original Consent Agreement

To the extent there is not a direct conflict between the foregoing the agreements, they will be construed in accordance with one another. For example, to the extent the Sixth Supplement does not modify provisions of the Fifth Supplement, the Fifth Supplement remains in full force and effect.

2 02 All Other Provisions Remain in Force and Effect Except as set forth above, all other provisions of the Consent Agreement shall remain in force and effect as written.

2.03 Authority. This Sixth Supplement is made pursuant to the authority conferred in Texas Local Government Code, § 402.001, Texas Government Code, Chapter 791 (the Interlocal Cooperation Act) and Texas Water Code, §§ 54.218 and 54.016.

2.04 Interpretation. All parties to this Sixth Supplement have been represented by legal counsel who have participated in the formulation of this Sixth Supplement. Accordingly, this Sixth Supplement shall not be construed in favor of nor more stringently against any party hereto.

2.05 Acknowledgment Regarding Consideration. Each party acknowledges that this Sixth Supplement is an agreement between governmental entities that includes a mix of consideration, both tangible and intangible, that each party has determined to be adequate and legally sufficient. Each party further acknowledges that it has entered into this Sixth Supplement freely and voluntarily and without unreasonable duress or coercion from the other and that it was at all times free to decline to enter this Sixth Supplement but elected to execute the same for the purposes and consideration expressed. Each party represents that it has secured all approvals required for lawful execution of this Sixth Supplement.

2.06 Severability. If any word, phrase, clause, sentence, paragraph, section, or other portion of this Sixth Supplement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Sixth Supplement shall not be affected by that and this Sixth Supplement shall be construed as if such invalid portion had never been contained in it and the provisions of this Sixth Supplement are expressly deemed severable for this purpose.

2.07 Payments from Current Revenues. All payments, if any, required to be made by a governmental entity shall be payable from current revenues or other funds lawfully available for such purpose.

2.08 Provision of Data. The parties, and each of them, agree to timely provide to one another all data, records, plans and specifications, or other documents or information reasonably necessary to the performance and implementation of this Sixth Supplement.

2.09 Further Documents, Actions. The parties, and each of them, agree to execute and deliver such other and further legal documents or instruments and perform such other and further actions as are reasonably necessary to effectuate the purposes and intent of this Sixth Supplement and to evidence, implement and make valid and binding the agreements of the parties set forth above.

2.10 Cooperation. The parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Sixth Supplement.

2.11 Entire Agreement. This Sixth Supplement together with the Consent Agreement and the SPA contains the entire agreement of the parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter of this supplement.

2.12 Amendments Any amendment must be in writing and signed by the authorized representative of each party. No verbal statement shall ever be construed as an amendment or modification of this Sixth Supplement.

2.13 No Third Party Beneficiaries. The agreements contained in this Sixth Supplement shall inure only to the benefit of the parties. Third persons not privy to this Sixth Supplement shall not be considered a third party beneficiary of this Sixth Supplement.

2.14 Assignment This Sixth Supplement concerns powers and duties that are governmental in nature and, as such, the rights and obligations of a party arising under this Sixth Supplement are not assignable, either in whole or in part.

2.15 Expiration in Event of Bankruptcy, Receivership, Consolidation, or Conversion of District into Another Entity If the District becomes the subject of any proceedings in bankruptcy, or is placed in receivership, or if the District becomes merged or consolidated with any entity other than the City, this Sixth Supplement shall immediately expire of its own terms on the initiation of such proceedings.

2.16 Applicable Law This Sixth Supplement shall be construed under and in accordance with the Constitution and laws of the State of Texas.

2.17 Default Upon the occurrence, or alleged occurrence, of a material event of default, the nondefaulting Party shall send the defaulting Party notice of its default or alleged default specifying such default. Except as otherwise specifically provided in this Sixth Supplement, the defaulting Party must cure its default within 30 days following the notice of the receipt of the default, or, must commence a cure of the default within 14 days following receipt of the notice of default and diligently pursue the cure to completion within 50 days of the receipt of the notice of default. In the event that 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 Sixth Supplement. All of these rights and remedies shall be cumulative.

2.18 Venue. The agreements of the parties shall be deemed performable in Travis County and venue for any action arising between the parties shall be in Travis County, Texas.

2.19 Notices Notice to be provided shall be sufficient if forwarded to the other party by handdelivery or via U.S. Postal Service, postage prepaid, to the address of the other party shown below.

SPRINGWOODS MUD

President, Board of Directors
Springwoods Municipal Utility
District c/o Eco Resources, Inc.
9511 Ranch Road 620 N
Austin, Texas 78726-2908

CITY OF AUSTIN

Director, Water and Wastewater Utility
City of Austin
P.O. Box 1088
625 E. 10th Street
Austin, Texas 78767-1088

With copy to

Gregg C Krumme
Armbrust & Brown, L L P
100 Congress Avenue, Suite 1300
Austin, Texas 78701

2 20 Effective Date This Sixth Supplement shall be effective on _____, 2006

IN WITNESS WHEREOF, the authorized representative of each party has signed this Sixth Supplement as of the date(s) indicated below

EXHIBIT “A”

The Regional Channel Project consists of two segments in the South Lake Creek Tributary. These are the Saddlebrook Trail Segment and the Turtle Rock Segment.

Saddlebrook Trail Segment The Saddlebrook Trail Segment is that reach of the creek from the Anderson Mill Rd crossing to the tributary confluence with Lake Creek. Current modeling indicates that 10 – 12 homes along Saddlebrook Trail lie within the limits of the 100-year floodplain. After extensive hydraulic analysis of various alternatives, it has been determined that the optimum solution consists of a combination of selective clearing of vegetation in the floodplain and construction of a low, three to four feet, floodwall along the western bank of the channel for a distance of approximately 1,000 feet. The vegetation clearing will provide for a more efficient conveyance of the stormwater through the stream segment. With the more efficient conveyance, a lower water surface elevation is obtained. However, it is not sufficient to remove the single family lots entirely from the floodplain. The construction of the floodwall will achieve this goal.

Turtle Rock Road Segment The Turtle Rock Segment is a maintenance project located at the confluence of a side channel discharging from Turtle Rock Rd to the South Lake Creek Tributary approximately 1400 feet downstream of Pond Springs Rd. The Turtle Rock Segment was originally constructed as a trapezoidal channel. Over the years sedimentation and vegetation have altered the original configuration to one with various low-flow stream paths that are not always continuous. One non-continuous low-flow path is caused by the flow of the side channel entering from Turtle Rock Rd. The maintenance will consist of establishing a low-flow connection from the side channel to the primary channel on the opposite side of the South Lake Creek Tributary floodplain. The current and non-continuous path will be filled so that the entire low flow will be directed to the primary channel. It is envisioned that the connection will consist of a three-foot wide cut of approximately two-foot depth for a distance of about 50 feet.

Due, in part, to environmental concerns the Regional Channel Project excludes any work within that portion of the South Lake Creek Tributary extending through Robinson Park on the south side of the Anderson Mill Road ROW crossing and excludes any work within the bed and immediate bank of the Saddlebrook Trail Segment.

ATTEST

City Clerk

Approved as to Form

Assistant City Attorney

CITY OF AUSTIN, TEXAS

By _____
Toby Hammett Futrell
City Manager

Date _____

ATTEST

Michael Weems
Board Secretary

**SPRINGWOODS MUNICIPAL
UTILITY DISTRICT**

By _____
James Buchanan
President

Date _____

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

THIS INSTRUMENT was acknowledged before me this ____ day of _____, 2006, by Toby Hammett Futrell, City Manager of the City of Austin, a Texas municipal corporation, on behalf of said municipal corporation

Notary Public, State of Texas

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

THIS INSTRUMENT was acknowledged before me this ____ day of _____, 2006, by James Buchanan, President of the Board of Directors of Springwoods Municipal Utility District, a conservation and reclamation district of the State of Texas, on behalf of said district

Notary Public, State of Texas