



Control Number: 42867



Item Number: 1

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
Legislature, Regular Session, transferred the functions
relating to the economic regulation of water and sewer
utilities from the TCEQ to the PUC effective
September 1, 2014.

42867

The Carlton Law Firm, P.L.L.C.

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Austin, Texas 78746

Phone: (512) 614-0901
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John J. Carlton
john@carltonlawaustin.com

December 12, 2013

VIA HAND DELIVERY

Ms. Tammy Benter
Texas Commission on Environmental Quality
12100 Park 35 Circle
Building F, 3rd Floor
Austin, Texas 78753

Re: Original Petition Appealing Wastewater Rates of the City of Austin

Dear Ms. Benter:

Enclosed for filing are five copies of the above-referenced petition. A copy of this petition has also been filed with the Chief Clerk.

I have also enclosed an extra copy for you to file-mark and return to me via the courier delivering same.

Please let me know if you have any questions.

Sincerely,

THE CARLTON LAW FIRM, P.L.L.C.



John J. Carlton

Enclosures

cc: Randall Wilburn

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FILING CLERK

TCEQ DOCKET NO.

42867

PETITION APPEALING
WASTEWATER RATES OF THE CITY
OF AUSTIN

§
§
§
§

BEFORE THE
TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

ORIGINAL PETITION APPEALING
WASTEWATER RATES OF THE CITY OF AUSTIN

TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COME NOW North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, and Wells Branch Municipal Utility District, collectively referred to as "Petitioners" herein, by and through the undersigned counsel, and pursuant to Section 13.044 of the Texas Water Code ("Water Code") and Title 30 Texas Administrative Code ("TAC ") Section 291.45(c), file this Petition to overturn the rates charged by the City of Austin (the "City" or "Austin") for wholesale wastewater service. In support of this Petition and Request for Interim Rates, Petitioners would respectfully show as follows:

I. PARTIES

1.1. The City of Austin is a home-rule municipality and a political subdivision of the State of Texas, governed by the Constitution of the State of Texas and the Texas Local Government Code.

1.2. Petitioners include the following retail public utilities:

A. North Austin Municipal Utility District No. 1, is a reclamation and conservation district and political subdivision of the State of Texas,

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created pursuant to Article XVI, Section 59, of the Texas Constitution, which the City of Austin charges for wastewater service;

B. Northtown Municipal Utility District is a reclamation and conservation district and political subdivision of the State of Texas, created pursuant to Article XVI, Section 59, of the Texas Constitution, which the City of Austin charges for wastewater service; and

C. Wells Branch Municipal Utility District is a reclamation and conservation district and political subdivision of the State of Texas, created pursuant to Article XVI, Section 59, of the Texas Constitution, which the City of Austin charges for wastewater service.

II. JURISDICTION

2.1 Petitioners bring this appeal pursuant to Section 13.044(b) of the Water Code and Section 291.45(c) of the TAC. Specifically, Petitioners challenge the wholesale wastewater rates of the City pursuant to Section 13.044 of the Water Code and Section 291.45 of the TAC.¹ Under Section 13.044, Petitioners may appeal the rates imposed by the City by filing a petition with the Commission.² The Commission shall hear the appeal de novo, and the City shall have the burden of proof to establish that the rates are just and reasonable.³ The Commission shall fix the rates to be charged by the City, and the City may not increase such rates without the approval

¹ 30 Tex. Admin. Code §291.45.

² TEX. WATER CODE §13.044 (b).

³ *Id.*

of the Commission.⁴ In fact, Petitioners and the City are the very reason why the Texas Legislature adopted Section 13.044 and why the Commission adopted Section 291.45.

III. FACTS

3.1 The City is an incorporated city that provides sewer service on a wholesale basis to Petitioners.

3.2 Petitioners are districts created pursuant to Article XVI, Section 59, of the Texas Constitution. Petitioners are located within the corporate limits or the extraterritorial jurisdiction of the City, and the resolutions, ordinances, or agreements of the City consenting to the creation of the Petitioners require Petitioners to purchase sewer service from the City.⁵

3.3 North Austin Municipal Utility District No. 1 is required to purchase sewer service from the City of Austin under the terms of that certain Agreement Concerning Creation and Operation of North Austin Municipal Utility District No. 1, dated November 15, 1983, which is attached as **Exhibit A**.

3.4 Northtown Municipal Utility District is required to purchase sewer service from the City of Austin under the terms of that certain Agreement Concerning Creation and Operation of North Town Municipal Utility District No. 1, dated August 14, 1985, which is attached as **Exhibit B**.

3.5 Wells Branch Municipal Utility District is required to purchase sewer service from the City of Austin under the terms of that certain agreement entitled Agreement Concerning

⁴ *Id.*

⁵ TEX. WATER CODE §13.044 (a).

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Creation and Operation of North Austin Growth Corridor Municipal Utility District No. 1, dated April 13, 1981, with later amendments, all of which is attached as **Exhibit C**.

3.6 Each Petitioner purchases sewer service from Austin as required by the City. Each Petitioner owns and operates its own facilities for the collection of untreated wastewater within its boundaries and provides virtually all customer services.

3.7 The sewer service contracts between Austin and each Petitioner do not specify a particular rate or establish a rate relationship but provide that rates shall be set each year by the City. Instead, the Austin City Council sets the rate annually by ordinance for the wholesale wastewater customers as a class.

3.8 On or about September 10, 2012, the City Council adopted an increase in the wastewater rates for its customers, including Petitioners, as part of the Council's adoption of the Fiscal Year 2012-2013 Annual Budget.⁶ The first phase of the increased rates went into effect on February 1, 2013.

3.9 The City did not obtain approval of the Commission before increasing the rates charged to the Petitioners.

3.10 The City has claimed that rates for Petitioners increased 5.0% in Fiscal Year 2013; however, the actual increase varied per wholesale customer. Wastewater rates increased 5.9% for North Austin Municipal Utility District No. 1; 5.4% for Northtown Municipal Utility District; and 3.9% for Wells Branch Municipal Utility District.⁷

⁶ See Austin City Council Minutes, Regular Meeting, September 10, 2012, attached as **Exhibit D**, and incorporated herein by reference.

⁷ See "Proposed FY 2013 WW Rates – Wholesale Detail," Austin Water Utility: Large Volume & Wholesale Customer Briefing; Proposed Budget & Service Rates FY 2012-13; July 10, 2012, attached as **Exhibit E** and incorporated herein by reference.

3.11 For Fiscal Year 2013, volumetric rates increased as follows: from \$5.19 to \$5.52 per 1,000 gallons for North Austin Municipal Utility District No. 1; from \$5.11 to \$5.41 per 1,000 gallons for Northtown Municipal Utility District; and from \$5.19 to \$5.41 per 1,000 gallons for Wells Branch Municipal Utility District.⁸ For Fiscal Year 2014, the volumetric rate again increased: North Austin Municipal Utility District No. 1 up a total of 7.7% to \$5.59 per 1,000 gallons; Northtown Municipal Utility District up a total of 8.4% to \$5.54 per 1,000 gallons; and Wells Branch Municipal Utility District up a total of 6.9% to \$5.55 per 1,000 gallons.⁹

IV. RELIEF SOUGHT

4.1 The City's increased wholesale wastewater rates collect revenue for costs unrelated to the provision of sewer service to the Petitioners, which makes the rates unjust or unreasonable. The City's wholesale wastewater rates include profit for use by the City on items unrelated to the provision of sewer service. Furthermore, the City transfers a large percentage of the sewer fund operation and maintenance revenue to fund the City's General Government, which is unrelated to the provision of sewer service to the Petitioners. The City also transfers sewer service revenue to other non-utility departments in the City.

4.2 The Petitioners' agreements with the City establish that each Petitioner is required to purchase sewer service from the City. The City has sewer capacity. Each Petitioner is willing and able to pay a just and reasonable rate for that sewer service. Just and reasonable wholesale wastewater rates should be established by the Commission.

⁸ *Id.*

⁹ See "Proposed FY 2014 WW Rates – Wholesale Detail," Austin Water Utility: Large Volume & Wholesale Customer Briefing; Proposed Budget & Service Rates FY 2013-14; August 13, 2013, attached as Exhibit F and incorporated herein by reference.

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4.3. The Texas Water Code and the TCEQ Rules authorize the Commission to establish interim rates to be in effect until the Commission makes its final decision in this rate appeal.¹⁰

4.4. The magnitude of the rate increase adopted by the City Council imposes an unreasonable economic hardship on Petitioners. Further, the increased rates are unreasonably preferential, prejudicial, and discriminatory in violation of the Texas Water Code. Finally, as the Commission will more than likely reduce or completely eliminate the proposed rate increase, any revenue that the City collects in the interim must be refunded to the Petitioners, which can be a complicated and inequitable process. The burden of such increase on the Petitioners is sufficient grounds for the imposition of an interim rate, and Petitioners hereby request that the Commission establish an interim rate. The Commission should set the interim rates at the level of water rates that existed prior to the effective date of the increase.

4.5 The Commission should enter an order vacating the City of Austin's unjust and unreasonable wholesale wastewater rates, establishing just and reasonable wholesale wastewater rates based upon the City's actual cost of service to provide sewer service to the Petitioners and requiring the City to obtain the Commission's approval before increasing the rates established by the Commission.

¹⁰ 30 Tex. Admin. Code §291.29(d).

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioners respectfully pray that the Commission:

1. Refer this Appeal to the State Office of Administrative Hearings for a contested case proceeding under Section 13.044 of the Water Code and require the City to show through a cost of service study that its rates are just and reasonable and in compliance with the Texas Water Code and the Commission's regulations;
2. Set interim wholesale wastewater rates at the same rates that were in effect prior to the effective date of the increased rates until such time as the Commission makes a final decision in this appeal; and
3. Enter an Order vacating the City of Austin's unjust and unreasonable wholesale wastewater rates, establishing just and reasonable rates wholesale wastewater rates based upon the City's actual cost of service to provide sewer service to the Petitioners and requiring the City to obtain the Commission's approval before increasing the rates established by the Commission; and
4. Grant such other and further relief as the Petitioners may show themselves entitled.

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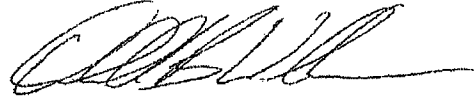
UTILITIES & DISTRICTS
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Respectfully submitted,

Randall B. Wilburn, Attorney at Law
State Bar No. 24033342
3000 South IH 35, Suite 150
Austin, Texas 78704
Telephone: (512) 535-1661
Telecopier: (512) 535-1678

John Carlton
State Bar No.03817600
The Carlton Law Firm, P.L.L.C.
2705 Bee Cave Road, Suite 200
Austin, Texas 78746
Telephone: (512) 614-0901
Telecopier: (512) 900-2855

By:



Randall B. Wilburn

COUNSEL FOR PETITIONERS

CERTIFICATE OF SERVICE

I certify that I have forwarded a true and correct copy of the foregoing Original Petition Appealing Water Rates of the City of Austin and Request for Interim Rates to the following, as indicated, on the 12th day of December 2013.

The Honorable Lee Leffingwell
Mayor of Austin
301 W. Second St.
Austin, Texas 78701

Via Hand Delivery

Mr. Greg Meszaros, Director
Austin Water Utility
625 E. 10th Street
Austin, Texas 78701

Via Hand Delivery

Ms. Karen Kennard, City Attorney
City of Austin
301 W. 2nd Street
Austin, Texas 78701

Via Hand Delivery

Ms. Anne Idsal, General Counsel
Texas Commission on Environmental Quality
12100 Park 35 Circle, Building F, 4th Floor
Austin, Texas 78753

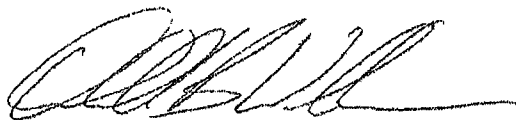
Via Hand Delivery

Ms. Tammy Benter-Holguin. (MC-153)
Utilities Rates and Services Section
Texas Commission on Environmental Quality
12100 Park 35 Circle, Building F, 3rd Floor
Austin, Texas 78753

Via Hand Delivery

Ms. Bridget C. Bohac (MC-105)
Office of the Chief Clerk
Texas Commission on Environmental Quality
12100 Park 35 Circle, Building F, 1st Floor
Austin, Texas 78753

Via Hand Delivery



Randall B. Wilburn

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EXHIBIT A

AGREEMENT CONCERNING CREATION AND OPERATION
OF
NORTH AUSTIN MUNICIPAL
UTILITY DISTRICT NO. 1

THE STATE OF TEXAS §

COUNTIES OF TRAVIS §
AND WILLIAMSON §

KNOW ALL MEN BY THESE PRESENTS:

THIS AGREEMENT is made and entered into by and between the City of Austin, Texas (hereinafter referred to as the "City"), a municipal corporation situated in Travis County, Texas, acting herein by and through its undersigned duly authorized City Manager, as authorized by specific action of its City Council; North Austin Municipal Utility District No. 1 (hereinafter referred to as the "District"), a municipal utility district created on the 15 day of November, 1983, by order of the Texas Water Commission and operating pursuant to Chapter 54 of the Texas Water Code; and Milwood Joint Venture, Robinson Ranch, and Austin White Lime Company (hereinafter collectively referred to as "Milwood"), the holders of legal title to all of the land comprising the District, which consists of approximately 997 acres situated partially within Williamson County, Texas, and partially within Travis County, Texas, a portion of which lies within the City and a portion of which lies within the extraterritorial jurisdiction of the City.

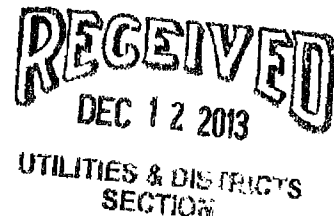
For and in consideration of the premises and the mutual agreements, covenants, and conditions hereinafter set forth, the parties hereto hereby contract and agree as follows, to wit:

ARTICLE I

ISSUANCE OF BONDS BY THE DISTRICT

A. Bonds For District Facilities

1. The City has granted its unconditional consent to the creation of the District in accordance with the Water District Ordinance adopted by the City Council of the City on August 19, 1981, by Ordinance Number 810819-E, a true and correct copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (the "Water District Ordinance"); subject, however, to a variance granting the District the bonding authority provided in the Water District Ordinance for Growth Area III. The terms and conditions of the Water District Ordinance are made a part of this Agreement for all purposes to the extent allowed by law. The District agrees that it shall only issue bonds and notes, including bond anticipation notes, in the manner provided by the Water District Ordinance and the rules and requirements of the Texas Water Commission. All bonds and notes of the District shall be approved by the City Council of the City prior to the



issuance thereof; provided, however, that the authorization granted herein by the City of a principal amount (plus interest) of bonds proposed to be issued by the District shall be deemed to include the approval of bond anticipation notes not to exceed the amount of principal and interest of the bonds so authorized. It is specifically agreed that the District's bonds, when issued, shall be secured by a pledge of the District's taxes and revenues.

2. The parties hereto acknowledge and agree that this Agreement and the Water District Ordinance, as now in effect and hereafter amended, have the effect of restricting the general statutory purposes for which the District may issue bonds and notes. The parties further recognize and agree that neither this Agreement nor the Water District Ordinance otherwise restrict or limit the powers and authority of the District to acquire, own, operate and maintain water or wastewater systems, drainage facilities, recreational facilities, or any other systems, facilities, assets or properties of or serving the District. The District may use funds and assets from any other available, lawful source to provide for such acquisition, ownership, maintenance and operation, as well as to accomplish any purpose or to exercise any function, act, power or right authorized by law. Such funds and assets shall include, without limiting the generality of the foregoing, revenues from any of the systems, facilities, properties and assets of the District not otherwise committed for the payment of indebtedness of the District; maintenance taxes; loans, gifts, grants and donations from public or private sources; and revenues from any other source lawfully available to the District. Bonds and notes of the District may be issued for any purpose not specifically prohibited by this Agreement or the Water District Ordinance, subject to the provisions of the Texas Water Code and the rules and requirements of the Texas Water Commission.

B. Bonds for Special Facilities

1. To enable the City to supply water to the District and to receive and treat wastewater from the District in accordance with the provisions of Articles II and III hereof, the parties hereby acknowledge that major extensions and improvements to the City's existing water and sewer facilities shall be necessary. The parties agree that, subject to the approval of the Texas Water Commission, the necessary improvements and extensions shall be accomplished as more fully described and identified in the Utility Construction Contract (the "Preferred Contract") by and between the District and the City, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference. The parties further agree that, in the event the

approval of the Texas Water Commission to the oversizing of the facilities described in the Preferred Contract is not obtained, the District shall construct improvements and extensions to the City's system sized only as necessary to provide service to the District, and the District shall purchase capacity from the City's water and wastewater utility system for a purchase price equivalent to the difference between the cost of construction of the oversized facilities, as described in the Preferred Contract, and the cost of facilities sized only to serve the District. The parties hereto acknowledge and agree that the value to the City of the District's oversizing certain utility facilities as provided in the Preferred Contract, is equivalent to the value to the District of the capacity to be allocated to the District by the City from the City's water and sewer utility systems. The Preferred Contract shall be deemed approved by the City Council of the City simultaneously with the City's approval of this Agreement.

2. It is expressly acknowledged and agreed that the approval of the Texas Water Commission of facilities described in the Preferred Contract will be requested at the time a petition for creation of the District is presented to the Texas Department of Water Resources. The parties mutually covenant and agree to cooperate in making such modifications to the Preferred Contract as may be reasonably necessary in order to obtain the approval of the Texas Water Commission thereof. In the event that the Texas Water Commission does not approve the construction of the facilities described in the Preferred Contract, the parties covenant and agree to cooperate with each other in order to develop a utility construction proposal which will satisfy the requirements of the District and the City in order to provide service to the land within the District and which will be acceptable to the Texas Water Commission.

3. The term "Construction Contract", as hereinafter utilized in this Agreement, shall mean and refer to the Preferred Contract or any subsequent utility construction agreement between the City and the District which provides for the construction of the utility facilities and improvements necessary to serve the District, and which is approved by the Texas Water Commission.

4. It is expressly acknowledged that the "Project", as such is defined in the Construction Contract, shall include approach mains necessary to serve the District and that no additional City approval of such approach mains shall be required upon completion of the Project.

5. To finance the cost of acquiring and constructing the Project, the District is hereby authorized to issue bonds and bond anticipation notes, subject to the terms, conditions and

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procedures set forth in the Construction Contract. The Project shall be constructed by the District in accordance with the provisions of the Construction Contract and, upon completion thereof, shall be dedicated to the City. Upon such dedication, all right, title and interest of the District in and to the Project shall vest in the City. The City agrees that, upon completion of the Project, adequate distribution capacity shall be reserved by the City to serve all land within the District.

ARTICLE II

WATER SUPPLY

A. At the times and in the manner requested by the District, the City agrees to sell and deliver to the District all water which may be reasonably required by inhabitants of the District for domestic and commercial purposes. The City agrees that water service to the District shall immediately, upon execution of this Agreement by the City, be made available to the District from the City's Jollyville Reservoir. All such water shall be supplied from the City's water distribution system, as extended by the District, to a point or points of delivery adjacent to the boundaries of the District, as designated by the District's engineer and approved by the City. The sale and furnishing of water to the District shall be nondiscriminatory and uniform with the policy or policies of the City relating to utilities inside the City's utility service area as established by Ordinance Number 810820-B, as now in effect or hereafter amended. Water supplied to the District pursuant to this Agreement shall be at the rate or rates established by the City for water supplied to water districts generally. The District specifically agrees that the supply of water to the District may be reasonably limited by the City on the same basis and to the same extent as the supply of water to any other customer within the City's service area. "Water", as used in this Article II, shall mean potable water meeting the requirements of the Texas Department of Health for human consumption and other domestic uses. The City agrees to use reasonable efforts to acquire and maintain a supply of water adequate to provide service to the District. This Agreement shall serve in lieu of an approved approach main request for water service under the City's approach main policy.

B. Metering equipment and related facilities, including a meter loop, a meter house or pit, and standard-type devices required for properly measuring the quantity of water delivered to the District, shall be installed at each point of delivery of water to the District. The District, at its expense, shall install and provide the meter loop and the meter house or pit. The City, at the District's expense, shall provide and install

the meter. The City, at its expense, shall operate and maintain the metering equipment and related facilities and shall calibrate the metering equipment upon request by the District; provided, however, that the cost of calibrating the metering equipment shall be borne by the District if requested more frequently than once every twelve (12) months. Any meter registering not more than two percent (2%) above or below the test result shall be deemed to be accurate. If any meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered during the corresponding period immediately preceding such failure, subject to reasonable adjustments for seasonal and climatic considerations, unless the City and the District otherwise agree. The metering equipment shall be read once each calendar month.

C. 1. Rates charged to customers of the District for water delivered pursuant to this Article II shall be set by the District and shall not be less than those normally charged by the City for comparable customers within the City, as established from time to time by the City Council of the City. It is agreed and understood that the District shall charge the surcharge provided in Article VII hereof in addition to such water service rates.

2. The City and the District agree that the District shall comply with the City's Capital Recovery Fee Ordinance, Ordinance Number 821216-H, as hereafter amended from time to time, and shall be entitled to any credits and offsets for construction of offsite facilities set forth therein.

D. The District's billing and payment procedures shall substantially conform with the procedures established by the City as set forth in the City of Austin Utility Service Regulations, as now in effect or hereafter amended; provided, however, that the District may vary such procedures if required by law and that the District and the City may enter into a contract providing that the City may handle billings for the District in such a manner and for such compensation as may be mutually agreeable.

ARTICLE III

SEWAGE TREATMENT

A. The City agrees to receive, treat, and dispose of all sewage which is collected by the District and delivered to a point or points of delivery into the City's sanitary sewer trunk line, as extended by the District. Said point or points of delivery shall be designated by the District's engineer and approved by the City. Sewage treatment and disposal services provided to the District shall be nondiscriminatory and uniform with the policy or policies established by the City Council of the City relating to utilities in the City's utility service

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area, as established by Ordinance Number 810820-B, as now in effect or hereafter amended. Sewage received from the District and treated by the City pursuant to the terms of this Agreement shall be at the rate or rates established by the City for sewage received from water districts generally. The District specifically agrees that the treatment of sewage received from the District may be reasonably limited by the City on the same basis and to the same extent as the treatment of sewage received any other customer within the City's service area. The City agrees to use reasonable efforts to acquire and maintain sewage treatment capacity adequate to provide service to the District. This Agreement shall serve in lieu of an approved approach main request for sewer service under the City's approach main policy.

B. The District is authorized to contract with any firm, corporation, person or governmental entity for the temporary disposal of sewage until such time as the facilities contemplated hereunder have been constructed by the District. The reasonable cost and expense of such temporary sewage disposal shall be a bondable expense of the District to the extent permissible under the rules and regulations of the Texas Water Commission. No package treatment plant shall be used within the District on either a temporary or permanent basis.

C. 1. Rates charged to customers of the District for sanitary sewer service shall be set by the District and shall not be less than those normally charged by the City for comparable customers within the City, as established from time to time by the City Council of the City. It is agreed and understood that the District shall charge the surcharge provided in Article VII hereof in addition to such sanitary sewer service rates.

2. The City and the District agree that the District shall comply with the City's Capital Recovery Fee Ordinance, Ordinance Number 821216-H, as hereafter amended from time to time, and shall be entitled to any credits and offsets for construction of offsite facilities set forth therein.

D. The District's billing and payment procedures shall substantially conform with the procedures established by the City as set forth in the City of Austin Utility Service Regulations, as now in effect or hereafter amended; provided, however, that the District may vary such procedures if required by law and that the District and the City may enter into a contract providing that the City may handle the billings for the District in such a manner and for such compensation as may be mutually agreeable.

E. Industrial waste, if any, received by the District shall be processed in a manner consistent with the provisions of the City's Industrial Waste Ordinance, Ordinance Number 821209-F.

ARTICLE IV
OPERATION AND MAINTENANCE

A. The District shall operate and maintain the water and wastewater system located within the District, unless the City and the District enter into a contract for the City to operate the system in such manner and for such compensation as may be mutually agreeable. All water and wastewater connections within the District shall be inspected by the District for compliance with the requirements of the City and the requirements of the Texas Department of Water Resources. Water meters shall be purchased by the District from the City's Water and Wastewater Department at cost.

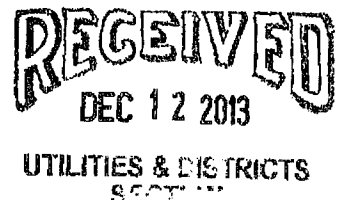
B. The District shall operate and maintain the park and recreational facilities located within the District to the extent permitted by applicable law; provided, however, that in the event it is ever determined by the Texas Water Commission or any court of competent jurisdiction that the District is incapable of legally operating and maintaining such facilities, the City may accept the parks and recreational facilities located within the District for operation and maintenance under a time schedule mutually acceptable to the District and the City, or, if an agreement is not reached between the City and the District, the District may convey such facilities to Milwood, its successors or assigns, pursuant to the terms and conditions of restrictive covenants which are to be imposed against the property situated within the District. In either event, the District shall thereafter have no further obligation with respect to the operation and maintenance of such facilities.

ARTICLE V
AREA OF AND LIMITATIONS ON SERVICE

Unless the prior approval of the City Council of the City is obtained, the District shall not: (1) construct or install water or wastewater lines or facilities to serve areas outside the District; (2) sell or deliver City water or wastewater service to areas outside the District; or (3) annex any additional lands to the District.

ARTICLE VI
LIMITATION ON LIABILITY

The City shall not be liable to Milwood, the District, or any customer of the District for any failure of the City to provide water or sewer service: (1) where such failure results from impairment of facilities, strikes or other conditions beyond the City's control, so long as the City uses reasonable efforts to promptly correct such condition or conditions, or (2) as otherwise provided in Articles II and III hereof.



ARTICLE VII
ANNEXATION

A. The parties hereto acknowledge and agree that the land comprising the District lies partially within the extraterritorial jurisdiction of the City and partially within the City; is not bordered by another city, town, or village; and that the portion which is not currently within the City is scheduled for annexation by the City in accordance with the Annexation Plan of the City. The parties further acknowledge that the creation of the District, and the City's consent thereto, are for the purpose of promoting the orderly development of and extension of municipal services to the land comprising the District.

B. In furtherance of the purposes of this Agreement, the District and Milwood, and their respective successors and assigns, covenant and agree to the extent allowed by law that, except upon written consent of the City Council of the City they will not: (1) seek or support any effort to incorporate any land within the District, or any part thereof; or (2) sign, join in, associate with, or direct to be signed any petition seeking to incorporate any land in the District or to include any of such land within the boundaries of the City or any other incorporated entity.

C. All parties to this Agreement respectively agree that one of the purposes of this Agreement is to effectuate the provisions of Section 54.016(f) of the Texas Water Code regarding annexation pursuant to the terms and conditions of a contract between a district and a city. It is further understood that, by enacting the ordinance granting consent to the creation of the District and by executing this Agreement, the City has begun the legal process of annexation of the District, and it is mutually agreed that all parties hereto shall use their best efforts to bring about the conclusion of that process in accordance with the terms hereof.

D. It is expressly understood and agreed that the City may complete the annexation process and annex the District upon the following terms and conditions:

1. At any time following the installation of the "requisite percentage of District facilities", as hereinafter defined, the annexation process may be completed and the District included within the corporate boundaries of the City. For purposes of this Subsection D, the term "requisite percentage of District facilities" shall mean ninety percent (90%) by dollar amount of the total facilities for which District bonds have been approved by the voters within the District. The District shall be dissolved on the date and in the manner specified in the ordinance

completing such annexation, but in no event more than ninety (90) days after the effective date of such annexation. Upon the dissolution of the District, the City shall immediately succeed to all properties, powers, duties, assets, debts, liabilities, and obligations of the District.

2. Notwithstanding the provisions of the preceding Subparagraph D-1, if, prior to the installation of the requisite percentage of District facilities, the City is presented with a valid petition for annexation in aid of incorporation which complies with the provisions of the Municipal Annexation Act (Article 970a, V.T.C.S.) and all other statutes, ordinances, and charter provisions relating to incorporation, the City shall be authorized to complete the annexation process and include the District within the corporate boundaries of the City. In such event, the District shall continue to exist following the effective date of such annexation; provided, however, that:

(a) The provisions of this Agreement shall remain in full force and effect until the District is dissolved in accordance with the provisions of this subsection;

(b) The total ad valorem taxes collected by the City and the District from taxable property within the District during any year between annexation of the District and dissolution of the District shall not exceed an amount greater than the City's ad valorem tax on property within the City limits. As between the City and the District, the District shall be entitled to levy and collect an ad valorem tax which, when added to the projected revenues of the District for the next year, will yield an amount sufficient to meet all financial obligations of the District and provide a ten percent (10%) contingency fund. The City shall be entitled to levy and collect an ad valorem tax which, when added to that which the District is entitled to levy and collect, shall not cause the total ad valorem taxes on taxable property within the District to exceed the limitation set forth above. It is provided, however, that if the foregoing limitation upon the total amount of ad valorem taxes shall be declared invalid by a court of competent jurisdiction and no appeal is or can be taken from that decision, then such limitation shall not apply and the City and District may each levy such ad valorem taxes as may be authorized by law.

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(c) During the period following annexation but preceding dissolution of the District, the District shall, to the extent permitted by law, be responsible for providing water and wastewater service to residents of the District. The City shall be responsible for the provision of all other governmental services, including the operation and maintenance of parks and recreational areas, to residents of the District until dissolution of the District, at which time the City shall become responsible for the provision of all governmental services to residents of the District.

(d) The District shall be dissolved and the City shall succeed to all the remaining properties, powers, duties, assets, debts, liabilities, and obligations to the District upon: (i) the retirement of the District's bonded indebtedness or (ii) the expiration of forty (40) years from the date this Agreement is executed by the District, whichever occurs first. In accordance with the procedures established by applicable law, the City may elect to forfeit the collection of the surcharge described in Article VII, Section E of this Agreement and dissolve the District prior to the installation of the requisite percentage of District facilities. In such event, the City shall give notice to the District in the same manner as provided in Subparagraph 3, of this Article VII, Section D, below, of its election to dissolve the District, and such dissolution shall take effect six (6) months after such notice; provided, however, that if the installation of any items of authorized facilities financed with the proceeds from the sale of bonds has been commenced in good faith, in compliance with and in reliance on the provisions of this Agreement, and is in progress upon the date the City notifies the District of its election, dissolution of the District shall be postponed until: (i) installation of such items has been completed, or (ii) the expiration of one (1) year, whichever occurs first.

3. The City may annex the District at such time as the City finds such annexation to be feasible; provided, however, that if the installation of any items of authorized facilities financed with the proceeds of bonds has commenced in good faith in compliance with and in reliance upon the provisions of this Agreement and is in progress at the time the City finds annexation of the District to be feasible, the City shall give written notice of its intent to proceed

to annex the District, by registered or certified mail, return receipt requested, to the address of the District designated in the registration statement on file with the Texas Department of Water Resources, with a copy to the District's attorney of record, and annexation of the District to the City shall be postponed until: (i) the installation of the items has been completed; or (ii) the expiration of one (1) year, whichever occurs first.

4. Milwood shall notify each person or entity purchasing property within the District from Milwood of the annexation provisions of this Agreement and shall obtain from each such purchaser a written acknowledgement that any attempt to incorporate all or any part of the District would be contrary to the intent and purpose of this Agreement.

E. Unless otherwise prohibited by applicable law, the District shall charge and collect a special water and sewer rate in the amount of \$18.20 per month from each single family dwelling unit or its equivalent to which water and sewer services are provided. Such special rate shall be assessed and collected from each customer in the manner specified above. The special rate may continue to be charged by the City after annexation and dissolution of the District, in addition to the City's normal water and sewer rates, as authorized by Section 54.016(h) of the Texas Water Code, until the bonded indebtedness of the District has been retired. If the total principal amount of bonds for District facilities is greater or less than the total estimated amount of bonds which was used to calculate the special rate, or if it becomes evident as a result of the subdivision process that the total number of single family dwelling units or their equivalents within the District will be greater or less than the total number used to calculate the special rate, then the District and the City agree to recalculate the special rate accordingly, and such recalculated special rate shall be charged and collected as provided herein. It is specifically acknowledged and agreed that the special rate described above has been calculated and that any recalculation thereof shall be calculated as provided in the Water District Ordinance for Growth Area III, in accordance with the terms and conditions of the ordinance of the City granting consent to the creation of the District.

G. Except as otherwise provided herein, all contract obligations and responsibilities of Milwood and the District pursuant to this Agreement shall terminate when the land within the District is annexed to the City; provided, however, that any obligations which have accrued prior to annexation shall not be affected by such termination.

ARTICLE VIII

ADDITIONAL REQUIREMENTS

Milwood and the District hereby respectively agree to comply with all applicable requirements contained in the Water District Ordinance; provided, however, that where the requirements of this Agreement are more specific than, but not inconsistent with, the provisions of the Water District Ordinance, the provisions of this Agreement shall control.

ARTICLE IX

CONSTRUCTION OF DISTRICT FACILITIES

With the consent of the District and the City, Milwood, or Milwood's successors or assigns, may serve as the project manager for the construction of all water, wastewater and drainage facilities to be constructed or acquired by the District. It is provided, however, that no construction of any facility shall commence unless the plans and specifications therefor have been approved by the City and all other governmental entities having jurisdiction. Upon the issuance and sale of its bond anticipation notes or bonds for such purposes, the District shall pay Milwood the cost of construction of any facilities constructed by Milwood to the extent authorized by the Texas Department of Water Resources and permitted by the Water District Ordinance. To the extent the District is not permitted to pay Milwood for any facilities, Milwood shall dedicate such facilities to the District without compensation.

ARTICLE X

LAND AND EASEMENT COSTS

Land, easements, and rights-of-way needed for District purposes within the District, which purposes are to be financed by issuance of bonds and notes, shall be dedicated to the District by Milwood, its successors or assigns. The District may acquire land from Milwood in accordance with the rules of the Texas Department of Water Resources and the provisions of the Water District Ordinance. Land, easements, and rights-of-way outside the District needed by the District shall be acquired by the District in accordance with the usual and customary public purchasing standards and procedures applicable to the District.

ARTICLE XI

LAND USE AND DEVELOPMENT

A. Milwood covenants and agrees to dedicate the following amenities to the District: (1) approximately sixty-four (64) acres of park and greenbelt areas; (2) a two (2) acre fire station site; and (3) a five (5) acre solid waste transfer site which shall be adjacent to the District's frontage along Highway 620, in either the area designated for industrial use or the area designated for retail use on the Conceptual Plan, as defined

below. Prior to development of the solid waste transfer site, the City shall submit a site plan showing all proposed structures, buffering, setbacks and uses on the site and the District shall have the right to approve, modify or disapprove such site plan as necessary, in the opinion of the Board of Directors of the District, to maintain compatibility with adjoining land and uses; provided, however, that such site plan approval shall not be unreasonably withheld. Milwood further agrees to provide park and recreational facilities for the residents within the District having a value of at least \$750,000.00, and to construct, at its sole cost, a bridge across Lake Creek at the location to be selected by Milwood and approved by the Director of Public Works.

B. All land within the District shall be developed in accordance with the conceptual plan attached hereto as Exhibit "C" and incorporated herein by reference, as the same may be amended from time to time with the concurrence of a majority of the members of the Planning Commission of the City and Milwood, its successors and assigns (the "Conceptual Plan"), except as otherwise hereinafter provided. Milwood, its successors and assigns shall comply with all requirements set forth in such Conceptual Plan. The Conceptual Plan shall be updated as each section of land within the District is platted, and all land located within the District shall be platted in accordance with the requirements of Article 970a, Texas Revised Civil Statutes, prior to development of such land. The City's Director of Planning shall determine whether a plat is in substantial compliance with the Conceptual Plan. Any person aggrieved by the decision of the Director of Planning may appeal such determination by filing a written appeal with the City Clerk of the City within ten (10) days from the date of such decision. The City Council of the City shall then hold a public hearing and render a decision either affirming or reversing such determination within fifteen (15) days from the date of such appeal.

C. Any increases in the overall gross density of development or any changes increasing the intensity of the land uses shown on the Conceptual Plan may only be made with the concurrence of a majority of the members of the City Council of the City and Milwood, its successors and assigns. Any decreases in land use intensity to a residential land use designation of "AA", "A", or "A-2" under the current zoning ordinance of the City, or the equivalent zoning classifications under any future zoning ordinance enacted by the City, shall not require approval by the City Council or Planning Commission of the City except as to plat approval by the Planning Commission as hereinabove provided.

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D. Milwood shall have the right to designate additional school sites without prior approval of either the City Council or Planning Commission.

E. All land within the District shall be developed in accordance with the Landscape Ordinance of the City, Ordinance Number 820408-E, as hereafter amended from time to time. In addition, the land within the District fronting onto Ranch Road 620 and Farmer Lane shall be developed in accordance with the requirements of the Austin City Code, Chapter 13-2, Article VI, as hereafter amended from time to time. Each site within the District developed for use for industrial purposes shall be developed as a Planned Development Area pursuant to Article 970a, Section 5, Texas Revised Civil Statutes. All buildings constructed within the District shall be constructed in accordance with City standards.

All land within the District which is located within the fully developed one hundred (100) year flood plain of the main stem of either Rattan Creek or Lake Creek shall contain no development other than development associated with District park and recreational facilities, roads, and utilities. No parking, other than parking provided in association with park and recreational facilities, shall be included within the one hundred (100) year flood plain. Land located within the one hundred (100) year flood plain shall not be included within lots or considered in making calculations of density.

F. Milwood agrees to construct the roadway designated as Anderson Mill Road to City standards, to the extent that such roadway is situated within the boundaries of the District.

G. The terms and provisions of this Article XI shall continue in effect after annexation of the District by the City.

ARTICLE XII

ASSIGNMENT OF AGREEMENT

Milwood, or any party to this Agreement, or the successors or assigns of any such party, may from time to time, transfer, convey or assign all or any part of its rights and obligations under this Agreement with respect to all or any part of the land within the District owned by such party. Upon approval by the City of the assignee or assignees, which approval shall not be unreasonably withheld, and provided that the assignee or assignees assume the liabilities, responsibilities and obligations of the assignor under this Agreement, the party assigning its rights and obligations under this Agreement shall be released from the liabilities, responsibilities and obligations hereof to the extent of the land involved in such assignment or assignments, or to the extent otherwise approved by the City. Neither the District nor the City shall assign this Agreement without written

consent of each of the other parties hereto. Milwood is specifically authorized to assign this Agreement to the District upon its creation; provided, however, that such assignment shall not relieve Milwood or its successors or assigns from the obligation to comply with the land use requirements and the other provisions contained herein affecting the use and conditions of sale of property within the District.

ARTICLE XIII

TERM OF AGREEMENT

This Agreement shall be effective from the date of execution hereof by the City and Milwood, and shall continue in effect for a period of forty (40) years from the date of the execution hereof by the District; provided, however, that if the District is not created within one (1) year after execution of this Agreement by the City, this Agreement shall terminate and be of no effect.

ARTICLE XIV

JOINT CONTRACTING

The District is authorized to contract with any firm, corporation, person, governmental entity or political subdivision for the construction, operation and maintenance of any water or wastewater facilities or any other facilities which are within the powers of the District to construct, operate or maintain.

ARTICLE XV

SEVERABILITY AND ENFORCEABILITY

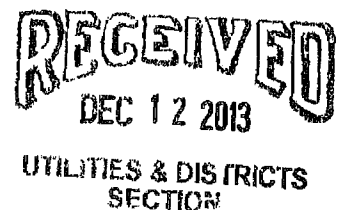
In the event that any provision hereof is subsequently determined to be invalid, illegal or unenforceable such provision shall be severed from the remaining portions of this Agreement and the remainder of the Agreement shall remain in full force and effect.

If the Texas Water Commission or any court of competent jurisdiction determines that any portion of this Agreement is beyond the scope or authority of the Texas Water Code or other applicable Texas law, the City, Milwood and the District agree to immediately amend this Agreement so as to conform to such ruling or decision in such a manner as is most consistent with the original intent hereof as may be legally possible.

ARTICLE XVI

BENEFITS OF AGREEMENT

This Agreement is for the benefit of the City; the District; and Milwood, its successors and assigns, and shall not be construed to confer any benefit on any other party except as expressly provided herein. This Agreement may be executed by the City and Milwood prior to creation of the District and shall be binding upon the City and Milwood for a period of one (1) year following such execution by the City, pending creation and



confirmation of the creation of the District and approval and execution of this Agreement by the Board of Directors of the District.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its undersigned duly authorized representative, in multiple copies, each of equal dignity, on the date or dates indicated below.

APPROVED AS TO FORM:

CITY OF AUSTIN, TEXAS

By *Albert DeLaRosa*
Albert DeLaRosa
City Attorney

By *Nickolas B. Hinger*
City Manager
Executed on MAY 20 1983, 1983

NORTH AUSTIN MUNICIPAL
UTILITY DISTRICT NO. 1

By *Stanley D. Dura*
President,
Board of Directors

Executed on February 21, 1984

AUSTIN WHITE LIME COMPANY

BY: *A.H. Robinson, Jr.*
A.H. ROBINSON, JR., Partner
BY: *George E. Robinson*
GEORGE E. ROBINSON, Partner
Executed on Jan. 30, 1984

ROBINSON RANCH

BY: *A.H. Robinson, Jr.*
A.H. ROBINSON, JR., Partner
BY: *George E. Robinson*
GEORGE E. ROBINSON, Partner
Executed on Jan. 30, 1984

MILWOOD JOINT VENTURE

BY: *Bill Milburn*
BILL MILBURN, Venturer

BY: PALMAR ASSOCIATES, Venturer

BY: *A.H. Robinson, Jr.*
Executed on Jan. 30, 1984

EXHIBIT B

#2

AGREEMENT CONCERNING CREATION AND OPERATION OF NORTHTOWN MUNICIPAL UTILITY DISTRICT NO. 1

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS;
COUNTY OF TRAVIS §

THIS AGREEMENT is made and entered into by and among the City of Austin, Texas (hereinafter referred to as the "City"), a municipal corporation situated in Travis County, Texas, acting herein by and through its undersigned duly authorized City Manager, as authorized by specific action of its City Council; Northtown Municipal Utility District No. 1 (hereinafter referred to as the "District"), a municipal utility district created on the 14th day of August, 1985, by order of the Texas Water Commission and operating pursuant to Chapter 54 of the Texas Water Code; and Pflugerville Joint Venture, a Texas joint venture, (hereinafter collectively referred to as the "Joint Venture"), the holder of legal title to all of the land comprising the District, which consists of approximately 1231.772 acres situated wholly in Travis County, Texas, and lying within the extraterritorial jurisdiction of the City and the extraterritorial jurisdiction of the City of Pflugerville, which land is more particularly described in Exhibit "A", attached hereto and incorporated herein by reference and lying within the preferred growth corridor of the City as designated by the Austin Tomorrow Comprehensive Plan.

For and in consideration of the premises and the mutual agreements, covenants, and conditions hereinafter set forth, the parties hereto hereby contract and agree as follows, to wit:

ARTICLE I COMPLIANCE WITH CITY WATER DISTRICT ORDINANCE

A. Except as otherwise expressly provided herein, the consent to the creation of the District hereby granted by the City is subject to, and the creation and operation of the District shall be in accordance with, the Water District Ordinance adopted by the City Council of the City of Austin on August 19, 1981, by Ordinance Number 810819-E, a true and correct copy of which is attached hereto as Exhibit "B" and incorporated herein by reference ("Water District Ordinance"). The terms and conditions of the Water District Ordinance are made a part of this Agreement for all purposes to the extent permitted by law.

B. Anything herein and in the Water District Ordinance to the contrary notwithstanding, the City has granted the District an exception to the Water District Ordinance by granting the District the authority to issue bonds and to make surcharge calculations, if applicable, for all internal drainage facilities built by the District to the extent permitted by the Texas Water Commission, but in any case, Joint Venture shall pay 30% of the costs of the internal drainage facilities as required by the Water District Ordinance.

C. Anything herein and in the Water District Ordinance to the contrary notwithstanding, financial consultant and bond counsel fees which are paid with proceeds of bonds issued by the District shall be limited in accordance with Exhibit "C", attached hereto and incorporated herein by reference.

ARTICLE II ISSUANCE OF BONDS BY THE DISTRICT

A. Bonds for District Facilities

1. The District agrees that it shall only issue bonds and notes, including bond anticipation notes, for the purposes and in the manner provided by the Water District Ordinance and

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the rules and requirements of the Texas Water Commission. All bonds and notes of the District (the "District bonds") and the terms and provisions thereof shall be approved by the City Council of the City prior to the issuance thereof; provided, however, that any authorization which may be granted hereunder by the City of a principal amount of District bonds (plus interest) proposed to be issued by the District shall be deemed to include the approval of bond anticipation notes in a principal amount not to exceed the amount of principal and interest of the District bonds so authorized. It is specifically agreed that the District bonds, when issued, shall be secured by a pledge of the District's taxes and revenues. The District shall be authorized to issue bonds to finance temporary wastewater pump stations and related facilities with participation by area landowners desiring service.

2. The parties hereto acknowledge and agree that this Agreement and the Water District Ordinance, as such ordinance now exists and may hereafter be amended from time to time, have the effect of restricting the general statutory purposes for which the District may issue bonds and notes. The parties further recognize and agree that neither this Agreement nor the Water District Ordinance otherwise restrict or limit the powers and authority of the District to acquire, own, operate and maintain water or wastewater systems, drainage facilities, recreational facilities, or any other systems, facilities, assets or properties of or serving the District. The District may use funds and assets from any other available, lawful source to provide for such acquisition, ownership, maintenance and operation, as well as to accomplish any purpose or to exercise any function, act, power or right authorized by law. Such funds and assets shall include, without limiting the generality of the foregoing, revenues from any of the systems, facilities, properties and assets of the District not otherwise committed for the payment of indebtedness of the District; maintenance taxes; loans, gifts, grants and donations from public or private sources; and revenues from any other source lawfully available to the District. The District bonds and notes may be issued by the District for any purpose not specifically prohibited by this Agreement or the Water District Ordinance.

B. Bonds for Special Facilities

To enable the City to supply water to the District and to receive and treat wastewater from the District in accordance with the provisions of Articles III and IV hereof, the parties hereby acknowledge that major extensions and improvements to the City's existing water and sewer facilities shall be necessary, all as more fully described and identified in the Utility Construction Contract (the "Construction Contract") by and between the District and the City, a proposed form of which is attached hereto as Exhibit "B" and incorporated herein by reference. The Construction Contract shall be approved by the City Council of the City simultaneously with its approval of this Agreement. It is expressly acknowledged that the "Project", as such is defined in the Construction Contract, includes approach mains necessary to serve the District and that no additional City approval of such approach mains shall be required upon completion of the Project.

To finance the cost of acquiring and constructing the Project, the District is hereby authorized to issue bonds and bond anticipation notes, subject to the terms, conditions and procedures set forth in the Construction Contract (the "Contract Bonds"). The Project shall be constructed by the District in accordance with the provisions of the Construction Contract and, upon completion thereof, shall be dedicated to the City. Upon such dedication, all right, title and interest of the District in and to the Project shall vest in the City. The City agrees that, upon completion of the Project, adequate distribution capacity shall be reserved by the City to serve all land within the

present boundaries of the District and to meet the City's other agreed obligations to supply treated water to the District and to collect wastewater therefrom.

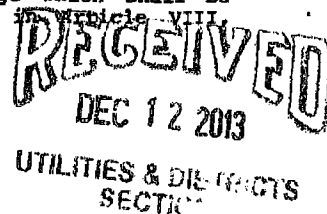
**ARTICLE III
WATER SUPPLY**

A. At the times and in the manner requested by the District, the City agrees to sell and deliver to the District all water which may be reasonably required for domestic and commercial purposes by users within the District. All such water shall be supplied from the City's water distribution system, as extended by the District, to a point or points of delivery adjacent to the boundaries of the District designated by the District's engineer and approved by the City. The sale and furnishing of water to the District shall be nondiscriminatory and uniform with the policy or policies of the City relating to utilities inside the City's utility service area as established by Ordinance Number 810820-B, as now in effect or hereafter amended. Water supplied to the District pursuant to this Agreement shall be at the rate or rates established by the City for water supplied to water districts generally. The District specifically agrees that the supply of water to the District may be reasonably limited by the City on the same basis and to the same extent as the supply of water to any other customer within the City's service area. "Water", as used in this Article III, shall mean potable water meeting the requirements of the Texas Department of Health for human consumption and other domestic uses. The City agrees to use reasonable efforts to acquire and maintain a supply of water adequate to provide service to the District. The City further agrees to permit the Joint Venture and the District to utilize existing City water facilities for temporary water service on the same basis as other customers within the City's service area until such time as the facilities described in the Construction Contract are completed. Upon execution hereof by the City, this Agreement shall serve as an approved approach main request for water service under the City's approach main policy, as established by Ordinance No. 81 0514-D as hereafter amended from time to time.

B. Metering equipment and related facilities, including a meter loop, a meter house or pit, and standard-type devices required for properly measuring the quantity of water delivered to the District, shall be installed at each point of delivery of water to the District. The District, at its expense, shall install and provide the meter loop and the meter house or pit. The City, at the District's expense, shall provide and install the meter. The City, at its expense, shall operate and maintain the metering equipment and related facilities and shall calibrate the metering equipment upon request by the District; provided, however, that the cost of calibrating the metering equipment shall be borne by the District if requested more frequently than once every twelve (12) months. Any meter registering not more than two percent (2%) above or below the test result shall be deemed to be accurate. If any meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered during the corresponding period immediately preceding such failure, subject to reasonable adjustments for seasonal and climatic considerations, unless the City and the District otherwise agree. The metering equipment shall be read once each City billing cycle.

C. 1. Rates charged to customers of the District for water delivered pursuant to this Article III shall be set by the District and shall not be less than those normally charged by the City for comparable customers within the City, as established from time to time by the City Council of the City.

2. In addition to the rates charged under the preceding subsection C.1., the District shall charge and collect from its in-district customers a monthly surcharge which shall be calculated in the same manner as provided in Article VIII.



Section E. of this Agreement for calculating the surcharge which may be charged by the City after annexation of the District into the City. In the event the District utilizes the Big Walnut Creek Wastewater Interceptor to serve a customer of the District, the District shall also collect a fee at the time of purchase of a tap from the District of Three Hundred Forty-five Dollars (\$345.00) per living unit equivalent from that customer as required by City Ordinance No. 821014-B as a subsequent user of the Interceptor, and shall further collect a monthly fee of \$10.07 pursuant to City Ordinance No. 821014-B from such customers who utilize the Big Walnut Creek Wastewater Interceptor. Provided, however, such fee shall not be collected by the City from the District at the time the District purchases its master meter. Further provided, that the exemptions set forth in Ordinance 821014-B shall remain applicable. The City and the District agree to work together to establish a one time charge in lieu of the monthly charge of \$10.07. All such fees collected by the District pursuant to Ordinance 821014-B shall be remitted to the City on a monthly basis.

3. The District shall collect from all customers to whom the District sells water and/or sewer taps, a fee designed to foster the general purposes and intent of the City's Capital Recovery Fee Ordinance, Ordinance No. 821216-B, as amended from time to time. Such fees and any applicable offsets or credits shall be calculated according to the criteria and formula provided for in Exhibit "E" attached hereto and incorporated herein by reference. The District shall promptly remit all such fees collected by the District to the City's Water and Wastewater Department.

D. The District's billing and payment procedures shall substantially conform with the procedures established by the City as set forth in the City of Austin Utility Service Regulations, as now in effect or hereafter amended; provided, however, that the District may vary such procedures if required by law and that the District and the City may enter into a contract providing that the City may handle billings for the District in such a manner and for such compensation as may be mutually agreeable.

E. The District shall promote compliance with the City's water conservation ordinance, as amended from time to time.

ARTICLE IV SEWAGE TREATMENT

A. The City agrees to receive, treat, and dispose of all sewage which is collected by the District and delivered to a point or points of delivery into the City's sanitary sewer trunk line, as extended by the District. Said point or points of delivery shall be designated by the District's engineer and approved by the City. Sewage treatment and disposal services provided to the District shall be nondiscriminatory and uniform with the policy or policies established by the City Council of the City relating to utilities in the City's utility service area, as established by Ordinance Number 810820-B, as now in effect or hereafter amended. Sewage received from the District and treated by the City pursuant to the terms of this Agreement shall be at the rate or rates established by the City for sewage received from water districts generally. The District specifically agrees that the treatment of sewage received from the District may be reasonably limited by the City on the same basis and to the same extent as the treatment of sewage received from any other customer within the City's service area. The City agrees to use reasonable efforts to acquire and maintain sewage treatment capacity adequate to provide service to the District. The City further agrees to permit the Joint Venture and the District to utilize existing City sewer facilities for temporary sewer service on the same basis as other customers within the City's service area until such facilities described in the Construction Contract are completed. Upon execution hereof by the City, this Agreement shall serve as an approved approach main

request for sewer service under the City's approach main policy, as established by Ordinance No. 810514-D as hereafter amended from time to time.

B. 1. Rates charged to customers of the District for sanitary sewer service shall be set by the District and shall not be less than those normally charged by the City for comparable customers within the City, as established from time to time by the City Council of the City.

2. In addition to the rates charged under the preceding subsection C.1., the District shall charge and collect from its in-district customers a monthly surcharge which shall be calculated in the same manner as provided in Article VIII, Section E. of this Agreement for calculating the surcharge which may be charged by the City after annexation of the District into the City.

3. The District shall collect from all customers to whom the District sells water and/or sewer taps, a fee designed to foster the general purposes and intent of the City's Capital Recovery Fee Ordinance, Ordinance No. 821216-H, as amended from time to time. Such fees and any applicable offsets or credits shall be calculated according to the criteria and formula provided for in Exhibit "B" attached hereto and incorporated herein by reference. The District shall promptly remit all such fees collected by the District to the City's Water and Wastewater Department.

C. The District's billing and payment procedures shall substantially conform with the procedures established by the City as set forth in the City of Austin Utility Service Regulations, as now in effect or hereafter amended; provided, however, that the District may vary such procedures if required by law and that the District and the City may enter into a contract providing that the City may handle the billings for the District in such a manner and for such compensation as may be mutually agreeable.

D. Industrial waste, if any, received by the District, shall be processed in a manner consistent with the provisions of the City's Industrial Waste Ordinance, Sections 12-2-76 through 12-2-85 of the 1981 Code of the City of Austin, as amended from time to time.

ARTICLE V OPERATION AND MAINTENANCE

A. The District shall operate and maintain the water and wastewater system located within the District (the "District facilities"). Unless the City and the District enter into a contract for the City to operate the system in such manner and for such compensation as may be mutually agreeable. The District shall have the obligation to inspect all water and wastewater connections made in the District for compliance with the requirements of the Uniform Plumbing Code and the City's local amendments thereto, the water and wastewater service detail promulgated by the Water and Wastewater Department of the City, as hereafter amended from time to time, and the rules and regulations of the Texas Department of Water Resources. Water meters shall be purchased by the District from the City's Water and Wastewater Department at cost.

B. The District shall operate and maintain the parks and recreational facilities located within the District to the extent permitted by law; provided, however, that in the event it is ever determined by the Texas Water Commission or any court of competent jurisdiction that the District is legally incapable of operating and maintaining such facilities, the City shall accept the public parks and recreational facilities located within both the District and the City's extraterritorial jurisdiction for operation and maintenance.

C. The District shall file a copy of its annual audit, and a copy of its proposed budget for the following year showing expenses, income and revenue sources, with the City Clerk, Director of Finance and City Manager of the City.

ARTICLE VI
AREA OF AND LIMITATIONS ON SERVICE

A. Except as authorized in Section B of this Article VI, unless the prior approval of the City Council of the City is obtained, the District shall not: (1) construct or install water or wastewater lines or facilities to serve areas outside the District; (2) sell or deliver City water or wastewater service to areas outside the District; or (3) annex any additional lands to the District.

B. With respect to all land within the City's extraterritorial jurisdiction for which annexation to the District or out-of-district service is hereafter requested, the owner of such land shall be required to submit a land use plan covering the land for which annexation or out-of-district service is sought at the time such approval is requested. Any land within the City's extraterritorial jurisdiction for which annexation or out-of-district service is requested shall be developed in accordance with the approved land use plan, in the same manner set forth in Article XII for land originally included within the District.

ARTICLE VII
LIMITATION ON LIABILITY

The City shall not be liable to the Joint Venture, the District, or any customer of the District for any failure of the City to provide water or sewer service: (1) where such failure results from impairment of facilities, strikes or other conditions beyond the City's control, so long as the City uses reasonable efforts to promptly correct such condition or conditions, or (2) as otherwise provided in Articles III and IV hereof.

ARTICLE VIII
ANNEXATION BY CITY

A. The parties hereto acknowledge and agree that approximately 1230.872 acres, more or less, of the total 1231.772 acres of land comprising the District lie within the extraterritorial jurisdiction of the City and that .9 acres of the total 1231.772 acres of land lie within the extraterritorial jurisdiction of the City of Pflugerville; the land is not bordered by any other city, town or village; and that the portion lying within the extraterritorial jurisdiction of the City is scheduled for annexation by the City in accordance with the Annexation Plan of the City.

B. In furtherance of the purposes of this Agreement, the District and the Joint Venture, and their respective successors and assigns, covenant and agree to the extent allowed by law that, except upon written consent of the City Council of the City they will not: (1) seek or support any effort to incorporate any land within the District, or any part thereof, or (2) sign, join in, associate with, or direct to be signed any petition seeking to incorporate any land in the District or to include any of such land within the boundaries of the City or any other incorporated entity. The Joint Venture shall notify each person or entity purchasing property within the District from the Joint Venture of the annexation provisions of this Agreement and that any attempt to incorporate all or any part of the District would be contrary to the intent and purpose of this Agreement.

C. All parties to this Agreement respectively agree that one of the purposes of this Agreement is to effectuate the provisions of Section 54.016(f) of the Texas Water Code regarding annexation pursuant to the terms and conditions of a contract

between a district and a city. It is further understood that, by enacting the ordinance granting consent to the creation of the District and by executing this Agreement, the City has begun to provide for the legal process of annexation of the District land which lies within the City's extraterritorial jurisdiction, and it is mutually agreed that all parties hereto shall use their best efforts to bring about the conclusion of that process in accordance with the terms hereof.

D. It is expressly understood and agreed that the City may complete the annexation process and annex land lying within the City's extraterritorial jurisdiction upon the following terms and conditions:

1. The District agrees that at least ninety percent (90%) by dollar amount of the total District facilities to be constructed for which District bonds are being authorized in this Agreement ("requisite percentage of District facilities") will be installed within eight (8) years from the date of confirmation of the creation of the district. At anytime following the installation of the requisite percentage of District facilities, the annexation process may begin on land within the District and such land may be included in the corporate boundaries of the City. If such installation of the requisite percentage of facilities has not been accomplished within said eight (8) year period, the City, at its option may begin to annex land within the District lying within the City's extraterritorial jurisdiction. After the City has annexed more than seventy-five percent (75%) of the land within the district by acreage or after the City has annexed more than seventy-five percent (75%) of the land within the District by tax assessed value, whichever occurs later, whether or not the requisite percentage of District facilities has been installed, the City shall, within ninety (90) days of that time annex the remaining portion of the District in its extraterritorial jurisdiction. The District shall be dissolved on the date and in the manner specified in the ordinance completing such annexation of all land within the District lying within the City's extraterritorial jurisdiction, but in no event more than ninety (90) days after the effective date of such annexation. Upon the dissolution of the District, the City shall immediately succeed to all properties, powers, duties, assets, debts, liabilities and obligations of the District.

2. Notwithstanding the provisions of the preceding Subsection D.1 or of Article IX of this Agreement, if, prior to the installation of the requisite percentage of District facilities, the City is presented with a valid petition for annexation of lands within the District in aid of incorporation which complies with the provisions of the Municipal Annexation Act (Article 970a, V.T.C.S.) and all other statutes, ordinances and charter provisions relating to incorporation, or if the City finds annexation to be feasible, the City shall be authorized to complete the annexation process to include such land within the corporate boundaries of the City. Provided, however the District shall continue in existence until and under terms and conditions set out in Subsection D1 above.

3. During the period following annexation of lands within the District but preceding dissolution of the District, the District shall, to the extent permitted by law, be responsible for providing water and wastewater service to residents of the annexed lands. The City shall be responsible for the provision of all other governmental services, including maintenance of parks and recreational areas, to the residents of the annexed lands within the district. Upon dissolution of the District, the City shall become responsible for provision of all governmental services to residents of such lands.

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UTILITIES & DISTRICTS
ST. LOUIS

E. The District shall be dissolved and the City shall succeed to all the remaining properties, powers, duties, assets, debts, liabilities, and obligations to the District no later than the occurrence of the first of either of the following: (i) the retirement of the District's bonded indebtedness or (ii) the expiration of forty (40) years from the date this Agreement is executed by the District.

F. After annexation of all District land located within the City's extraterritorial jurisdiction into the City and dissolution of the District resulting therefrom, the City may collect a surcharge in addition to the rates for water and sewer services for property that was within the territorial boundaries of the District at the time of annexation, as provided by Section 54.016(h) of the Texas Water Code. Such surcharge shall be calculated according to the criteria and formula provided for in Exhibit "F" attached hereto and incorporated herein by reference. The surcharge may continue for thirty (30) years after the initial District debt is issued or until the bonded indebtedness of the District has been retired, whichever occurs last, but in no case for a longer period of time than is necessary to wholly compensate the City for its assumption of the bonded indebtedness of the District. If the total principal amount of bonds for District facilities is greater or less than the total estimated amount of bonds which was used to calculate the surcharge, if the average annual effective interest rate of the bonds becomes greater or less than the rate used to calculate the surcharge, or if it becomes evident as a result of the subdivision process or annexation of land to the District that the total number of dwelling unit equivalents within the District will be greater or less than the total number used to calculate the surcharge, then the District and the City agree to recalculate the surcharge accordingly, and such recalculated surcharge shall be charged and collected beginning in the month following such recalculation as provided herein. It is specifically acknowledged and agreed that the special rate described above has been calculated, and any recalculation thereof shall be calculated, as provided in the Water District Ordinance for Growth Area III, Extraterritorial Jurisdiction 0-2 miles. Each purchaser of land within the District shall be furnished by the Joint Venture, or its successors or assigns, prior to the final closing of the sale and purchase, a separate written notice executed and acknowledged by the seller which shall contain the information required by Section 54.016(h)(4)(A) of the Texas Water Code. The District shall comply with Section 54.016(h)(4)(B) of the Texas Water Code.

ARTICLE IX OBLIGATIONS AFTER ANNEXATION

Except as otherwise provided herein, when the land within the District and within the City's extraterritorial jurisdiction is annexed to the City and the District is dissolved, the Joint Venture and the District shall incur no further contractual obligations and responsibilities pursuant to this Agreement; provided, however, that any such obligations or responsibilities which may have been incurred prior to annexation shall not be affected thereby unless the City succeeds to such obligations or responsibilities pursuant to law or this Agreement or by further agreement of the applicable parties.

ARTICLE X CONSTRUCTION OF DISTRICT FACILITIES

With the consent of the District, the Joint Venture or its successors and assigns may serve as the project manager for the construction of all water, wastewater and drainage facilities to be constructed or acquired by the District. It is provided, however, that no construction of any facility shall commence unless the plans and specifications therefor have been approved by the City; the Texas Department of Water Resources; the Texas Department of Health, where applicable; and all other governmental entities having jurisdiction. The City shall have

the right to inspect all facilities being constructed by the District and to charge and collect the standard inspection fee therefor; provided, that no such inspection fees may be collected as to the facilities described as the "Project" by the Construction Contract. Upon the issuance and sale of its bond anticipation notes or bonds for such purposes, the District may reimburse the Joint Venture for the cost of construction of any facilities constructed by the Joint Venture to the extent authorized by the Texas Department of Water Resources and permitted by the Water District Ordinance. To the extent the District is not permitted to pay the Joint Venture for any facilities, the Joint Venture shall dedicate such facilities to the District without compensation. Construction of the facilities herein contemplated shall be accomplished in accordance with the provisions of Article VIII, Section D.1. of this Agreement.

ARTICLE XI
LAND AND EASEMENT COSTS

Land, easements, and rights-of-way needed for District purposes within the District shall be dedicated to the District by Joint Venture, its successors or assigns. The District may acquire land from the Joint Venture in accordance with the rules of the Texas Department of Water Resources and the provisions of the Water District Ordinance. Land, easements, and rights-of-way outside the District needed by the District shall be acquired by the District in accordance with the usual and customary public purchasing standards and procedures applicable to the District.

ARTICLE XII
LAND USE AND DEVELOPMENT

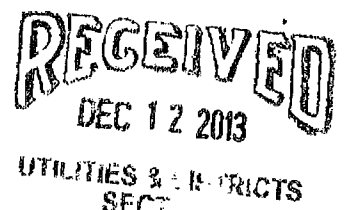
A. The Joint Venture, its successors and assigns, covenant and agree that, at the time the creation of the District is confirmed by the residents of the District or prior to development of the Property, whichever occurs first, the following restrictive covenants, numbered one (1) through nine (9), shall be placed of record in the Real Property Records of Travis County, Texas, in a form approved by the City Attorney, which covenants and restrictions shall run with the property and be binding upon the Joint Venture and its successors and assigns:

1. The property shall be developed and maintained in a manner which meets or exceeds the standards for landscaping set out in the City's Landscape Ordinance, as codified in Section 13-2-135 of the 1981 Code of the City of Austin, as amended from time to time, or as such landscaping standards may be carried forward into any comprehensive revision to the City Zoning Ordinance which may hereafter become effective.

2. The property shall be developed and maintained in a manner which meets or exceeds the standards set out in the City's Waterway Development Ordinance, as codified in Divisions 1 and 2, Article IV of Chapter 9-10 of the 1981 Code of the City of Austin, as amended from time to time.

3. Construction on the property shall be in compliance with the City's Building Code, including but not limited to any provisions thereof relating to construction in floodplains, the City's Plumbing Code and the City's Electrical Code, as the same may be amended from time to time. The City Building Inspection Department shall have the right, but not the obligation, to inspect and approve all construction for compliance with this subsection 3.

4. The subdivision of the property shall require approval of subdivision plats by the City Planning Commission as provided by Art. 974a V.T.C.S., as amended, and Chapter 13-3 of the 1981 Code of the City of Austin, as amended from time to time.



5. Any use of any portion of the property for a use or uses other than single family residential or duplex residential shall require site plan approval of such use(s) by the City Planning Commission in accordance with the site plan review procedures and the development standards prescribed by the City's Principal Roadway Area Ordinance, as codified in Article VI of Chapter 13-2 of the City of Austin, as amended from time to time, or as such Principal Roadway Area standards and site plan review procedures may be carried forward into any comprehensive revision to the City Zoning Ordinance which may hereafter become effective. Such portion of the property requiring site plan approval shall be developed and maintained in a manner consistent with the approved site plan. Such site plan approvals which may be required after the effective date of any comprehensive revision to the City Zoning Ordinance shall comply with such "compatibility standards" as may be included therein. ✓

6. Portions of the property may be used for industrial use, as described by the City's Zoning Ordinance, upon the approval of the City. The owner(s) of such proposed industrial site(s) shall be required to enter into a Planned Development Area and Industrial District Agreement with the City as allowed by Art. 970a, Sec. 5 V.T.C.S., as amended, upon such approval. Provided, however, that this requirement to enter into a Planned Development Area and Industrial District Agreement shall not apply if the proposed industrial site has been annexed into the City.

7. The erection and maintenance of billboards and signs on the property shall be consistent with the standards of Chapter 13-13 of the 1981 Code of the City of Austin, as amended from time to time.

8. The property shall be developed and maintained in accordance with the land use buffering standards established in any revisions to the City's Zoning Ordinance which may hereafter become effective.

9. Any City reviews, permits, approvals or inspections required by these covenants and restrictions or necessary to evidence compliance herewith shall require the payment to the City of the standard fees for performing the same.

8. The Joint Venture, its successors and assigns, shall develop and maintain the land within the District in accordance with the land plan attached hereto as Exhibit "G" and incorporated herein by reference, including all notations thereon, as the same may be amended from time to time with the concurrence of a majority of the members of the City Council of the City and Joint Venture, its successors and assigns (the "land plan"), except as otherwise hereinafter provided. It is acknowledged and agreed that the densities and land use intensities reflected on the land plan are not guaranteed levels of development, but represent the maximum levels of development which can be achieved subject to the reduction thereof necessitated by compliance with the requirements of applicable ordinances. Variances, exceptions or waivers from the requirements of the preceding Section A. are not guaranteed. Any increases in the overall gross density of development, any changes in the intensity of the land uses, or any changes in the land uses shown on the land plan may only be made with the concurrence of a majority of the members of the City Council of the City and the Joint Venture, its successors and assigns. The City Planning Commission shall make a recommendation to the City Council on any such proposed change in the land plan. Provided, however, that transfers of densities and land uses at or below the maximum levels as reflected on the land plan may be approved administratively by the City Planning Director. Any decreases in land use intensity or density shall not require approval by the Planning Commission or City Council of the City, except as to plat approval by the Planning Commission as provided above. X

C. All subdivision plats of the property shall be consistent with the land plan, which shall be updated as each section of the property is platted. The City Planning Director shall determine whether a plat is in substantial compliance with the land plan. Any person aggrieved by the decision of the Planning Director may appeal such decision by filing a written notice thereof with the City Clerk within ten (10) days of the date of such decision. The City Council shall then hold a public hearing and render a decision either affirming or reversing such decision within fifteen (15) days of the date of such notice of appeal.

D. All boundary street improvements within the District shall be constructed in accordance with applicable City policies and ordinances. The Joint Venture shall construct, at its expense, all arterial roadways within the District, the final design and alignment of which shall be approved by the Planning Commission through the subdivision process after recommendations by the Urban Transportation and Public Works Departments of the City. Further, the arterial roadways within the District shall be constructed with divided sections where adjacent land uses are residential. Dessau Road (Howard Lane) from the District's most westerly boundary west to the service road of Interstate 35 shall be fully built to urban standards and according to the City's adopted Roadway Plan, as it may be amended, at or prior to such time that enough lots receive final plat approval to increase the projected traffic counts to 2,500 trips per day on that section of Dessau Road (Howard Lane). This section of roadway shall be built under the following conditions:

- (1) The Joint Venture shall attempt to acquire right-of-way for this roadway section and then fully construct the road; or
- (2) Should the Joint Venture be unable to acquire the right-of-way, the City shall acquire the right-of-way and the Joint Venture shall construct this section as set forth above, or
- (3) Should the adjacent property owner subdivide and/or develop his property adjacent to the roadway, such property owner shall be required to construct the roadway according to the above standards.

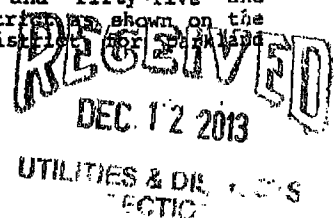
The Joint Venture shall also dedicate to the public Sprinkle Road Cutoff right-of-way as shown on the Land Plan attached to this Agreement. Nothing in this subsection D shall be construed to preclude the Joint Venture from requesting or accepting funds from the State of Texas or County of Travis for use in connection with such roadway construction. No driveway curb cuts for single family or duplex residential property shall be permitted on arterial roadways, as defined by the City's Austin Metropolitan Area Roadway Plan. All allowable curb cuts on major arterial roadways shall be at least two hundred (200) feet apart.

*deleted by
2nd amendment*

~~E. The Joint Venture agrees to perform a preliminary stormwater detention study which shall be approved by the City's Director of Public Works, prior to approval of the first preliminary subdivision plat. The District and the City agree that should the City determine that regional drainage facilities should be constructed, the District will issue contract bonds for such facilities under Article II, Section B above and pursuant to the requirements for issuance of bonds under the Utility Construction Contract attached hereto as Exhibit "D".~~

F. The Joint Venture agrees and covenants to dedicate, and by these presents does hereby express its intention to dedicate the following:

1. Approximately one hundred and fifty-five and one-tenth (155.1) acres of land in the District as shown on the Land Plan shall be dedicated to the District for Sprinkle



deleted revised
by second amendment

purposes. ~~The acreage designated on the Land Plan as District Park shall be dedicated to the District within one (1) year of confirmation of the District. The acreage designated on the Land Plan as Greenbelt shall be dedicated in segments as adjacent property is platted. Provided, however, that the Joint Venture shall retain the right to use all such acreage for calculating density on other parts of the Joint Venture Development even though platted after such dedication. The Joint Venture and the Director of the City's Parks and Recreation Department shall agree on the exact location and configuration of the parkland to be so dedicated.~~

2. The following contributions and dedications shall be made no later than the date of disbursement of the proceeds of the first sale of District bonds.

a. A fire station site of approximately 0.8 acres and located approximately 1.5 miles east of Interstate Highway 35 and one mile north of Dessau Road (Howard Lane) shall be dedicated to the District, as shown on the Land Plan attached hereto.

b. A school site of approximately ten (10) acres shall be dedicated to the Pflugerville Independent School District as shown on the Land Plan attached hereto.

deleted by
second amendment

G. ~~No later than the date of disbursement of proceeds of the first sale of District bonds, the Joint Venture agrees to construct or acquire the recreational facilities listed on Exhibit "H" attached hereto, for use within the District. The Joint Venture shall not be obligated to expend more than \$1,770,000.00 on the total facilities. Such facilities shall be established in the public parkland shown on the Land Plan and as stated in Exhibit "H". Such facilities shall be donated to the District without cost to the District after construction or acquisition of the facilities.~~

H. In the event that the District is not created, the intention and offer to dedicate expressed in Sections F or G above shall not be effective, but shall be of no force or effect.

ARTICLE XIII ASSIGNMENT OF AGREEMENT

The Joint Venture, its successors and assigns may, from time to time, transfer, convey or assign all or any part of its rights and obligations under this Agreement with respect to all or any part of the land within the District owned by it. Upon approval by the City of the assignee or assignees, which approval shall not be unreasonably withheld provided that the assignee or assignees assume the liabilities, responsibilities and obligations of the assignor under this Agreement, the party assigning its rights and obligations under this Agreement shall be released from the liabilities, responsibilities and obligations hereof to the extent of the land involved in such assignment or assignments, or to the extent otherwise approved by the City. Neither the District nor the City shall assign this Agreement without written consent of each of the other parties hereto. The Joint Venture is specifically authorized to assign this Agreement to the District upon its creation; provided, however, that such assignment shall not relieve the Joint Venture or its successors or assigns from the obligation to comply with the land use requirements and the other provisions contained herein affecting the use and conditions of sale of property within the District.

ARTICLE XIV TERM OF AGREEMENT

This Agreement shall be effective from the date of execution hereof by the City and the Joint Venture, and shall continue in effect for a period of forty (40) years from the date of the execution hereof by the District; provided, however, if the

District is not created within one (1) year after execution of this Agreement by the City, this Agreement shall terminate and be of no effect.

ARTICLE XV
JOINT CONTRACTING

The District shall be and is hereby authorized to contract with any entity, individual, governmental authority or political subdivision for the construction, operation and maintenance of any water, wastewater or other facilities which are within the power of the District to construct, operate or maintain.

ARTICLE XVI
SEVERABILITY AND ENFORCEABILITY

The provisions of this Agreement are severable and, in the event any word, phrase, clause, sentence, paragraph, section or other provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held or determined to be invalid, illegal or unenforceable for any reason, the remainder of this Agreement shall remain in full force and effect and the application thereof to any other person or circumstance shall not be affected thereby.

In the event that the Texas Water Commission or any court of competent jurisdiction determines that any provision of this Agreement is beyond the scope of the Texas Water Code, the City, the Joint Venture and the District agree to immediately amend this Agreement to conform to such ruling or decision.

ARTICLE XVII
BENEFITS OF AGREEMENT

This Agreement is for the benefit of the City, the District, and the Joint Venture, its successors and assigns, and shall not be construed to confer any benefit on any other party except as expressly provided herein. This Agreement may be executed by the City and the Joint Venture prior to creation of the District and shall be binding upon the City and the Joint Venture for a period of one (1) year following such execution by the City, pending creation and confirmation of the creation of the District and approval and execution of this Agreement by the Board of Directors of the District.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its undersigned duly authorized representative, in multiple copies, each of equal dignity, as of the date hereinabove first mentioned.

APPROVED AS TO FORM:

Kinda L. Wiegman
City Attorney - ASSY.

CITY OF AUSTIN, TEXAS

By *Jorge Carrasco*
Jorge Carrasco
City Manager

Executed on *August 31*, 1984

NORTHTOWN MUNICIPAL
UTILITY DISTRICT NO. 1

By *Robert M. J.*
Robert M. Thompson, President,
Board of Directors

Executed on *Jan 12*

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UTILITIES DIVISION

PFLUGERVILLE JOINT VENTURE,
a Texas joint venture

By: BILL MILBURN INC., a Texas
corporation, venturer

By: [Signature]
Bill Milburn, President

Executed on Oct. 18, 1981

By: William T. Gunn
William T. Gunn

Executed on Oct 3, 1984

STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on 8-31,
1984 by Jorge Carrasco, City Manager of the City of Austin,
Texas.

Norma Taylor
Notary Public, State of Texas

My Commission Expires:
1-20-85

Norma Taylor
(Name - Typed or Printed)

STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on January 6,
1986 by Robert M. Tiemann, President of the Board of Directors
of Northtown Municipal Utility District No. 1, on behalf of said
District.

Judy W. McAnis
Notary Public, State of Texas

My Commission Expires:
9/4/88

Judy W. McAnis
(Name - Typed or Printed)

STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on Oct. 18,
1984 by Bill Milburn, President of Bill Milburn, Inc., a Texas
corporation, Venturer of Pflugerville Joint Venture, on behalf of
said corporation and as Venturer of said joint venture.

Donna Fair
Notary Public, State of Texas

My Commission Expires:
11-13-84

DONNA FAIR
(Name - Typed or Printed)

STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on October 3,
1983 by William T. Gunn, Venturer of said joint venture.

My Commission Expires:
5-24-86

Carol Kay George Seale
Notary Public, State of Texas
Carol Kay George Seale
(Name - Typed or Printed)

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SECT

**FIRST AMENDMENT TO THE AGREEMENT
CONCERNING CREATION AND OPERATION OF
NORTHTOWN MUNICIPAL UTILITY DISTRICT NO. 1**

**THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS
COUNTY OF TRAVIS §**

THAT this Amendment Agreement is made and entered into as of the 16th day of April, 1990, by and among the City of Austin, Texas ("City"), a home rule city, located in Travis County, Texas, acting herein by and through its undersigned duly authorized City Manager, as authorized by specific action of its City Council; Northtown Municipal Utility District No. 1, ("District") a political subdivision of the State of Texas created and operating pursuant to Chapters 50 and 54 of the Texas Water Code; and Bill Milburn, Inc. (hereinafter referred to as "Milburn").

RECITALS

WHEREAS, the District, the City and Milburn entered into that certain "Agreement Concerning Creation and Operation of Northtown Municipal Utility District No. 1 (the "Consent Agreement") on August 14, 1985, which provided for, among other things, the provision of water and wastewater utility services and financing for system improvements for same; and

WHEREAS, the District now desires to delete that certain requirement that the District collect from each customer of the District a special water and sewer rate before annexation in addition to normal water and wastewater rates;

NOW, THEREFORE, the City, the District, and Milburn agree as follows:

**I.
ARTICLE I**

- A. The last sentence of Article I, Section A of the Consent Agreement shall be and is hereby amended by deleting the period at the end thereof and adding the following proviso:

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SECTION

"... provided, however, that, unless otherwise required by state law, the requirement for the District to collect from each customer of the District a special water and sewer rate before annexation in addition to its normal water and wastewater rates, as set forth in Part II, Sec. IV, Subpart D of the Water District Ordinance or as set forth in Subpart (c) of Sec. 13-4-8 of City's Land Development Code, or any amendment thereof, shall not be a condition of this Agreement."

- B. Article III, Sec. C(2) of the Consent Agreement shall be and is hereby amended by deleting the first sentence thereof in its entirety.
- C. Article IV, Sec. B(2) shall be and is hereby deleted in its entirety.
- D. Article VIII, Sec. F of the Consent Agreement shall be and is hereby amended to read in its entirety as follows:

"Unless otherwise prohibited by applicable law, the City may charge and collect a special water and sewer rate in the amount of \$17.05 per month from each single family dwelling unit or its equivalent to which water and sewer services are provided after the City has annexed the District and assumed the District's obligations. Such special rate after annexation shall be assessed and collected in the manner specified above. The special rate shall be charged in addition to the City's normal water and sewer rates, as authorized by Section 54.016 (h) of the Texas Water Code, until the bonded indebtedness of the District has been retired. If the total principal amount of bonds for District facilities is greater or less than the total estimated amount of bonds which was used to calculate the special rate, or if it becomes evident as a result of the subdivision process that the total number of single family units or their equivalents within the District will be greater or less than the total number used to calculate the special rate, the City shall recalculate the special rate accordingly, and such recalculated special rate shall be charged and collected as provided herein. It is specifically acknowledged and agreed that the special rate described above has been calculated and that any recalculation thereof shall be calculated as provided in the

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UTILITIES & DISTRICTS
SECTION

Water District Ordinance for Growth Area III, Extraterritorial Jurisdiction 0-2 miles. Each purchaser of land within the District shall be furnished by the Joint Venture, or its successors or assigns, prior to the final closing of the sale and purchase, a separate written notice executed and acknowledged by the seller which shall contain the information required by Section 54.015(h)(4)(A) of the Texas Water Code. The District shall comply with Section 54.015(h)(4)(B) of the Texas Water Code.

ARTICLE II

Except as otherwise expressly provided herein, all other provisions of the Consent Agreement, as amended to the date hereof, shall be and remain in full force and effect as written.

EXECUTED, in multiple copies, each of which shall constitute an original, this 16th day of April, 1990.

ATTEST:

CITY OF AUSTIN, TEXAS

By: James E. Aldridge
James E. Aldridge
City Clerk

By: Byron C. Fairhall
Title: Assistant City Manager
Executed on 4/16, 1990

ATTEST:

NORTHTOWN MUNICIPAL UTILITY
DISTRICT NO. 1

By: Ashton Cumberbatch, Jr.
Secretary, Ashton Cumberbatch, Jr.
Board of Directors

By: Robert M. Tiemann
President, Robert M. Tiemann
Board of Directors

Executed on February 26, 1990

BILL MILBURN, INC.

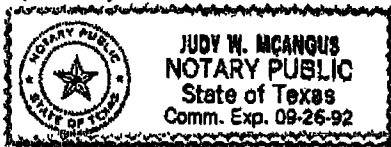
By: Joseph A. DiQuinzio, Jr.
~~JOSEPH A. DIQUINZIO, JR., VICE PRESIDENT~~
JOSEPH A. DIQUINZIO, JR., VICE PRESIDENT
Executed on MARCH 19, 1990

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UTILITIES & DISTRICTS
SECTION

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 26th
day of February, 1990, by Robert M. Tiemann, as
President of NORTHTOWN MUNICIPAL
UTILITY DISTRICT NO. 1, a municipal utility district, on behalf of
said district.

(SEAL)



Judy W. McAngus
Notary Public, State of Texas

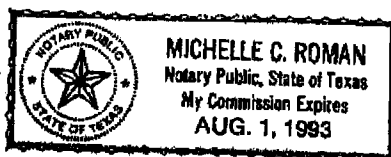
Typed/Printed Name of Notary

My Commission Expires:

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 26th
day of March, 1990, by Bill Milburn, as President of
Bill Milburn, Inc., a Texas corporation, on behalf of said
corporation.

(SEAL)



Michelle C. Roman
Notary Public, State of Texas

Typed/Printed Name of Notary

My Commission Expires:

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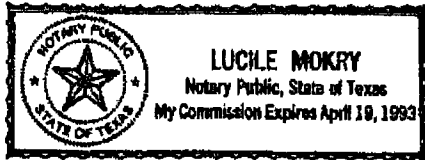
APPROVED AS TO FORM:

John M. Feenichy
ASSISTANT CITY ATTORNEY

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 16th day of April, 1990, by Byron C. Marshall, as Assistant City Manager of CITY OF AUSTIN, Texas, a municipal corporation, on behalf of said municipal corporation.

(SEAL)



Lucile Mokry
Notary Public, State of Texas

Typed/Printed Name of Notary

My Commission Expires:

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FIRST AMENDMENT TO THE AGREEMENT
CONCERNING CREATION AND OPERATION OF
NORTHTOWN MUNICIPAL UTILITY DISTRICT NO. 1

THE STATE OF TEXAS \$
 \$ KNOW ALL MEN BY THESE PRESENTS
COUNTY OF TRAVIS \$

THAT this Amendment Agreement is made and entered into as of the 16th day of April, 1990, by and among the City of Austin, Texas ("City"), a home rule city, located in Travis County, Texas, acting herein by and through its undersigned duly authorized City Manager, as authorized by specific action of its City Council; Northtown Municipal Utility District No. 1, ("District") a political subdivision of the State of Texas created and operating pursuant to Chapters 50 and 54 of the Texas Water Code; and Bill Milburn, Inc. (hereinafter referred to as "Milburn").

RECITALS

WHEREAS, the District, the City and Milburn entered into that certain "Agreement Concerning Creation and Operation of Northtown Municipal Utility District No. 1 (the "Consent Agreement") on August 14, 1985, which provided for, among other things, the provision of water and wastewater utility services and financing for system improvements for same; and

WHEREAS, the District now desires to delete that certain requirement that the District collect from each customer of the District a special water and sewer rate before annexation in addition to normal water and wastewater rates;

NOW, THEREFORE, the City, the District, and Milburn agree as follows:

I.
ARTICLE I

- A. The last sentence of Article I, Section A of the Consent Agreement shall be and is hereby amended by deleting the period at the end thereof and adding the following proviso:

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"... provided, however, that, unless otherwise required by state law, the requirement for the District to collect from each customer of the District a special water and sewer rate before annexation in addition to its normal water and wastewater rates, as set forth in Part II, Sec. IV, Subpart D of the Water District Ordinance or as set forth in Subpart (c) of Sec. 13-4-8 of City's Land Development Code, or any amendment thereof, shall not be a condition of this Agreement."

- B. Article III, Sec. C(2) of the Consent Agreement shall be and is hereby amended by deleting the first sentence thereof in its entirety.
- C. Article IV, Sec. B(2) shall be and is hereby deleted in its entirety.
- D. Article VIII, Sec. F of the Consent Agreement shall be and is hereby amended to read in its entirety as follows:

"Unless otherwise prohibited by applicable law, the City may charge and collect a special water and sewer rate in the amount of \$17.05 per month from each single family dwelling unit or its equivalent to which water and sewer services are provided after the City has annexed the District and assumed the District's obligations. Such special rate after annexation shall be assessed and collected in the manner specified above. The special rate shall be charged in addition to the City's normal water and sewer rates, as authorized by Section 54.016 (h) of the Texas Water Code, until the bonded indebtedness of the District has been retired. If the total principal amount of bonds for District facilities is greater or less than the total estimated amount of bonds which was used to calculate the special rate, or if it becomes evident as a result of the subdivision process that the total number of single family units or their equivalents within the District will be greater or less than the total number used to calculate the special rate, the City shall recalculate the special rate accordingly, and such recalculated special rate shall be charged and collected as provided herein. It is specifically acknowledged and agreed that the special rate described above has been calculated and that any recalculation thereof shall be calculated as provided in the

