

(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)(i)(a) and (c)(i)(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)(i)(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.

(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

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;

- (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

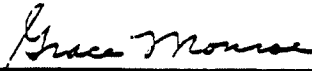
shall be of no significance or effect as regards the legality thereof and neither the City nor attorneys approving the Series 1982 Bonds as to legality are to be held responsible for CLSIP numbers incorrectly printed thereon.

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.

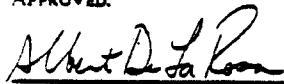
PASSED AND APPROVED, this


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

P-NA00656

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Exhibit A

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

1. \$593,000,000 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.

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 §
 § KNOW ALL MEN BY THESE PRESENTS:
 COUNTIES OF TRAVIS §
 §
 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 Contratt 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

X

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.

X

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.

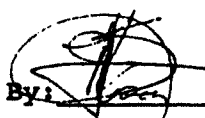
IN WITNESS WHEREOF, the City and the District, acting under authority of their respective governing bodies, and Milwood and SASA have caused multiple copies of this Agreement to be duly executed, each of which shall be of equal dignity, all as of the ____ day of _____, 1989.

THE CITY OF AUSTIN, TEXAS

By: 

City Manager

APPROVED AS TO FORM:

By: 

As to Susan H. 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

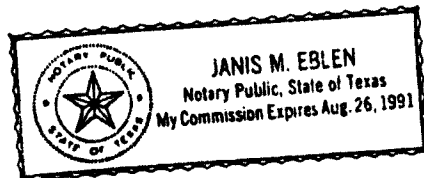
SAN ANTONIO SAVINGS
ASSOCIATION, a Texas financial
institution

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.



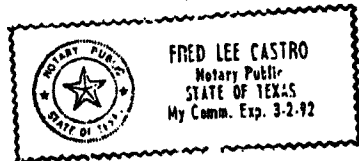
Janis M. Eblen
Notary Public, State of Texas

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.



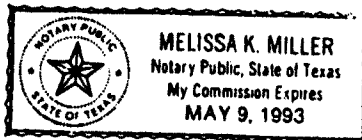
Fred Lee Castro
Notary Public, State of Texas

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.



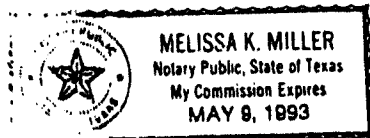
Melissa K. Miller
Notary Public, State of Texas

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.



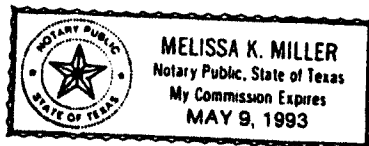
Melissa K. Miller
Notary Public, State of Texas

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.



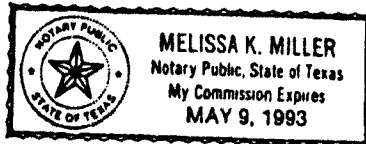
Patricia L. Beard
Notary Public, State of Texas

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

"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"

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTIES OF TRAVIS §
 §
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 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 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 area;

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 Mains and to operate and maintain the Mains upon such dedication by the District and to reserve adequate capacity in the Mains for the District's use to the District's customers within its boundaries. 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.

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 and engineering costs of the 16-inch main shall be paid by the City. The District agrees to act as the project manager and shall obtain engineering services for the design and construction of the 16-inch main. The City agrees to enter into a construction contract for the project and to enter into an engineering services agreement for payment of the design and contract administration of the project. The District agrees to assist the City in obtaining easements for the 16-inch main. The City agrees that 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 or, if necessary, condemnation. The City further 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 or other special 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 a total of 8,333 Living Unit Equivalents ("L.U.E.s"), as that term is defined by City ordinance, of water capacity to the District and its customers of which 1,800 L.U.E.s are reserved for the 177 acre tract owned by SASA.

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

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

4.04 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.

4.05 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.

4.06 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.

4.07 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 _____, 1988.

NORTHWEST CROSSING

LOCATION:

Northwest Crossing is located adjacent to the south side of F.M. 620 approximately 1.8 miles east of U.S. 183 and approximately 0.3 miles west of the proposed Parmer Lane/F.M. 620 intersection (see Location Maps). The site contains a total of 169.2 acres which lies in Williamson County, within the City of Austin 2-mile E.T.J., and within the boundaries of the North Austin M.U.D. No. One. A strip of land approximately 50 feet in width adjacent to F.M. 620 is within a City of Austin limited purpose annexation area.

TOPOGRAPHY:

The site is flat with a gentle slope down from north to south averaging from 1 to 2 percent (see enclosed Preliminary Plan).

UTILITIES:

Water: Water service is supplied by the North Austin M.U.D. No. One. Water service via a 12-inch diameter line in Briarwick Lane is currently serving the tract from the east. A 24-inch diameter water line is planned to be built along F.M. 620 to serve the tract from the west and provide a "looped" system. This 24-inch line should be in place by early 1989.

Wastewater: Wastewater service is also supplied by the North Austin M.U.D. No. One. Wastewater service to the tract is currently through an 18-inch diameter line in Briarwick Lane. This line is sized to service the entire tract at full built-out.

Gas: The gas supplier is Lone Star Gas. A 6-inch diameter gas line exists on the south side of F.M. 620 along the entire frontage of this tract. Another 6-inch diameter line traverses the tract from north to south. This line is in the process of being relocated into the Northwest Parkway right-of-way.

Electric: The City of Austin provides electric service to the tract. The nearest electric substation is the Jollyville station (see Jollyville Substation map) and is approximately 0.5 miles north of the tract.

Telephone: Telephone service is provided by Southwestern Bell. Overhead service exists along F.M. 620.

NBMUD 1
Brocky Res. Assoc
CORA vs B.C.WC101

③ - Cost Est. 14" F.M. to
Contract Crock
① - Def. 3000 gpm / relative Pump Times...

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

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

This agreement ("Agreement") amending "Agreement Concerning Creation and Operation of North Austin Municipal Utility District No. 1" and "Utility Construction Contract Between the City of Austin and North Austin Municipal Utility District No. 1" is made and entered into by and between 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, Texas (the "City"), a home-rule city located in Travis and Williamson Counties, Texas; 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"), a subsequent holder of title to the certain tract of 177 acres within the boundaries of the District.

RECITALS

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 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 certain "Utility Construction Contract Between the City of Austin, Texas and North Austin Municipal District No. 1" (the "Construction Contract") on February 21, 1984 and certain amendments thereto, which provides for, among other things, the provision of water and wastewater utility services and the financing for utility system improvements for same through the issuance of contract revenue bonds; and

WHEREAS, the City has entered into certain agreements with Brushy Creek Water Control and Improvement District No. 1 ("Brushy Creek") and others whereby it has agreed to participate in the Brushy Creek Regional Wastewater, Collection, Treatment and Disposal System (the "Regional System"); and

WHEREAS, the City now desires to fulfill its obligations to provide permanent wastewater service to a portion of the District located within the Lake Creek Drainage Basin through the City's participation in the Regional System rather than through the provision of such service from the City's Walnut Creek Wastewater Treatment Plant and additional extensions of the City's collection system to that plant; and

WHEREAS, the City additionally desires to provide water and wastewater to property owned by the 183/620 Group in the Highway 183 area; and

WHEREAS, additional off-site facilities must be acquired and/or constructed in order to provide service from the Regional System to the District and the 183/620 Group; and

WHEREAS, the Consent Agreement and Construction Contract contain certain District financial obligations which the parties now desire to amend or delete;

NOW, THEREFORE, in order to provide for wastewater system improvements for the entire District, and to amend or delete certain District financial obligations, the parties agree as follows:

I.

PRIOR AGREEMENTS

1.01 Provision of Wastewater Utility Service and System Improvements.

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

1. Temporary Lift Station and Force Main System (from the District to Bull Creek Lateral "A"); and

2. Permanent Wastewater System, including Anderson Mill and Forest North (from the District to the Bull Creek Interceptor), (all hereinafter referred to as "Incomplete Project Items").

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" and to "receive, treat, and dispose of all sewage...collected by the District and delivered...into the City's sanitary sewer trunk line, as extended by the District." In consideration for such water and wastewater service, the District, pursuant to Article I.B. of the Consent Agreement and subject to Texas Water Commission approval, agreed to oversize and/or extend certain City facilities existing at that time.

1.02 Ownership and Operation of Project. The District and the City agreed, pursuant to Article IV of the Construction Contract, that upon final completion the Project would be dedicated to the City and, following City acceptance, the City would be responsible for Project operation and maintenance.

1.03 Construction Financing. In order to finance the cost of acquiring and constructing the Project, the City authorized the District and the District agreed to issue bonds and bond anticipation notes (both hereinafter referred to as "Bonds") in amounts necessary to pay "principal, interest...agents' fees and other charges and expenses [accruing] in connection with the payment and discharge of the Bonds." The City, in consideration of the District's constructing and/or acquiring the Project and for conveying same to the City, agreed to repay certain costs. The terms and conditions of such payments are set forth in Article V of the Construction Contract.

II.

REVISIONS TO THE PROJECT

2.01 Regional System. The City is a participant in the Regional System pursuant to the terms and conditions set forth in that certain agreement entitled "Wastewater Disposal Contract" dated _____, 1988, by and between the City, Brushy Creek, and the City of Round Rock. Pursuant to that Wastewater Disposal Contract, the City hereby represents that it has reserved capacity adequate to provide wastewater utility service to the District to the extent that the District is not already utilizing service guaranteed pursuant to the Consent Agreement and Construction Contract through the Walnut Creek Wastewater Treatment Plant. The City further represents that it has entered into contracts with other entities whereby the Regional System will receive and treat wastewater from City customers. WCTD

2.02 Duties with Regard to Incomplete Project Items. Upon the execution of this Agreement by all parties and the approval of the Texas Water Commission, the parties agree that the District shall have no further obligations with regard to acquisition, construction and/or financing of Incomplete Project Items, including but not limited to the duties set forth in Article I hereinabove. It is specifically acknowledged and understood that approval of the change in plans and expenditure of funds must receive approval of the Texas Water Commission. All duties and obligations herein are contingent upon the receipt of such approval.

2.03 Walnut Creek Service. The parties acknowledge that the District has already acquired and/or constructed certain wastewater utility system improvements necessary to provide for wastewater treatment and disposal through the Walnut Creek Wastewater Treatment Plant and, to the extent the District is currently receiving such service and for land yet to be developed within the Rattan Creek Drainage Basin, this Agreement shall not affect such service nor provide for alternate utility service. However, to the extent that the City has not furnished the level of wastewater utility service for District property located in the Lake Creek Drainage Basin pursuant to the Consent Agreement and Construction Contract, such service shall be provided by the City in its role as a participant in the Regional System.

2.04 Revised Project. The parties acknowledge that, in order to provide for wastewater transmission, treatment and disposal through the Regional System, certain wastewater system improvements not contemplated in the Consent Agreement and Construction Contract must be acquired and/or constructed (the "Revised Project") by the District and that certain facilities must also be completed by the Regional System. In consideration for the City's reservation of capacity to the District set forth in this Article, the District agrees to provide certain amounts of funding to construct those sanitary sewer main extensions and improvements described in Exhibit "A", attached hereto and incorporated herein by reference (the "Revised Project Facilities"). It is specifically understood and agreed that the District shall have no obligation to expend

funds in excess of the remaining proceeds of the outstanding contract revenue bonds. The funding of costs to construct the Revised Project Facilities shall be provided as set forth in Section 5.03 below. The City represents that the items identified on Exhibit "A" comprise the only off-site facilities to be constructed by the District necessary for the City to provide wastewater service to the District through the Regional System. The exact alignment and configuration of such extensions and the exact location and configuration of improvements may vary depending on the final engineering design. Final design shall be approved by the City, the District, the Commission and, with regard to Regional System improvements, by Brushy Creek.

2.05 Reservation of Capacity. The City and the District acknowledge and agree that the City has reserved water and wastewater capacity adequate to provide service to the property within the District for domestic and commercial purposes. The City and the District further acknowledge and agree that the provision of adequate permanent wastewater capacity for the entire District is dependent upon the completion of the wastewater improvements of the Project or other improvements to the City's wastewater system. The parties understand and acknowledge that the Regional System has not yet been constructed and that the District must have adequate wastewater capacity at all times for continued growth and adequate service to existing customers. Therefore, the parties agree that, upon the District's agreement to fund improvements for the Regional System and to fund the Revised Project with money that would have

been otherwise used to complete the original Project wastewater improvements, the City shall guarantee that any and all other wastewater improvements necessary to allow the District to utilize wastewater capacity when required to provide adequate service to customers of the District shall be funded by the City. In the event that the Regional System is not anticipated to be completed and operational by such time as is necessary to provide the District with uninterrupted wastewater service for existing and new customers, alternate wastewater improvements will need to be constructed to provide adequate wastewater service to the District. The parties agree that the determination as to whether or not alternative wastewater improvements must be built shall be made on the basis of actual flows in the 20-inch gravity wastewater interceptor (Interceptor") shown on Exhibit "C" attached hereto.

The parties acknowledge and understand that the District has only a limited amount of money with which to fund the permanent wastewater utility improvements for full build-out of the District. At a certain point in time the District or the City through the Regional System must begin construction of such improvements. The District and the City desire to have the District's service area within the Lake Creek Drainage Basin served through the Regional System. However, the provision of such service must be available to the District at such times as to accommodate continued build-out of the District. In the event all segments of the Regional System facilities necessary to serve the District are under construction prior to the time that flow monitoring data set forth

below require construction of permanent improvements for ultimate build-out, the District shall participate in the funding of the Regional System through its construction of the Revised Project and shall receive service through Austin's participation in the Regional System. In the event that all of the necessary Regional System Improvements are not under construction prior to the time flow monitoring data set forth below require the District to commence design and construction of permanent improvements for ultimate build-out to serve the District, the District shall proceed to fund such alternate wastewater improvements, shall not be required to participate in the funding of the Revised Project and shall receive necessary capacity from the City through the City's Walnut Creek System.

The City agrees to make a determination immediately as to the current flows and capacity available within the Interceptor for planning and monitoring purposes. The City shall provide the results of such analysis to the District. Further, the City agrees to monitor at its cost the capacity within the Interceptor on an ongoing basis. The City and the District shall jointly analyze the flows recorded within the Interceptor on a monthly basis. When flow monitoring data indicates that flows in the upper portion of the Interceptor, including 3000 gallons per minute of pump over flows, are approaching 40% line capacity at peak dry weather flows and 60% line capacity at wet weather flows, design shall commence for 1,195 feet of 14-inch gravity main to relieve wastewater surcharging and to provide adequate continued capacity. At such

time as flow monitoring data indicates peak dry weather flows of 50% or peak wet weather flows of 70% in the upper reaches of the Interceptor, construction of the 1195 feet of 14-inch gravity main shall commence. When flow monitoring indicates peak dry weather flows of 60% or 80% of wet weather capacity within the lower reaches of the Interceptor and if all necessary Regional System Improvements are not under construction, design shall commence on approximately 17,600 feet of 24-inch force main to the 30-inch Walnut Creek Interceptor. At such time as flow monitoring data indicates the lower reaches at the Interceptor are flowing at 70% of peak dry weather capacity and 90% of wet weather capacity and if all necessary Regional System Improvements are not under construction, construction shall be commenced by the District to build the 17,600 feet of 24-inch force main and shall be funded through the existing contract revenue bond funds. The term "under construction" as used in this Section in regard to the Regional System shall mean that fixed price construction contracts have been entered into between the Regional System and the contractor, notice to proceed has been issued to the contractor, necessary funds have been designated and are available and all easements and necessary permits have been acquired.

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In the event construction of the 24-inch force main to the 30-inch Walnut Creek Interceptor becomes necessary under the above-stated criteria, such 24-inch force main shall become the permanent wastewater collection system for the District. The parties agree that moratoriums against additional connections to the City

wastewater system is not a desirable method to control flows within the Interceptor or to prevent the need for construction of interim or permanent improvements to the Walnut Creek System. The City agrees that it shall not utilize moratoriums or other limitations in service to new or existing customers to reduce or contain wastewater flows in the Interceptor.

2.06 City Billing Procedures. The City and the District agree that the City will continue to bill the District for wastewater service pursuant to the Consent Agreement. The District shall remain a customer of the City for wastewater service and the City shall be the party with whom there is a direct relationship with the Regional System.

III.

PROJECT MANAGEMENT

3.01 Project Management.

A. The District and the City agree that management of the Revised Project shall be by the District. It is specifically understood and agreed that all bidding and awarding of construction contracts shall be in compliance with the competitive bidding requirements of the Texas Water Commission. The District shall pay from the existing contract revenue bond proceeds when due all costs of constructing or installing the Revised Project as set forth in Section 5.03 below.

B. The District shall obtain the City's approval of the plans and specifications for the Revised Project Facilities. The District shall obtain the City's approval of the award of all

contracts for construction of the Revised Project Facilities and shall file with the Texas Water Commission all construction drawings, plans and specifications, contract documents, and supporting engineering data for the construction and installation of the Revised Project Facilities, together with evidence that the materials have been filed with and approved by both the District and the City.

C. The District Engineer shall serve as "Resident Project Representative" who shall (i) perform construction contract administration by monitoring the day-to-day activities of the construction of the Revised Project and pursue the timely completion of the Revised Project subject to the weather, the availability of adequate labor, machinery and materials, and other factors beyond the control of the District; (ii) on a routine basis perform or supervise construction staking and resident project representation during construction of the Revised Project; and (iii) inspect and approve Revised Project Facilities pursuant to the standards set forth in the plans and specifications.

D. The City reserves the right to inspect the construction of all portions of the Revised Project. The City shall not seek to impose or collect inspection fees on the District for inspecting any portion of the Revised Project.

3.05 Revised Project Facilities. Acquisition of permits, licenses, easements, rights-of-way, and land required for the construction, operation, maintenance, repair, replacement and removal of the Revised Project shall be the duty of the District.

The District shall be authorized to employ any necessary persons to acquire needed easements, rights-of-way and land on which to locate Revised Project Facilities to the extent that same is not provided by the City or the District. The cost of easements, rights-of-way, and/or land shall not exceed the fair market value of the easements, rights-of-way or land, plus damages, if any, to the remaining portion of the person's property that is not acquired.

IV

OPERATION AND MAINTENANCE

4.01 Dedication. It is understood and agreed that the Revised Project Facilities, upon final completion and/or construction of same shall be dedicated either to the City or Brushy Creek pursuant to the schedule attached hereto as Exhibit "____" and incorporated herein for all purposes. Upon acceptance thereof, all right, title and interest of the District in and to the dedicated Revised Project Facility shall vest in the designated entity and such entity shall thereafter be responsible for the maintenance and operation of the dedicated Revised Project Facility at its sole expense.

4.02 Off-Site Facilities. The City and/or Brushy Creek will be responsible for operation and maintenance of all off-site facilities at such entity's sole expense as designated on Exhibit "____".

V.

FINANCING

5.01 Payment of Costs. The District shall immediately apply to the Texas Water Commission for permission to use available District contract revenue bond proceeds from the District's bond sale of December, 1985, toward the Construction Costs of the Revised Project and, as an alternative as set forth in Section 2.05 above, for the construction of alternative wastewater improvements if necessary. The District shall retain possession of the contract revenue bonds proceeds after approval of the Revised Project by the Texas Water Commission. Upon the commencement of construction of all necessary facilities of the Regional System to provide wastewater service to the District which are set forth on Exhibit "____" attached hereto, the District will commence design and then construction of the 30-inch force main to the Regional System. In the event additional interim capacity needs of the District require the design and construction of the approximate 1195 feet of 14-inch gravity main set forth in Section 2.05, the District shall be authorized to fund such design and construction from the contract revenue bond funds in the event the City fails to provide funds for the 14-inch gravity main. Should the design and/or construction of the 24-inch force main to the Walnut Creek Interceptor become necessary under the terms of this Agreement, the costs of the 24-inch force main shall be paid from contract revenue bond proceeds.

5.02 Issuance of Bonds. The District and the City agree that the District shall not be obligated to issue additional contract revenue bonds to finance the cost of acquisition and/or construction of Revised Project Facilities.

5.03 Financing of Revised Project Cost. The District shall pay for the costs of design and construction of the Revised Project improvements (the "Construction Costs") as set forth on Exhibit "___" attached hereto and incorporated herein for all purposes. It is specifically understood and agreed that to the extent that the Construction Costs of the Revised Project exceed the amounts available from the outstanding contract bond proceeds, the City shall fund the additional amounts. The Construction Costs shall include all reasonable and actual costs for design, engineering, surveying, easements, materials, labor, construction, legal fees associated with the costs of this Agreement and any construction disputes, advertising for construction bids, auditing, administrative, materials testing, construction inspection arising in connection with obtaining governmental approvals, certificates or permits required as a part of the construction, interest, resident project representation, insurance, taxes, and any miscellaneous costs attributable to the construction of the Revised Project.

5.04 Payment of Pro Rata Shares. The City and the District acknowledge and agree that the District has constructed a 24-inch wastewater force main generally depicted on Exhibit "___" hereto, which was to provide service for the District to the City Walnut

Creek Wastewater Treatment System and will not be utilized by the District. A portion of the 24-inch wastewater force main described in Exhibit "F" hereto has been converted and shall be used as a water main within the City's water system, which main shall provide service to the City customers including the 183/620 Group. The City and the District have agreed that the sum of Three Hundred Twenty-Four Thousand Two Hundred Seven and 00/100 Dollars (\$324,207.00) is the fair value for the converted main and the parties have placed the funds in escrow. Upon execution of this Agreement the parties will concurrently execute a release of the escrowed amount to the District. A portion of the 24-inch wastewater force main is expected to be abandoned because of a partial conversion of the wastewater main to a water main. It is understood by the parties that such force main was financed in part by contract revenue bonds and will be of no further use to the District. In consideration for the District's agreement to allow the conversion and abandonment of portions of the force main, the City hereby agrees to assume the debt service payments upon an additional Three Hundred Thirty-Eight Thousand Two Hundred Eighty-Three and 00/100 Dollars (\$338,283.00) of the outstanding \$16,300,000.00 contract revenue bond issue. The pro rata debt service payments between the City and the District shall be

recalculated to reflect this assumption of debt service by the City. The District shall be allowed to continue to use the portion of the force main to be abandoned so long as the District requires its use for interim wastewater service to the Walnut Creek Wastewater Plant.

VI.

MISCELLANEOUS PROVISIONS

6.01 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.

6.02 Assignment of Agreement. Neither the District nor the City shall assign this Agreement without the prior written consent of both parties hereto.

6.03 Term or Agreement. This Agreement shall be in force and effect until the Revised Project is completed and accepted in whole by the City and Brushy Creek, pursuant to the terms hereof, at which time this Agreement shall terminate; provided, however, that in no event shall the terms of this Agreement exceed ten (10) years.

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

6.05 Benefits of Agreement. This Agreement is for the benefit of the City and the District, and shall not be construed to confer any benefits on any other party except as expressly provided herein.

6.06 Severability and Enforceability. In the event that any provision hereof is subsequently determined to be invalid, illegal or unenforceable, such provision shall be severed from the remaining portions of this Agreement and the remainder of the Agreement shall remain in full force and effect. If the Texas Water Commission or any court of competent jurisdiction determines that any portion of this Agreement is beyond the scope or authority of the Texas Water Code or other applicable Texas law, the City and the District agree to immediately amend this Agreement so as to conform to such ruling or decision in the manner most consistent with the original intent hereof.

6.07 Entire Agreement. The above and foregoing Agreement, including the 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 both parties.

IN WITNESS WHEREOF, the City and the District, acting under authority of their respective governing bodies, 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: _____,
City Attorney

NORTH AUSTIN MUNICIPAL UTILITY
DISTRICT NO. 1

By: _____,
President, Board of Directors

ATTEST:

By: _____,
Secretary, Board of
Directors

589-65.3