

executed, each of such to be of equal dignity, as of the date hereinabove first mentioned.

APPROVED AS TO FORM:

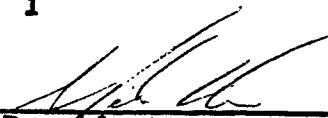
  
City Attorney

CITY OF AUSTIN, TEXAS

By:   
City Manager

Date: August 17, 1988

NORTH AUSTIN GROWTH CORRIDOR  
MUNICIPAL UTILITY DISTRICT  
NO. 1

By:   
President  
Board of Directors

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

4E/NAG1(j)

SECOND AMENDMENT AGREEMENT TO THE AGREEMENT  
CONCERNING CREATION AND OPERATION OF  
WELLS BRANCH MUNICIPAL UTILITY DISTRICT  
(FORMERLY NORTH AUSTIN GROWTH CORRIDOR  
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 11 day of March, 1992, by and between the City of Austin, Texas (the "City"), a home rule city located in Travis County, Texas, acting herein by and through its undersigned duly authorized City Manager or her designee, as authorized by specific action of its City Council, and Wells Branch Municipal Utility District formerly named North Austin Growth Corridor Municipal Utility District No. 1 (the "District"), a political subdivision of the State of Texas created and operated pursuant to Chapter 50 and 54 of the Texas Water Code.

RECITALS

WHEREAS, the District and the City entered into that certain "Agreement Concerning Creation and Operation of North Austin Growth Corridor Municipal Utility District No. 1 (the "Consent Agreement") on April 13, 1981, which provides for, among other things, the provision of water and wastewater utility services and financing of 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 ("pre-annexation surcharge") in addition to normal water and wastewater rates; and

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

I.

- A. Article II B of the Consent Agreement is amended to add the following:

The District may make such payments to the City through the assessment and collection of a district property tax or any other revenues lawfully available to the District.

The parties hereby stipulate that, following the deletion of the requirement for a preannexation surcharge originally set forth in Article VIII B of this Agreement, funds from the preannexation surcharge remaining in the escrow held by the City on the District's behalf for payment of the District's pro rata share of the Series 1981 and Series 1990 contract

revenue bonds will be applied to the March 1, 1992 debt service payment. At the District's option, amounts remaining in the escrow following the March 1, 1992 debt service payment will be refunded to the District or applied in partial satisfaction of the District's pro rata share of the September 1, 1992 debt service payment.

- B. Article VIII B of the Consent Agreement is deleted in its entirety.
- C. Article VIII C of the Consent Agreement is renumbered as Article VIII B and is revised to read as follows:

B. After the annexation of the District by the City, the City may collect a special water and sewer service surcharge in the amount of \$8.89 per month for each single family residential customer or living unit equivalent (LUE) of the District's water or sewer system as determined by the City's policies and ordinances. The parties agree that the amount of said surcharge has been calculated pursuant to Paragraph IV of Part 1 of the City's municipal utility district policy. Collection of the surcharge shall be continued by the City as authorized by Section 54.016 (h), Texas Water Code, until the bonded indebtedness of the District has been retired. The surcharge may be charged in addition to the City's normal water and sewer rates.

- D. Article VIII D of the Consent Agreement is renumbered as Article VIII C.

## II.

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

EXECUTED in multiple counterparts, each of which shall constitute an original to be effective on the latest date this Amendment is executed by a party hereto, being the 14th day of March, 1992.

APPROVED AS TO FORM:

By: John M. Treanor  
Assistant City Attorney

CITY OF AUSTIN

By: Byron C. Harshbarger  
Title: First Assistant City Manager  
Date: February 27, 1992

ATTEST: James E. Aldridge  
James E. Aldridge  
City Clerk

(Rev. 02/14/92)

-2-

ATTEST:

WELLS BRANCH MUNICIPAL UTILITY  
DISTRICT

By: Brenda Oliver  
Secretary,  
Board of Directors

By: William L. Glass  
President,  
Board of Directors

Executed on: 3-18-92

STATE OF TEXAS       §  
                             §  
COUNTY OF TRAVIS   §

This instrument was acknowledged before me on the 27th day of  
February, 1992, by Byron C. Marshall, First Assistant  
City Manager of the CITY OF AUSTIN, TEXAS, on behalf of said  
City.

(Seal)

James E. Aldridge  
Notary Public in and for the  
State of Texas

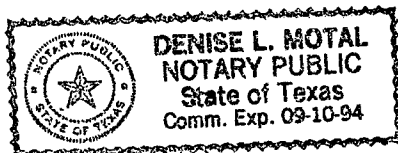
James E. Aldridge  
(Name - Typed or Printed)

My Commission Expires: 7-14-92

STATE OF TEXAS       §  
                             §  
COUNTRY OF TRAVIS   §

This instrument was acknowledged before me on the 13th day of  
March, 1992, by William L. Glass,  
President of WELLS BRANCH MUNICIPAL UTILITY, a  
municipal utility district, on behalf of said District.

(Seal)



Denise L. Motal  
Notary Public in and for the  
State of Texas

(Name - Typed or Printed)

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

JMT:scy/12035

(Rev. 02/14/92)

-3-

THIRD AMENDMENT TO THE AGREEMENT CONCERNING  
CREATION AND OPERATION OF WELLS BRANCH MUNICIPAL UTILITY DISTRICT  
(FORMERLY NORTH AUSTIN GROWTH CORRIDOR  
MUNICIPAL UTILITY DISTRICT NO. 1)

THE STATE OF TEXAS   §  
                              §  
COUNTY OF TRAVIS   §

WHEREAS, Wells Branch Municipal Utility District, formerly known as North Austin Growth Corridor Municipal Utility District No. 1 (the "District") is a political subdivision of the State of Texas, created and operating pursuant to Chapter 50 and 54 of the Texas Water Code; and

WHEREAS, the City of Austin, Texas (the "City"), is a home rule city, and the District is located wholly within the extraterritorial jurisdiction of the City; and

WHEREAS, the City and the District have previously entered into that certain "Agreement Concerning Creation and Operation of North Austin Growth Corridor Municipal Utility District No. 1 dated April 13, 1981, and such agreement has previously been amended, by mutual agreement of the City and the District, by amendments dated August 17, 1988 and March 11, 1992 (the original agreement, together with all amendments thereto being herein collectively referred to as the "Consent Agreement"); and

WHEREAS, the City and the District now desire to further amend the Consent Agreement, and to set forth such amendments in writing;

NOW, THEREFORE, the City, acting herein by and through its undersigned, duly authorized acting City Manager, as authorized by specific action of its City Council, and the District, acting herein by and through its undersigned duly authorized officers, hereby agree as follows:

1. The District. The City and the District acknowledge and agree that, on February 14, 1983, the District, with the consent of the City, annexed a tract of land containing 141.476 acres of land situated in Travis County, Texas, and on June 24, 1993, the District, pursuant to House Bill 1962, annexed three tracts of land containing 218.91 acres of land situated in Travis and Williamson Counties, Texas. The City hereby consents to the June 24, 1993 annexation by the District. After such annexations, the District consists of 1,279.0463 acres of land, and all references in the Consent Agreement to the District shall be amended to mean the District as presently constituted, and all land within the District, including the land added to the District pursuant to the annexations described herein. The City ratifies and confirms its agreement to provide water and wastewater service to all users within the boundaries of the District, as such boundaries currently exist, in accordance with the terms of the Consent Agreement,

including without limitation the provisions set forth in Articles III and IV of the Consent Agreement, which require (i) that the City provide all water reasonably required by users within the boundaries of the District for domestic and commercial uses; and (ii) that the City receive, treat and dispose of all sewage collected by the District and delivered to the City. Without limiting the generality of the foregoing, it is stipulated and agreed that the City shall provide the District with water pressure, at the District's master meters, which is sufficient, under normal operating conditions, to provide 35 p.s.i. or greater pressure at the District's retail customer meters for all District customers.

2. Amendment to Article III. Article III, Section C, of the Consent Agreement is hereby deleted in its entirety. Article III, Section D is hereby renumbered as Article III, Section C.

3. Amendment to Article IV. Article IV, Section B, of the Consent Agreement is hereby deleted in its entirety. Article IV, Section C is hereby renumbered as Article IV, Section B.

4. Amendment to Article VIII. Article VIII, Section A of the Consent Agreement is hereby deleted in its entirety, and the following inserted in lieu thereof:

A. In accordance with Section 54.016(h) of the Texas Water Code, annexation of the District shall not occur prior to September 1, 1999. The District stipulates and agrees that on June 23, 1993, ninety percent of the facilities for which District bonds were originally authorized had been installed. The District further stipulates and agrees that on or before September 1, 1999, ninety percent of the facilities for which District bonds have now been authorized will be installed within the District as expanded by the June 24, 1993, annexation. If for any reason it is determined or alleged, notwithstanding the District's stipulation and agreement, that ninety percent of the facilities have not been installed by September 1, 1999, then the City may revoke its authorization for or approval of the installation of any further facilities or amenities and also may revoke its authorization for the issuance of the balance of the District's unissued bonds; provided, however, that any such revocation shall not prejudice the rights provided to Milburn Investments, Inc. in paragraph 9a of the Settlement Agreement and Mutual Release executed to settle and resolve the litigation styled Milburn Investments, Inc. v. City of

Austin, et al., No. 93-08464, in the District court of Travis County, Texas, or as otherwise provided by law.

5. Post-Annexation Surcharge. The parties agree that the time and conditions of annexation of the District by the City shall be as set out in paragraph 4 of this third Amendment to the Agreement Concerning Creation and Operation of Wells Branch Municipal Utility District, formerly North Austin Growth Corridor Municipal Utility District No. 1 (hereafter "Third Amendment"). The parties further recognize and agree that the surcharge in the amount of \$8.89 has been calculated in the amount and manner set out in paragraph VIII of the Consent Agreement and agree that, upon annexation of the District to the City, the surcharge may be charged in all the land now constituting the District, including the property annexed to the District as set out and described in paragraph 1 of this Third Amendment. The parties agree that Milburn Investments, Inc. ("MII") is bound by and is a party only to this paragraph 5 of this Third Amendment, and is not a party to nor is it bound by any other paragraph of this Third Amendment; further, the parties agree that MII, by signing this third Amendment, is not bound by and is not a party to the original Consent Agreement or any of its subsequent amendments except as provided herein. The parties agree that MII, by signing this Third Amendment, does not assume any obligations or liabilities of Wells Branch, a joint venture (one of the parties to the original Consent Agreement in 1981), or any other party to the Consent Agreement.

6. Controlling Agreement. Except as otherwise provided herein and in the previous amendments to the original Consent Agreement, all terms and provisions of the Consent Agreement shall remain in full force and effect. In the event of any conflict between the provisions of the original Consent Agreement and/or any previous amendment thereto and this Third Amendment, the provisions of this Third Amendment shall control.

EXECUTED in multiple counterparts, each of which shall constitute an original, to be effective on the 10<sup>th</sup> day of June, 1994.

Date: 6/10/94

CITY OF AUSTIN, TEXAS

By: Jesus Gama

Its: Jesus Gama  
Acting City Manager

ATTEST:

Betty J. Brown  
Betty J. Brown  
DEPUTY City Clerk

APPROVED AS TO FORM:

Diana L. Granger  
Diana L. Granger  
Attorney for the City

Date: 6/13/94

WELLS BRANCH MUNICIPAL UTILITY  
DISTRICT

By: Charles R. Walters  
Charles R. Walters, President  
Board of Directors

ATTEST:

Joseph E. Bowker  
Joseph E. Bowker, Secretary  
Board of Directors

MILBURN INVESTMENTS, INC.

By: Terry E. Mitchell  
Printed Name: TERRY E. Mitchell  
Title: Vice President