



Control Number: 44010



Item Number: 29

Addendum StartPage: 0

# WEBB & WEBB

ATTORNEYS AT LAW  
712 SOUTHWEST TOWER

211 EAST SEVENTH STREET  
AUSTIN, TEXAS 78701

STEPHEN P. WEBB  
GWENDOLYN HILL WEBB

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2015 MAR 18 PM 4:47

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TELEPHONE: (512) 472-9990  
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March 18, 2015

Central Records Filing Clerk  
Public Utility Commission of Texas  
1701 N. Congress Ave.  
P.O. Box 13326  
Austin Texas 78711-3326

**Re:** SOAH Docket No. 473-15-2123.WS, PUC Docket No. 44010  
Petition of the Ratepayers of the River Place Appealing the Retail Water and  
Wastewater Rates of the City of Austin


**Subject:** *City of Austin's Comments, Concerns and Responses to Public Utility Commission  
Staff's First Request for Information to the City of Austin*

Dear Central Records Filing Clerk,

Please be advised that today while filing *City of Austin's Comments, Concerns and Responses to Public Utility Commission Staff's First Request for Information to the City of Austin* (Tracking Number UWRK672Q) via PUC Filer, I received an error message stating that the PDF file was too large and had to be submitted electronically. Sierra Herrera of my staff and "Rosie," an assistant in the Central Records Division, spoke about that error message. "Rosie" advised Austin to provide four (4) CDs with the material that was too large to file via PUC Filer. Therefore, enclosed are four CDs of the entire 1,246 page Response that could not be uploaded, and one copy each of the City of Austin response to Staff 1-2 and Staff 1-6, which was requested to be provided electronically.

Thank you for your attention to this matter. Please let me know if I can provide further information or assistance.

Sincerely,



Gwendolyn Hill Webb

Counsel for the City of Austin-Austin Water Utility

Enclosures

cc: Hon. Lilo D. Pomerleau, Administrative Law Judge  
Hon. William B. Newchurch, Administrative Law Judge  
State Office of Administrative Hearings  
Ms. Jessica Gray, Attorney for the Public Utility Commission of Texas  
Mr. Randall Wilburn, Attorney for Petitioners

SOAH DOCKET NO. 473-15-2123.WS  
PUC DOCKET NO. 44010

PETITION OF THE RATEPAYERS OF  
THE RIVER PLACE WATER AND  
WASTEWATER SYSTEMS APPEALING  
THE RETAIL WATER AND  
WASTEWATER RATES OF THE  
CITY OF AUSTIN

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BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

RECEIVED  
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**CITY OF AUSTIN'S COMMENTS, CONCERNS AND RESPONSES**  
**TO PUBLIC UTILITY COMMISSION STAFF'S FIRST REQUEST FOR INFORMATION TO**  
**THE CITY OF AUSTIN**

TO: Commission Staff, by and through their counsel of record, Jessica A. Gray and Thomas L. Tynes, Public Utility Commission of Texas, 1701 N. Congress Avenue, PO Box 13326, Austin, Texas 78711.

COMES NOW, the City of Austin, (herein sometimes referred to as "City," "Austin" or "Respondent"), in the above styled and docketed retail water rate appeal proceeding and serves this, its General and Specific Comments, Concerns and Responses to Commission Staff's First Request for Information to the City of Austin, on all parties to this Proceeding.

**I. GENERAL COMMENTS AND CONCERNS REGARDING INSTRUCTIONS**

Some of the information requested is outside of Austin's ownership and control, and, therefore, Austin cannot provide that information under oath. In every case where Austin is not the owner or producer of the documents or records requested, Austin so notes. Additionally, some requests are subject to limitation by Austin's pending Motion to Dismiss. While Austin attempts to provide responses the twin limitations of "information available to the City of Austin at the time the City made the rate increase decision," as well as requesting information related to a yet to be defined "test year" makes it impossible to provide a complete response at this time. Austin provides all information and material below subject to the limitations set forth in each Request.

## **II. GENERAL COMMENTS AND CONCERNS REGARDING DEFINITIONS**

### *Definition of "City of Austin," "the City," or "you."*

Commission Staff's definition of "you," "your," and "City" are improper, overbroad, and on their face unreasonable. Austin cannot be held responsible for "any person purporting to act" on behalf of the City of Austin, because that may be done without Austin's express knowledge or consent. The materials and information produced below is produced by authorized representatives of the City of Austin, acting on behalf of the City of Austin. Other information is not within Austin's knowledge, ownership or control.

### *Definition of "Document."*

Commission Staff's definition of this term is overly broad, harrassive, and at odds with the information requested in the specific Requests for Information, and the limitations set forth in the instructions. Accordingly, Austin provides the materials and information below based on the specific Requests for Information, and not a universe of documents outside of Austin's ownership or control which are unknown are not relied upon by Austin in connection with the issues of this case which may or may not be in the possession of persons "acting or purporting to act" on behalf of Austin.

Additionally, in the absence of definitions provided by Commission Staff, Austin has had to both develop its own definitions and provide a proper response. As stated to PUC Staff Counsel, in the future, it is hoped that PUC Staff will meet and confer with Austin to ensure complete understanding of what is being requested and what is expected as a response. Accordingly, in the answers below, Austin includes its own definition of undefined terms, and explains the limitations of its response.

## **III. SPECIFIC RESPONSES TO REQUESTS FOR INFORMATION SUBJECT TO GENERAL AND SPECIFIC COMMENTS, CONCERNS, RIGHT TO AMEND OR SUPPLEMENT**

Each of these responses is submitted pursuant to applicable law and rules, and each response provided is expressly subject to the general and specific comments, concerns and right to amend or supplement set forth herein. By providing documents in response to a request, Austin does so subject to the specific information requested by Commission Staff, and subject to Austin's general and specific

comments and concerns. Additionally, Austin reserves the right to amend or supplement this response in accordance with applicable rules.

#### IV. RESPONSES TO REQUESTS FOR INFORMATION

Staff 1-1 Please state whether the City completed a cost of service study for the water rate increases for the retail water and wastewater customers of the River Place Water and Wastewater Systems, effective on October 1, 2014 and November 1, 2014, prior to that date.

**Response:** Austin developed the City of Austin cost of service rate methodology, as set forth in the 2008 City of Austin Cost of Service Rate Study, and the City of Austin Cost of Service Rate Model. Austin defines a “cost of service study” as a joint project with Austin and independent expert rate consultants under contract wherein a cost of service rate methodology is developed through a collaborative stakeholder process and then used in subsequent years for the development of each current Fiscal Year’s cost of service rate *MODEL*. The applicable cost of service rate study continues to be the basis of the cost of service rate model in every fiscal year until a new cost of service study is developed through a similar partnership between Austin and independent expert rate consultants.

The City of Austin did not complete a cost of service rate study, for the so called “Retail Water and Wastewater Customers of the River Place Water and Wastewater Systems.” No such customer class exists among the ratepayers of Austin Water Utility. The Austin City Council took no action with respect to the so called “Retail Water and Wastewater Customers of the River Place Water and Wastewater Systems” in connection with any rate setting for Fiscal Year 2013-2014 or Fiscal Year 2014-2015.

*Prepared by or under the direct supervision of: David A. Anders*

Staff 1-2 Please provide copies of any rate studies and other related documentation that was used in determining the rates which were effective on October 1, 2014 and November 1, 2014. Please also provide models used in native format with original formulas intact along with any documented support of the models used. All calculations should be referenced and explained.

**Response:** The term “other related documentation” is not understandable without further explanation.

**In full consideration of Austin’s comments and concerns:**

**Attached hereto is the complete Strategic Partnership Agreement between the City of Austin and the River Place Municipal Utility District, dated September 9, 2009.**

Attached hereto is the 2008 City of Austin Cost of Service Rate Study which defines the methodology Austin uses in establishing Cost of Service water and wastewater rates for all customer classes, including retail water and wastewater utility customers. Please see the response to Staff 1-1, above explaining the use of the 2008 Cost of Service Rate Study defining the methodology used in each fiscal year's cost of service rate model.

The working Cost of Service Rate Model for water and wastewater utility service for Fiscal Year 2013-2014, and Fiscal Year 2014-2015, is attached hereto in a separate zip drive. The working Cost of Service model includes a cost of service model, a Revenue Forecast Model, and a Budget Model, all used by the City of Austin in determining retail water and wastewater rates. Please contact me if you require assistance using the model; Austin Water Utility staff will be happy to provide any assistance needed.

*Prepared by or under the direct supervision of: David A. Anders*

Staff 1-3      Please provide the cost of service using a singular methodology, such as the cash needs method defined in the AWWA M-1 Manual, which is typically used by municipal utilities. For any variations from the methodology used, include a thorough explanation for such variation(s).

**Response:**      See, Item 1-2. Austin uses the Cash Needs method as defined in the AWWA M-1 Manual. The M-1 states:

“Basic revenue requirement components of the cash needs approach include O & M expenses, taxes or transfer payments, debt service payments, contributions to specified reserves, and the cost of capital expenditures that are not debt financed. Depreciation expense is not included within the cash-needs revenue requirement”

*See, Principles of Water Rates, Fees and Charges, Manual of Water Supply Practices, M-1, American Water Works Association, Sixth Edition, 2012, p. 12.*

Austin does not use depreciation expense as part of its annual revenue requirement. Some tables within Austin's cost of service rate model include the term “depreciation.” The reference to depreciation in those tables refers to depreciation as a factor used to allocate debt service costs in Austin's cost of service rate model.

Therefore, the cost of service for water and wastewater utility service is provided by the Cost of Service Rate Model for water and wastewater utility service for Fiscal

**Year 2013-2014 and Fiscal Year 2014-2015, which is provided in Austin's response to Staff 1-2 above.**

***Prepared by or under the direct supervision of: David A. Anders***

Staff 1-4      Please state the test year the City used to set the appealed rates and indicate whether it is historical, budgeted or other.

**Response:**    **Austin is unable to answer this question until such time as the Administrative Law Judges in this case accept jurisdiction and define the terms and the matters at issue in this retail rate appeal.**

**Austin has not used a historical "test year" in the development of its cost of service water and wastewater rates. Austin has used a process where rates are projected for the coming fiscal year using budget data and financial, or revenue, forecast models. The validity of its budgeting and financial forecast models are verified using some known historical costs from the previous fiscal year.**

***Prepared by or under the direct supervision of: David A. Anders***

Staff 1-5      If not provided in the previous request, please provide a Statement of Revenue and Expenses, and changes in fund balance, for the water utility only for the 12- month test period including any rate study which the City utilized in establishing the rates which were effective on October 1, 2014 and November 1, 2014.

**Response:**    **This request is such a compound request that it is not fully understandable by Austin. The reference to the "test period" is not capable of response until such time as the Administrative Law Judges in this case accept jurisdiction and define the terms and the matters at issue in this retail rate appeal.**

**In full consideration of Austin's comments and concerns:**

**In response to this request, Austin provides the following:**

**City of Austin, Texas, Austin Water Utility Water Cost of Service Budget vs. Actual Comparison: FY 2012;**

**City of Austin, Texas, Austin Water Utility Wastewater Cost of Service Budget vs. Actual Comparison: FY 2012;**



**City of Austin, Texas, Austin Water Utility Water Cost of Service Budget vs. Actual Comparison: FY 2013;**

**City of Austin, Texas, Austin Water Utility Wastewater Cost of Service Budget vs. Actual Comparison: FY 2013;**

**City of Austin, Texas, Austin Water Utility Water Cost of Service Budget vs. Close II (unaudited) Comparison: FY 2014;**

**City of Austin, Texas, Austin Water Utility Wastewater Cost of Service Budget vs. Close II (unaudited) Comparison: FY 2014;**

**City of Austin, Texas, Austin Water Utility Water Cost of Service Budget Comparison FY 2012 vs. FY 2013;**

**City of Austin, Texas, Austin Water Utility Wastewater Cost of Service Budget Comparison FY 2012 vs. FY 2013;**

**City of Austin, Texas, Austin Water Utility Water Cost of Service Budget Comparison FY 2013 vs. FY 2014;**

**City of Austin, Texas, Austin Water Utility Wastewater Cost of Service Budget Comparison FY 2013 vs. FY 2014; and**

**City of Austin, Texas, Austin Water Utility Water Cost of Service Budget Comparison FY 2014 vs. FY 2015.**

**Austin provided the 2008 Cost of Service Rate Study, and the Cost of Service Rate Model for Water and Wastewater for Fiscal Years 2014 and 2015, in response to Staff 1-2.**

***Prepared by or under the direct supervision of: David A. Anders***

Staff 1-6      Please provide Statements of Revenue and Expenses, and changes in fund balance for the City for the 12-month test period and two years prior with a comparison of budget to actual.

**Response:**      Austin is unable to identify a "12-month test period" until such time as the Administrative Law Judges in this case accept jurisdiction and define the terms and the matters at issue in this retail rate appeal.

**In full consideration of Austin's comments and concerns:**

**Please see Austin's response to Staff 1-5, above. In response to Staff 1-6, Austin provides the following documents as a Microsoft Excel Spreadsheet.**

**City of Austin, Texas, Austin Water Utility Water Cost of Service Budget vs. Actual Comparison: FY 2012;**

**City of Austin, Texas, Austin Water Utility Wastewater Cost of Service Budget vs. Actual Comparison: FY 2012;**

**City of Austin, Texas, Austin Water Utility Water Cost of Service Budget vs. Actual Comparison: FY 2013;**

**City of Austin, Texas, Austin Water Utility Wastewater Cost of Service Budget vs. Actual Comparison: FY 2013;**

**City of Austin, Texas, Austin Water Utility Water Cost of Service Budget vs. Close II (unaudited) Comparison: FY 2014; and**

**City of Austin, Texas, Austin Water Utility Wastewater Cost of Service Budget vs. Close II (unaudited) Comparison: FY 2014.**

***Prepared by or under the direct supervision of: David A. Anders***

Staff 1-7      Please provide the total number of gallons pumped and billed from the River Place Water and Wastewater System during the 12- month test period.

**Response:**    **Austin is unable to identify a "12-month test period" until such time as the Administrative Law Judges in this case accept jurisdiction and define the terms and the matters at issue in this retail rate appeal.**

**In full consideration of Austin's comments and concerns:**

**Austin obtained information from River Place MUD showing water and wastewater service provided. Austin cannot provide this information under oath, because Austin has no knowledge of the truth of the information.**

***Provided by: David A. Anders***

Staff 1-8      Please provide the number of water and wastewater customers and meter sizes during the 12-month test period for the River Place Water and Wastewater System.

**Response:** Austin is unable to identify a “12-month test period” until such time as the Administrative Law Judges in this case accept jurisdiction and define the terms and the matters at issue in this retail rate appeal.

**In full consideration of Austin’s comments and concerns:**

Before providing service to City of Austin retail customers living in River Place MUD, Austin Water Utility personnel performed a field inspection to determine meter size and locations of water and wastewater service connections for persons receiving service within the territorial limits of River Place MUD.

Austin provides the attached document, entitled River Place MUD July 2014 Master Listing.

*Prepared by or under the direct supervision of: David A. Anders*

Staff 1-9 Please provide a summary of all customers served by the City of Austin as of October 1, 2014 by customer class (inside city, outside city, retail, wholesale, water, wastewater).

**Response:** Austin provides the attached summary of user characteristics dated September, 2014, in response to Staff 1-9.

*Prepared by or under the direct supervision of: David A. Anders*

Staff 1-10 Please provide a detailed list of other income (i.e., tap fees, late fees, reconnect fees, etc.) for the 12-month test period, and one year prior to the test period.

**Response:** Austin is unable to identify a “12-month test period” until such time as the Administrative Law Judges in this case accept jurisdiction and define the terms and the matters at issue in this retail rate appeal.

**In full consideration of Austin’s comments and concerns:**

Austin has attached the City of Austin, Texas, Austin Water Utility, Miscellaneous Revenue statement for several years.

*Prepared by or under the direct supervision of: David A. Anders*

Staff 1-13 Please provide a monthly summary of tax or revenues collected from the retail water and wastewater customers of the River Place Water and Wastewater Systems to pay for any capital improvement or operations and maintenance and/or any cost of service, if any.

**Response:** This question seems to ask for information regarding “taxes” which would only be available from River Place MUD, and not from the City of Austin. Beyond that, the question is not understandable, because it seems to request information from regarding service provided by River Place MUD and their cost of service.

At this time, Austin does not have a summary of revenues received from the so-called Retail Water and Wastewater Customers of River Place Water and Wastewater Systems” because no such customer class exists among the City of Austin ratepayers for water and wastewater utility service.

*Prepared by or under the direct supervision of: David A. Anders*

Staff 1-17 Please provide monthly operations reports for the 12-month test period.

**Response:** Austin is unable to identify a “12-month test period” until such time as the Administrative Law Judges in this case accept jurisdiction and define the terms and the matters at issue in this retail rate appeal. Additionally, Austin assumes that Commission Staff is referring to a document entitled “Monthly Operating Reports” submitted by River Place MUD to the TCEQ.

**In full consideration of Austin’s comments and concerns:**

Austin provides the attached documents, “Surface Water Monthly Operating Reports,” provided by River Place MUD to the Texas Commission on Environmental Quality for a period beginning January 2013 through January 2015. Austin cannot provide these documents under oath because Austin did not prepare these documents and has no knowledge of the truth of the matters asserted within the documents.

*Provided by: David A. Anders*

Staff 1-19 Please provide all documents pertaining to required improvements to meet drinking water standards or water quality standards and any related estimates available to the City at the time the rates which were effective on October 1, 2014 and November 1, 2014 were approved.

**Response:** This request is multifaceted and very confusing. Austin maintains that its cost of service water and wastewater rates were adopted to provide water and wastewater utility service to all customer classes that complies with all applicable law and regulations. Therefore, please see Responses to Staff 1-1 and Staff 1-2, above.

No separate estimates were available to Austin for improvements needed for facilities in River Place MUD in connection with rates effective October 1, 2014. In connection with rates which were effective November 1, 2014, there were some estimates of improvements needed as shown on Austin's response to Staff 1-19, attached hereto.

*Prepared by or under the direct supervision of: David A. Anders*

Staff 1-28 Please provide the City's line loss, and any line loss studies, for the 12-month test period.

**Response:** Austin is unable to identify a "12-month test period" until such time as the Administrative Law Judges in this case accept jurisdiction and define the terms and the matters at issue in this retail rate appeal.

**In full consideration of Austin's comments and concerns:**

Austin provides the attached document entitled: 2013 Water Audit Report, submitted to the Texas Water Development Board for the period 10/1/2012 to 9/30/2013.

*Prepared by or under the direct supervision of: David A. Anders*

Staff 1-29 Please provide a copy of any current contracts between City of Austin and River Place Water and Wastewater systems.

**Response:** See the Strategic Partnership Agreement between the City of Austin and the River Place Municipal Utility District, provided in response above to Staff 1-2.

*Prepared by or under the direct supervision of: David A. Anders*

**SOAH DOCKET NO. 473-15-2123.WS  
PUC DOCKET NO. 44010**

<b>PETITION OF THE RATEPAYERS OF THE RIVER PLACE WATER AND WASTEWATER SYSTEMS APPEALING THE RETAIL WATER AND WASTEWATER RATES OF THE CITY OF AUSTIN</b>	§ § § § § §	<b>BEFORE THE STATE OFFICE  OF  ADMINISTRATIVE HEARINGS</b>
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**AFFIDAVIT OF DAVID A. ANDERS**

On this day, David A. Anders appeared before me, the undersigned notary public, and after I administered an oath to him, upon his oath, he said:

1. My name is David A. Anders, I am more than 21 years of age, and capable of making this Affidavit. The matters contained herein are true and correct and are within my personal knowledge.
2. I am of sound mind and am fully competent to make this Affidavit.
3. I am the Assistant Director, Finance and Business Services of the City of Austin, Austin Water Utility.
4. The following Responses to the Public Utility Commission Staff's First Request for Information to the City of Austin were prepared by me or under my direct supervision. The following responses are presented under oath, as true and correct and within my personal knowledge:

Staff 1-1; Staff 1-2; Staff 1-3; Staff 1-4; Staff 1-5; Staff 1-6; Staff 1-8; Staff 1-9; Staff 1-10; Staff 1-13; Staff 1-19; Staff 1-28; and Staff 1-29.

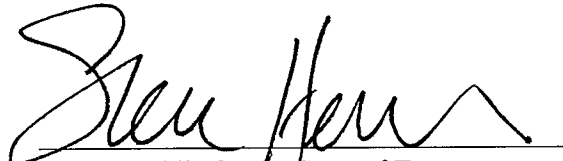
AFFIANT SAYS NOTHING FURTHER.

  
\_\_\_\_\_  
David A. Anders, Affiant

IN THE COUNTY OF TRAVIS, STATE OF TEXAS:

The foregoing Affidavit of David A. Anders was SUBSCRIBED AND SWORN TO before me by David A. Anders on the 18<sup>th</sup> day of March, 2015.



  
Notary Public for the State of Texas

Respectfully submitted,


**KAREN KENNARD,**  
City Attorney

**MEITRA FARHADI**  
Assistant City Attorney

**MARIA SANCHEZ**  
Assistant City Attorney

**WEBB & WEBB**  
712 Southwest Tower  
211 East Seventh Street  
Austin, Texas 78767  
Tel: (512) 472-9990  
Fax: (512) 472-3183

By:

  
Gwendolyn Hill Webb  
State Bar No. 21026300

Stephen P. Webb  
State Bar No. 21033800  
ATTORNEYS FOR CITY OF AUSTIN



## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served via hand delivery, facsimile, electronic mail, overnight mail, US mail and/or Certified Mail Return Receipt Requested on all parties whose names appear on the mailing list below on this 18<sup>th</sup> day of March, 2015.

FOR THE PUBLIC UTILITY COMMISSION:

1701 N. Congress Avenue, 7<sup>th</sup> Floor  
PO Box 13326  
Austin, Texas 78711-3326  
Via Electronic Upload

FOR THE ADMINISTRATIVE LAW JUDGES:

Honorable Lilo D. Pomerleau  
Honorable William B. Newchurch  
Administrative Law Judges  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street, Suite 504  
Austin, Texas 78701  
Phone: 512-475-4993  
Fax: 512-322-2061  
Via Electronic Upload

FOR THE SOAH DOCKET CLERK:

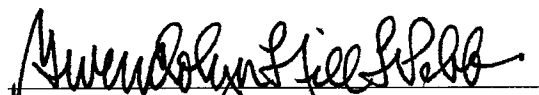
Ms. Monica Luna, Docketing Clerk  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street, Suite 504  
Austin, Texas 78701  
Phone: 512-475-4993  
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FOR PETITIONERS:

Mr. Randall B. Wilburn, Attorney at Law  
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Fax: 512-535-1678  
[rbw@randallwilburnlaw.com](mailto:rbw@randallwilburnlaw.com)

FOR THE PUC STAFF:

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[jessica.gray@puc.texas.gov](mailto:jessica.gray@puc.texas.gov)  
512-936-7228  
Mr. Thomas L. Tynes  
[Thomas.tynes@puc.texas.gov](mailto:Thomas.tynes@puc.texas.gov)  
512-936-7297  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
PO Box 13326  
Austin, Texas 78711-3326  
Phone: 512-936-7228  
Fax: 512-936-7268

  
GWENDOLYN HILL WEBB

# Response to Staff

1-2

## **Table of Contents**

- 1. Strategic Partnership Agreement Between the City of Austin and the River Place Municipal Utility District (“SPA”)**
- 2. Exhibit A to SPA: District Boundaries (Not Included)**
- 3. Exhibit B to SPA: Map of District Boundaries (Not Included)**
- 4. Exhibit C to SPA: Map of Limited and Full-Purpose Annexation Areas (Not Included)**
- 5. Exhibit D to SPA: Agreement for Water and Wastewater Service and Operations Management of Facilities between the City of Austin and the River Place Municipal Utility District (“W/WW Services Agreement”)**
- 6. Attachment 1 to W/WW Services Agreement: Map of Service Area**
- 7. Attachment 2 to W/WW Services Agreement: Conveyed Equipment to the City**
- 8. Attachment 3 to W/WW Services Agreement: Conveyed Water Facilities to the City**
- 9. Attachment 4 to W/WW Services Agreement: Conveyed Wastewater Facilities to the City**
- 10. Attachment 5 to W/WW Services Agreement: Conveyed Easements to the City, 5A through 5M.**
- 11. Attachment 6 to W/WW Services Agreement: District Property Conveyed to the City**
- 12. Attachment 7 to W/WW Services Agreement: Easement Conveyed to City**
- 13. Exhibit E to SPA: List of Amenities to be Maintained by Limited District**
- 14. Exhibit F to SPA: Annexation Service Plan**

**STRATEGIC PARTNERSHIP AGREEMENT BETWEEN  
THE CITY OF AUSTIN AND  
THE RIVER PLACE MUNICIPAL UTILITY DISTRICT**

This Strategic Partnership Agreement Between the City of Austin, Texas and the River Place Municipal Utility District, Travis County, Texas ("SPA") is entered into by the City of Austin ("City"), a municipal corporation, acting by and through its City Manager, and the River Place Municipal Utility District ("District"), acting by and through its Board of Directors, under the authority of Section 43.0751 of the Texas Local Government Code ("Local Government Code").

**RECITALS**

1. The District is a municipal utility district created and operating pursuant to Chapters 49 and 54 of the Texas Water Code. The District encompasses approximately 1,040 acres, more or less. Its boundaries are described in Exhibit "A" and depicted on Exhibit "B" attached to this SPA.
2. The District under normal circumstances does not use ad valorem taxes to fund the operation and maintenance of its Retail Water System and Retail Wastewater System and the District sets its utility rates in such a way that the utility revenues it receives from its Retail Water System and Retail Wastewater System are sufficient to pay its expenses of operating and maintaining the said Retail Water System and Retail Wastewater System.
3. The City is a municipal corporation established by and chartered under Chapter 90, Page 634, of the Special Laws of Texas, 1909, 31st Legislature.
4. On December 31, 2008, the City added the District to its Municipal Annexation Plan with the intention to annex the District, which would result in the dissolution of the District and the City succeeding to all of the District's powers, duties, assets, and obligations.
5. The District and its residents and property owners desire to postpone the City's annexation of the District and to provide benefits to each party that are reasonable and equitable with regard to the other party.
6. The purpose of this SPA is to enter into a strategic partnership agreement regarding the terms and conditions of the annexation of the District by the City in accordance with Section 43.0751 of the Local Government Code and the terms and conditions pursuant to which the District will convert into a limited district at the time of full purpose annexation of the District by the City.

7. The District provided notice of two public hearings concerning the adoption of this SPA in accordance with the procedural requirements of Section 43.0751 of the Local Government Code.

8. The District conducted two public hearings regarding this SPA in accordance with procedural requirements of Section 43.0751 of the Local Government Code on August 19, 2009, at seven o'clock p.m., at the River Place Country Club and on August 25, 2009 at seven o'clock p.m. at the River Place Country Club.

9. The City provided notice of two public hearings concerning the adoption of this SPA in accordance with the procedural requirements of Section 43.0751 of the Local Government Code.

10. The City conducted two public hearings regarding this SPA and the limited and full-purpose annexations in accordance with procedural requirements of Section 43.0751 of the Local Government Code on August 20, 2009 at six o'clock p.m., at the City Council Chambers and on August 27, 2009 at six o'clock p.m., at the City Council Chambers.

11. The District has, by formal action, after public hearings approved this SPA on August 25, 2009 in open session at a meeting held in accordance with the Open Meetings Act.

12. The City has, by formal action, after public hearings approved this SPA on August 27, 2009 in open session at a meeting held in accordance with the Open Meetings Act.

13. All procedural requirements imposed by state law for the adoption of this SPA have been met.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained in this SPA, and other good and valuable consideration, the City and the District agree as follows:

**ARTICLE I.**  
**DEFINITIONS, PURPOSE, AND LEGAL AUTHORITY**

**Section 1.01 Terms Defined in this Agreement.**

In this Agreement, the following terms shall have the meanings indicated:

- (a) "City" means the City of Austin, Texas.
- (b) "Consent Agreement" means, collectively, Agreement Concerning Creation and Operation of River Place Municipal Utility District, executed on February 24,

1984; the First Amendment Agreement Concerning Creation and Operation of River Place Municipal Utility District, executed on August 22, 1984; the Second Amendment to Agreement Concerning Creation and Operation of River Place Municipal Utility District, executed on May 14, 1992; the Third Amendment to Agreement Concerning Creation and Operation of River Place Municipal Utility District, executed on April 8, 1993; the Fourth Amendment to Agreement Concerning Creation and Operation of River Place Municipal Utility District, executed on June 19, 1995; and the Fifth Amendment to Agreement Concerning Creation and Operation of River Place Municipal Utility District, executed on February 3, 2000. The Consent Agreement and all amendments thereto are incorporated herein for the purposes specified in Section 4.01 of this Agreement.

- (c) "District" means the River Place Municipal Utility District, Travis County, Texas.
- (d) "District Boundaries" means the boundaries of the District as they now exist and as more particularly described in Exhibit "A" and depicted on Exhibit "B" attached to this Agreement.
- (e) "Effective Date" means the date of approval of this Agreement, as defined in Section 2.02 of this Agreement.
- (f) "Force Majeure" means conditions and occurrences as defined in Section 7.13 of this Agreement.
- (g) "Full-Purpose Annexation Date" means 12:01 a.m., December 31, 2017.
- (h) "Limited District" means the River Place Limited District resulting from the conversion of the River Place Municipal Utility District under Section 43.0751 of the Local Government Code.
- (i) "Notice" means any formal notice or communication required or authorized to be given by one Party to another by this SPA.
- (j) "O&M Transfer Date" means October 1, 2014.
- (k) "Party or Parties" means the City and/or the District, as the case may be.
- (l) "Period of Limited Purpose Annexation" means that period commencing on the Effective Date of this SPA and ending on the Full-Purpose Annexation Date.
- (m) "Prior Out-of-District Agreements" means, collectively, the agreement, as amended, for the provision of out-of-District wholesale water service to the Lower Colorado River Authority (the "LCRA Agreement") and the City's authorizations to provide out-of-District service to "Webb Estates" and "Slover Tract".

- (n) "Prior Utility Agreements" means the First Amended Agreement for Water Supply and Effluent Disposal, executed on January 28, 1997, with First River Place Reserve, LTD; the First Amended Raw Water Diversion and Supply Contract, executed on March 1, 2005, with River Place Golf Group LP, Inc.; Water Sale Contract for Municipal Uses, executed on August 28, 1991, with the Lower Colorado River Authority ("LCRA"); 1<sup>st</sup> Amendment to Water Sale Contract No. 12569, executed on June 27, 1995, with LCRA; 2<sup>nd</sup> Amendment to Water Sale Contract No. 12569, executed on August 22, 1997, with LCRA; and 3<sup>rd</sup> Amendment to Water Sale Contract No. 12569, executed on September 24, 1999, with LCRA.
- (o) "Service Plan" means the Annexation Service Plan attached hereto as Exhibit F.
- (p) "SPA" means this Strategic Partnership Agreement Between the City of Austin and the River Place Municipal Utility District, including all Exhibits attached hereto.
- (q) "Water and Wastewater Agreement" means the Agreement for Water and Wastewater Service and Operations Management of Facilities Between the City of Austin and the River Place Municipal Utility District; and Amendment to Agreement for Emergency Water Service, attached hereto as Exhibit D.

#### **Section 1.02 Purposes of the SPA.**

The purpose of this SPA is to define and clarify, through contractual agreement, the terms and conditions of annexation of property in the District by the City and the relationship between the City and the Limited District upon conversion of the District to the Limited District at the time full purpose annexation of the entire District is completed, all in accordance with Section 43.0751 of the Local Government Code.

### **ARTICLE II.**

#### **ADOPTION OF THE AGREEMENT AND ANNEXATION OF THE DISTRICT**

##### **Section 2.01 Conduct of Public Hearings and Procedure for Adoption.**

The District and the City acknowledge and agree that prior to the execution of this SPA and prior to full purpose annexation pursuant to this SPA, the District and the City conducted public hearings and complied with all procedural requirements for the purpose of considering the adoption of this SPA and annexation of the District in accordance with the terms of this SPA.

##### **Section 2.02 Effective Date of Agreement.**

Under the provisions of Section 43.0751(c) of the Local Government Code, this SPA shall become effective on September 7, 2009. Upon adoption, the SPA shall be filed by the City in the Real Property Records of Travis County, Texas.

**Section 2.03 Annexation of the Property Within the District.**

**(a) Annexation of Property.**

- (i) All land within the District shall be automatically annexed by the City for full purposes effective on the Full-Purpose Annexation Date, without further procedural action of any kind by either party, in accordance with Sections 43.0751(f)(5) and 43.0751(h) of the Texas Local Government Code. The Annexation Service Plan attached as Exhibit "F" is approved as the service plan for this area and shall be effective for a period of ten years from the Full-Purpose Annexation Date.
- (ii) The City and the District further agree that all property within the District that is not already in the City's limited purpose or full-purpose jurisdiction shall be annexed by the City for the limited purposes of planning and zoning on the Effective Date of this SPA, and such limited purpose annexation will extend the full range of City regulatory authority regarding development, construction, land use, and environmental quality to the area. This authority includes the application of all regulations pertaining to planning and zoning including, but not limited to, regulations within the City's Land Development Code including Title 30 Austin/Travis County Subdivision Regulations and related technical manuals, and all rules adopted pursuant thereto.

(b) Consent by District to Annexation. The District hereby consents to the City's annexation of all the land in the District in accordance with this Agreement. The District accepts the Service Plan and agrees not to seek arbitration, other legal actions, or legislative remedies to challenge the Service Plan. Notwithstanding the foregoing, the District or the Limited District may take authorized actions, if any, to enforce the terms of the Service Plan. The terms of this Agreement are binding on the City, the District and each owner and future owner of land within the District's boundaries in accordance with Texas Local Government Code Section 43.0751(c), and the consent to annexation granted herein.

(c) Consent by District to Actions by City. The District agrees that the City may take any and all steps required by the Local Government Code to assure that full-purpose and limited purpose annexation of all appropriate land within the District (described and depicted in Exhibit "C") becomes effective in accordance with the timeframes and procedures set forth in this Agreement.



**Section 2.04 District Residents to Become Citizens During Limited Purpose Annexation and Full-Purpose Annexation.**

- (a) **Citizenship Rights During the Period of Limited Purpose Annexation.**
- (i) **Voting Rights.** As provided in Article 1, Section 7 of the City's Charter, upon limited purpose annexation any resident of that portion of the District annexed for limited purposes shall be deemed to be a citizen of the City and shall be entitled to vote in city elections on every issue where the question before the electorate is the election of or recall of a City Council member, or the amendment of the City's Charter.
  - (ii) **Limitation on Running for Office.** As provided by Article 1, Section 7 of the City's Charter, no resident of that portion of the District annexed for limited purposes is eligible to run for office in the City during the Period of Limited Purpose Annexation.
  - (iii) **Applicability of Ordinances, Rules, and Regulations.** As provided by Article 1, Section 7 of the City's Charter, upon limited purpose annexation any resident of that portion of the District annexed for limited purposes of planning and zoning shall be deemed to be a citizen of the City in connection with ordinances, rules, or regulations which are applicable to the citizen by virtue of the limited purpose annexation.
- (b) **Citizenship Rights Upon Full-Purpose Annexation.** A resident of an area of the District annexed for full purposes by the City becomes a citizen of the City for all purposes and shall have all the rights, privileges, and responsibilities accorded to the citizens residing in all other areas that the City has annexed for full purposes. However, such citizens shall continue to also be citizens of the Limited District.

**Section 2.05 Notice to Landowners of Full Purpose Annexation of Land Within the District.**

Within 60 days of the Effective Date, the District shall file the following notice concerning this SPA in the Real Property Records of Travis County for the property within the District:

All of the property within the boundaries of River Place Municipal Utility District of Travis County, Texas (the "District"), as depicted on the map attached hereto, is subject to the terms and conditions of a Strategic Partnership Agreement ("SPA") between the District and the City of Austin, dated September 7, 2009. The SPA establishes a timetable for the annexation by the City of Austin of property in the District, which will be annexed initially for limited purposes and subsequently for full purposes. The SPA also provides for the conversion and the timing for

conversion of the District to a Limited District and establishes the governmental and operational relationship between the City and the District while the District or the Limited District continues in existence, all as authorized by Section 43.0751, Texas Local Government Code. A copy of the SPA may be obtained by contacting the offices of the District, and questions concerning the SPA may be directed to the District or the City of Austin Neighborhood Planning and Zoning Department.

This notice with appropriate modifications shall also be included in the notice to purchasers of real property in the District in each future edition of the District's Information Form required to be recorded in the Real Property Records of Travis County, Texas, pursuant to Section 49.455 of the Texas Water Code.

#### **Section 2.06 Regulatory and Taxation Authority of the City and the District Upon Limited and Full-Purpose Annexation of an Area of the District.**

During the Period of Limited Purpose Annexation the District shall continue to have and thereafter the Limited District shall have within the District Boundaries all of the authority and power, including taxation authority, of a municipal utility district, except as limited and modified by the terms and provisions of this SPA and applicable law, so long as the District or Limited District exists. Upon full purpose annexation of an area of the District not previously annexed by the City for full purposes, the City shall have all the authority and power, including taxation authority, within the full-purpose annexed area that the City enjoys in all other areas that the City has annexed or does annex for full purposes.

### **ARTICLE III.**

#### **SERVICES TO THE DISTRICT AND OTHER TRANSITIONAL MATTERS**

##### **Section 3.01 Municipal Services Prior to the Full-Purpose Annexation Date.**

- (a) **Limitation on Services.** During that period of time beginning on the Effective Date and ending on the Full-Purpose Annexation Date, the City and the District will provide water and wastewater service to the District pursuant to the terms and conditions of the Water and Wastewater Agreement. Except as provided in the preceding sentence or as may be provided in subsequent agreements between the Parties, the District acknowledges and agrees that no City services (including by way of example and not in limitation, police services, fire protection services, emergency medical responder services, and road maintenance) will be provided to the District until the Full-Purpose Annexation Date, upon which the City shall provide full services to the District unless specifically provided otherwise.
- (b) **Continuity of Services.** Commencing on the Full-Purpose Annexation Date, the City will provide full City services to areas within the District Boundaries in accordance with the Service Plan, except that the City shall not be responsible for

those services to be provided by the Limited District. City services shall include, for example, but not in limitation, water and wastewater services. The Parties understand and agree that the portion of the Service Plan addressing services to be provided in the event of the dissolution or termination of the District or the Limited District for any reason shall be performed by the City upon dissolution or termination as provided by the Service Plan and Section 7.02 of this SPA.

### **Section 3.02 Capital Improvements During the Period Prior to the Full-Purpose Annexation Date.**

(a) **District's Responsibility for Continued Improvements.**

- (i) Except as provided in the Water and Wastewater Agreement, the District will be responsible for operating and maintaining all District facilities and properties during that period of time beginning on the Effective date and ending on the Full-Purpose Annexation Date. By way of example and not in limitation, the aforementioned operation and maintenance responsibilities shall include the responsibility to operate and maintain parks facilities, and for drainage, prevention of erosion, remediation of storm damage and channel dredging.
- (ii) The District may also continue to make capital improvements during this same time period in accordance with the terms and provisions of the Consent Agreement. In this regard, the Parties agree that except as otherwise authorized by the Water and Wastewater Agreement or the City, any such improvements shall not materially affect the level of services the City will be required to provide after the Full-Purpose Annexation Date.
- (iii) Notwithstanding the foregoing provisions, the District may construct trails or trail improvements subject to approval by the City's Parks and Recreation Department, which shall not be withheld unless a proposed trail or trail improvement would materially impact the level-of service the City will be required to provide after the Full-Purpose Annexation Date.

### **Section 3.03 District Tax and Utility Rate.**

- (a) **District's Tax Rate.** The District agrees to set its annual debt tax rate and operations and maintenance tax rate in an amount deemed sufficient by the District, to report such rate to the District's tax collector in Travis County, and to perform all acts required by law for the tax rates to be effective.
- (b) **Use of Excess Monies.** The District agrees to allocate a sufficient amount of utility revenues and ad valorem taxes, if necessary, to maintain its Retail Water System and Retail Wastewater System until the O&M Transfer Date. Any existing or future utility revenues collected through an increase in utility rates and

such ad valorem taxes, if applicable, in excess of the District's annual operation and maintenance expenses shall only be used (1) to help pay down the District's outstanding indebtedness prior to the Full-Purpose Annexation Date or (2) transferred to the Austin Water Utility on the Full-Purpose Annexation Date. The District shall separate such funds from its general fund and place them in a special fund account reflecting the source of these funds.

- (c) Park Fund. All monies in the District's park fund on the Full-Purpose Annexation Date will be retained by the Limited District.

#### **Section 3.04 Transfer of Assets and Employment and Services Contractual Obligations of the District.**

Except for the construction of trails in accordance with Section 3.02(a)(iii) of this Agreement, or as otherwise may be authorized by the Water and Wastewater Agreement or by prior written agreement of the City Manager, the District may not do the following:

- (1) transfer any of its assets to a third party without reasonable consideration; or
- (2) acquire additional assets, other than those required for the normal and customary operations of the District provided that such required assets do not increase the City's costs or responsibilities after the Full-Purpose Annexation Date; or
- (3) enter into any contracts for employment or services that will result in the creation or continuation of a contractual obligation or fees and charges for the City after the Full-Purpose Annexation Date.

#### **Section 3.05 Separate Transition Agreements.**

The Parties contemplate that they may negotiate and execute separate transition agreements concerning their relationship during the term of this SPA. Such transition agreements may supplement or amend this SPA.

### **ARTICLE IV. DISTRICT ASSETS, LIABILITIES, OBLIGATIONS, DEBT AND DEBT SERVICE AND THE CONSENT AGREEMENT**

#### **Section 4.01 Assets, Liabilities, Indebtedness, and Obligations During the Period of Limited Purpose Annexation.**

- (a) Continuation of Consent Agreement.

- (i) Except as provided in subsection (ii) immediately following, the Consent Agreement and any subsequent transition agreements shall remain in effect until the Full-Purpose Annexation Date, at which time they shall terminate.
  - (ii) To the extent there is any conflict between this SPA or any subsequent transition agreements and the Consent Agreement, the terms of this SPA shall prevail.
- (b) Responsibility for District Assets, Liabilities, and Obligations Prior to the Full-Purpose Annexation Date. Except as specifically provided elsewhere in this SPA, the Water and Wastewater Agreement or any subsequent transition agreements, the District shall remain solely responsible for all District contracts, assets, liabilities and obligations of the District and shall be subject to the terms and conditions of the Consent Agreement until the Full-Purpose Annexation Date. As set forth in the Water and Wastewater Agreement, the District shall remain responsible for payments on all existing bond obligations until October 1, 2017, after which time the City shall assume all remaining debt obligations of the District. Except as specifically provided elsewhere in this SPA, the Water and Wastewater Agreement or any subsequent transition agreements, the City shall become solely responsible for all the District's contracts, assets, liabilities and other obligations on the Full-Purpose Annexation Date.

#### **Section 4.02 No Liability for Operations Performed by Others.**

- (a) Mutual Limitations on Liability.
  - (i) The Parties agree that the City shall not be liable for any claims or causes of action arising out of, or resulting from the maintenance, operations, or ownership of the facilities owned by the District or the Limited District in the performance of the District's or Limited District's functions as described in this SPA. The Parties further agree the City shall not be liable for any or all claims or causes of actions arising out of or resulting from the maintenance, operations, or other activities of the District on any property owned by the City.
  - (ii) The Parties agree that the District and Limited District shall not be liable for any claims or causes of action arising out of, or resulting from the maintenance, operations, or ownership of the facilities owned by the City in the performance of the City's functions as described in this SPA. The Parties further agree that the District shall not be liable for any or all claims or causes of action arising out of or resulting from the maintenance, operations or other activities of the City.

- (b) City to be an Additional Insured. The District shall add the City of Austin as an additional insured on its general liability insurance, which the District shall carry each year until the O&M Transfer Date. At the request of the City, the District shall continue to include the City as an additional insured following the O&M Transfer Date, provided that the City shall be responsible for any additional direct costs to the District for continuing to include the City as an additional insured.

#### **Section 4.03 Additional Bonds and Indebtedness by District.**

- (a) Consent by City Required for Bond Issuance. Neither the District nor the Limited District shall issue new bonds for any purpose without the prior written consent of the City Council. Subject to approval by the City Council, which may not be unreasonably denied or delayed, the District may refund or refinance its outstanding bonds so long as the proposed refinancing meets the financial criteria of the City.
- (b) Limitation on Additional Debt or Leases. Except as may be required for normal operation and maintenance of the District or as may be authorized by prior written consent of the City Manager, the District may not after the Effective Date incur any new indebtedness or execute any new lease that extends beyond the Full-Purpose Annexation Date.

### **ARTICLE V.**

#### **DISTRICT WATER AND WASTEWATER FACILITIES; FUNCTIONS**

##### **Section 5.01 District Functions.**

Except as modified by this SPA and the Water and Wastewater Agreement, prior to the Full-Purpose Annexation Date, the District shall solely have those functions, purposes, and authorities specifically exercised or performed by the District prior to the Effective Date, or otherwise authorized under the laws of the State of Texas. If the District or the City takes any formal action to discharge a function or to exercise authority that is not directly related to those functions and purposes specifically exercised or performed prior to the Effective Date or otherwise authorized by this SPA, the other Party may proceed as provided in Article VIII of this SPA.

##### **Section 5.02 Transfer of Ownership.**

The District shall convey ownership of its Retail Water System and Retail Wastewater System (as described in the Water and Wastewater Agreement) and all associated assets and easements to the City on the Effective Date of this SPA pursuant to the terms and conditions of the Water and Wastewater Agreement.

##### **Section 5.03 Provision of Water and Wastewater Service.**

- (a) From the Effective Date to the Full-Purpose Annexation Date, provision of water and wastewater service to the District shall be made pursuant to the terms and conditions of the Water and Wastewater Agreement, including that the City may not charge the Limited District's residents a post-annexation surcharge for any purpose.
- (b) Effective on the O&M Transfer Date, the City will provide water and wastewater services to the land and customers within the District Boundaries pursuant to the Service Plan and the Water and Wastewater Agreement and to the same level as before the Effective Date, and the City further agrees to the following:
  - (i) The City will not increase the permitted volume limits of the wastewater treatment plant currently owned by the District without the advance written agreement of the District. Further, without the advance written agreement of the District, the City will not expand the physical components of either the water treatment plant or wastewater treatment plant outside of the property to be conveyed to the City pursuant to the Water and Wastewater Agreement or operate the Retail Water System and Retail Wastewater System in a manner that would materially impair the water and wastewater service existing in the District as of the O&M Transfer Date.
  - (ii) The City will maintain all facilities described in the Water and Wastewater Agreement at the same level as on the O&M Transfer Date and otherwise (1) maintain the aesthetic quality of such facilities and (2) maintain such facilities in a manner consistent with Firewise principles and guidelines as established by the National Fire Protection Association. The City agrees that any repainting of facilities, including but not limited to the elevated storage tank, shall be in colors substantially similar to those in use on the Effective Date of this SPA, and prior to any such repainting, the City will first confer with the District on the color to be used.
  - (iii) The City will not add writing or symbols of any kind to the elevated storage tank.
  - (iv) The City will not allow any extraneous equipment to be attached to or otherwise placed on the elevated storage tank, including but not limited to antennae unless such equipment is used for the City's operation and maintenance of the Retail Water System or Retail Wastewater System. The City agrees not to place equipment on the elevated storage tank that would be used for third party benefit.
- (c) Effective on the Full-Purpose Annexation Date, the City shall honor and assume all obligations to provide service as set forth in the Prior Utility Agreements and the Prior Out-of-District Agreements.

#### **Section 5.04 Audit; Review of District Records.**

The District shall conduct an annual audit each year, at its sole expense, to be performed by an independent certified public accountant. The District shall file a copy of the completed audit with the City's Director of Financial Services. The District shall make its financial records available to the City for inspection during normal business hours upon prior reasonable notice by the City.

### **ARTICLE VI. OPEN SPACE**

#### **Section 6.01 Balcones Canyonland Preserve Land, Parkland and Other Lands**

- (a) The District is the current owner of approximately 310 acres of land (the "BCCP Land") that is a part of the Balcones Canyonland Conservation Plan. The District will remain responsible for the ownership, operation and maintenance of the BCCP Land until the Full-Purpose Annexation Date; provided however, that the Parties expressly the District is not responsible to build any fences on or around the BCCP Land unless required of the District pursuant to its federal permit.
- (b) On the Full-Purpose Annexation Date, the District shall convey the BCCP Land to the City at which time the City shall assume responsibility for all operation and maintenance costs for the same.
- (c) The District and subsequently the Limited District shall retain full ownership of its open space, parklands, greenbelt areas and other tangible assets not conveyed to the City pursuant to the Water and Wastewater Agreement.
- (d) Subject to a determination by the City's Parks and Recreation Department that the City's level of service obligations will not be substantially increased, the District and the Limited District may obtain additional parkland.

### **ARTICLE VII. DISTRICT CONTINUATION AS A LIMITED DISTRICT FOR CERTAIN MAINTENANCE, OPERATIONS AND ENFORCEMENT PURPOSES**

#### **Section 7.01 Continuation as a Limited District.**

- (a) Conversion of District to Limited District. Pursuant to Section 43.0751(f)(6) of the Local Government Code, the District shall automatically convert into a limited district on the Full-Purpose Annexation Date and shall thereafter be known as the "River Place Limited District."
- (b) Boundaries of Limited District. The boundaries of the Limited District shall be coextensive with the District Boundaries.



- (c) **Term of Limited District.** The Limited District shall exist for an initial term of ten years. The term of the Limited District may be renewed successively by mutual agreement of the governing bodies of the City and the Limited District.

**Section 7.02 Functions and Responsibilities of the Limited District.**

Subject to future amendments by the Parties, the functions and responsibilities of the Limited District shall be limited to the following:

- (a) Operation, maintenance and control of additional security for the Limited District;
- (b) Operation, maintenance and control of residential and commercial solid waste pick-up and disposal services;
- (c) Ownership, operation, maintenance and control of parkland, open space, greenspace and other areas owned by the Limited District; and

The City will not provide, or charge or bill the Limited District or its residents for, services the Limited District provides.

**Section 7.03 Amenities.**

- (a) **Availability of Amenities to All Residents.** All Amenities described in Exhibit "E" shall be available for the benefit, use and enjoyment of all of the residents of the River Place Limited District and the public.
- (b) **Fees and Charges.** The Limited District may assess those fees and charges for the use of the Amenities that it deems reasonable and necessary and may charge users who reside outside the Limited District separate fees and charges if such fees and charges are reasonably related to the Limited District's actual costs of operation and maintenance.
- (c) **Limitation on City's Obligations.** The Parties agree that the City shall have no obligation during the existence of the Limited District to perform the functions undertaken by the Limited District, provided, however, the Limited District's rights to provide security for the Amenities shall not diminish the City's obligations to provide adequate police protection in accordance with the requirements of State law.
- (d) **Limitation on Actions by Limited District.**
  - (i) The Limited District may not sell, convey, lease, mortgage, transfer, assign, or otherwise alienate any of its Amenities to a third party. The Limited District may not approve a program or project that requires the use or taking of its Amenities or that would otherwise require findings under

Section 26.001 of the Texas Parks and Wildlife Code. However, this subsection (d) shall not prohibit the Limited District from contracting with management and operating firms to manage and operate any of the District's Amenities.

- (ii) The Limited District may not sell, convey, lease, mortgage, transfer, assign, or otherwise alienate any of its surplus assets to a third party without the prior approval of the City Manager or his designee, which approval shall not be unreasonably withheld or delayed.
- (iii) The Limited District may acquire, purchase, or lease additional Amenities and expand any existing Amenities and may purchase necessary equipment, materials and facilities to maintain, replace or upgrade the level of Amenities available at the time of this SPA.
- (iv) The Limited District may hire employees, agents, representatives, and consultants to manage, operate and maintain the Amenities and perform services related to the Limited District's operations and activities.

#### **Section 7.04 Limited District Approval and Election.**

- (a) Action by Board. The Board of Directors for the Limited District shall place the adoption and ratification of this SPA on the agenda of its first meeting following the conversion of the District into the Limited District.
  - (i) If the Board of Directors of the Limited District fails to adopt and ratify this SPA within sixty days of the conversion of the District into the Limited District, the Limited District shall be automatically dissolved sixty days after the date of conversion without the necessity of any further action by the City, whether through litigation or otherwise, and all assets, obligations, indebtedness, and liabilities of the District shall be assumed by the City.
  - (ii) The Limited District shall continue to exist after the failure to adopt or ratify this SPA for the sole purpose of doing any and all acts or things necessary to transfer the assets, obligations, indebtedness, and liabilities to the City. Upon the completion of the transfer of all assets, obligations, indebtedness, and liabilities to the City, the Limited District shall cease to exist.
- (b) Ratification and Election. If the Board of Directors of the Limited District adopts and ratifies this SPA pursuant to Section 7.04a of this SPA, the Board of Directors of the Limited District shall call an election no later than the first practicable uniform election date, as determined in the reasonable judgment of the Board of Directors, after such adoption and ratification at which time the Limited District

shall place a proposition before the qualified voters of the Limited District to consider ratification of the creation of the Limited District and to authorize an ad valorem tax for operation and maintenance of the Limited District. The Board of Directors at its option may call the election at the same meeting at which it acts on the adoption and ratification of this SPA or at a subsequent meeting, provided that the election date is no later than the first practicable election date after adoption and ratification of this SPA, as determined in the reasonable judgment of the Board of Directors.

- (i) The maximum tax rate to be included within the proposition shall be at the discretion of the Board of Directors of the Limited District provided that it is not greater than \$0.50 per \$100 of assessed valuation. The proposition shall also provide that any District maintenance tax authorization in existence before the tax election provided for in this subsection b shall be rescinded upon approval of the proposition by the voters.
- (ii) If a majority of the qualified voters voting at this election do not approve the proposition, the Limited District shall be automatically dissolved sixty days after the date of the election without the necessity of any further action by the City, whether litigation or otherwise, and all assets, obligations, indebtedness, and liabilities of the District shall be assumed by the city.
- (iii) If the election fails, the Limited District shall continue to exist after such failure for the sole purpose of doing any and all acts or things necessary to transfer the assets, obligations, indebtedness, and liabilities to the City.

## **ARTICLE VIII.**

### **MISCELLANEOUS PROVISIONS**

#### **Section 8.01 Effective Date and Multiple Counterparts.**

This SPA may be executed in multiple identical counterparts but shall not be effective unless executed by the City and the District on or before September 7, 2009.

#### **Section 8.02 Entire Agreement/Conflicting Provisions.**

- (a) This SPA is not intended to waive or limit the applicability of laws, regulations, and ordinances applicable to the District or the City, nor does it waive the jurisdiction or sovereignty of any governmental body with respect to the District or the City.
- (b) As of this date there are no agreements, oral or written, between the Parties which are in conflict with this SPA. This SPA, together with all of the attachments to this SPA, constitutes the entire agreement between the Parties with respect to the terms and conditions governing the annexation of the District. No representations

or agreements other than those specifically included in this SPA shall be binding on either the City or the District.

- (c) Prior to the Full-Purpose Annexation Date, to the extent that any provision in this SPA conflicts with a term in the Water and Wastewater Agreement, the Water and Wastewater Agreement shall prevail.

**Section 8.03 Notice.**

- (a) Any Notice given under this SPA shall be given in accordance with this Section.
- (b) Notice may be given by:
  - (i) delivering the Notice to the Party to be notified;
  - (ii) by depositing the Notice in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified; or
  - (iii) by sending the Notice by telefax with confirming copy sent by mail to the Party to be notified.
- (c) Notice deposited in the United States mail in the manner herein described shall be deemed effective upon the earlier of the date of actual receipt or three days after the date of such deposit. Notice given in any other manner shall be effective only if and when received by the Party to be notified.
- (d) For purposes of Notice, the addresses of the Parties shall, until changed as provided in this Section, be as follows:

City of Austin:                      City Manager  
                                             City of Austin  
                                             P. O. Box 1088  
                                             Austin, Texas 78767

with required copy to  
City Attorney:

City Attorney  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767

River Place Municipal Utility District:

River Place Municipal Utility District

c/o Severn Trent Services  
14050 Summit Drive, Suite 113  
Austin, Texas 78728

with required copy to  
District's Attorney:

Phil Haag  
McGinnis, Lochridge & Kilgore  
600 Congress Avenue, Suite 2100  
Austin, Texas 78701

- (e) The Parties may change their addresses for Notice purposes by providing five days written notice of the changed address to the other Party.
- (f) If any date or period provided in this SPA ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating Notice is extended to the first business day following the Saturday, Sunday, or legal holiday.

#### **Section 8.04 Time.**

Time is of the essence in all matters pertaining to the performance of this SPA.

#### **Section 8.05 Severability or Modification of Agreement as a Result of Court Action, or Amendment of State Law or Statutory Authority for the Agreement; No Legislative or Litigative Efforts by District.**

- (a) If any part of this SPA, or the application of this SPA to any person or circumstance is held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the Parties agree that they will amend or revise this SPA to accomplish to the greatest degree practical the same purpose and objective of the part determined to be invalid or unconstitutional, including without limitation amendments or revisions to the terms and conditions of this SPA pertaining to or affecting the rights and authority of the Parties in areas of the District annexed by the City pursuant to this SPA, or proposed to be annexed.
- (b) If part of this SPA is nullified or modified in whole or in part as a result of amendments to the underlying state law and statutory authority for this SPA, the Parties agree and understand that such modification may frustrate the purpose of this SPA. The parties agree that they will attempt to amend or revise this SPA to accomplish to the greatest degree practical (i) the same purpose and objective of the part of this SPA affected by the amendment of the underlying state law and statutory authority and (ii) the original intent and purpose of this SPA.

- (c) Neither the District nor the City will initiate or support any legislation to modify the City's or the District's rights under the SPA or the Consent Agreement. If future legislation would have the effect of prohibiting annexation or requiring further approval of residents for annexation, it is the intent of the Parties that annexation will take place in accordance with this SPA regardless of any such legislation. Further, the District will not seek or support legislation to incorporate all or a portion of itself as a municipality.

#### **Section 8.06 Waiver.**

Any failure by a Party to this SPA to insist upon strict performance by the other Party of any provision of this SPA shall not be deemed a waiver of the provision or of any other provision of the SPA. The Party has the right at any time to insist upon strict performance of any of the provisions of the SPA.

#### **Section 8.07 Applicable Law and Venue.**

The construction and validity of the SPA shall be governed by the laws of the State of Texas (without regard to conflict of laws principles). Venue shall be in Travis County, Texas.

#### **Section 8.08 Reservation of Rights.**

To the extent not inconsistent with this SPA, each Party reserves all rights, privileges, and immunities under applicable law.

#### **Section 8.09 Further Agreement and Documents.**

Both Parties also agree that they will perform any further acts as the other Party may reasonably request to effectuate the terms of this SPA.

#### **Section 8.10 Incorporation of Exhibits and Other Documents by Reference.**

All exhibits and other documents attached to or referred to in this SPA are incorporated into this SPA by reference for the purposes set forth in this SPA.

#### **Section 8.11 Assignability, Successors, and Assigns.**

- (a) This SPA shall not be assignable by either Party without the prior written consent of the other Party.
- (b) This SPA shall be binding upon and inure to the benefit of the Parties and their respective representatives, successors, and assigns.

#### **Section 8.12 Amendment.**

This SPA may only be amended in writing upon the approval of the governing bodies of the City and the District or Limited District, as applicable.

### **Section 8.13 Force Majeure.**

In the event that either Party is rendered unable by force majeure to carry out any of its obligations under this SPA, whether in whole or in part, then the obligations of that Party, to the extent affected by the force majeure, shall be suspended during the continuance of the inability, provided, however, that due diligence is exercised to resume performance at the earliest practicable time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the Party whose contractual obligations are affected thereby shall give notice and full particulars of the force majeure to the other Party. The cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure" includes events or occurrences that are not within the control of the Party claiming their ability and that could not have been avoided by the exercise of due diligence, and may include acts of God, strikes, lockouts or other industrial disturbances, criminal conduct or sabotage, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and civil disturbances, explosions, breakage, or accidents to equipment, pipelines, or canals, partial or complete failure of water supply, and any other inability of either Party, whether similar to those enumerated or otherwise, that is not within the control of the Party claiming their ability and that could not have been avoided by the exercise of due diligence. It is understood and agreed that the settlement of strikes, lockouts and other industrial or labor disturbances shall be entirely within the discretion of the Party having the difficulty and that the requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes, lockouts or other industrial or labor disturbances by acceding to the demands of the opposing party if the settlement is unfavorable to it in the judgment of the Party having the difficulty. Force majeure shall relieve City from liability to the District or any water customer of the District for failure to provide water service due to an inability covered by this Article.

## **ARTICLE IX.**

### **DEFAULT AND REMEDIES FOR DEFAULT**

#### **Section 9.01 Default.**

- (a) Upon the occurrence, or alleged occurrence, of an event of default under or violation of this SPA, the nondefaulting Party shall send the defaulting Party Notice of its default or violation or alleged default or violation. Except as otherwise specifically provided in this SPA and subject to force majeure, the defaulting Party must cure its default or violation within thirty days following receipt of the Notice of default or violation.

- (b) If the default or violation is not cured within the thirty day period, the non-defaulting Party may sue for enforcement or cancellation of this SPA. However, prior to bringing any proceeding in a court of law or before a court of competent jurisdiction, the Parties may (but are not required to) resolve the issue through alternative dispute resolution. If the Parties agree to seek alternative dispute resolution, they must participate in good faith. Unless otherwise agreed to, the Parties shall share equally in the costs of the mediation or arbitration. The Parties further agree that neither the City nor the District is obligated to resolve any dispute based on an arbitration decision under this SPA if the arbitration decision compromises the City's or District's sovereign immunity.
- (c) If the Parties are unable to resolve their dispute through mediation or arbitration, if any, the nondefaulting Party shall have the right to enforce the terms and provisions of this SPA by specific performance or by such other legal or equitable relief to which the nondefaulting Party maybe entitled. Any remedy or relief described in this SPA shall be cumulative of, and in addition to, any other remedies and relief available at law or in equity.
- (d) If the defaulting Party fails to abide by these deadlines, the nondefaulting Party shall have all rights and remedies available in law and equity and all rights and remedies provided in this SPA.
- (e) All of these rights and remedies shall be cumulative.
- (f) The Parties agree that the remedy of accelerated full purpose annexation of the District set forth in Section 9.02(a) of this SPA is limited solely to the circumstances described therein, and shall not be available for any other circumstances under this SPA. The parties agree that none of the remedies specified in this SPA shall apply to a breach of the Water and Wastewater Agreement, and that the remedies available for a breach of that Water and Wastewater Agreement shall be controlled by the remedy provisions of that agreement.

#### **Section 9.02 Dissolution of the District**

- (a) If the District is dissolved for any reason prior to the Full-Purpose Annexation Date, this SPA shall automatically terminate and the City shall have the right to accelerate the Full-Purpose Annexation Date without restriction.
- (b) If the District is dissolved, the Board of Directors for the District shall continue to exist after the dissolution for the sole purpose of doing any and all acts or things necessary to transfer the assets, obligations, indebtedness, and liabilities to the City.



IN WITNESS WHEREOF, this SPA consisting of 23 pages and Exhibits A-F is executed in multiple identical counterparts.

**CITY OF AUSTIN, TEXAS**

Attest: \_\_\_\_\_  
Shirley Gentry  
City Clerk

By: *Marc Ott*  
Marc Ott  
City Manager

**RIVER PLACE MUNICIPAL  
UTILITY DISTRICT**

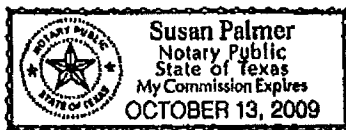
Attest: \_\_\_\_\_  
  
Secretary

By: \_\_\_\_\_  
  
President, Board of Directors

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was <sup>*Rudy Garza*</sup>acknowledged before me on the 3rd day of September, 2009, by ~~Marc Ott~~ <sup>*assistant*</sup> City Manager for the City of Austin, Texas, for and on behalf of the City of Austin, Texas.



*Susan Palmer*  
Notary Public in and for the State of Texas  
My Commission Expires: 10/13/2009

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_, President of the Board of Directors River Place Municipal Utility District, for and on behalf of the River Place Municipal Utility District.

Notary Public in and for the State of Texas  
My Commission Expires: \_\_\_\_\_

IN WITNESS WHEREOF, this SPA consisting of 23 pages and Exhibits A-F is executed in multiple identical counterparts.

**CITY OF AUSTIN, TEXAS**

Attest: \_\_\_\_\_  
Shirley Gentry  
City Clerk

By: \_\_\_\_\_  
Marc Ott  
City Manager

**RIVER PLACE MUNICIPAL  
UTILITY DISTRICT**

Attest: \_\_\_\_\_  
*Arthur Jistel*  
Arthur Jistel  
Secretary

By: \_\_\_\_\_  
*James I. Casey*  
James Casey  
President, Board of Directors

STATE OF TEXAS

COUNTY OF TRAVIS

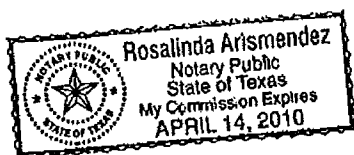
This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2009, by Marc Ott, City Manager for the City of Austin, Texas, for and on behalf of the City of Austin, Texas.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission Expires: \_\_\_\_\_

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the 9 day of September, 2009, by James Casey, President of the Board of Directors River Place Municipal Utility District, for and on behalf of the River Place Municipal Utility District.



\_\_\_\_\_  
*Rosalinda Arismendez*  
Notary Public in and for the State of Texas  
My Commission Expires: April 14, 2010

**STRATEGIC PARTNERSHIP AGREEMENT  
BETWEEN THE CITY OF AUSTIN AND THE  
RIVER PLACE MUNICIPAL UTILITY DISTRICT**

**LIST OF EXHIBITS**

The following are the exhibits for this Agreement:

Exhibit A	District Boundaries
Exhibit B	Map of District Boundaries
Exhibit C	Map of Limited and Full-Purpose Annexation Areas
Exhibit D	Agreement for Water and Wastewater Service and Operations Management of Facilities Between the City of Austin and the River Place Municipal Utility District; and Amendment to Agreement for Emergency Water Service
Exhibit E	List of Amenities to be Maintained by Limited District
Exhibit F	Annexation Service Plan

**EXHIBIT D**

**AGREEMENT FOR WATER AND WASTEWATER SERVICE AND OPERATIONS  
MANAGEMENT OF FACILITIES BETWEEN THE CITY OF AUSTIN AND THE  
RIVER PLACE MUNICIPAL UTILITY DISTRICT; AND AMENDMENT TO  
AGREEMENT FOR EMERGENCY WATER SERVICE**

**STRATEGIC PARTNERSHIP AGREEMENT**

**AGREEMENT FOR WATER AND WASTEWATER SERVICE AND OPERATIONS  
MANAGEMENT OF FACILITIES BETWEEN THE CITY OF AUSTIN AND  
THE RIVER PLACE MUNICIPAL UTILITY DISTRICT; and  
AMENDMENT TO AGREEMENT FOR EMERGENCY WATER SERVICE**

THIS AGREEMENT ("Water and Wastewater Agreement") is made and entered into between the City of Austin, Texas ("City"), a Texas home rule municipal corporation, and the River Place Municipal Utility District ("District"), a conservation and reclamation district created and operating as a municipal utility district pursuant to the provisions of Chapters 49 and 54, Texas Water Code, collectively "Parties."

**WHEREAS**, the City and the District previously entered into the Agreement Concerning Creation and Operation of River Place Municipal Utility District, executed on February 24, 1984; the First Amendment Agreement Concerning Creation and Operation of River Place Municipal Utility District, executed on August 22, 1984; the Second Amendment to Agreement Concerning Creation and Operation of River Place Municipal Utility District, executed on May 14, 1992; the Third Amendment to Agreement Concerning Creation and Operation of River Place Municipal Utility District, executed on April 8, 1993; the Fourth Amendment to Agreement Concerning Creation and Operation of River Place Municipal Utility District, executed on June 19, 1995; and the Fifth Amendment to Agreement Concerning Creation and Operation of River Place Municipal Utility District, executed on February 3, 2000 (collectively, the "Consent Agreement");

**WHEREAS**, the City and the District previously entered into the Agreement for Wholesale Wastewater Service Between City of Austin and River Place Municipal Utility District, executed on May 14, 1992, and the Agreement for Emergency Water Service, executed on May 30, 2001;

**WHEREAS**, the District entered into the First Amended Agreement for Water Supply and Effluent Disposal, executed on January 28, 1997, with First River Place Reserve, LTD; the First Amended Raw Water Diversion and Supply Contract, executed on March 1, 2005, with River Place Golf Group LP, Inc.; Water Sale Contract for Municipal Uses, executed on August 28, 1991, with the Lower Colorado River Authority ("LCRA"); 1<sup>st</sup> Amendment to Water Sale Contract No. 12569, executed on June 27, 1995, with LCRA; 2<sup>nd</sup> Amendment to Water Sale Contract No. 12569, executed on August 22, 1997, with LCRA; and 3<sup>rd</sup> Amendment to Water Sale Contract No. 12569, executed on September 24, 1999, with LCRA; regarding the water and wastewater utility operations of the District;

**WHEREAS**, the District entered into the Interlocal Agreement Regarding Water Storage, executed on August 23, 2007, with LCRA; Agreement Regarding Wholesale Water Service and Donation of Park Funds, executed on January 22, 2001, with LCRA; Wholesale Division, Treatment and Water Supply Contract between River Place Municipal Utility District and the Lower Colorado River Authority, executed on May, 1, 2001; and Wholesale Division, Treatment and Water Supply Contract, executed on March 31, 2000, with Glenlake Water Supply Corporation; and has received

authorization from the City to provide out-of-District water service to "Webb Estates" and "Slover Tract", proposed subdivisions in Travis County, Texas;

**WHEREAS**, the City and the District desire to enter into a new agreement, prior to full purpose annexation by the City on December 31, 2017, to set out terms and conditions for the ownership, operation, and maintenance of the District's water, wastewater, and reclaimed water facilities;

**WHEREAS**, the Austin City Council, by minutes dated August 27, 2009, has authorized the negotiation and execution of this Water and Wastewater Agreement with the District;

**WHEREAS**, the District, by minutes dated August 25, 2009, has authorized the negotiation and execution of a this Water and Wastewater Agreement with the City;

**WHEREAS**, the District under normal circumstances does not use ad valorem taxes to fund the operation and maintenance of its Retail Water System and Retail Wastewater System and the District sets its utility rates in such a way that the utility revenues it receives from its Retail Water System and Retail Wastewater System are sufficient to pay its expenses of operating and maintaining the said Retail Water System and Retail Wastewater System.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual undertakings herein contained, the Parties agree as follows:

## **ARTICLE I DEFINITIONS**

The following terms shall have the meanings set out below:

**1.01. City Water System:** means all water treatment, transmission, and distribution facilities, lines, mains, reservoirs, and pump stations; residential, commercial, and industrial connections; and any other parts or components that comprise the public water system of the City.

**1.02. Commission:** means the Texas Commission on Environmental Quality or its successor agency.

**1.03. Connection:** means a single family residential unit, or each commercial or industrial establishment, to which drinking water is supplied from the Retail Water System.

**1.04. Consent Agreement:** means the Agreement Concerning Creation and Operation of River Place Municipal Utility District, executed on February 24, 1984, and the five amendments thereto, as listed above.

**1.05. Default:** means the omission or failure of a Party to perform its contractual duty under this Water and Wastewater Agreement.

**1.06. District or Districts:** means the District and its successors and assigns, in particular, upon conversion, the Limited District as authorized by the Strategic Partnership Agreement executed between the District and the City.

**1.07. Director:** means the Director of the Austin Water Utility or the Director's authorized designee.

**1.08. Effective Date:** means the last date of execution of this Water and Wastewater Agreement.

**1.09. EPA:** means the United States Environmental Protection Agency.

**1.10. Full Purpose Annexation Date:** means 12:01 a.m., December 31, 2017.

**1.11. Industrial Waste:** means industrial waste as defined in Chapter 15-10 of the 2009 Austin City Code, as amended.

**1.12. Infiltration and Inflow:** means water that has migrated from the ground or through direct sources into a Wastewater system.

**1.13. O&M Transfer Date:** means October 1, 2014.

**1.14. Prior Out-of-District Agreements:** means the Interlocal Agreement Regarding Water Storage, executed on August 23, 2007, with LCRA; Agreement Regarding Wholesale Water Service and Donation of Park Funds, executed on January 22, 2001, with LCRA; Wholesale Division, Treatment and Water Supply Contract between River Place Municipal Utility District and the Lower Colorado River Authority, executed on May, 1, 2001; and Wholesale Division, Treatment and Water Supply Contract, executed on March 31, 2000, with Glenlake Water Supply Corporation; and the City's authorization for the District to provide out-of-District water service to "Webb Estates" and "Slover Tract", proposed subdivisions in Travis County, Texas.

**1.15. Prior Utility Agreements:** means the First Amended Agreement for Water Supply and Effluent Disposal, executed on January 28, 1997, with First River Place Reserve, LTD; the First Amended Raw Water Diversion and Supply Contract, executed on March 1, 2005, with River Place Golf Group LP, Inc.; Water Sale Contract for Municipal Uses, executed on August 28, 1991, with the Lower Colorado River Authority ("LCRA"); 1<sup>st</sup> Amendment to Water Sale Contract No. 12569, executed on June 27, 1995, with LCRA; 2<sup>nd</sup> Amendment to Water Sale Contract No. 12569, executed on August 22, 1997, with LCRA; and 3<sup>rd</sup> Amendment to Water Sale Contract No. 12569, executed on September 24, 1999, with LCRA.

**1.16. Reclaimed Water:** means treated wastewater effluent for irrigation purposes.

**1.17. Retail Wastewater System:** means the collection lines; lift stations; mains; residential, commercial, and industrial connections; the District-owned facilities necessary for the storage and

transportation of reclaimed water; the areas within the fenced areas surrounding the various components of the wastewater system and any other parts or components that comprise the public wastewater system serving the retail customers located within the Service Area.

**1.18. Retail Water System:** means the lines; reservoirs; pump stations; mains; residential, commercial, and industrial connections; those facilities associated with the transportation of untreated water from Lake Austin to the water treatment plant; the areas within the fenced areas surrounding the various components of the water system and any other parts or components that comprise the public water system serving the retail customers of the Service Area.

**1.19. Service Area:** means a portion of District's boundaries and City approved out-of-district areas as more particularly designated on Attachment 1.

**1.20. Service Plan:** means the Annexation Service Plan, attached as Attachment F to the Strategic Partnership Agreement.

**1.21. Sewage:** means water-borne human excretae and gray water.

**1.22. Strategic Partnership Agreement:** means that certain Strategic Partnership Agreement Between the City of Austin and the River Place Municipal Utility District, executed simultaneously herewith on the Effective Date.

**1.23. Waste or Wastewater:** means liquid or water borne waste, including, without limitation, sewage, industrial waste, or other wastes, whether separate or commingled.

**1.24. Water:** means potable water meeting the requirements of the Commission for human consumption and other domestic uses.

## **ARTICLE II. WATER AND WASTEWATER SERVICE**

**2.01. Amendment to Emergency Water Service.** On May 30, 2001, the District and the City entered into the Agreement for Emergency Water Service regarding the provision of emergency water service to the District from the City. Section 7.01 of the Agreement for Emergency Water Service shall be amended to read:

**7.01 Term.** The term of this Agreement shall be effective until October 1, 2014, upon which date the City assumes operation and maintenance of the District's water and wastewater facilities and this Agreement terminates.

Section 7.02 of the Agreement for Emergency Water Service is deleted. All other provisions of the Agreement for Emergency Water Service are in full force and effect.



**2.02. Consent Agreement and Applicable Laws and Regulations.** In accordance with the Strategic Partnership Agreement, the District's obligations under this Water and Wastewater Agreement shall be governed by the Consent Agreement; provided however, that to the extent there is any conflict between this Water and Wastewater Agreement and the Consent Agreement, the terms of this Water and Wastewater Agreement shall prevail. Moreover, the obligations of the District and the City under this Water and Wastewater Agreement shall be performed in accordance with all applicable federal, state and local laws and regulations.

**2.03. Operation and Maintenance by the District.** The Parties agree that before the O&M Transfer Date, the District shall be solely responsible for operation and maintenance of the Retail Water System and Retail Wastewater System, and except as modified by the section herein titled "City's Criticality Assessment", such responsibility shall be performed at the same level as before the Effective Date and in accordance with generally accepted industry standards in Texas and manufacturer's standards for property of that type.

**2.04. Operation and Maintenance by the City.** Beginning on the O&M Transfer Date, the City will assume all responsibility for operating and maintaining the Retail Water System and Retail Wastewater System. The City shall operate and maintain the Retail Water System and Retail Wastewater System and provide water and wastewater services to customers in the District pursuant to this Water and Wastewater Agreement and the Service Plan at the same level as in the District before the Effective Date, and the City further agrees to the following:

- i. The City will not increase the permitted volume limits of the wastewater treatment plant currently owned by the District without the advance written agreement of the District. Further, without the advance written agreement of the District, the City will not expand the physical components of either the water treatment plant or wastewater treatment plant outside of the property to be conveyed to the City pursuant to this Water and Wastewater Agreement or operate the Retail Water System and Retail Wastewater System in a manner that would materially impair the water and wastewater service existing in the District as of the O&M Transfer Date.
- ii. The City will maintain all facilities described in this Water and Wastewater Agreement at the same level as on the O&M Transfer Date and otherwise (1) maintain the aesthetic quality of such facilities and (2) maintain such facilities in a manner consistent with Firewise principles and guidelines as established by the National Fire Protection Association. The City agrees that any repainting of facilities, including but not limited to the elevated storage tank, shall be in colors substantially similar to those in use on the Effective Date of this Water and Wastewater Agreement, and prior to any such repainting, the City will first confer with the District on the color to be used.
- iii. The City will not add writing or symbols of any kind to the elevated storage tank.

- iv. The City will not allow any extraneous equipment to be attached to or otherwise placed on the elevated storage tank, including but not limited to antennae unless such equipment is used for the City's operation and maintenance of the Retail Water System or Retail Wastewater System. The City agrees not to place equipment on the elevated storage tank that would be used for third party benefit.

Beginning on the O&M Transfer Date, the City shall honor and assume all the District's utility obligations, specifically including, by way of example and not in limitation, those obligations to provide service as set forth in the Prior Utility Agreements.

**2.05. Commission Orders or Violations.** If the Commission issues any form of order or penalty for violations, of applicable law that occur before the O&M Transfer Date, and that result from operation, maintenance, or other program associated with the Retail Water System, the District is solely responsible for and will take all necessary action to comply with, or otherwise respond to, the order as it pertains to those violations. If the Commission issues any form of order or penalty for violations, of applicable law that occur on or after the O&M Transfer Date, and that result from operation, maintenance, or other program associated with the Retail Wastewater System, the City is solely responsible for and will take all necessary action to comply with, or otherwise respond to, the order as it pertains to those violations.

**2.06. Water Conservation Program.** The District shall adopt, within 90 days of the Effective Date, and enforce the City's water conservation program including measures and goals, as amended.

**2.07. Provision of Water Service to Out-of-District Customers.** The District shall continue to provide out-of-District water service to its current out-of-district customers until the O&M Transfer Date. Beginning on the O&M Transfer Date, the City shall honor and assume all the District's utility obligations, specifically including, by way of example and not in limitation, those obligations to provide service as set forth in the Prior Out-of-District Agreements.

### **ARTICLE III. COMPLIANCE WITH STATE LAWS AND CITY REGULATIONS**

**3.01. Service Outside District; Enlargement of District Boundaries or Service Area.** Without prior written consent of the City, the District will not initiate any proceedings to enlarge its jurisdictional boundaries through any other agency or court of competent jurisdiction.

**3.02. Agreement Subject to Applicable Law.** This Water and Wastewater Agreement will be subject to all applicable federal, state, and local rules, regulations, and laws, and of any other governmental body or agency having lawful jurisdiction.

**3.03. Cooperation to Assure Regulatory Compliance.** Because both Parties must comply with all federal, state, and local requirements to obtain permits, grants, and assistance for system construction, studies, etc., the District and the City will cooperate in good faith at all times to assure