

City shall be affected by any notice to the contrary. Notwithstanding the registration of this Bond as to principal, the interest coupons appertaining hereto shall remain payable to bearer and shall continue to be transferable by delivery. For every transfer the Registrar may make a charge to the owner of this Bond sufficient to reimburse it for any tax, fee, or governmental charge required to be paid with respect thereto.

Date of
Registration

Name of
Registered Owner

Signature
of Bond Registrar

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SECTION 10: *Definitions.* For all purposes of this ordinance and in particular for clarity with respect to the issuance of the Series 1982 Bonds herein authorized and the pledge and appropriation of revenues for the payment of the Bonds, the following definitions are provided.

Additional Parity Bonds—shall mean revenue bonds, Contractual Obligations or other evidences of indebtedness which the City reserves the right to issue or enter into, as the case may be, in the future under the terms and conditions provided in Section 19 this Ordinance and which are equally and ratably secured with the Series 1982 Bonds by a lien on and pledge of the Net Revenues of the Systems.

Bonds—shall mean collectively the Series 1982 Bonds and Additional Parity Bonds.

Capital Additions—shall mean those properties and facilities which by their nature, and as incorporated into the Systems, either or both, will add additional capacity, or are to replace existing capacity, of the Systems, either or both, or substantially increase revenue-producing capabilities.

Capital Improvements—shall mean those property improvements or any combination of property improvements which will constitute enlargements, extensions, betterments or repairs to the then existing facilities or properties of the Systems, either or both.

City—shall mean the City of Austin, Texas, located in the County of Travis.

Contractual Obligations—shall mean those obligations (i) issued or incurred by the City payable from the Net Revenues of the Electric Light and Power System and the Net Revenues of the Waterworks and Sewer System and (ii) incurred pursuant to express charter or statutory authority heretofore or hereafter adopted or enacted and (iii) which by the terms of the ordinance authorizing their issuance or the incurring of the obligation provide for payments to be made by the City for the retirement or payment thereof to be equally and ratably secured with the Priority Bonds or the Bonds by a lien on and pledge of the Net Revenues of the Systems.

Electric Light and Power System—shall mean all facilities and plants currently owned, operated and maintained by the City, wholly or partially in participation with others, for the generation, transmission, supply and distribution of electrical energy and power, together with all future extensions, improvements, replacements and additions thereto, and all replacements thereof; provided that, notwithstanding the foregoing, and to the extent now or hereafter authorized or permitted by law, the term "Electric Light and Power System" shall not mean to include facilities of any kind (including any electric power generating and transmission facilities) which are declared not to be a part of the Electric Light and Power System and which are acquired or constructed by the City, or in participation with others, with the proceeds from the issuance of "Special Facilities Bonds", which are hereby defined as being special revenue obligations of the City which are not Priority Bonds, Bonds or Separate Lien Obligations but which are payable from and secured by other liens on and pledges of any revenues, sources or payments not pledged to the payment of the Priority Bonds, the Bonds or Separate Lien Obligations including, but not limited to, special contract revenues or payments received from any other legal entity in connection with such facilities.

Fiscal Year—shall mean the twelve month period used by the City in connection with the operation of the Systems which may be any twelve consecutive month period established by the City.

Government Obligations—shall mean direct obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, which may be United States Treasury obligations such as its State and Local Government Series, and which may be in book-entry form.

Gross Revenues—shall mean, with respect to the Electric Light and Power System or the Waterworks and Sewer System, all income, receipts and revenues of every nature derived or received from the operation and ownership (excluding refundable meter deposits, restricted gifts and grants and proceeds derived from the sale or other disposition of all or part of the City's participating interest in the South Texas Project and revenues, sources or payment from facilities acquired or constructed

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with "Special Facilities Bonds") of the respective system, including earnings and income derived from the investment or deposit of moneys in any special funds or accounts created and established by the City for the payment and security of the Priority Bonds or the Bonds or Separate Lien Obligations.

Independent Engineer—shall mean an individual, firm or corporation engaged in the engineering profession, selected by the City Council, of recognized good standing and having specific experience in respect of business and properties of a character similar to those of the Systems, which individual, firm or corporation has no substantial interest, direct or indirect, in the City and in the case of an individual, is not a member of the City Council, officer or employee of the City, and in the case of a firm or corporation, does not have a partner, director, officer or employee who is a member of the City Council, officer or employee of the City.

Maintenance and Operating Expenses—shall mean, with respect to the Electric Light and Power System or the Waterworks and Sewer System, all current expenses of operating and maintaining the respective system, including all salaries, labor, materials, repairs and extensions necessary to render efficient service; provided, however, that only such repairs and extensions, as in the judgment of the City Council, reasonably and fairly exercised, are necessary to maintain the operations and render adequate service to the City and the inhabitants thereof, or such as might be necessary to meet some physical accident or condition which would otherwise impair the Priority Bonds or the Bonds shall be deducted in determining "Net Revenues". Depreciation shall never be considered as an expense of Maintenance and Operation. Maintenance and Operating Expenses shall include payments under contracts for the purchase of power and energy, water supply or other materials, goods or services for the Systems to the extent authorized by law and the provisions of such contract.

Net Earnings—shall have the meaning assigned to such term by Section 19 hereof.

Net Revenues—shall mean, with respect to the Electric Light and Power System or the Waterworks and Sewer System, Gross Revenues of the respective system after deducting the system's Maintenance and Operating Expenses.

Places of Payment—shall have the meaning assigned to such term by Section 4 hereof.

Priority Bonds—shall mean all revenue bonds, Contractual Obligations or other evidences of indebtedness which may hereafter be issued and incurred in accordance with the provisions of Section 19 hereof, and secured by a first lien on and pledge of the Net Revenues of the (i) Electric Light and Power System and (ii) Waterworks and Sewer System.

Refunded Bonds—shall mean the City's presently outstanding and unpaid Electric, Waterworks and Sewer System Refunding Revenue Bonds, Series 1979 and Utility System Revenue Bonds, Series 1 through 10, more particularly described in the preamble of this Ordinance.

Required Reserve—shall mean the amount required to be accumulated and maintained in the Reserve Fund under the provisions of Section 15.

Separate Lien Obligations—shall mean those obligations (i) issued or incurred by the City payable solely from the Net Revenues of either the Electric Light and Power System or the Net Revenues of the Waterworks and Sewer System, but not both (ii) incurred pursuant to express charter or statutory authority heretofore or hereafter adopted or enacted and (iii) which by the terms of the ordinance authorizing their issuance or the incurring of the obligation provide for payments to be made by the City for the retirement or payment thereof to be secured solely by a lien on and pledge of the Net Revenues of the Electric Light and Power System or the Net Revenues of the Waterworks and Sewer System, but not both, of equal dignity with the lien on and pledge of said Net Revenues securing the payment of the Bonds.

Series 1982 Bonds—shall mean the "City of Austin, Texas, Water, Sewer and Electric Refunding Revenue Bonds, Series 1982" authorized by this Ordinance.

South Texas Project—shall mean the City's ownership interest in two nuclear steam electric generating units and related land and facilities, as more particularly defined in the South Texas Project Participation Agreement effective as of December 1, 1973, as amended.

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Systems—shall mean collectively the Electric Light and Power System and the Waterworks and Sewer System.

Waterworks and Sewer System—means all properties, facilities and plants currently owned, operated and maintained by the City for the supply, treatment and transmission of treated potable water and the collection, treatment and disposal of water-carried wastes, together with all future extensions, improvements, replacements and additions thereto; provided, however, that notwithstanding the foregoing, and to the extent now or hereafter authorized or permitted by law, the term "Waterworks and Sewer System" shall not mean to include facilities of any kind which are declared not to be a part of the Waterworks and Sewer System and which are acquired or constructed by or on behalf of the City with the proceeds from the issuance of "Special Facilities Bonds", which are hereby defined as being special revenue obligations of the City which are not Priority Bonds, Bonds or Separate Lien Obligations but which are payable from and secured by other liens on and pledges of any revenues, sources or payments, not pledged to the payment of Priority Bonds, the Bonds or Separate Lien Obligation including, but not limited to, special contract revenues or payments received from any other legal entity in connection with such facilities.

SECTION 11: *Pledge*. That the City hereby covenants and agrees that, subject only to any prior lien on and pledge of the Net Revenues of both the Electric Light and Power System and Waterworks and Sewer System to the payment and security of the Priority Bonds, including the establishment and maintenance of the special funds hereafter created and established for the payment and security of the Priority Bonds, the Net Revenues of both Systems, with the exception of those in excess of the amounts required for the payment and security of the Bonds, are hereby irrevocably pledged, jointly and severally, to the payment and security of the Bonds, including the establishment and maintenance of the special funds created, and established by Sections 15 and 16 of this Ordinance, all as hereinafter provided; provided, however, the City has retained the right to issue or incur Separate Lien Obligations.

SECTION 12: *Rates and Charges*. That, for the benefit of the holders of the Bonds and in addition to all provisions and covenants in the laws of the State of Texas and in this Ordinance, the City hereby expressly stipulates and agrees, while any of the Priority Bonds or the Bonds are outstanding and unpaid, to establish and maintain rates and charges for facilities and services afforded by the Electric Light and Power System and the Waterworks and Sewer System to provide Gross Revenues in each Fiscal Year from each System sufficient:

- (1) To pay the respective Maintenance and Operating Expenses thereof.
- (2) To provide amounts required to establish, maintain or restore, as the case may be, a required balance in any reserve or contingency fund created for the payment and security of Separate Lien Obligations.
- (3) To produce combined Net Revenues of the Systems sufficient to pay the amounts required to be deposited in any reserve or contingency fund created for the payment and security of the Priority Bonds, the Bonds, and other obligations or evidences of indebtedness issued or incurred that are payable only from and secured solely by a lien on and pledge of the combined Net Revenues of the Systems, and
- (4) To produce combined Net Revenues of the Systems (after satisfaction of the amounts required to be paid in 2 and 3 above) equal to at least the sum of (i) 1.25 times the annual principal and interest requirements (or other similar payments) for the then outstanding Priority Bonds and Separate Lien Obligations and (ii) 1.10 times the total annual principal and interest requirements (or other similar payments) for the then outstanding Bonds and all other indebtedness (except Priority Bonds and Separate Lien Obligations) payable only from and secured solely by lien on and pledge of the Net Revenues of the Systems, either or both.

SECTION 13: *Electric Light and Power System Fund*. The City hereby covenants and agrees that Gross Revenues of the Electric Light and Power System shall be, as collected, deposited into a separate account hereby created and established with a depository bank of the City and to be known as the "Electric Light and Power System Fund" (herein called the "Electric Fund") and to keep such revenues of the Electric

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Light and Power System separate and apart from all other funds of the City. All revenues deposited in the Electric Fund shall be pledged and appropriated to the extent required for the following uses and in the order of precedence shown:

FIRST: To the payment of all necessary and reasonable Maintenance and Operating Expenses of the Electric Light and Power System, as defined herein or required by statute to be a first charge on and claim against the Gross Revenues thereof

SECOND: To the payment of the amounts required to be deposited in any special funds or accounts created for the payment and security of the Priority Bonds

THIRD: To the payment of the amounts required to be deposited in the Reserve Fund created by this Ordinance to establish and maintain the Required Reserve in accordance with the provisions of this Ordinance or any other ordinance relating to obligations for which the Reserve Fund was created and established to pay.

FOURTH: To the payment of the amounts required to be deposited in the Interest and Redemption Fund created and established by this Ordinance for the payment of principal of and interest on the Bonds as the same becomes due and payable and the payment of Separate Lien Obligations secured by a lien on and pledge of the Net Revenues of the Electric Light and Power System.

Any Net Revenues remaining in the Electric Fund after satisfying the foregoing payments, or making adequate and sufficient provision for the payment thereof, may be appropriated and used for any other City purpose now or hereafter permitted by law

SECTION 14: *Water and Sewer System Fund.* The City hereby covenants and agrees that Gross Revenues of the Waterworks and Sewer System shall be, as collected, deposited into a separate account hereby created and established with a depository bank of the City and to be known as the "Water and Sewer System Fund" (herein called the "Water and Sewer Fund") and to keep such revenues of the Waterworks and Sewer System separate and apart from all other funds of the City. All revenues deposited in the Water and Sewer Fund shall be pledged and appropriated to the extent required for the following uses and in the order of precedence shown:

FIRST: To the payment of all necessary and reasonable Maintenance and Operating Expenses of the Waterworks and Sewer System, as defined herein or required by statute to be a first charge on and claim against the Gross Revenues thereof.

SECOND: To the payment of the amounts required to be deposited in any special funds or accounts created for the payment and security of the Priority Bonds.

THIRD: To the payment of the amounts required to be deposited in the Reserve Fund created by this Ordinance to establish and maintain the Required Reserve in accordance with the provisions of this Ordinance or any other ordinance relating to obligations for which the Reserve Fund was created and established to pay.

FOURTH: To the payment of the amounts required to be deposited in the Interest and Redemption Fund created and established by this Ordinance for the payment of principal of and interest on the Bonds as the same becomes due and payable and the payment of Separate Lien Obligations secured by a lien on and pledge of the Net Revenues of the Waterworks and Sewer System.

Any Net Revenues remaining in the Water and Sewer Fund after satisfying the foregoing payments, or making adequate and sufficient provision for the payment thereof, may be appropriated and used for any other City purpose now or hereafter permitted by law

SECTION 15: *Reserve Fund.* For purposes of accumulating and maintaining funds as a reserve for the payment of the Priority Bonds and the Bonds, the City agrees and covenants to create a separate and special fund or account to be known as the "Combined Pledge Revenue Bond Common Reserve Fund"

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(the "Reserve Fund"), and all funds deposited therein (excluding earnings and income derived or received from deposits or investments which may be transferred to the Interest and Redemption Fund established in Section 16 hereof during such periods as there is on deposit in the Reserve Fund the Required Reserve) shall be used solely for the payment of the principal of and interest on the Priority Bonds and the Bonds on a pro rata basis, when (whether at maturity, upon mandatory redemption, prior to maturity or any interest payment date) and to the extent other funds available for such purposes are insufficient, and, in addition, may be used to retire the last of the Priority Bonds or Bonds outstanding.

Simultaneously with the delivery of the Series 1982 Bonds to the initial purchaser thereof, the City shall deposit in the Reserve Fund the sum of \$85,000,000, hereby determined to be the Required Reserve for the Series 1982 Bonds. As and when Additional Parity Bonds or Priority Bonds are delivered or incurred, the Required Reserve shall be increased, if required, to an amount equal to the greater of (i) \$85,000,000 or (ii) the average annual requirement (calculated on a calendar year basis) for the payment of principal of and interest (or other similar payments) on all Priority Bonds and Bonds then outstanding, as determined on the date the last series of Additional Parity Bonds or Priority Bonds are delivered or incurred, as the case may be. Any additional amount required shall be so accumulated by the deposit in the Reserve Fund of all or any part of said required additional amount in cash immediately after the delivery of the then proposed Priority Bonds or Additional Parity Bonds, or, at the option of the City, by the deposit of said required additional amount (or any balance of said required additional amount not deposited in cash as permitted above) in monthly installments, made on or before the last day of each month following the delivery of the then proposed Additional Parity Bonds or Priority Bonds, of not less than 1/60th of said required additional amount (or 1/60 of the balance of said required additional amount not deposited in cash as permitted above).

When and so long as the money and investments in the Reserve Fund total not less than the Required Reserve, no deposits need be made to the credit of the Reserve Fund; but when and if the Reserve Fund at any time contains less than the Required Reserve (other than as the result of the issuance of Additional Parity Bonds or Priority Bonds as provided in the preceding paragraph), the City covenants and agrees to cure the deficiency in the Required Reserve within twelve (12) months from the date the deficiency in funds occurred with available Net Revenues in the Electric Fund and the Water and Sewer Fund, and the City hereby covenants and agrees that, subject only to payments required for the payment of principal of and interest on the Priority Bonds and the establishment and maintenance of any special funds created for the payment and security thereof, all Net Revenues remaining in the Electric Fund and the Water and Sewer Fund shall be applied and appropriated and used to establish and maintain the Required Reserve and to cure any deficiency in such amount, as required by the terms of this Ordinance and any other ordinance pertaining to obligations the payment of which are secured by the Required Reserve.

Notwithstanding the foregoing provisions contained in this Section pertaining to an increase in the Required Reserve, in the event Priority Bonds are hereafter issued or incurred and the proceedings pertaining to the issuance or incurrence thereof provide for, or require, the creation and establishment, or reaffirm the creation and establishment, of a separate and special reserve or contingency fund for the benefit of such obligations, the amount to be accumulated and maintained in such separate and special reserve or contingency fund shall offset and be subtracted from the increase, if any, in the Required Reserve as hereinabove required.

During such time as the Reserve Fund contains the total Required Reserve, the City may, at its option, withdraw all surplus in the Reserve Fund in excess of the Required Reserve and deposit such surplus in the Interest and Redemption Fund. The City hereby designates its depository bank or banks as the custodian of the Reserve Fund.

SECTION 16: Interest and Redemption Fund. For purposes of providing funds to pay the principal of and interest on the Bonds as the same becomes due and payable (whether at maturity or upon mandatory redemption), the City agrees to create or maintain at a depository bank of the City a separate and special account or fund known as the "City of Austin Interest and Redemption Fund No. One" (the "Interest and Redemption Fund"). The City covenants that there shall be deposited into the Interest and Redemption Fund from the Net Revenues in the Electric Fund and the Water and Sewer Fund after the deduction of

payments required to be made to the Reserve Fund, if any, and the special funds or accounts created for the payment and security of the Priority Bonds, an amount equal to one hundred per centum (100%) of the amount required to fully pay the interest and principal, and mandatory redemption payments on the Bonds, falling due on or before the next maturity or mandatory redemption date for the Bonds, such payments to be made in equal monthly installments made on or before the 14th day of each month. If the Net Revenues in the Electric Fund and the Water and Sewer Fund in any month (after the deduction of payments required to be made to the Reserve Fund, if any, for the benefit and security of the Priority Bonds) are then insufficient to make the required payments into the Interest and Redemption Fund, then the amount of any deficiency in the payment shall be added to the amount otherwise required to be paid into the Interest and Redemption Fund in the next month.

SECTION 17: *Payment of Bonds.* On or before November 14, 1982, and semiannually on or before the 14th day of May and November thereafter while any of the Bonds are outstanding, the City shall make available to the paying agents therefor, in funds which will be immediately available on the next succeeding business day, out of the Interest and Redemption Fund and the Reserve Fund, if necessary, money sufficient to pay such interest on and such principal of the Bonds as will accrue or mature or come due by reason of redemption prior to maturity on each November 15 and May 15, respectively. The paying agents shall cancel or destroy all paid Bonds, and the coupons appertaining thereto, and furnish the City with an appropriate certificate of cancellation or destruction.

SECTION 18: *Investment of Certain Funds.* (a) Money in any Fund established pursuant to this Ordinance may, at the option of the City, be placed in time deposits or certificates of deposit secured by obligations of the type hereinafter described, or be invested, including investments held in book-entry form, in direct obligations of the United States of America, obligations guaranteed or insured by the United States of America, which, in the opinion of the Attorney General of the United States, are backed by its full faith and credit or represent its general obligations, or invested in indirect obligations of the United States of America, including, but not limited to, evidences of indebtedness issued, insured or guaranteed by such governmental agencies as the Federal Land Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, Federal Home Loan Banks, Government National Mortgage Association, United States Postal Service, Farmers Home Administration, Federal Home Loan Mortgage Association, Small Business Administration, Federal Housing Association, or Participation Certificates in the Federal Assets Financing Trust; provided that all such deposits and investments shall be made in such a manner that the money required to be expended from any Fund will be available at the proper time or times. Such investments (except State and Local Government Series investments held in book entry form, which shall at all times be valued at cost) shall be valued in terms of current market value within 45 days of the close of each Fiscal Year. All interest and income derived from deposits and investments in the Interest and Redemption Fund immediately shall be credited to, and any losses debited to, the Interest and Redemption Fund. All interest and interest income derived from deposits in and investments of the Reserve Fund shall, subject to the limitations provided in Section 15 hereof, be credited to and deposited in the Interest and Redemption Fund. All such investments shall be sold promptly when necessary to prevent any default in connection with the Bonds and with respect to the Reserve Fund, the Priority Bonds.

(b) That money in all Funds created by this Ordinance, to the extent not invested, shall be secured in the manner prescribed by law for securing funds of the City.

SECTION 19: *Issuance of Priority and Additional Parity Obligations.* Subject to the provisions hereinafter appearing as to conditions precedent which must first be satisfied, the City reserves the right to issue, from time to time as needed, Priority Bonds and Additional Parity Bonds, either or both, for any lawful purpose. Such Priority Bonds or Additional Parity Bonds may be issued in such form and manner as now or hereinafter authorized by the laws of the State of Texas for the issuance of evidences of indebtedness or other instruments, and should new methods or financing techniques be developed that differ from those now available and in normal use, the City reserves the right to employ the same in its financing arrangements provided only that the same conditions precedent herein required for the authorization and issuance of the same are satisfied.

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(a) *Conditions Precedent for Issuance of Priority Bonds and Additional Parity Bonds—General*

(i) The Director of Finance of the City (or other officer of the City then having the primary responsibility for the financial affairs of the City) shall have executed a certificate stating (i) that the City is not then in default as to any covenant, obligation or agreement contained in any ordinance or other proceeding relating to any obligations of the City payable from and secured by a lien on and pledge of the Net Revenues of the Systems, either, or both and (ii) all payments into all special funds or accounts created and established for the payment and security of all outstanding obligations payable from and secured by a lien on and pledge of the Net Revenues of the Systems, either or both, have been made in full and that the amounts on deposit in such special funds or accounts are the amounts then required to be deposited therein.

(ii) The Priority Bonds and Additional Parity Bonds (except Contractual Obligations and evidences of indebtedness due within 12 months from the date of the issuance thereof) shall be scheduled to mature or be payable as to principal on November 15 or May 15 (or both) in each year the same are to be outstanding or during the term thereof.

(b) *Conditions Precedent for Issuance of Priority Bonds and Additional Parity Bonds—Capital Improvements.* The City covenants and agrees that neither Priority Bonds or Additional Parity Bonds will be issued for the purpose of financing Capital Improvements, unless and until the conditions precedent in subparagraph (a) above have been satisfied and, in addition thereto, the City has secured:

(i) for the issuance of Priority Bonds, a certificate or opinion of a Certified Public Accountant to the effect that, according to the books and records of the City, the Net Earnings for the preceding Fiscal Year or for 12 consecutive months out of the 15 months immediately preceding the month the ordinance authorizing the Priority Bonds is adopted are at least equal to the sum of (i) 1.10 times the average annual requirement for the payment of principal and interest (or other similar payments) for the Bonds outstanding and all other outstanding obligations (except Priority Bonds and Separate Lien Obligations) that are payable only from and secured solely by a lien on and pledge of the Net Revenues of the Systems, either or both, and (ii) 1.25 times the average annual requirement for the payment of principal and interest (or other similar payments) for all outstanding Priority Bonds and Separate Lien Obligations after giving effect to the Priority Bonds then proposed. In making a determination of the Net Earnings, the Accountant may take into consideration a change in the rates and charges for services and facilities afforded by the Systems, either or both, that became effective at least sixty (60) days prior to the last day of the period for which Net Earnings are determined and, for purposes of satisfying the above Net Earnings test, make a pro forma determination of the Net Earnings for the period of time covered by his certification or opinion based on such change in rates and charges being in effect for the entire period covered by the Accountant's certificate or opinion; or

(ii) for the issuance of Additional Parity Bonds, a certificate or opinion of a Certified Public Accountant to the effect that, according to the books and records of the City, the Net Earnings for the preceding Fiscal Year or for 12 consecutive months out of the 15 months immediately preceding the month the ordinance authorizing the Additional Parity Bonds is adopted are at least equal to the sum of (i) 1.10 times the average annual requirement for the payment of principal and interest (or other similar payments) for the Bonds outstanding and all other outstanding obligations (except Priority Bonds and Separate Lien Obligations) that are payable only from and secured solely by a lien on and pledge of the Net Revenues of the Systems, either or both, including the Additional Parity Bonds then proposed and (ii) 1.25 times the average annual requirement for the payment of principal and interest (or other similar payments) for all outstanding Priority Bonds and Separate Lien Obligations. In making a determination of the Net Earnings, the Accountant may take into consideration a change in the rates and charges for services and facilities afforded by the Systems, either or both, that became effective at least sixty (60) days prior to the last day of the period for which Net Earnings are determined and, for purposes of satisfying the above Net Earnings test, make a pro forma determination of the Net Earnings of the Systems for the period of time covered by his certification or opinion based on such change in rates and charges being in effect for the entire period covered by the Accountant's certificate or opinion.

As used in this Section, the term "Net Earnings" shall mean the combined Gross Revenues of the Systems after deducting the combined Maintenance and Operating Expenses of the Systems, but not expenditures which, under standard accounting practice, should be charged to capital expenditures.

(c) *Conditions Precedent for Issuance of Priority Bonds or Additional Parity Bonds—Capital Additions* (i) Initial Issue. The City covenants and agrees that neither Priority Bonds nor Additional Parity Bonds will be issued for the purpose of financing Capital Additions for integration into the Systems, either or both, unless the same conditions precedent specified in subparagraph (a) above have been satisfied and, in addition thereto, the conditions precedent specified in subparagraph (b) above are satisfied or, in the alternative, the City shall have obtained:

(a) from an Independent Engineer a comprehensive Engineering Report for the Capital Addition to be financed, which report shall (a) contain (1) detailed estimates of the cost of acquiring and constructing the Capital Addition, (2) the estimated date the acquisition and construction of the Capital Addition will be completed and commercially operative, and (3) a detailed analysis of the impact of the Capital Addition on the financial operations of the system for which the Capital Addition is to be integrated and to the Systems, as a whole, during the construction thereof and for at least five Fiscal Years after the date the Capital Addition becomes commercially operative, and (b) concludes that (1) the Capital Addition is necessary and will substantially increase the capacity, or is needed to replace existing facilities, to meet current and projected demands for the service or product to be provided thereby, and (2) the estimated cost of providing the service or product from the Capital Addition will be reasonable in comparison with projected costs for furnishing such service or product from other reasonably available sources; and

(b) a certificate of the Independent Engineer to the effect that, based on the Engineering Report prepared for the Capital Addition, the projected Net Earnings for each of the five Fiscal Years subsequent to the date the Capital Addition becomes commercially operative (as estimated in the Engineering Report) will be equal to at least the sum of (i) 1.25 times the average annual requirements for the payment of the principal and interest (or other similar payments) for Priority Bonds and Separate Lien Obligations then outstanding or incurred and all Priority Bonds estimated to be issued, if any, during the period from the date the first series of obligations for the Capital Additions is to be delivered through the 5th Fiscal Year subsequent to the date the Capital Addition is estimated to become commercially operative, for all Capital Improvements and for all Capital Additions then in progress or then being initiated and (ii) 1.10 times the average annual requirements for the payment of principal and interest (or other similar payments) for Bonds and all other obligations (other than Priority Bonds or Separate Lien Obligations) payable solely from the Net Revenues of the Systems, either or both, which are then outstanding or incurred and all Bonds or such other obligations estimated to be issued, if any, during the period from the date the first series of obligations for the Capital Addition is to be delivered through the 5th Fiscal Year subsequent to the date the Capital Addition is estimated to become commercially operative, for all Capital Improvements and for all Capital Additions then in progress or then being initiated.

(ii) Subsequent Issues. Once a Capital Addition has been initiated by meeting the conditions precedent specified in subparagraphs (c)(i)(a) and (c)(i)(b) above and the initial Priority Bonds or Additional Parity Bonds delivered therefor, the City reserves the right to issue Priority Bonds and Additional Parity Bonds, as the case may be, to finance the costs of such Capital Addition in such amounts as may be necessary to complete the acquisition and construction thereof and make the same commercially operative without satisfaction of any condition precedent under subparagraphs (c)(i)(a) and (c)(i)(b) or subparagraph (b) of this Section but subject to satisfaction of the following conditions precedent:

(a) the City makes a forecast (the "Forecast") of the operations of the Systems demonstrating the Systems' ability to pay all obligations, payable solely from the Net Revenues of the Systems, either or both, to be outstanding after the issuance of the Priority Bonds or Additional Parity Bonds then being issued for the period (the "Forecast Period") of each ensuing Fiscal Year through the 5th Fiscal Year subsequent to the latest estimated date the Capital Addition then being financed is expected to be commercially operative, and

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(b) an Independent Engineer reviews such Forecast and executes a certificate to the effect that such Forecast is reasonable, and, based thereon (and such other factors deemed to be relevant), the Net Revenues of the Systems will be adequate to pay all the obligations, payable solely from the Net Revenues of the Systems, either or both, to be outstanding after the issuance of the Priority Bonds or Additional Parity Bonds then being issued for the Forecast Period.

The conditions of subparagraph (b) and subparagraphs (c)(1)(a) and (c)(1)(b) of this Section need not be met with respect to any Additional Parity Bonds or Priority Bonds issued for the South Texas Project.

With reference to Priority Bonds, Additional Parity Bonds and such other obligations anticipated and estimated to be issued or incurred, the annual principal and interest requirements therefor shall be those estimated and computed by the City's Director of Finance (or other officer of the City then having the primary responsibility for the financial affairs of the City). In the preparation of the Engineering Report required in subparagraph (c)(1)(a) above, the Independent Engineer may rely on other experts or professionals, including those in the employment of the City, provided such Engineering Report discloses the extent of such reliance. In connection with the issuance of Additional Parity Bonds or Priority Bonds for Capital Additions, the certificate of the Director of Finance and Independent Engineer, together with the Engineering Report for the initial issue and the Forecast for a subsequent issue, shall be conclusive evidence and the only evidence required to show compliance with the provisions and requirements and this subparagraph (c) of this Section.

Priority Bonds or Additional Parity Bonds for Capital Additions may be combined in a single issue with Priority Bonds or Additional Parity Bonds, as the case may be, for Capital Improvements provided the conditions precedent set forth in subparagraphs (b) and (c) are complied with as the same relate to the respective purposes.

SECTION 20: Refunding Bonds. The City reserves the right to issue refunding bonds to refund all or any part of the outstanding Priority Bonds or the Bonds (pursuant to any law then available) upon such terms and conditions as the City Council of the City may deem to be in the best interest of the City and its inhabitants, and if less than all such outstanding Priority Bonds or the Bonds are refunded, the conditions precedent prescribed (for the issuance of Priority Bonds or Additional Parity Bonds) set forth in subparagraphs (a) and (b) of Section 19 shall be satisfied and the Accountant's certificate or opinion required in subparagraph (b) shall give effect to the issuance of the proposed refunding bonds (and shall not give effect to the Priority Bonds or the Bonds being refunded following their cancellation or provision being made for their payment).

SECTION 21: Obligations of Inferior Lien and Pledge. The City hereby reserves the right to issue additional obligations payable from and secured by a junior and subordinate lien on and pledge of the Net Revenues of the Systems, either or both, as may be authorized by the laws of the State of Texas.

SECTION 22: Maintenance and Operation—Insurance. The City shall maintain the Systems in good condition and operate each in an efficient manner and at reasonable cost. So long as any Bonds are outstanding, the City agrees to maintain insurance for the benefit of the holder or holders of Bonds on the Systems of a kind and in an amount which usually would be carried by municipal corporations engaged in a similar type of business. Nothing in this Ordinance shall be construed as requiring the City to expend any funds derived from sources other than the operation of the Systems, but nothing hereon shall be construed as preventing the City from doing so.

SECTION 23: Sale or Lease of Properties. (a) The City, to the extent and in the manner required by law, may sell or exchange for consideration representing the fair value thereof, as determined by the City Council of the City, any property not necessary or required in the efficient operations of the Systems, either or both, or any equipment not necessary or useful in the operations thereof or which is obsolete, damaged or worn out or otherwise unsuitable for use in the operation of the Systems, either or both. Save and except as hereinafter provided, the proceeds of any sale of properties of the Waterworks and Sewer System shall be deposited in the Water and Sewer Fund and the proceeds of sale of properties of the Electric Light and Power System shall be deposited in the Electric Fund.

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Exhibit B to Utility Construction Contract: - Page 20 of 27

(b) The City may, to the extent and in the manner permitted by law, sell, lease or otherwise dispose of all or part of its participating interest in the South Texas Project as approved and authorized at an election held November 3, 1981, provided such sale, lease or other disposition is approved by a majority vote of the City Council of the City with a finding on the part of the City Council that the remaining available capacity of the Electric Light and Power System (including power and energy to be received under contracts) for furnishing power and energy is adequate and sufficient to satisfy current and foreseeable power and energy demands therefor taking into consideration any generating capacity then estimated to become available and that such disposal will not jeopardize the ability of the City to meet the rate covenants contained herein and in any other ordinance authorizing outstanding obligations secured by a lien on and pledge of the Electric Light and Power System. All proceeds derived from such sale or disposal, net of reasonable and necessary expenses incurred in connection therewith (including attorneys and engineers), shall be deposited in a special escrow account with the City's depository bank and expended only for the purposes of making Capital Additions to the Electric Light and Power System, or for cost-effective projects or purposes which reduce the peak demand requirements of the Electric Light and Power System, or for the redemption or purchase (at a price not to exceed par) of outstanding Bonds or Priority Bonds, all as shall be in the sole discretion and determination of the City Council of the City.

SECTION 24. Records and Accounts. The City hereby covenants and agrees that so long as any of the Bonds or any interest thereon remains outstanding and unpaid, it will keep and maintain separate and complete records and accounts pertaining to the operations of the Waterworks and Sewer System and the Electric Light and Power System in which complete and correct entries shall be made of all transactions relating thereto, as provided by Article 1113, V.A.T.C.S. The holder or holders of any Bonds or any duly authorized agent or agents of such holders shall have the right at all reasonable times to inspect such records, accounts and data relating thereto, and to inspect the respective Systems and all properties comprising same. The City further agrees that following the close of each Fiscal Year, it will cause an audit of such books and accounts to be made by an independent firm of Certified Public Accountants. Each such audit, in addition to whatever other matters may be thought proper by the Accountant, shall particularly include the following:

- (a) A detailed statement of the income and expenditures of the Electric Light and Power System and of the Waterworks and Sewer System for such Fiscal Year.
- (b) A balance sheet for the Electric Light and Power System and the Waterworks and Sewer System as of the end of such Fiscal Year.
- (c) The Accountant's comments regarding the manner in which the City has carried out the requirements of this Ordinance and any other ordinance authorizing the issuance of Priority Bonds or Additional Priority Bonds and his recommendations for any changes or improvements in the operations, records and accounts of the respective Systems.
- (d) A list of insurance policies in force at the end of the Fiscal Year covering the properties of the respective Systems, setting out as to each policy the amount thereof, the risk covered, the name of the insurer and the policy's expiration date.

Expenses incurred in making an annual audit of the operations of the Systems are to be regarded as Maintenance and Operating Expenses of the respective Systems and paid on a pro rata basis or as otherwise determined by the City from available revenues in the Electric Fund and Water and Sewer Fund, either or both. Copies of each annual audit shall be furnished to the Executive Director of the Municipal Advisory Council of Texas at his office in Austin, Texas, or as otherwise provided by law and, upon request, to the original purchaser of any series of Bonds. The audits herein required shall be made within 120 days following the close of each Fiscal Year insofar as is possible.

SECTION 25: Deficiencies; Excess Net Revenues. (a) If on any occasion there shall not be sufficient Net Revenues of the Systems to make the required deposits into the Interest and Redemption Fund and the Reserve Fund, then such deficiency shall be cured as soon as possible from the next available Net Revenues of the Systems, or from any other sources available for such purpose.

(b) Subject to making the required deposits to (i) all special funds created for the payment and security of the Priority Bonds (including the Reserve Fund) (ii) the Interest and Redemption Fund and the Reserve Fund when and as required by this Ordinance, or any ordinance authorizing the issuance of

Additional Parity Bonds and (iii) all funds or accounts created for the benefit of Separate Lien Obligations, the excess Net Revenues of the Systems, either or both, may be used by the City for any lawful purpose.

SECTION 26: Further Covenants. The City further covenants and agrees by and through this Ordinance as follows:

(a) It has the lawful power to pledge the Net Revenues of the Systems to the payment of the Bonds to the extent provided herein and has lawfully exercised said power under the Constitution and laws of the State of Texas, and that the Series 1982 Bonds issued hereunder, together with the Additional Parity Bonds shall be ratably secured in such manner that no one Bond shall have preference over any other Bond of said issues.

(b) The Net Revenues of the Systems, either or both, have not been in any manner pledged or encumbered to the payment of any debt or obligation of the City or the Systems, save and except as set forth and identified in Exhibit A attached hereto and incorporated by reference as a part hereof for all purposes.

SECTION 27: Final Deposits; Governmental Obligations. (a) All or any of the Series 1982 Bonds shall be deemed to be paid, retired and no longer outstanding within the meaning of this Ordinance when payment of the principal of, and redemption premium, if any, on such Bonds, plus interest thereon to the due date thereof (whether such due date be by reason of maturity, upon redemption, or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof (including the giving of any required notice of redemption), or (ii) shall have been provided by irrevocably depositing with, or making available to, a paying agent therefor, in trust and irrevocably set aside exclusively for such payment, (1) money sufficient to make such payment or (2) Government Obligations, certified by an independent public accounting firm of national reputation, to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money to make such payment, and all necessary and proper fees, compensation and expenses of each paying agent pertaining to the Series 1982 Bonds with respect to which such deposit is made shall have been paid or the payment thereof provided for the satisfaction of each paying agent. At such time as a Series 1982 Bond shall be deemed to be paid hereunder, as aforesaid, it shall no longer be secured by or entitled to the benefit of this Ordinance or a lien on and pledge of the Net Revenues of the Systems, and shall be entitled to payment solely from such money or Government Obligations.

(b) That any moneys so deposited with a paying agent may at the direction of the City also be invested in Government Obligations, maturing in the amounts and times as hereinbefore set forth, and all income from all Government Obligations in the hands of the paying agent pursuant to this Section which is not required for the payment of the Series 1982 Bonds, the redemption premium, if any, and interest thereon, with respect to which such money has been so deposited, shall be turned over to the City or deposited as directed by the City.

(c) That the City covenants that no deposit will be made or accepted under clause (a) (ii) of this Section and no use made of any such deposit which would cause the Series 1982 Bonds to be treated as arbitrage bonds within the meaning of Section 103 (c) of the Internal Revenue Code of 1954, as amended.

(d) That notwithstanding any other provisions of this Ordinance, all money or Government Obligations set aside and held in trust pursuant to the provisions of this Section for the payment of the Series 1982 Bonds, the redemption premium, if any, and interest thereon, shall be applied to and used for the payment of such Bonds, the redemption premium, if any, and interest thereon and the income on such money or Government Obligations shall not be considered to be "Gross Revenues" under this Ordinance.

SECTION 28: Remedy in Event of Default. In addition to all the rights and remedies provided by the laws of the State of Texas, the City covenants and agrees particularly that in the event the City (a) defaults in payments to be made to the Interest and Redemption Fund or the Reserve Fund as required by this Ordinance or (b) defaults in the observance or performance of any other of the covenants, conditions or obligations set forth in this Ordinance, the holder or holders of any of the Bonds shall be entitled to a writ of mandamus issued by a court of proper jurisdiction, compelling and requiring the City and its officers to

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Exhibit B to Utility Construction Contract - Page 22 of 27

observe and perform any covenant, condition or obligation prescribed in this Ordinance. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

The specific remedy herein provided shall be cumulative of all other existing remedies and the specification of such remedy shall not be deemed to be exclusive.

SECTION 29: *Bonds are Obligations.* The Series 1982 Bonds are special obligations of the City payable from the pledged Net Revenues of the Systems and the holders thereof shall never have the right to demand payment thereof out of funds raised or to be raised by taxation.

SECTION 30: *Bonds are Negotiable Instruments.* Each of the Series 1982 Bonds herein authorized shall be deemed and construed to be a "Security", and as such a negotiable instrument, within the meaning of Article 8 of the Uniform Commercial Code.

SECTION 31: *Ordinance to Constitute Contract.* The provisions of this Ordinance shall constitute a contract between the City and the holder or holders from time to time of the Series 1982 Bonds and, except as otherwise provided herein, no change, variation or alteration of any kind of the provisions of this Ordinance may be made, until such Bonds are no longer outstanding.

SECTION 32: *Governmental Agencies.* The City will comply with all of the terms and conditions of any and all franchises, permits and authorizations applicable to or necessary with respect to the Systems, either or both, and which have been obtained from any governmental agency; and the City has or will obtain and keep in full force and effect all franchises, permits, authorizations and other requirements applicable to or necessary with respect to the acquisition, construction, equipment, operation and maintenance of the Systems.

SECTION 33: *No Competition.* The City will not grant any franchise or permit the acquisition, construction or operation of any competing facilities which might be used as a substitute for the facilities of the Systems, either or both, and, to the extent that it legally may, the City will prohibit any such competing facilities.

SECTION 34: *No-Arbitrage.* The City covenants to and with the purchasers of the Series 1982 Bonds that it will make no use of the proceeds of the Series 1982 Bonds, investment income or other funds at any time throughout the term of this issue of Series 1982 Bonds which would cause the Series 1982 Bonds to be arbitrage bonds within the meaning of Section 103(c) of the Internal Revenue Code of 1954, as amended, or any regulations or rulings pertaining thereto.

SECTION 35: *Interest on Bonds to Remain Tax Exempt.* The City recognizes that the purchasers and holders of the Series 1982 Bonds will have accepted them on, and paid therefor a price which reflects, the understanding that interest thereon is exempt from federal income taxation under laws in force at the time the Series 1982 Bonds shall have been delivered. In this connection the City shall take no action or fail to take any action, which action or failure to act may render the interest on any of such Series 1982 Bonds subject to federal income taxation, particularly pursuant to Section 103(b) of the Internal Revenue Code of 1954, as amended, nor shall the City take any action or fail to take any action, which action or failure to act, would have the effect of causing the income derived by the City from the Systems, either or both, to become subject to federal income taxation in the hands of the City, whether or not provision shall have been made for the payment of such Series 1982 Bonds.

SECTION 36: *Amendment of Ordinance.* This Ordinance may be amended in the following manner and subject to the following conditions: (a) the holders of Bonds aggregating in principal amount 51% of the aggregate principal amount of then outstanding Bonds shall have the right from time to time to approve any amendment to this Ordinance which may be deemed necessary or desirable by the City, provided, however, that nothing herein contained shall permit or be construed to permit the amendment of the terms and conditions in this Ordinance or in the Bonds so as to:

- (1) Make any change in the maturity of the outstanding Bonds;
- (2) Reduce the rate of interest borne by any of the outstanding Bonds;

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Exhibit B to Utility Construction Contract - Page 23 of 27

- (3) Reduce the amount of the principal payable on the outstanding Bonds;
- (4) Modify the terms of payment of principal of or interest on the outstanding Bonds, or impose any conditions with respect to such payment;
- (5) Affect the rights of the holders of less than all of the Bonds then outstanding;
- (6) Change the minimum percentage of the principal amount of Bonds necessary for consent to such amendment.

(b) If at any time the City shall desire to amend the Ordinance under this Section, the City shall cause notice of the proposed amendment to be published in a financial newspaper or journal of general circulation in The City of New York, New York, and in a newspaper of general circulation in the City of Austin, Texas, once during each calendar week for at least two successive calendar weeks. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy thereof is on file at the principal office of the paying agents for inspection by all holders of Bonds. Such publication is not required, however, if notice in writing is given to each holder of Bonds.

(c) Whenever at any time the City shall receive an instrument or instruments executed by the holders of at least 51% in aggregate principal amount of all Bonds then outstanding, which instrument or instruments shall refer to the proposed amendment described in said notice and which specifically consent to and approve such amendment in substantially the form of the copy thereof on file with the paying agents, the governing body of the City may pass the amendatory ordinance in substantially the same form.

(d) Upon the passage of any amendatory ordinance pursuant to the provisions of this Section, this Ordinance shall be deemed to be amended in accordance with such amendatory ordinance, and the respective rights, duties and obligations under this Ordinance of the City and all the holders of then outstanding Series 1982 Bonds and all future Additional Parity Bonds shall thereafter be determined, exercised and enforced hereunder, subject in all respects to such amendments.

(e) Any consent given by the holder of a Bond pursuant to the provisions of this Section shall be irrevocable for a period of six months from the date of the first publication of the notice provided for in this Section or the date of such consent, whichever is later, and shall be conclusive and binding upon all future holders of the same Bond during such period. After the applicable period of time a consent is irrevocable has expired, the holder who gave consent, or a successor in title, may revoke such consent by filing notice thereof with the paying agents and the City, but such revocation shall not be effective if the holders of 51% in aggregate principal amount of the then outstanding Bonds as in this Section defined have, prior to the attempted revocation, consented to and approved the amendment.

(f) For the purpose of this Section, the fact of the holding of Bonds by any bondholder and the amount and numbers of such Bonds and the date of their holding same, may be proved by the affidavit of the person claiming to be such holder, or by a certificate executed by any trust company, bank, banker or any other depository wherever situated showing that at the date therein mentioned such person had on deposit with such trust company bank, banker or other depository, the Bonds described in such certificate. The City may conclusively assume that such ownership continues until written notice to the contrary is served upon the City.

SECTION 37: *City Manager—Director of Finance to Have Charge of Records and Bonds.* The City Manager and Director of Finance shall be and they are hereby authorized to take and have charge of all necessary orders and records pending investigation by the Attorney General of the State of Texas, and shall take and have charge and control of the Series 1982 Bonds herein authorized pending their approval by the Attorney General, their registration by the Comptroller of Public Accounts and delivery to the initial purchasers.

SECTION 38: *Sale of Bonds.* The Series 1982 Bonds are hereby sold and shall be delivered to Dillon, Read & Co. Inc., Smith Barney, Harris Upham & Co. Incorporated and Boettcher & Company, on behalf of the ultimate purchasers thereof in accordance with the Purchase Contract in form and substance

approved by resolution of the City Council of even date herewith, and it is hereby found and determined by the City Council that the price and terms specified in such Purchase Contract are the most advantageous and reasonably obtainable by the City.

SECTION 39: Approval of Official Statement. The Official Statement, dated March 3, 1982, relating to the Series 1982 Bonds, in substantially the form as submitted to this meeting, is hereby approved and authorized to be distributed to the ultimate purchasers of the Series 1982 Bonds, with such changes therein as shall be approved by the Mayor or the City Manager of the City and the distribution of the Preliminary Official Statement, dated February 22, 1982 is hereby in all respects ratified, confirmed and approved.

SECTION 40: Proceeds of Sale. Promptly after the delivery of the Series 1982 Bonds, all of the proceeds from the sale and delivery of the Series 1982 Bonds shall be deposited in immediately available funds with Morgan Guaranty Trust Company of New York, hereby designated as the bank of delivery, and such proceeds, less accrued interest on the Series 1982 Bonds, which shall ultimately be deposited to the credit of the Interest and Redemption Fund, shall be used for the purpose of refunding, discharging and retiring all of the Refunded Bonds, initially funding the Reserve Fund as herein required, and paying the costs and expenses of issuance of the Series 1982 Bonds. By a resolution of the City Council of even date herewith the City Council has authorized the execution of a "City of Austin, Texas Water, Sewer and Electric Refunding Revenue Bonds Special Escrow Fund Agreement" between the City and the Treasurer of the State of Texas, which will use said proceeds, together with other available funds of the City, to provide for the refunding, discharging and retiring of the Refunded Bonds. The balance of said proceeds not so transferred to Treasurer of the State of Texas, representing accrued interest on the Series 1982 Bonds, a portion of the Required Reserve for the Series 1982 Bonds and amounts sufficient to pay the costs of issuance of the Series 1982 Bonds will be immediately transferred by the bank of delivery to Texas Commerce Bank—Austin, Austin, Texas, the City's official depository bank. The Director of Finance is hereby authorized and directed to instruct the Texas Commerce Bank—Austin, to transfer \$20,000,000 from the reserve fund established for the benefit of the Utility System Revenue Bonds, Series 1 through 10, being refunded by the Series 1982 Bonds to the Reserve Fund established herein for investment in open market securities; and also to transfer to the Reserve Fund established herein the sum of \$28,325,743.10 from the Interest and Redemption Funds for the Refunded Bonds, which amount, together with the sum of \$36,674,256.90 from the proceeds of sale of the Series 1982 Bonds, shall be invested in the United States Treasury Obligations, State and Local Government Series totalling in amount \$65,000,000 and as set forth in the subscriptions filed on behalf of the City with the Federal Reserve Bank of Dallas on February 26, 1982, which subscriptions are hereby ratified and affirmed.

SECTION 41: Reasons for Refunding. It is specifically found and determined by the City that unanticipated increases in the cost of certain Capital Additions and Capital Improvements to the Systems and greater than expected population and industrial growth in the City of Austin metropolitan area have created an immediate need for the City to achieve greater financing flexibility, reduced net debt service payments on debt supported by the Systems and the ability to sell or otherwise dispose of the City's interest in the South Texas Project or other parts or components of the Systems no longer needed. It is further found and determined that the ordinances authorizing the Refunded Bonds contain restrictive covenants which inhibit the City's ability to finance Capital Additions and projects financed through Separate Lien Obligations and require the City to provide excess revenues which results in the necessity of charging and collecting rates considerably higher than necessary, thus increasing the cost of electric, water and sewer service to the inhabitants of the City and prevent, because of excessively restrictive covenants, the adequate and economical financing of projects which are expected to be required for the Systems in the near future. It is also found that the refunding of the Refunded Bonds in the manner herein provided is expected to release certain of the City's moneys for capital expenditures for the Systems thus avoiding the necessity to issue bonds of the City for such purpose, and is expected to reduce significantly the amount of Net Revenues of the Systems which will be required for the amortization of outstanding indebtedness, thus permitting lower rates to the customers of the Systems. Therefore, for the reasons stated in this Section 41, the City Council has found it to be necessary and in the best interest of the City that such refunding be accomplished, and the Refunded Bonds be refunded, discharged and retired thereby.

SECTION 42: Cusip Numbers. That CUSIP numbers may be printed on the Series 1982 Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the Series 1982 Bonds

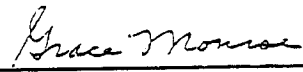
shall be of no significance or effect as regards the legality thereof and neither the City nor attorneys approving the Series 1982 Bonds as to legality are to be held responsible for CLSIP numbers incorrectly printed thereon.

SECTION 43. *Emergency* The public importance of refunding the Refunded Bonds creates an emergency and an urgent public necessity that the refunding be accomplished as soon as possible and without delay for the immediate preservation of the public peace, health and safety of the citizens of the City of Austin, Texas; that this Ordinance take effect and be in full force immediately upon its passage, and that the rule requiring that all ordinances be read on three separate days be waived and suspended, and it is hereby suspended and further that all ordinances and charter rules governing the effective date of this Ordinance are hereby suspended and that this ordinance is hereby passed as an emergency measure and shall be effective immediately upon its passage and adoption as provided by the Charter of the City of Austin.

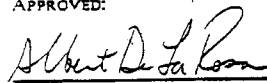
PASSED AND APPROVED, this


Mayor, City of Austin, Texas

(City Seal)

ATTEST: 
City Clerk, City of Austin, Texas

APPROVED:


City Attorney, City of Austin, Texas

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Exhibit B to Utility Construction Contract - Page 26 of 27

Exhibit A

LIST OF OUTSTANDING OBLIGATIONS
PAYABLE FROM NET REVENUES OF THE
SYSTEMS, EITHER OR BOTH

1. \$598,000,000 City of Austin, Texas, Water, Sewer, and Electric Revenue Bonds, Series 1982.
2. Utility Construction Contract between the City and North Austin Growth Corridor MUD No.1, pursuant to which \$5,960,000 North Austin Growth Corridor MUD No.1, City of Austin Contract Bonds, Series 1981 have been issued.
3. Utility Construction Contract between the City and Northwest Travis County MUD No.1, pursuant to which \$3,550,000 Northwest Travis County MUD No.1, Unlimited Tax and City of Austin Contract Bonds, Series 1982, payable by the City as to principal amount only, are expected to be issued on or about April 1, 1982.
4. Utility Construction Contract between the City and Springwoods MUD, pursuant to which \$3,520,000 Springwoods MUD Combination City of Austin Contract, Unlimited Tax and Revenues Bonds, Series 1982, payable by the City as to principal amount only, are expected to be issued on or about April 1, 1982.
5. Utility Construction Contract between the City and South Austin Growth Corridor MUD No. 1.

Exhibit B to Utility Construction Contract - Page 27 of 27

EXHIBIT "C"

<u>Facility</u>	<u>District's pro rata share</u>
1. Spicewoods Springs 48 inch Discharge Pipe and Transmission Main	51.3%
2. Oversize Proposed Research Boulevard Line from 36 inch to 48 inch	51.3%
3. 2.7 MG Northwest "A" Reservoir	100%
4. 36 inch Jollyville Water Transmission Line	100%
5. 24 inch Parmer Lane Water Transmission Line from McNeil to Existing 24 inch Line	100%
6. 36 inch Line from 36 inch in McNeil to Reservoir	100%
7. 24 inch Parmer Lane Water Line from Reservoir to FM 620	100%
8. Temporary sewer to Bull Creek Lateral "A"	100%
9. Permanent Sewer Interceptor to Bull Creek Interceptor	26.4%

REAL9/43-2:SBL

EXHIBIT D

Contract Bond Number One

The calculation of the District's pro rata share of the Debt Service Payment is based on the following formula:

Pro rata share X CR X DSP

Debt Service Payment (DSP)

Semi-annual Debt Service Payment (DSP) to be made by the city to the paying agent shall equal the total semi-annual principal, interest, and paying agent fees. For its participation, the District will pay to the City the pro rata share as calculated by the formula.

Construction Ratio (CR) for Each Project

$$\frac{\text{Proceeds Applied to Construction of Each Project}}{\text{Total Proceeds Applied to Construction of All Projects}}$$

Example

Total Construction of All Projects	\$6,500,000
For Permanent Sewer Interceptor Lift Station and Force Main to Bull Creek Interceptor	CR = $\frac{6,500,000}{6,500,000} = 1.00$

District Share of Debt Service Payment calculated as follows for each project:

	Pro rata share	X	CR	X	DSP
For Permanent Sewer Interceptor Lift Station and Force Main to Bull Creek Interceptor	26.4%	X	100%	X	DSP

EXHIBIT "D"
Page 1 of 2

EXHIBIT D
Contract Bond Number Two

The calculation of the District's pro rata share of the Debt Service Payment is based on the following formula:

Pro rata share X CR X DSP

Debt Service Payment (DSP)

Semi-annual Debt Service Payment (DSP) to be made by the City to the paying agent shall equal the total semi-annual principal, interest, and paying agent fees. For its participation, the District will pay to the City the pro rata share as calculated by the formula.

Construction Ratio (CR) for Each Project

$$\frac{\text{Proceeds Applied to Construction of Each Project}}{\text{Total Proceeds Applied to Construction of All Projects}}$$

Example

Total Construction of All Projects \$ 5,380,250

- | | |
|---|--|
| (1) For N.W. "A" Reservoir | $CR = \frac{3,105,000}{5,380,250} = .5771$ |
| (2) For Oversize Research Blvd.
Transmission Main | $CR = \frac{465,750}{5,380,250} = .0866$ |
| (3) For 48" Spicewood Springs Discharge
Piping to U.S. 183 | $CR = \frac{1,809,500}{5,380,250} = .3363$ |

District Share of Debt Service Payment calculated as follows for each project:

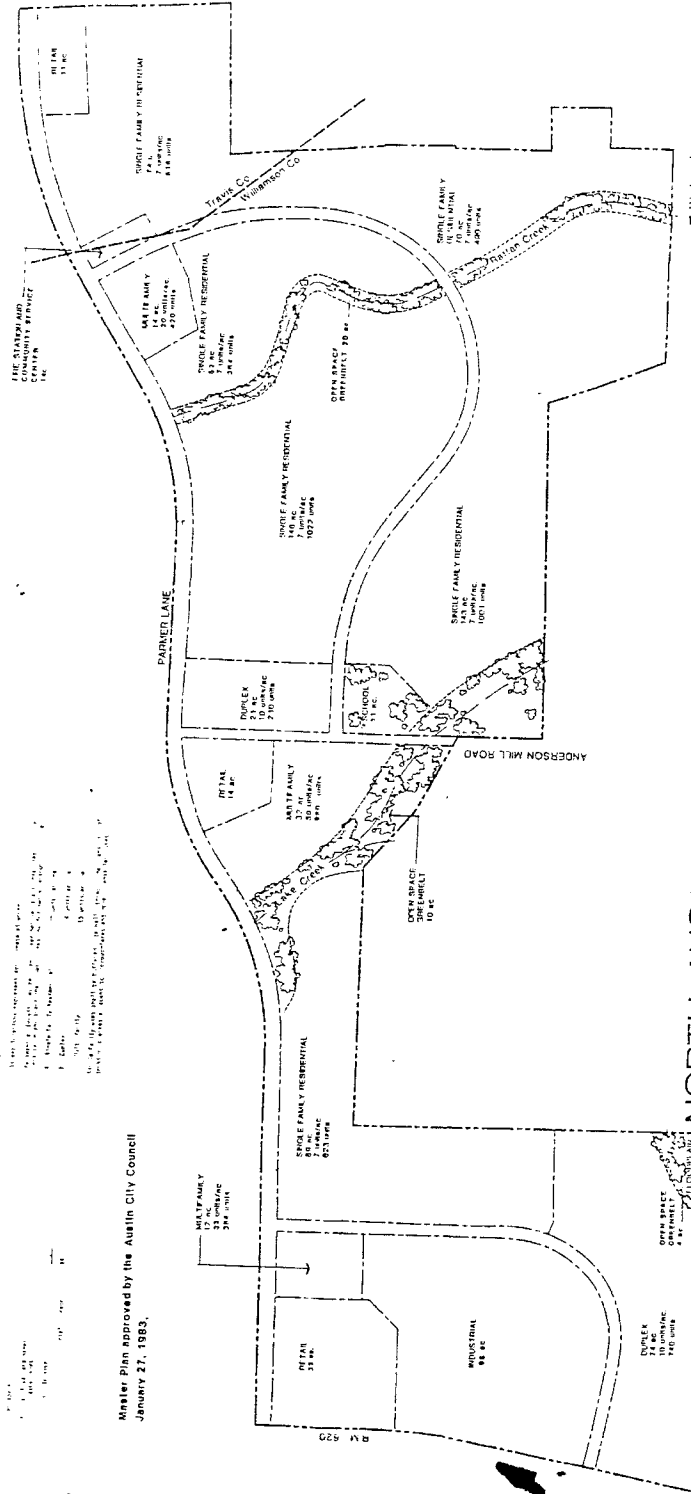
	Pro rata share	X	CR	X	DSP
(1) For N.W. "A" Reservoir	100.00%	X	.5771	X	DSP
(2) For Oversize Research Blvd. Transmission Main	51.30%	X	.0866	X	DSP
(3) For 48" Spicewood Springs Discharge Piping to U.S. 183	51.30%	X	.3363	X	DSP

LAND USE BREAKOUT

NOTES:

1. All land use breakout is based on the Master Plan approved by the Austin City Council on January 27, 1983.
2. All land use breakout is based on the Master Plan approved by the Austin City Council on January 27, 1983.
3. All land use breakout is based on the Master Plan approved by the Austin City Council on January 27, 1983.
4. All land use breakout is based on the Master Plan approved by the Austin City Council on January 27, 1983.
5. All land use breakout is based on the Master Plan approved by the Austin City Council on January 27, 1983.
6. All land use breakout is based on the Master Plan approved by the Austin City Council on January 27, 1983.
7. All land use breakout is based on the Master Plan approved by the Austin City Council on January 27, 1983.
8. All land use breakout is based on the Master Plan approved by the Austin City Council on January 27, 1983.
9. All land use breakout is based on the Master Plan approved by the Austin City Council on January 27, 1983.
10. All land use breakout is based on the Master Plan approved by the Austin City Council on January 27, 1983.

Master Plan approved by the Austin City Council
January 27, 1983.



NORTH AUSTIN MUNICIPAL UTILITY DISTRICT NO. 1

Bit Hardison
Partnership Inc.
The Austin, Texas
City of Austin
City of Austin
City of Austin

EXHIBIT "C" TO CREATION AGREEMENT

Docket Nos. 42857 and 42867

-78-

DM-4
119

Texas Department of Water Resources

INTEROFFICE MEMORANDUM

TO : The File

DATE: June 4, 1985

THRU :

FROM : Districts Section

SUBJECT: Summary of Agreement Between District and City of Austin.

Agreement Concerning Creation and Operation of North Austin Municipal Utility
District No. 1

Dated February 21, 1984 between:

City of Austin (City)
North Austin MUD No. 1 (District)
Milwood Joint Venture, Robinson Ranch & Austin White Lime Company (Milwood)

Article I, Issuance of Bonds by District

- A. By Ordinance No. 810819-E (Exhibit "A") City consents to creation of District. Under the terms of this ordinance, the District, located in "Growth Area III and within 2 miles of city limits, agrees to only issue bonds to finance a share of the facilities as follows:

<u>Item</u>	<u>% of Costs to be Paid by District</u>
Internal Water Lines	100%
Internal Wastewater Lines	100%
Storm Sewer Drainage	75%
Regional Drainage	100%
Water Approach Mains	100%
Wastewater Approach Mains	100%
Water Facilities	100%
Water Facilities Utilizing Edwards Aquifer	0%
Wastewater Facilities	100%
Irrigation Land	100%

These percentages shall apply after limits imposed by the Department's 30% rule are applied.

- B. Incorporates a "Utility Construction Contract" between the City and District (Exhibit "B").
1. This contract specifies that the District agrees to construct certain extensions to the City's water supply and sanitary sewer facilities. The facilities to be constructed are described as follows:

June 4, 1985

a. District Items

- (1) 36-inch Jollyville Transmission Main (along McNeil Rd. from Jollyville Res. to Parmer Ln.).
- (2) 24-inch Parmer Lane Transmission Line (from 24-inch in Milwood 6-11 to McNeil Rd.).
- (3) 36-inch Transmission Line (from 36-inch in McNeil Rd. to Proposed Res.).
- (4) 24-inch FM 620 Transmission Main (from 36-inch in Parmer at Res. to FM 620).
- (5) Temporary Lift Station & Force Main System (from District to Bull Creek Lateral "A").

b. Contract Bond Items

- (1) Northwest "A" System Reservoir, 2.7 MG.
 - (2) 48-inch Spicewood Springs Transmission Main and Discharge (from Spicewood Springs Pump Sta. to US 183).
 - (3) Oversize Research Blvd. Transmission Main from 36 to 48-inch.
 - (4) Permanent Wastewater System including Anderson Mill & Forest North (from District to Bull Creek Interceptor).
2. The District agrees to design and construct the project and sell bonds to finance the project. After completion of the project, it shall be dedicated to the City who will be responsible for maintenance and operation of the facilities at its sole expense.
 3. The City agrees to pay to the District a sum equal to the total of the principal, interest, paying agent's fees, and other charges and expenses which may accrue in connection with the payment and discharge of the bonds. This includes payments into any special fund or reserve fund required to be established and/or maintained by the provisions of any Bond Resolution. The City shall make its payments on these bonds from its water and sewer revenues.

All payments made by the City shall be deposited with a designated paying agent.

4. Upon completion of the project, the City agrees to reserve sufficient capacity in the facilities to serve the entire District. In return, the District agrees to pay its pro rata share of the bonds for the project as follows (exhibit "C"):

<u>Facility</u>	<u>District's Pro Rata Share</u>
a. 48-inch Spicewood Springs Transmission Main & Discharge	51.3%
b. Oversize Research Blvd. Transmission Main from 36 to 48-inch	51.3%
c. Northwest "A" System Reservoir, 2.7 MG	100.0%
d. 36-inch Jollyville Transmission Main	100.0%
e. 24-inch Parmer Lane Transmission Line from McNeil to Existing 24-inch Line	100.0%

June 4, 1985

<u>Facility</u>	<u>District's Pro Rata Share</u>
f. 36inch Line from 36-inch in McNeil to Res.	100.0%
g. 24-inch Parmer Lane Water Line from Res. to FM 620	100.0%
h. Temporary Sewer to Bull Creek Lateral "A"	100.0%
i. Permanent Sewer Interceptor to Bull Creek Interceptor	26.4%

The District's share of the bonds, based on the above percentages, shall be payable in semi-annual installments on or before 5 business days prior to the due date of each payment on the bonds. The District's pro rata share of the debt service payment is calculated using the following formula (exhibit "D"):

$$\text{District's Share} = \text{Pro Rata Share} \times \text{CR} \times \text{DSP}$$

where: DSP is the total debt service payment due on the bonds;

CR is the construction ratio for each project which is the Proceeds Applied to Construction of Each Project divided by the Total Proceeds Applied to Construction of All Projects.

Examples given in exhibit "D".

The District agrees to pledge all of its excess water and sewer revenues (subject to prior liens) to the City for payment towards its share of the debt service payments. In addition, the District shall make the remainder of its share of payments from and secured by an ad valorem tax (voted at election held April 7, 1984).

The City reserves the right to charge a "user fee" to all city water and sewer customers connecting to the facilities comprising the project; however, such "user fee" shall not be charged to the District or customers within the District.

5. City has the right to review plans for the project.
6. District's obligation is subject to the approval of all agencies having jurisdiction including the Department's approval.
7. The City authorizes the District to use its property for the projects and agrees to provide right-of-ways where necessary. The costs of the right-of-ways; however, shall be considered as costs of the project.

Article II, Water Supply

- A. The City agrees to sell and deliver to the District all the water reasonably required by the District for domestic and commercial purposes.

June 4, 1985

- B. The District shall pay for the cost of installing meters at all delivery points.
- C. Rates for the water shall be set by the District and shall not be less than those charged by the City. In addition to the water rates, the District shall charge a surcharge (described in Article VII).

The District agrees to comply with the City's Capital Recovery Fee Ordinance (No. 821216-H).

Article III, Sewage Treatment

- A. The City agrees to receive, treat and dispose of the District's sewage delivered to the City's system.
- B. Rates for sewer service shall be set by the District and shall not be less than those charged by the City.

In addition to the sewer rates, the District shall charge a surcharge (described in Article VII).

Article IV, Operation and Maintenance

- A. The District shall operate and maintain the water and sewer system located within the District.
- B. The District shall operate and maintain the park and recreational facilities located within the District to the extent permitted by law (not permitted by law, Section 54.012, Texas Water Code).

Article V, Area of and Limitation on Service

District shall not annex any additional lands or provide water or sewer outside its boundaries without approval by the City.

Article VI, Limitation of Liability

Concerning the City's limits of liability to the District and Milwood.

Article VII, Annexation

- A. A portion of the District lies within the extraterritorial jurisdiction of the City and partially within the City. That portion of the District not already annexed is scheduled to be annexed.
- B. The District shall charge and collect a special water and sewer rate (surcharge) in the amount of \$18.20 per month from each single family dwelling or its equivalent.

If the total principal amount of bonds for District facilities or the number of projected equivalent connections in the District varies from those figures used to calculate the surcharge, the surcharge may be recalculated (using the growth area III in city ordinance).

June 4, 1985

Article VIII, Additional Requirements

Milwood and District agree to comply with Water District Ordinance.

Article IX, Construction of District Facilities

With consent of the District and City, Milwood shall proceed with the construction of the District facilities. The District shall sell bond anticipation notes or bonds to purchase the facilities in accordance with Department Rules. All facilities not allowed to be purchased by the District shall be dedicated to the District.

Article X, Land and Easement Costs

Describes acquisition of land and easements necessary for installing facilities.

Article XI, Land Use and Development

A. Milwood agrees to dedicate the following amenities to the District:

1. 64 acres of park and greenbelt areas,
2. 2 acre fire station site,
3. 5 acre solid waste transfer site,
4. Park & recreational facilities having a value of at least \$750,000,
5. Bridge across Lake Creek.

B. Provides a development plan (exhibit "C").

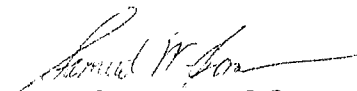
Article XII, Assignment of Agreement

Article XIII, Term of Agreement

Article XIV, Joint Contracting

Article XV, Severability and Enforceability

Article XVI, Benefits of Agreement


Samuel W. Jones, P.E.

SWJ:km

AGREEMENT CONCERNING THE THIRD AMENDMENT TO THE
AGREEMENT CONCERNING CREATION AND OPERATION OF
NORTH AUSTIN MUNICIPAL UTILITY DISTRICT NO. 1 AND THE
FIRST AMENDMENT TO THE UTILITY CONSTRUCTION CONTRACT BETWEEN
THE CITY OF AUSTIN AND
NORTH AUSTIN MUNICIPAL UTILITY DISTRICT NO. 1

THE STATE OF TEXAS §
COUNTIES OF TRAVIS § KNOW ALL MEN BY THESE PRESENTS:
AND WILLIAMSON §
 §

This agreement ("Agreement") amending "Agreement Concerning Creation and Operation of North Austin Municipal Utility District No. 1" and amending "Utility Construction Contract Between the City of Austin and North Austin Municipal Utility District No. 1" is made and entered into by and among North Austin Municipal Utility District No. 1 (the "District"), a municipal utility district created by order of the Texas Water Commission on November 15, 1983, and operating pursuant to Chapter 54 of the Texas Water Code, the City of Austin (the "City"), a home-rule City located in Travis and Williamson Counties, Texas and Austin White Lime, a Texas general partnership, Robinson Ranch, a Texas general partnership and Milwood Joint Venture, a Texas joint venture (hereinafter collectively referred to as "Milwood") and San Antonio Savings Association ("SASA"), subsequent holder of title to the certain tract of 177 acres within the boundaries of the District.

W I T N E S S E T H

WHEREAS, the District, the City and Milwood entered into that certain "Agreement Concerning Creation and Operation of North Austin Municipal Utility District No. 1" (the "Consent Agreement") on February 21, 1984, and two subsequent amendments thereto which provide for, among other things, the provision of water and wastewater utility services and financing for system improvements for same; and

WHEREAS, the District and the City entered into that "Utility Construction Contract Between the City of Austin, Texas and North

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Austin Municipal Utility District No. 1 (the "Construction Contract") on February 21, 1984, which provides for, among other things, the provision of water and wastewater utility services and the financing for utility system improvements to provide such services through the issuance of contract revenue bonds; and

WHEREAS, the Consent Agreement, as amended, and Construction Contract contain certain obligations by the parties for construction, ownership and financing of certain water improvements to provide adequate water supply to the District; and

WHEREAS, the parties acknowledge that the District has financed and constructed the 24-Inch Parmer Lane Transmission Main and the 36-Inch McNeil Road Transmission Main at a combined cost of \$4,900,000 and that the City has financed and constructed approximately \$23,600,000 of water improvements to provide Northwest B pressure plane water service to the general area; and

[WHEREAS, the parties now desire to amend or delete certain obligations of the parties with respect to water utility facilities and services to benefit all parties and provide reliable water service in the District; and]

WHEREAS, the parties desire to designate this Agreement as the third amendment to the Consent Agreement and as the first amendment to the Construction Contract;

NOW, THEREFORE, for the mutual promises, obligations and releases set forth below, the parties agree as follows:

I.
PRIOR AGREEMENTS

1.01 Provision of Water Utility Service and System Improvements.

A. The Consent Agreement and Construction Contract provide for the design, financing, construction, ownership, and operation and maintenance of certain water main extensions and other water improvements (the "Project"). Water improvements designated as Project items include:

1. 36-Inch McNeil Road Transmission Main from the Jollyville Reservoir along McNeil Road to the 24-Inch Transmission Main in Parmer Lane. The parties acknowledge that this facility has been constructed by the District with its funds and is owned and operated by the District.
2. 24-Inch Parmer Lane Transmission Main from the terminus of the 36-Inch McNeil Road Transmission Main along the right-of-way of Parmer Lane to FM 620. The parties acknowledge that this facility has been constructed by the District with its funds and is owned and operated by the District.
3. Cost participation in the oversize of the Research Boulevard Transmission Main. The parties acknowledge that the Research Boulevard Transmission Main has been constructed by the City with its funds and is owned and operated by the City.
4. 2,700,000 Gallon Northwest "A" System Elevated Reservoir. The parties acknowledge that this facility has not been constructed and its funding

was to be provided through the issuance of contract revenue bonds.

5. 48-Inch Spicewood Springs Transmission Main and Discharge Piping from Spicewood Springs Pump Station to U.S. Highway 183. The parties acknowledge that the Transmission Main has not been constructed and does not need to be constructed. Its funding was to be provided through the issuance of contract revenue bonds. The parties further acknowledge that the Discharge Piping has been constructed and funded from other sources.

- B. The City, pursuant to Article III of the Consent Agreement, agreed to "sell and deliver to the District all water which may be reasonably required ... for domestic and commercial uses" of the District. The City and District in the Consent Agreement and Construction Contract agreed to the construction of the Project to provide the facilities for the provision of the water service to the District by the City. Portions of the Project were to be funded solely by the District through its bonds and other portions were to be funded through the issuance of contract revenue bonds.

II.

REVISIONS TO THE WATER UTILITY SERVICE PLAN

2.01 Ownership of 24-Inch and 36-Inch Transmission Mains. The parties acknowledge that the 24-Inch Parmer Lane Transmission Main and the 36-Inch McNeil Road Transmission Main (collectively the "Mains") are currently owned, operated and maintained by the District. The District agrees to dedicate the Mains to the City upon execution of this Agreement. The City agrees to accept the

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Mains and to operate and maintain the Mains upon such dedication by the District and that adequate distribution capacity shall be reserved by the City to serve all land within the District. The City specifically agrees to relocate at its sole expense any and all appurtenances on the 36-Inch McNeil Road Transmission Main necessary for roadway improvements on McNeil Road and constructed after the execution of this Agreement. Such relocations shall be subject to standard City policies and procedures for relocating water mains.

2.02 Provision of Northwest B Water. The City agrees to provide Northwest B pressure plane water to the District through the connection of the City's Northwest B Water System to the District's facilities. The provision of such water shall be accomplished by the construction of approximately 1,000 feet of 16-inch water main from the existing 24-inch water main located at the intersection of FM 620 and Broadmeade Avenue generally down the right-of-way of FM 620 to the boundary of the District. The construction, engineering and inspection costs of the 16-inch main shall be provided by the City and the City hereby agrees to pay for the construction, design and inspection of the 16-inch main. It is understood and acknowledged by the parties that the City will have money available to fund the design, construction and inspection of the 16-inch main not sooner than October, 1989 but no later than January, 1990. The parties further understand and acknowledge that SASA may require water service from the completed 16-inch main for its property within the District prior to 1990 when City funding is available. Therefore, the parties agree that:

- a. In the event design and construction of the 16-inch main is not necessary to serve customers within the District until January, 1990, the City shall and agrees to act as the project manager and shall obtain or provide engineering services for the design, construction and

inspection of the 16-inch main. The City further agrees to obtain easements for the 16-inch main. In the event portions of the 16-inch main cannot be located in existing right-of-way or donated easements, the City shall acquire easements through purchase at its cost or, if necessary, condemnation. The City shall then proceed to bid, award and to enter into a construction contract with the low responsible bidder.

- b. If the City fails to initiate design of the 16-inch main within 45 days after approval of this Agreement by the City Council or fails to proceed in an uninterrupted fashion and within reasonable time limits with the design phase, easement acquisition, advertisement for bids phase and construction phase consistent with standard engineering design practice and the time limits for bidding and award practices as set out by ordinance or State law, then SASA may elect to commence or complete all of the phases that the City has failed to complete, which may include actions to acquire easements, design and construct the 16-inch main at their cost which shall then be reimbursed to SASA after completion and acceptance by the City, which acceptance shall not be unreasonably withheld. Provided, however, notwithstanding anything to the contrary herein, the City shall not be required to proceed with construction prior to November, 1989. SASA agrees to notify the District and the City in writing that SASA believes that it will need water service from the 16-inch main prior to the City's schedule for design and construction. At such time, SASA may engage the services of an engineer to design the 16-inch main at a fee schedule to be approved in advance by the City Director of Water and Wastewater. In the event easements must be acquired, SASA shall obtain a letter

of appraised value for the easement from an MAI appraiser and shall not pay an amount higher than the appraised value without the City's consent. Provided, however, SASA shall have the option to pay a higher amount so long as SASA agrees to waive reimbursement from the City for the difference between the appraised amount and the purchase price of the easement. All easements shall be obtained in the name of the City. In the event condemnation of such easement or easements is required, the District agrees to proceed to condemn the easements at the cost of SASA. The District agrees to convey any such easements obtained by condemnation to the City upon the City's acceptance of the completed 16-inch main. After completion of design, approval of the design by the City and acquisition of all necessary easements for the 16-inch main, SASA may then bid the construction of the 16-inch main pursuant to completion bidding requirements for municipalities and shall award the contract to the low responsible bidder. The construction contract shall be entered into between SASA and the construction contractor. SASA shall be responsible for all payments coming due under the contract and shall pay all applicable City inspection fees. After completion of the construction and acceptance by the City, SASA shall dedicate the 16-inch main to the City for operation and maintenance. SASA agrees to provide an accounting of all expenditures for reimbursement. The City agrees to reimburse SASA for engineering, easement acquisition whether by purchase or condemnation, construction and inspection costs expended for the 16-inch main not later than January 31, 1990 or completion and acceptance of the 16-inch main, whichever occurs later.

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The City agrees and represents to the District that neither the District nor any of its customers within its boundaries shall be required to pay subsequent user fees for utilizing Northwest B pressure plane water through the Maconda Park reservoir and transmission main.

2.03 Deletion of Certain Facilities. The parties agree that upon execution of this Agreement, the District shall have no further obligations with regard to the acquisition, construction and financing of the 2,700,000 Gallon Northwest "A" System Elevated Reservoir or the 48-Inch Spicewood Springs Transmission Main and Discharge Piping from Spicewood Springs Pump Station to U.S. Highway 183 described in the Consent Agreement and the Construction Contract. The parties further agree that the District shall be released from its obligation to fund the oversize costs of the Research Boulevard (U.S. Highway 183) Transmission Main constructed by the City described in the Consent Agreement and the Construction Contract.

III. WATER SUPPLY

3.01 Water Service to the District. The City agrees to reserve and to guarantee to the District adequate water capacity for the District and its customers at full development.

3.02 Metering of Water Supply. The District agrees to install at its sole expense any new master meters to record flows of potable water from the City to the District necessitated by the revisions to the water service plan set forth in this Agreement. The City Water and Wastewater Department Director or his designee and the District's Engineer shall determine a mutually agreeable location for any new master meter.

IV.
MISCELLANEOUS PROVISIONS

4.01 Conflict. To the extent that this Agreement conflicts with any term or provision in the Consent Agreement and/or the Construction Contract, this Agreement is controlling. All other provisions of the Consent Agreement, as amended to date, and the Construction Contract shall remain in effect.

4.02 Force Majeure. The parties agree that the provisions regarding Force Majeure set out in the Utility Construction Contract between the City of Austin and North Austin Municipal Utility District No. 1 are specifically incorporated herein and are a part of this Agreement.

4.03 Assignment of Agreement. None of the parties shall assign this Agreement without the prior written consent of the other parties hereto.

4.04 Term or Agreement. This Agreement shall be in force and effect for a term of forty (40) years from the date of execution.

4.05 Regulatory Authorities. This Agreement and the acquisition and/or construction of the water facilities shall be subject to all valid rules, regulations and laws applicable thereto, of the United States of America, the State of Texas, or any governmental or regulatory body having lawful jurisdiction.

4.06 Benefits of Agreement. This Agreement is for the benefit of the parties hereto and shall not be construed to confer any benefits on any other party except as expressly provided herein.

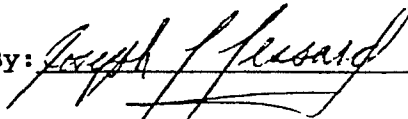
4.07 Severability and Enforceability. In the event that any provision hereof is subsequently determined to be invalid, illegal

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 parties agree to amend immediately this Agreement so as to conform to such ruling or decision in the manner most consistent with the original intent hereof.

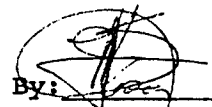
4.08 Entire Agreement. The above and foregoing Agreement, including any exhibits which are attached hereto and made a part hereof, contain the entire agreement between the parties hereto and shall in no way be conditioned, modified or supplemented except by written agreement executed by the parties.

IN WITNESS WHEREOF, the City and the District, acting under authority of their respective governing bodies, and Milwood and SASA have caused multiple copies of this Agreement to be duly executed, each of which shall be of equal dignity, all as of the _____ day of _____, 1989.

THE CITY OF AUSTIN, TEXAS

By: 
City Manager

APPROVED AS TO FORM:

By: 
As to Susan A. Lytle
City Attorney

NORTH AUSTIN MUNICIPAL UTILITY
DISTRICT NO. 1

By: Steve D. Pena
Steve D. Pena,
President, Board of
Directors

ATTEST:

By: Dennis Miller
Dennis Miller
Secretary, Board of
Directors

AUSTIN WHITE LIME COMPANY

By: A.H. Robinson, Jr.
A.H. Robinson, Jr., Partner

By: George E. Robinson
George E. Robinson, Partner

ROBINSON RANCH

By: A.H. Robinson, Jr.
A.H. Robinson, Jr., Partner

By: George E. Robinson
George E. Robinson, Partner

MILWOOD JOINT VENTURE

By: *Bill Milburn*
Bill Milburn, Venturer

By: Palmar Associates,
Venturer

By: *A.H. Robinson III*
A.H. Robinson, III

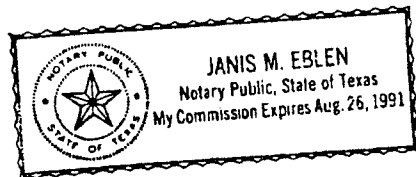
SAN ANTONIO SAVINGS
ASSOCIATION, a Texas financial
institution

By: _____

Its: _____

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

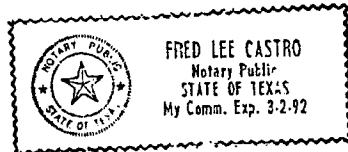
This instrument was acknowledged before me this 28th day of April, 1989, by Joseph L. Lessard, City Manager of the City of Austin, a Texas political subdivision, on behalf of said political subdivision.



Janis M. Eblen
Notary Public, State of Texas
Name Printed: _____
Commission Expires: _____

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me this 30th day of August, 1989, by Steve D. Pena, President, Board of Directors of North Austin Municipal Utility District No. 1, a Texas political subdivision, on behalf of said political subdivision.



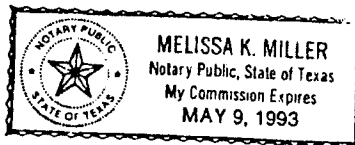
Fred Lee Castro
Notary Public, State of Texas

Name Printed: _____

Commission Expires: _____

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me this 10th day of July, 1989, by A.H. Robinson, Jr., Partner of Austin White Lime Company, a Texas general partnership, on behalf of said partnership.



Melissa K. Miller
Notary Public, State of Texas

Name Printed: _____

Commission Expires: _____

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me this 10th day of July, 1989, by George E. Robinson, Partner of Austin White Lime Company, a Texas general partnership, on behalf of said partnership.



Melissa K. Miller
Notary Public, State of Texas

Name Printed: _____

Commission Expires: _____

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me this 10th day of July, 1989, by A.H. Robinson, Jr., Partner of Robinson Ranch, a Texas general partnership, on behalf of said general partnership.



Melissa K. Miller
Notary Public, State of Texas

Name Printed: _____

Commission Expires: _____

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me this 10th day of July, 1989, by George E. Robinson, Partner of Robinson Ranch, a Texas general partnership, on behalf of said partnership.



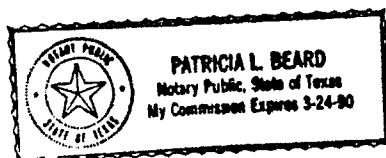
Melissa K. Miller
Notary Public, State of Texas

Name Printed: _____

Commission Expires: _____

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me this 12 day of July, 1989, by Bill Milburn, Venturer of Milwood Joint Venture, a Texas joint venture, on behalf of said joint venture.



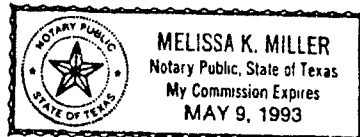
Patricia L. Beard
Notary Public, State of Texas

Name Printed: _____

Commission Expires: _____

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me this 10th day of July, 1989, by A.H. Robinson, III, of Palmar Associates, Venturer of Milwood Joint Venture, on behalf of said joint venture.



Melissa K. Miller
Notary Public, State of Texas

Name Printed: _____

Commission Expires: _____

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me this _____ day of _____, 1989, by _____ of San Antonio Savings Association, a Texas financial institution, on behalf of said financial institution.

Notary Public, State of Texas

Name Printed: _____

Commission Expires: _____

289-17.3

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Kathleen Hartnett White, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*

PWS ID #2270226 CO

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 8, 2005

Mr. David Malish, P.E.
Murfee Engineering Company, Inc.
1101 Capital of Texas Highway South, Bldg. D Suite 110
Austin, Texas 78746-6482

Re: North Austin MUD No. 1 - Public Water System I.D. #2270226
Proposed North Booster Pump Station
Engineer Contact Telephone: 512/327-9204
Plan Review Log Number 200506-065
Travis County, Texas

Dear Mr. Malish:

The planning material received on June 7, 2005, with your letter dated June 7, 2005 and additional material received on July 12, 2005 for the proposed booster pump station has been reviewed. The commission's public drinking water program does not examine plans and specifications in regard to the structural features of design, such as strength of concrete or adequacy of reinforcing. Only the features covered by these sections will be reviewed [§290.39(d)(3)(B)]. The project generally meets the minimum requirements of the TCEQ's Chapter §290 - Rules and Regulations for Public Water Systems (Rules) and is **conditionally approved for construction** if the project plans and specifications meet the following requirement:

- Planning material for this plan submittal state that construction shall be in accordance with standard specifications of the City of Austin. Please note that TCEQ's specifications for location of waterlines as required in Title 30 TAC, §Chapter 290.44(e) (Rules and Regulations for Public Water Systems) are minimum requirements. When conflicts are noted with local requirements, the more stringent requirement shall be required. Construction for public water systems must always, at a minimum, meet TCEQ's "Rules and Regulations for Public Water Systems"

We have reviewed your request for a temporary exception to the Texas Commission's on Environmental Quality's requirement contained in 30 TAC §290.44(d)(2) that booster pumps are to take suction from storage tanks. You are proposing to install in-line booster pump stations to take suction directly from the City of Austin's distribution. This is to correct low pressure problems being encountered by the North Austin MUD No. 1 (MUD) in their south pressure plane as a result of adequate pressure maintenance facilities to meet peak hour customer demands. Based on our review, **we are granting a temporary exception for the two proposed in-line booster pump stations to take suction from the City of Austin's distribution under the following conditions:**

1. Both in-line booster pump stations must be equipped with automatic pressure cut-off devices located on the suction side of the pumps so that the pumps will become inoperable if the suction side pressure drops below 20 pounds per square-inch (psi)
2. Both in-line booster pump stations must be equipped with continuous pressure recording devices on the suction side of the pumps. These devices must be equipped with emergency power backup in the event of loss of normal power.

P.O. Box 13087 • Austin, Texas 78711-3087 • 512/239-1000 • Internet address: www.tceq.state.tx.us

3. At any time the continuous pressure recorders indicate a suction pressure of less than 20 psi during normal operating conditions, the MUD this temporary exception shall be revoked. At that time the MUD must take immediate action to submit engineering plans and specifications for TCEQ review and approval for properly sized storage tanks for the booster pumps to take suction from and pressure maintenance facilities as specified in 30 TAC §290.44(d)(2). The MUD must begin construction of the facilities within 30 days of receiving written TCEQ approval to construct.
4. This exception will expire in one year from the date of this letter. If an extension is needed, it must be submitted in writing with documentation verifying that compliance with TCEQ's minimum capacity requirements is being made by either a written agreement with the City of Austin or the construction of the MUD's on storage and pressure maintenance facilities.

Please note that the granting of the above exception is **not** an exception to the TCEQ's minimum requirement that system's serving greater 2,500 connections provide at least 100 gallons of elevated storage capacity per connection for each pressure plane as specified in 30 TAC §290.45. We do understand that the MUD has a written agreement with the City of Austin to meet all capacity requirements. Also, we understand that discussions are underway between the MUD and the City of Austin to resolve the current lack of pressure maintenance facilities under all customer demand conditions. Based on your submittal, the City of Austin's elevated storage tanks will continue to provide emergency flow and pressure (20 psi) through the four proposed check valves during the event of the loss of normal power. Therefore, **we are granting a one year temporary exception to this requirement under the following conditions:**

1. All of the conditions for the in-line booster pump exception are met.
2. There is not an increase in distribution line leaks or plumbing failures on the customers' sides of the meters due to surge pressures.

The TCEQ's definition of elevated storage is that water store at least 80 feet above the highest connection on the pressure plane. Based on the submitted pressure readings recorded below 30 psi within the MUD's south pressure plane, it would indicate that the possibility of a low water level during demand periods less than this 80-foot mark. You raised the concern that the City of Austin's customers in the adjacent service area may also be experiencing low pressures during peak demand periods. We are passing this information on to our Austin Regional Office staff.

It is noted that the MUD is proposing to install checks at the two interconnections not to be equipped with in-line booster pumps and in bypass lines at the in-line booster pump stations. This is to prevent the flow of water out of the MUD's system and a reduction of pressure and not for cross-connection protection. The TCEQ staff agree's that there has not been a historical concern for the existence of potential sources of pollution within the MUD's system that would require the interconnections to be through air-gaps. The installation of the checks and in-line booster pumps does not change this condition. The MUD should continue to maintain an adequate cross-connection and customer service inspection program in place.

The TCEQ's concern is for the potential of the in-line booster pumps to create backflow/back-siphonage conditions on the City of Austin's mains feeding water to the in-line booster pump stations under reduced pressures on this lines. This is the reason the TCEQ considers in-line booster pumps a temporary solution where water demand has outgrown the provided storage and pressure maintenance facilities until a proper pressure model can be developed for modifications to a system that meet the TCEQ's minimum requirements.

The submittal consisted of an engineering report, nine sheets of engineering drawings and technical specifications. The approved project is a booster pump station consisting of.

- Two 2,200 g.p.m. at 55 feet total dynamic head (TDH) variable speed centrifugal pumps,
- Three 1,800 g.p.m. at 55 feet total dynamic head (TDH) variable speed centrifugal pumps
- 106 linear feet (l.f.) of 12-inch ductile iron (DI) AWWA C151 waterline with valves, and fittings; and,
- Electrical controls, fencing and related appurtenances.

The North Pump Station will be located at the northwest corner of Tamayo Drive and Palmer Lane. The South Pump

Mr. David Malish, P. E.
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August 8, 2005

Station will be located at the southwest corner of Dallas Drive and Palmer Lane. The Austin Water and Waste Water Utility public water supply system provides water treatment for the system.

An appointed engineer must notify the TCEQ's Region 11 Office at (512) 339-2929 when construction will start.

Please keep in mind that upon completion of the water works project, the engineer or owner will notify the commission's Water Supply Division, in writing, as to its completion and attest to the fact that the completed work is substantially according to the plans and change orders on file with the commission as required in §290.39(h)(3) of the Rules.

Please refer to the Utility Technical Review Team's Log No. 200506-065 in all correspondence for this project. This will help complete our review and prevent it from being considered a new project.

Please complete a copy of the most current Public Water System Plan Review Submittal form for future submittal to TCEQ for review of improvements to a Public Water System. Every blank on the form must be completed to minimize any delays in review of your project. The document is available on our WEB site at the address shown below.

<http://www.tceq.state.tx.us/permitting/waterperm/ud/sf.pdf>

For future reference, you can review part of the Utility Technical Review Team's database to see if we have received your project. This is available on the TCEQ's homepage on the Internet at the following address:

http://www.tceq.state.tx.us/assets/public/permitting/watersupply/ud/planrev_list.html

You can download most of the well construction checklists and the latest revision of Chapter 290 "Rules and Regulations for Public Water Systems" from this site.

If you have any questions please contact me at (512)239-6970 or the Internet address: "DLAUGHLI@tceq.state.tx.us" or if by correspondence, include MC 153 in the letterhead address below.

Sincerely,



David D. Laughlin, P.E.
Utility Technical Review Team
Water Supply Division MC-153

DDL/mmg

cc: North Austin MUD No. 1 - Attn.: Eco Resources, 9511 620 N, Austin, TX 78726
TCEQ Central Records PWS File #2270226
TCEQ Technical Review & Oversight Team - Attn.: Ms. Marlo Berg, P.E.
TCEQ Region No. 11 Office - Austin (w/approved materials)

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



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File PWS 2270226/CO
RN 10167116
CN 600890065

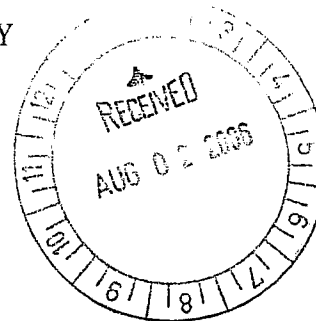
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 25, 2006

Mr. David Malish, P.E.
Murfee Engineering Company, Inc.
1101 Capital of Texas highway South, Bld. D Suite 110
Austin, Texas 78746-6482

SUBJECT: Exception request for the use of in-line booster pumps
North Austin MUD No. 1 - PWS I.D. # 2270226
Travis County, Texas



Dear Mr. Malish:

We received your letter dated June 20, 2006 requesting revision of the condition to an exception granted previously to the Texas Commission on Environmental Quality's (TCEQ) requirement 30 TAC §290.44(d)(2), that booster pumps are to take suction from storage tanks. Your letter included a copy of a May 11, 2006 letter from the City of Austin to the North Austin MUD No. 1 describing the City's agreement to approve plans for the in-line booster pump and the plan to build a permanent solution to the issue in the near future. The exception information in this letter will replace, not supplement the exception information contained in our letter dated August 8, 2005.

You are proposing to install in-line booster pump stations to take suction directly from the City of Austin's distribution. This is to temporarily correct low pressure problems being encountered by the North Austin MUD No. 1 (MUD) in their south pressure plane. **Based on our review, we are revising the conditions to the previously granted temporary exception for the two proposed in-line booster pump stations under the following conditions:**

1. Both in-line booster pump stations must be equipped with automatic pressure cut-off devices located on the suction side of the pumps so that the pumps will become inoperable if the suction side pressure drops below 20 pounds per square-inch (psi). These cut-off devices must be tested to assure accuracy before installation and each year thereafter.
2. Both in-line booster pump stations must be equipped with continuous pressure recording devices on the suction side of the pumps. The pressure sensors and devices must be equipped with emergency power backup in the event of loss of normal power.
3. At any time the continuous pressure recorders indicate a suction pressure of less than 20 psi during normal operating conditions, this temporary exception shall be revoked. At that time, the MUD must take immediate action to submit engineering plans and specifications for TCEQ review and approval for properly sized storage tanks for the booster pumps to take suction from and pressure maintenance facilities as specified in 30 TAC §290.44(d)(2). The MUD must begin construction of the facilities within 30 days of receiving written TCEQ approval to construct.

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Mr. David Malish, P.E.

Page 2

July 25, 2006

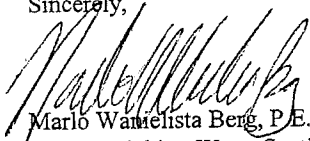
4. This exception will expire in **three years** from the date of this letter. At that time an extension can be requested. The request must be submitted in writing with documentation showing progress towards a permanent solution for compliance with TCEQ's minimum capacity requirements. Progress can be shown by providing plans for the discussed 84" water main or any other permanent operating or infrastructure improvements that will eliminate the need for the in-booster pumps.

From discussions between the City of Austin and North Austin MUD No. 1, it appears there is a disagreement concerning what the contract between the two entities includes. The two entities need to have a discussion and come to a joint agreement on this issue. One of the issues is an understanding of which party is responsible for providing the required high service, elevated storage and total storage capacities for North Austin MUD No. 1. Please contact us when a joint resolution has been reached.

It is noted that the MUD is proposing to install checks at the two interconnections not to be equipped with in-line booster pumps and in bypass lines at the in-line booster pump stations. This is to prevent the flow of water out of the MUD's system and a reduction of pressure and not for cross-connection protection. The TCEQ staff agrees that there has not been a historical concern for the existence of potential sources of pollution within the MUD's system that would require the interconnections to be through air-gaps. The installation of the checks and in-line booster pumps does not change this condition. The MUD should continue to maintain an adequate cross-connection and customer service inspection program in place.

Should you have additional questions or comments concerning this letter, or if we may be of further assistance, please contact us at the letterhead's address or me by telephone at (512) 239-6967.

Sincerely,



Mario Wamelist Berg, P.E.
Public Drinking Water Section (MC 155)
Water Supply Division

MWB/ac

cc: TCEQ Austin Regional Office - 11
Mr. David Laughlin, P.E., TCEQ Utilities Technical Review Team (MC 153)
Mr. James Weddell, P.E., TCEQ Technical Review and Oversight Team (MC 155)
Mr. Buck Henderson, TCEQ Public Drinking Water Section (MC 155)
Mr. Doug Holcomb, P.E., TCEQ Utilities and Districts Section (MC 155)
Mr. Michael Cowan, TCEQ Water Supply Division (MC 155)
Mr. Bart Jennings, Austin Water Utility
North Austin MUD No. 1, Attn: Eco Resources, 9511 620 N, Austin, TX 78726

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 10th day of June, 1994.

Date: 6/10/94

CITY OF AUSTIN, TEXAS

By: Jesus Garza

Its: Acting City Manager

ATTEST:

Betty A. Brown
Betty A. 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. MICHAEL
Printed Name: TERRY E. MICHAEL
Title: Vice President