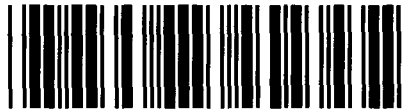


Control Number: 48836



Item Number: 1

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48006

PUC DOCKET NO. \_\_\_\_\_

2018 OCT 31 PM 1:19

BEFORE THE

PETITION OF PALOMA LAKE  
MUNICIPAL UTILITY DISTRICT NO. 1,  
PALOMA LAKE MUNICIPAL UTILITY  
DISTRICT NO. 2, VISTA OAKS  
MUNICIPAL UTILITY DISTRICT,  
WILLIAMSON COUNTY MUNICIPAL  
UTILITY DISTRICT NO. 10, AND  
WILLIAMSON COUNTY MUNICIPAL  
UTILITY DISTRICT NO. 11 APPEALING  
THE RATEMAKING ACTIONS OF THE  
CITY OF ROUND ROCK IN TRAVIS  
AND WILLIAMSON COUNTIES

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FILED CLERK

PUBLIC UTILITY COMMISSION

OF TEXAS

**PETITION APPEALING  
WATER AND WASTEWATER RATES OF THE CITY OF ROUND ROCK  
AND REQUEST FOR INTERIM RATES**

TO THE HONORABLE COMMISSIONERS:

COME NOW Paloma Lake Municipal Utility District No. 1, Paloma Lake Municipal Utility District No. 2, Vista Oaks Municipal Utility District, Williamson County Municipal Utility District No. 10, and Williamson County Municipal Utility District No. 11, collectively referred to as "Petitioners" herein, by and through the undersigned counsel, and pursuant to Section 13.044(b) of the Texas Water Code ("TWC") and Section 24.45 of Title 16 of the Texas Administrative Code ("TAC"), file this Petition to overturn the rates charged by the City of Round Rock (the "City" or "Round Rock") for wholesale water and wastewater services. Pursuant to TWC § 13.044 and 16 TAC § 24.45, Petitioners file this Petition to appeal the rates for wholesale water and wastewater service charged by the City. Further, pursuant to TWC §§ 13.041(a) and 13.041(c-1) and 16 TAC § 24.29(d), Petitioners request that the Commission establish interim rates to be in effect until such time as the Commissioners make a final decision regarding this appeal.

In support of this Petition and Request for Interim Rates, Petitioners would respectfully show the following:

## **I. PARTIES**

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

1.2. Petitioners include the following retail public utilities:

- A. Paloma Lake Municipal Utility District No. 1, a reclamation and conservation district and political subdivision of the State of Texas created pursuant to Art. 16, § 59 of the Texas Constitution, provides retail water service as Public Water System (“PWS”) No. 2460164 and holds Certificate of Convenience and Necessity (“CCN”) Nos. 13141 and 21022;
- B. Paloma Lake Municipal Utility District No. 2, a reclamation and conservation district and political subdivision of the State of Texas created pursuant to Art. 16, § 59 of the Texas Constitution, provides retail water service as PWS No. 2460165 and holds CCN Nos. 13142 and 21023;
- C. Vista Oaks Municipal Utility District, a reclamation and conservation district and political subdivision of the State of Texas created pursuant to Art. 16, § 59 of the Texas Constitution, provides retail water service as PWS No. 2460139 and holds PUC Registration No. P0936;
- D. Williamson County Municipal Utility District No. 10, a reclamation and conservation district and political subdivisions of the State of Texas created pursuant to Art. 16, § 59 of the Texas Constitution, provides retail water service as PWS No. 2460145 and holds PUC Registration No. P1261; and
- E. Williamson County Municipal Utility District No. 11, a reclamation and conservation district and political subdivisions of the State of Texas created pursuant to Art. 16, § 59 of the Texas Constitution, provides retail water service as PWS No. 2460159 and hold PUC Registration No. P1349.

## II. JURISDICTION

### A. Appeal of Municipal Rate Pursuant to Section 13.044

2.1. Petitioners challenge the wholesale water and wastewater rates of the City pursuant to TWC § 13.044 and 16 TAC § 24.45 of the Commission Rules.<sup>1</sup> Under TWC § 13.044, Petitioners may appeal the rates imposed by the City by filing a petition with the Commission.<sup>2</sup> The Commission shall hear the appeal de novo, and the City shall have the burden of proof to establish that the rates are just and reasonable.<sup>3</sup> The Commission shall fix the rates to be charged by the City, and the City may not increase such rates without the approval of the Commission.<sup>4</sup> In fact, the rate dispute between Petitioners and the City is the very reason why the Texas Legislature adopted TWC § 13.044 and why the Commission adopted 16 TAC § 24.45.

### B. INTERIM RATES

2.9 The Petitioners request that the Commission set interim rates during the pendency of this rate appeal under the authority granted to the Commission under TWC §§ 13.041(a) and (c-1) and 16 TAC §24.29(d). The proposed increase in rates could result in an unreasonable economic hardship on the Petitioner's customers, unjust or unreasonable rates, or failure to set interim rates could result in an unreasonable economic hardship on the Petitioners.

## III. FACTS

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

3.2 Petitioners are districts created pursuant to Article XVI, Section 59, of the Texas Constitution. Petitioners are located within the corporate limits or the extraterritorial jurisdiction

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<sup>1</sup> 16 TAC §24.45.

<sup>2</sup> TWC §13.044 (b).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

of the City; and the resolutions, ordinances, or agreements of the City consenting to the creation of the Petitioners require Petitioners to purchase water or sewer service from the City.<sup>5</sup>

3.3 Paloma Lake Municipal Utility District No. 1 is required to purchase water and wastewater service from the City under the terms of that certain Paloma Lake Municipal Utility District No. 1 Wholesale Water and Wastewater Agreement dated effective September 13, 2007. The City's Consent Agreement for the creation of the district is attached as **Exhibit A**. The Wholesale Services Agreement is attached as **Exhibit B**.

3.4 Paloma Lake Municipal Utility District No. 2 is required to purchase water and wastewater service from the City under the terms of that certain Paloma Lake Municipal Utility District No. 2 Wholesale Water and Wastewater Agreement dated effective September 13, 2007. The City's Consent Agreement for the creation of the district is attached as **Exhibit A**. The Wholesale Services Agreement is attached as **Exhibit C**.

3.5 Vista Oaks Municipal Utility District is required to purchase water and wastewater service from the City under the terms of that certain Vista Oaks Municipal Utility District Amended and Restated Wholesale Water and Wastewater Agreement dated effective August 29, 2011. The City's Consent Agreement and Wholesale Services Agreement are attached as **Exhibit D**.

3.6 Williamson County Municipal Utility District No. 10 is required to purchase water and wastewater service from the City under the terms of that certain Water Supply and Wastewater Services Contract Between Williamson County Municipal Utility District No. 10 and the City of Round Rock, Texas, dated March 22, 2001. The City's Consent Agreement and Wholesale Services Agreement are attached as **Exhibit E**.

3.7 Williamson County Municipal Utility District No. 11 is required to purchase water and wastewater service from the City of Round Rock under the terms of that certain Water Supply and Wastewater Services Contract Between Williamson County Municipal Utility District No. 11

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<sup>5</sup> See TWC §13.044 (a).

and the City of Round Rock, Texas, dated March 22, 2001. The City's Consent Agreement and Wholesale Services Agreement are attached as **Exhibit F**.

3.8 Each Petitioner purchases treated water from Round Rock, distributes, and sells the treated water to retail customers located within its respective boundaries. Each Petitioner owns and operates its own facilities for the distribution of treated water within its boundaries and provides virtually all customer services.

3.9 Each Petitioner purchases wastewater treatment services from Round Rock, distributes, and provide wastewater collection services to retail customers located within its respective boundaries. Each Petitioner owns and operates its own facilities for the collection of wastewater within its boundaries and provides virtually all customer services.

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

3.11 On or about September 28, 2017, the City Council adopted an increase in the water and wastewater rates for its customers, including Petitioners, as part of the Council's adoption of an ordinance amending Chapter 44 Sections 44-32, 44-34, and 44-34, Code of Ordinances, regarding water rates, reuse rates, and sewer rates.<sup>6</sup> The increased rates went into effect on October 1, 2017.<sup>7</sup>

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

3.13 The monthly fixed charge for water that the City bills Paloma Lake MUD Nos. 1 & 2 (in a consolidated billing) increased from \$4,572 per month in FY 2017 to \$5,318 in FY 2018,

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<sup>6</sup> See City of Round Rock City Council Minutes, Regular Meeting, September 28, 2017, attached as **Exhibit G**.

<sup>7</sup> See Ordinance No. O-2017-4779, City of Round Rock, attached is **Exhibit H**.

\$5,566 in FY 2019, and \$5,728 in FY 2020.<sup>8</sup> The City increased the water volumetric charges from \$3.26 per 1,000 gallons for Paloma Lake Municipal Utility District No. 1 and \$2.99 for Paloma Lake Municipal Utility District No. 2 to a consolidated rate of \$3.82 per 1,000 gallons in FY 2018, \$3.97 in FY 2019, and \$4.05 in FY 2020.<sup>9</sup>

3.14 The monthly fixed charge for water that the City bills Vista Oaks Municipal Utility District increased from \$11,873 per month in FYs 2017 and 2018 to \$12,277 in FY 2019 and \$12,355 in FY 2020.<sup>10</sup> The City increased the water volumetric charges from \$2.76 per 1,000 gallons in FYs 2017 and 2018 to \$2.85 in FY 2019 and \$2.91 in FY 2020.<sup>11</sup>

3.15 The monthly fixed charge for water that the City bills Williamson County Municipal Utility District No. 10 increased from \$14,405 per month in FY 2017 to \$14,996 in FY 2018, \$15,507 in FY 2019, and \$15,832 in FY 2020.<sup>12</sup> The City increased the water volumetric charges from \$2.64 per 1,000 gallons in FY 2017 to \$2.76 in FY 2018, \$2.85 in FY 2019, and \$2.91 in FY 2020.<sup>13</sup>

3.16 The monthly fixed charge for water that the City bills Williamson County Municipal Utility District No. 11 increased from \$13,063 per month in FY 2017 to \$14,173 in FY 2018, \$14,655 in FY 2019, and \$14,963 in FY 2020.<sup>14</sup> The City increased the water volumetric charges from \$2.87 per 1,000 gallons in FY 2017 to \$3.11 in FY 2018, \$3.22 in FY 2019, and \$3.29 in FY 2020.<sup>15</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See Ordinance No. O-2017-4779, City of Round Rock, attached is **Exhibit H**.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

3.17 The volumetric rates for each Petitioner under the City's new wastewater rate is \$3,90 per 1,000 gallons.<sup>16</sup>

3.18 The City's increased wholesale water and wastewater rates over-collect revenue, because those rates are based upon (1) a revenue requirement that includes costs unrelated to the provision of water and wastewater utility service to customers<sup>17</sup> and (2) a revenue requirement based upon budgetary forecasts instead of historic test-year expenditures adjusted for known and measurable changes.<sup>18</sup> For these reasons and more, the City's rates are unjust or unreasonable.

3.19 The increased wholesale water and wastewater rates of the City are neither just nor reasonable. Furthermore, the rates charged to wholesale customers are discriminatory.

#### IV. INTERIM RATES

4.1. The Texas Water Code and the Commission Rules authorize the Commission to establish interim rates to be in effect until the Commission makes its final decision in this rate appeal.<sup>19</sup>

4.2. The magnitude of the rate increase adopted by the City Council imposes an unreasonable economic hardship on Petitioners. Further, the increased rates are unreasonably preferential, prejudicial, and discriminatory in violation of the Texas Water Code. Moreover, the City's wholesale rates violate the rate design provisions, findings of fact, and conclusions of law that the Commission adopted in its prior Order regarding the proper basis for a municipality's rates to wholesale customers.<sup>20</sup> Finally, as the Commission will more than likely reduce or completely eliminate the proposed rate increases, any revenue that the City collects in the interim must be refunded to the Petitioners, which can be a complicated and inequitable process. The burden of

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<sup>16</sup> *Id.*

<sup>17</sup> Round Rock Financial Planning and COS Model, page 2, attached as **Exhibit I**.

<sup>18</sup> Round Rock Wholesale Customer Meeting Presentation, August 16, 2017, attached as **Exhibit J**; see also **Exhibit I**.

<sup>19</sup> 16 TAC §24.29(d).

<sup>20</sup> *Petition of North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control and Improvement District No. 10, and Wells Branch Municipal Utility District from the Ratemaking Actions of the City of Austin and Request for Interim Rates in Williamson and Travis Counties*, Docket 42857, Order (Jan. 14, 2016).



such increase on the Petitioners is sufficient grounds for the imposition of an interim rate, and Petitioners hereby request that the Commission establish an interim rate in accordance with 16 TAC § 24.29(d). The Commission should set the interim rates at the level of water rates that existed prior to October 1, 2017.

## **V. PRAYER**

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

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

Respectfully submitted,

Randall B. Wilburn  
State Bar No. 24033342  
Helen Gilbert  
State Bar No. 00786263  
GILBERT WILBURN PLLC  
7000 North MoPac Blvd., Suite 200  
Austin, Texas 78731  
Telephone: (512) 535-1661  
Telecopier: (512) 535-1678



By:

\_\_\_\_\_  
Randall B. Wilburn

**COUNSEL FOR PETITIONERS**

**CERTIFICATE OF SERVICE**

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail Return Receipt Requested on all parties on the 31<sup>st</sup> day of October 2018.



\_\_\_\_\_  
Randall B. Wilburn

# Exhibit A

## CONSENT AGREEMENT

BETWEEN

CITY OF ROUND ROCK, TEXAS

AND

BLAKE MAGEE INVESTMENTS, L.P.

FOR

PALOMA LAKE MUNICIPAL UTILITY DISTRICT NO. 1

AND

PALOMA LAKE MUNICIPAL UTILITY DISTRICT NO. 2

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193728-19 09/15/2005  
R-05-09-22-1463

# Exhibit A

## CONSENT AGREEMENT

THE STATE OF TEXAS       §  
                                     §  
COUNTY OF WILLIAMSON   §

This Consent Agreement ("Agreement") is between the City of Round Rock, Texas (the "City"), a home-rule city located in Williamson County, Texas and Blake Magee Investments, L.P., a Texas limited partnership (the "Developer").

## INTRODUCTION

The Developer owns or has an option to purchase approximately 726.21 acres of land located within the extraterritorial jurisdiction of the City (the "Land"). The Land is more particularly described by metes and bounds on the attached Exhibit A, and its boundaries are depicted on the concept plan attached as Exhibit B (the "Concept Plan").

The Developer intends to develop the Land as "Paloma Lake," a master-planned, residential community that will include park and recreational facilities to serve the community. Because the Land constitutes a significant development area that will be developed in phases under a master development plan, the Developer and the City wish to enter into this Agreement, which will provide an alternative to the City's typical regulatory process for development, encourage innovative and comprehensive master-planning of the Land, provide certainty of regulatory requirements throughout the term of this Agreement and result in a high-quality development for the benefit of the present and future residents of the City and the Land.

Therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including the agreements set forth below, the parties contract as follows.

## ARTICLE I DEFINITIONS

**Section 1.01: Definitions.** In addition to the terms defined elsewhere in this Agreement or in the City's ordinances, the following terms and phrases used in this Agreement will have the meanings set out below:

**Agreement:** This Consent Agreement between the City and the Developer.

**City:** The City of Round Rock, Texas, a home-rule city located in Williamson County, Texas.

**City Manager:** The City Manager of the City.

**Commission:** The Texas Commission on Environmental Quality or its successor agency.

**Concept Plan:** The Concept Plan for the Land attached as Exhibit B, as amended from time to time in accordance with this Agreement.

# Exhibit A

County: Williamson County, Texas.

Developer: Blake Magee Investments, L.P., a Texas limited partnership, or its successors and assigns under this Agreement.

Districts: Paloma Lake Municipal Utility District No. 1 and Paloma Lake Municipal Utility District No. 2, the political subdivisions of the State of Texas to be created over the Land, with the consent of the City, as provided in this Agreement. As used in this Agreement, "District" means either of the Districts.

Double J.: Double J Investments, L.P., the owner of the tract or tracts of land adjacent to the Land, which are also intended to receive service through the McNutt Interceptor.

Effective Date of this Agreement: The date when one or more counterparts of this Agreement, individually or taken together, bear the signature of all parties.

Land: Approximately 726.21 acres of land located in the City's extraterritorial jurisdiction, as described by metes and bounds on Exhibit A.

Line A: The segment of the McNutt Interceptor located between the Treatment Plant and McNutt Creek, as indicated on Exhibit C.

Line B.: The segments of the McNutt Interceptor located between the terminus of Line A and the southern boundary of the Land, as indicated on Exhibit C.

Line C.: The segments of the McNutt Interceptor located between the terminus of Line B adjacent to the southern boundary of the Land and County Road 112, as indicated on Exhibit C.

McNutt Interceptor: The City wastewater interceptor project, as generally depicted on Exhibit C, which will transport wastewater generated by customers located within the McNutt drainage basin, as defined by the City, to the Treatment Plant.

Treatment Plant: The Brushy Creek East regional wastewater treatment plant.

## ARTICLE II MCNUTT INTERCEPTOR PROJECT

**Section 2.01 McNutt Interceptor Project.** The City proposes to construct Line A of the McNutt Interceptor Project according to the construction schedule attached as Exhibit D. The preliminary budget for Line A is attached as Exhibit E. The City desires that the Developer participate in the cost of construction of Line A and the Developer is willing to do so on the terms set forth in this Article.

**Section 2.02 Line A Participation.** The Developer will cost participate with the City to finance Line A of the McNutt Interceptor as follows:

(a). Line A Capacity Payment. The Developer will pay the City the sum of \$2,850,000 which will be applied by the City to pay a portion of the costs of Line A (the

# Exhibit A

"Capacity Payment"). The Capacity Payment will be paid as provided in Subsections (b) and (h). In consideration of the Capacity Payment, 2,000 living unit equivalents ("LUEs") of wastewater capacity in Line A will be reserved for and allocated to the Developer, on behalf of the Districts, as provided in this Agreement.

(b). Line A Plans. Line A will be designed by Karen Friese and Associates (the "Line A Engineer"). Upon completion of the preliminary plans and specifications for Line A (the "Line A Plans"), the Line A Engineer will submit a set of the Line A Plans to the City and a set to the Developer for review and approval. The Developer agrees to review the Line A Plans and either approve them or provide written comments specifically identifying any required changes within 10 days of receipt. If the Developer fails to either approve the Line A Plans or provide written comments within this 10-day period, the Line A Plans will be deemed approved. No changes which would adversely affect the capacity to be allocated to and reserved for the Developer, on behalf of the Districts, as provided in this Agreement or the cost of such reserved capacity may be made to the Line A Plans unless the changes are submitted to the Developer, which will have the same review and approval rights as provided above. The Developer's approval of the Line A Plans will not be unreasonably withheld. The Developer will reimburse the City for 25% of the cost of the Line A Plans within 30 days of the City's written request, accompanied by a copy of the City's contract with the Line A Engineer. The City may make such request for reimbursement from the Developer for one-half of such cost when the plans are 50% complete and for the remainder of the cost when the plans are complete. The amounts paid by the Developer under this subsection will be applied against and will reduce the remaining sum due for the Capacity Payment.

(c). Construction Schedule. The City will proceed with the design of, easement acquisition for, and construction of Line A in accordance with the construction schedule attached as Exhibit D, subject, however, to extensions of time due to *force majeure*. The City acknowledges that the Developer is relying on service being available to the Districts in accordance with such construction schedule, and agrees that wastewater service will be made available on or before the date specified in Exhibit D.

(d). Bidding and Contract Award. The contract for construction of Line A will be advertised for bid by the City in accordance with all applicable legal requirements, including Chapter 252, *Texas Local Government Code*, and awarded by the City to the lowest responsible bidder.

(e). Payment Bond. At such time as the City awards a contract for the construction of Line A, the City will give written notice to the Developer, accompanied by a copy of the accepted bid, and the Developer will obtain and deliver to the City, within 30 days, a payment bond or letter of credit in the amount of the Capacity Payment, less any payments previously made by the Developer under subsection (b) (the "Fiscal Security"), to secure the Developer's obligation to pay the unpaid portion of the Capacity Payment to the City as provided in this Agreement.

(f). Construction. Line A will be constructed in a good and workmanlike manner, and all material used in such construction will be substantially free from defects and fit for its

# Exhibit A

intended purpose. The Developer or the Districts may, at their own expense, inspect the construction.

(g). Status Reports. The Line A Engineer will provide the Developer and the City with monthly construction status reports.

(h). Progress Payments by the Developer. The Developer agrees to fund the unpaid portion of the Capacity Payment to the City as follows:

Upon contract award:	25%
Upon 25% completion:	25%
Upon 75% completion:	25%
Upon substantial completion	25%

Upon acceptance of Line A by the City: Any remaining amount still due the City

The City will deliver written notice to the Developer of each payment due, which will be accompanied by a copy of the related pay request and the Line A Engineer's approval of the related percentage of the work. The Developer will fund the payment within 30 days after receipt of the related request and supporting documentation, and will be entitled, upon such payment, to reduce the amount of the Fiscal Security so that the Fiscal Security at all times corresponds with the total remaining amount of the Capacity Payment due to the City under this Agreement. Promptly following completion of construction, and the Developer's final payment to the City, the City will return the Fiscal Security to the Developer. If the Developer fails to pay any sum due to the City as set out herein, the City may require payment under and in accordance with the Fiscal Security.

(i). Guarantee and Reservation of Capacity. Upon completion of Line A and payment of the Capacity Payment to the City as required under this Agreement, 2,000 LUEs of capacity in Line A will be irrevocably and permanently reserved for and committed to the Developer, on behalf of the Districts. The Developer may, at any time, transfer such capacity to the Districts by written notice to the City. The Developer shall not transfer such capacity to any other entity or person without the prior written consent of the City, which consent will not be unreasonably withheld.

**Section 2.03 Line B.** In order to serve the Districts only, Line B, which will be constructed in two phases as Line B-1 and Line B-2, would be required to be constructed as an 18-inch line. The City has requested that Line B-1 be oversized as a 42-inch line and that Line B-2 be oversized as a 24-inch line in order to provide additional capacity for future development. The City and the Developer agree to cooperate in connection with the construction of Line B, as provided in this Section.

(a). Line B Plans. The Developer will cause Line B to be designed by Randall Jones Engineering, Inc. (the "Line B Engineer"). Upon completion of the preliminary plans and specifications for the Line B, or a segment of Line B if Line B is designed in phases (the "Line B

# Exhibit A

Plans”), the Line B Engineer will submit a set of the Line B Plans to the City and a set to the Developer for review and approval. The City agrees to review the Line B Plans and either approve them or provide written comments specifically identifying any required changes within 14 days of receipt. The City’s approval of the Line B Plans will not be unreasonably withheld. The City will reimburse the Developer for the City’s cost share, as described in Subsection (e), below, of (a) engineering fees for the Line B Plans equal to twelve and one-half percent (12 1/2%) of the construction cost of Line B, and (b) the costs of inspection, testing, permits and environmental studies for Line B within 30 days of the Developer’s written request, accompanied by a copy of the Developer’s contract with the Line B Engineer, documentation confirming the Developer’s payment of the Line B Engineer for the Line B Plans and documentation confirming the Developer’s payment for the costs of inspection, testing, permits and environmental studies..

(b). Easements. The City agrees to acquire the easement across the Double J property that is required for Line B and to make this easement available to the Developer or the Districts for the construction of Line B in accordance with the Construction Schedule attached as Exhibit E. The Developer will use reasonable efforts to obtain any other required easements for Line B through negotiation. If the Developer is unable to obtain any required easements through negotiation, then, upon the Developer’s request, the City agrees to acquire such easements using its power of eminent domain and to use good faith efforts to obtain possession of such easements within 180 days of the request. If the City utilizes its power of eminent domain to acquire any easements required for Line B, the Developer will reimburse the City for its prorata share of the reasonable costs incurred and the amounts awarded as compensation to the landowners in the proceedings.

(c). Construction Schedule. The Developer will proceed with the design of, easement acquisition for, and construction of Line B in accordance with the construction schedule attached as Exhibit F, subject, however, to extensions of time due to *force majeure*.

(d). Bidding and Contract Award. The contract for construction of Line B will be advertised for bid by the Developer, on behalf of the Districts, in accordance with all applicable legal requirements, including Chapter 49, *Texas Water Code*. Line B will be bid both at the size required by the Developer to serve the Districts only and at the size required by the City. The contract will be awarded by the Developer, on behalf of the Districts, to the lowest responsible bidder.

(e). City’s Cost Share. The City’s share of the costs of Line B will be the difference between the cost of Line B if built at the size proposed by the Developer to serve the only and the cost of Line B built at the sizes required by the City, based on the low bid

(f). Construction. Line B will be constructed in a good and workmanlike manner, and all material used in such construction will be substantially free from defects and fit for its intended purpose. The City will inspect the construction, and the Developer will pay the City a portion of the costs of such inspections, based on the percentage of construction costs for Line B being borne by Developer as determined under Subsection (e).



# Exhibit A

(g). Status Reports. The Line B Engineer will provide the Developer and the City with monthly construction status reports.

(h). Progress Payments by City. The City agrees to pay its share of the costs of Line B, based on the incremental cost determined under Subsection (e), above, which payment will constitute a "contractual obligation" under Section 8.503(i) of the Round Rock City Code, as follows:

Upon contract award:	25%
Upon 25% completion:	25%
Upon 75% completion:	25%
Upon substantial completion	25%
Upon acceptance of Line B by the City:	Any remaining amount still due the Developer

(i). Guarantee and Reservation of Capacity. Upon completion of Line B, it will be transferred and conveyed to the City. The conveyance will be subject to the irrevocable and permanent reservation of 2,000 LUEs of capacity in Line B to the Developer, on behalf of the Districts, and the Developer's right to reimbursement from the Districts as permitted by the rules of the Commission, and the City will accept Line B for ownership, operation and maintenance subject to such reservation. The Developer may, at any time, transfer its reserved capacity in Line B to the Districts by written notice to the City. The Developer will not transfer such capacity to any other entity or person without the express written consent of the City, which will not be unreasonably withheld.

**Section 2.04. Line C.** Service to the Districts from the McNutt Interceptor will require the construction of Line C which will connect to Line B and will be constructed in six phases, as Line C-1, Line C-2, Line C-3, Line C-4, Line C-5 and Line C-8, as shown on Exhibit C. In order to serve the Districts only, Line C-1 would be required to be constructed as a 12-inch line, Line C-2, Line C-3 and Line C-4 would be required to be constructed as 8-inch lines and Line C-5 and Line C-8 would be required to be constructed as 12-inch lines. The City has requested that Line C-1 be oversized as a 36-inch line, Line C-2 and Line C-3 be oversized as 24-inch lines, Line C-4 be oversized as a 12-inch line, and Line C-5 and Line C-8 be oversized as 18-inch lines in order to provide additional capacity for future development. The City and the Developer agree to cooperate in connection with the construction of Line C, as provided in this Section.

(a). Line C Plans; Oversizing. Line C will be designed by Randall Jones Engineering, Inc. (the "Line C Engineer"). Upon completion of the preliminary plans and specifications for Line C, or a segment of Line C if Line C is designed in phases (the "Line C Plans"), the Line C Engineer will submit a set of the Line C Plans to the City and a set to the Developer for review and approval. The City agrees to review the Line C Plans and either approve them or provide written comments specifically identifying any required changes within fourteen (14) days of receipt. The City's approval of the Line C Plans will not be unreasonably withheld. The City

# Exhibit A

will reimburse the Developer for the City's cost share, as described in Subsection (c), below, of (a) engineering fees for the Line C Plans equal to twelve and one-half percent (12 1/2%) of the construction cost of Line C, and (b) the costs of inspection, testing, permits and environmental studies for Line C within 30 days of the Developer's written request, accompanied by a copy of the Developer's contract with the Line C Engineer, documentation confirming the Developer's payment of the Line C Engineer for the Line C Plans and documentation confirming the Developer's payment for the costs of inspection, testing, permits and environmental studies..

(b). Bidding and Contract Award. The contract for construction of each phase of Line C will be advertised for bid by the Developer, on behalf of the Districts, in accordance with all applicable legal requirements, including Chapter 49, *Texas Water Code*. Each phase of Line C will be bid both at the size originally proposed by the Developer and at the size required by the City. The contract or contracts for Line C will be awarded by the Developer, on behalf of the Districts, to the lowest responsible bidder.

(c). City Cost Share. The City's share of the costs of each phase of Line C will be the difference between the cost of that phase if built at the size required to serve the Districts only and the cost of the phase built at the size required by the City, based on the low bid amounts.

(d). Construction. Each phase of Line C will be constructed in a good and workmanlike manner, and all material used in such construction will be substantially free from defects and fit for its intended purpose. The City will inspect the construction, and the Developer will pay the City a portion of the costs of such inspections, based on the percentage of construction costs for that phase of Line C being borne by Developer as determined under Subsection (c).

(e). Status Reports. The Line C Engineer will provide the Developer and the City with monthly construction status reports.

(f). Progress Payments by City. The City agrees to pay a share of the cost of each phase of Line C, based on the incremental cost determined under Subsection (c), above, in accordance with Section 8.503(4) of the Round Rock City Code regarding reimbursement for oversized mains. If there are insufficient funds in the City's oversize account to make any payments due under this Section, the Developer will be entitled to a credit against any water and wastewater oversize fees otherwise due under Section 8.503 of the City Code and against any impact fees otherwise due to the City.

(g). Guarantee and Reservation of Capacity. Upon completion of each phase of Line C and payment by the City of its cost share as provided above, that phase of Line C will be transferred and conveyed to the City subject to the irrevocable and permanent reservation of 2,000 LUEs of capacity to the Developer on behalf of the Districts. The conveyance will also be subject to the Developer's right to reimbursement from the Districts as permitted by the rules of the Commission. The City will accept each phase of Line C for ownership, operation and maintenance, subject to the reservations described above. The Developer may, at any time, transfer its reserved capacity in a phase of Line C to the Districts by written notice to the City. Developer shall not transfer such capacity to any other entity or person without the express written consent of the City, which will not be unreasonably withheld.

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**Section 2.05 Credits Against Impact Fees.** The City acknowledges that certain costs of the McNutt Interceptor are or will be included in the City's wastewater community impact fee calculation and will be collected at the time the City's wastewater community impact fees are paid for future development. It would not be equitable for the Developer to both cost participate in the facilities described in this Article and pay a full wastewater community impact fee. Therefore, in consideration of the Developer's construction and cost participation in the McNutt Interceptor as described in this Agreement, the Developer will receive a credit against the City's wastewater impact fees for any costs of Line B and Line C that are included in the impact fee at the time of payment.

## ARTICLE III WATER SYSTEM IMPROVEMENTS

**Section 3.01 Off-Site Water Facilities.** The City agrees to construct a 36-inch water transmission main from the City's existing 36-inch line in FM 1460 along the south side of County Road 112 to the intersection of County Road 112 and County Road 117 and from County Road 117 to Kiphen Road; a 24-inch water line from the intersection of County Road 117 and County Road 112 to County Road 110; a 24-inch water line from the intersection of County Road 112 and County Road 110 to the intersection of County Road 110 and County Road 122, and a 16-inch water line along County Road 122 along the boundary of the Land, all as depicted on Exhibit H (collectively, the "Off-Site Water Facilities"). The City will proceed with the design of, easement acquisition for, and construction of these water lines in accordance with the construction schedule attached as Exhibit I.

**Section 3.02 Water Capacity Payment.** The Developer will pay the City a sum calculated as set forth on Exhibit J (the "Water Capacity Payment") for 2,000 living unit equivalents ("LUEs") of water capacity in the Off-Site Water Facilities, which capacity will be reserved for and allocated to the Districts, as provided in this Agreement. The Developer will receive a credit against the Water Capacity Payment as described in Section 3.10 of this Agreement.

**Section 3.03 Water Main Plans.** The City will cause the Off-Site Water Facilities to be designed by an engineer to be selected by the City (the "Water Line Engineer"). Upon completion of the preliminary plans and specifications for the Off-Site Water Facilities (the "Water Line Plans"), the Water Line Engineer will submit a set of the Water Line Plans to the City and a set to the Developer for review and approval. The Developer agrees to review the Water Line Plans and either approve them or provide written comments specifically identifying any required changes within 10 days of receipt. If the Developer fails to either approve the Water Line Plans or provide written comments within this 10-day period, the Water Line Plans will be deemed approved. No changes which would adversely affect the capacity to be allocated to and reserved for the Developer, on behalf of the Districts, as provided in this Agreement or the cost of such reserved capacity may be made to the Water Line Plans unless the changes are submitted to the Developer, which will have the same review and approval rights as provided above. The Developer's approval of the Water Line Plans will not be unreasonably withheld.

**Section 3.04 Bidding and Contract Award.** The contract for construction of the Off-Site Water Facilities will be advertised for bid by the City in accordance with all applicable legal

# Exhibit A

requirements, including Chapter 252, Local Government Code, and awarded by the City to the lowest responsible bidder.

**Section 3.05 Payment Bond.** At such time as the City awards a contract for the construction of each of the Off-Site Water Facilities, the City will give written notice to the Developer, accompanied by a copy of the accepted bid, and the Developer will obtain and deliver to the City a payment bond or letter of credit in the amount of the Water Capacity Payment less the applicable credit under Section 3.10 (the "Water Fiscal Security") to secure the Developer's obligation to pay the unpaid portion of the Water Capacity Payment (less any credit under Section 3.10) to the City as provided in this Agreement.

**Section 3.06 Construction.** The Off-Site Water Facilities will be constructed in a good and workmanlike manner, and all material used in such construction will be substantially free from defects and fit for its intended purpose. The Developer or the Districts may, at their own expense, inspect the construction.

**Section 3.07. Status Reports.** The Water Line Engineer will provide the Developer and the City with monthly construction status reports.

**Section 3.08 Progress Payments by the Developer.** The Developer agrees to fund the unpaid portion of the Water Capacity Payment (less any credit under Section 3.10) to the City as follows:

Upon contract award:	25%
Upon 25% completion:	25%
Upon 75% completion:	25%
Upon substantial completion:	25%

Upon acceptance of Off-Site Water Facilities by the City: Any amount still due the City

The City will deliver written notice to the Developer of each payment due, which will be accompanied by a copy of the related pay request and the Water Line Engineer's approval of the related percentage of the work. The Developer will fund the payment within 30 days after receipt of the related request and supporting documentation, and will be entitled, upon such payment, to reduce the amount of the Water Fiscal Security so that the Water Fiscal Security at all times corresponds with the total remaining amount of the Water Capacity Payment due to the City under this Agreement. Promptly following completion of construction, and the Developer's final payment to the City, the City will return the Water Fiscal Security to the Developer. If the Developer fails to pay any sum due to the City as set out herein, the City may require payment under and in accordance with the Water Fiscal Security.

**Section 3.09. Guarantee and Reservation of Capacity.** Upon completion of the Off-Site Water Facilities and payment of the Water Capacity Payment to the City as required by this Agreement, 2,000 LUEs of capacity in Off-Site Water Facilities will be irrevocably and permanently reserved for and committed to the Developer, on behalf of the Districts. The

# Exhibit A

Developer may, at any time, transfer such capacity to the Districts by written notice to the City. Developer shall not transfer such capacity to any other entity or person without the express written consent of the City, which will not be unreasonably withheld.

**Section 3.10 Credits Against Water Capacity Payment.** The City acknowledges that certain costs of the Off-Site Water Facilities are or will be included in the City's water community impact fee calculation and will be collected at the time the City's water community impact fees are paid for future development. It would not be equitable for the Developer to both cost participate in the Off-Site Water Facilities and pay a full water community impact fee. Therefore, in consideration of the Developer's construction and cost participation in the Off-Site Water Facilities, the Developer will receive a credit against the Water Capacity Payment calculated as set forth on Exhibit K.

## ARTICLE IV ROADWAY IMPROVEMENTS

**Section 4.01 County Road 122 Improvements.** In lieu of any annexation, infrastructure or other per-acre fees which would otherwise be collected by the City based on the development of the Land, the Developer agrees to construct one 24-foot wide segment of pavement with curb and gutter from the intersection of County Road 122 with County Road 117 to County Road 110, as depicted and described on the attached Exhibit L. The Developer will dedicate 100-feet of right-of-way for this roadway within the boundaries of the Land and will use good faith efforts to obtain any right-of-way or related easements required for these improvements outside of the boundaries of the Land by negotiation. If the Developer is unable to obtain any required right-of-way or easements outside of the boundaries of the Land, the City agrees to acquire such right-of-way and easements upon the Developer's request, using its powers of condemnation, if necessary; however, all reasonable and necessary costs incurred by the City in connection with such right-of-way and easement acquisition will be reimbursed to the City by the Developer.

**Section 4.02 Right-of-Way Dedications.** The Developer will dedicate, at no cost to the City, one-half of the right-of-way required for any roads shown on the Concept Plan which bound the Land and 100% of the right-of-way for the portion of any arterials shown on the Concept Plan which bisect the Land. The parties acknowledge that the final location of certain of such roadways may be subject to minor changes based on the final right-of-way alignment.

**Section 4.03 County Road 117.** The City acknowledges that the Developer may desire to have those portions of County Road 117 adjacent to the southern and western boundaries of the Land abandoned by the County, and to replace such abandoned portions of County Road 117 with internal streets as shown on the Concept Plan. The City agrees to support any related applications for such abandonment or vacation provided that the Developer grants the City any utility easements reasonably required for City utility facilities located or proposed to be located in the right-of-way. The parties acknowledge that the Concept Plan has been prepared based on the assumption that portions of County Road 117 will be abandoned as shown on the plan. If, however, those portions of County Road 117 are not abandoned, then the Developer will dedicate sufficient right-of-way out of the Property adjacent to the existing roadway to increase the total right-of-way to 60 feet. If County Road 117 is abandoned and conveyed to the

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Developer, then the Developer agrees to dedicate a 20-foot waterline easement to the City within the portion of the right-of-way conveyed to it, as depicted on Exhibit M. If part of County Road 117 is abandoned, the City agrees that the Developer will not be required to construct subdivision walls and sidewalks along any portion of County Road 117 that remain open. If, however, no part of County Road 117 is abandoned, then a subdivision wall and sidewalk along County Road 117 will be required.

## ARTICLE V CONCEPT PLAN

**Section 5.01 Phased Development.** The Developer intends to develop the Land in phases. Portions of the Land not under active development may remain in use as income-producing agricultural lands or as open space land.

**Section 5.02 Concept Plan; Exceptions.** The City hereby confirms (i) its approval of the Concept Plan, and (ii) that the Concept Plan complies with the City's General Plan, as amended. The City approves the land uses, densities, exceptions, roadway alignments and widths, access and other matters shown on the Concept Plan, and confirms that the Concept Plan has been approved by all required City departments, boards and commissions.

**Section 5.03 Development Review and Approval.** It is the parties mutual intention that the City will have the sole responsibility for review and approval of all construction plans, development plans; preliminary plans, and subdivision plats within the Land. If an amendment to the City's interlocal agreement with Williamson County is required to assure that no County review of such plans is required and that no related County fees are assessed, the City agrees to promptly request and use good faith efforts to obtain such an amendment.

**Section 5.04 Term of Approvals.** Except as provided below, the Concept Plan will be effective for the term of this Agreement. Any preliminary subdivision plan or final subdivision plat that is consistent with the Concept Plan, applicable City ordinances and State law will be effective for the term of this Agreement. The Concept Plan will be deemed to have expired if no final plat of the Land is recorded for a period five years.

**Section 5.05. Amendments.** Due to the fact that the Land comprises a significant land area and its development will occur in phases over a number of years, modifications to the Concept Plan may become desirable due to changes in market conditions or other factors. Variations of a preliminary plat or final plat from the Concept Plan that do not increase the overall density of development of the Land will not require an amendment to the Concept Plan. Minor changes to the Concept Plan, including minor modifications of street alignments, minor changes in lot lines, the designation of land for public or governmental uses; changes in lot sizes that do not result in an increase in the overall density of development of the Land (including any increase in lot sizes resulting in a decrease in the total number of lots) or any change to a public use, including, but not limited to school use, will not require an amendment to the Concept Plan or City approval. Major changes to the Concept Plan must be consistent with the terms of this Agreement and will be subject to review and approval by the City, which will not be unreasonably withheld.

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## ARTICLE VI CREATION OF DISTRICT

**Section 6.01 Consent to Creation of Districts.** The City acknowledges receipt of the Developer's request, in accordance with Section 54.016, *Texas Water Code*, and Section 42.042, *Texas Local Government Code*, for creation of the Districts over the Land. On the Effective Date of this Agreement, the City has approved the resolution attached as Exhibit N, consenting to the inclusion of the Land within the proposed Districts.

**Section 6.02 Wholesale Water and Wastewater Service to Districts.** The City agrees to enter into a wholesale water and wastewater utility services agreement with each of the Districts on the terms set forth on Exhibit O. This agreement will include any other standard terms contained in City wholesale water and wastewater service contracts that are not in conflict with the terms of Exhibit O. The Districts will provide retail water and wastewater services within their respective boundaries.

**Section 6.03 Street Lighting.** The Developer, or an electric utility, will construct all required street lighting within the boundaries of the Districts, and the Districts will be required to operate and maintain the street lighting within their respective boundaries.

### **Section 6.04 Annexation.**

(a) The City agrees that it will not annex a District until: (i) water, wastewater and drainage facilities have been completed to serve at least 90% of the developable acreage within the District; and (ii) (a) the Developer has been reimbursed by the District for the water, wastewater and drainage facilities in accordance with the rules of the Commission (or its successor agency) or (b) the City has expressly assumed the obligation to reimburse the Developer under those rules. The City agrees that a request for annexation will not be required with the filing of any final plat of property within a District.

(b) Contemporaneously with the annexation of the land within a District, the City will zone any undeveloped property within that District consistently with the land uses shown on the Concept Plan, and will zone all developed property consistently with the land uses in existence on the date of the annexation.

## ARTICLE VII DEVELOPMENT MATTERS

**Section 7.01 Generally.** The Developer will have the right to select the providers of CATV, gas, electric, telephone, telecommunications and all other utilities and services, including solid waste collection and recycling services, or to provide "bundled" utilities within the Land.

**Section 7.02 Drainage.** The City agrees that the Land will be eligible to participate in the City's regional detention facilities, rather than providing on-site detention, on the same basis as other development within the City's extraterritorial jurisdiction. Subject to the City's review and approval of the Developer's drainage plan, the availability of capacity, and the payment of

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all applicable City fees, the City agrees to provide written confirmation of its commitment of detention capacity or services for the Land. Alternatively, subject to standard City review and approval processes and compliance with applicable City ordinances, on-site detention for areas within the Land that drain into the existing water control and improvement district lake located on the Land may be provided through the lake. The Developer, or its successors or assigns, will maintain all stormwater drainage facilities within the Land that are not accepted by a District for operation and maintenance or included in the lake, including all drainage easements. The City will not require the installation of any drainage improvements which do not qualify for construction under the existing nationwide Section 404 Permit issued by the Corps of Engineers.

**Section 7.03 Fire Protection Services.** The Developer agrees to negotiate a fire plan with the City, for presentation to the Districts, under which each District would receive fire protection and emergency service from the City and that District would compensate the City for such services as authorized by Section 49.351, *Texas Water Code*. The City acknowledges that any fire protection plan must be approved by the Commission and the voters within the District, and approval will be subject to confirmation that the Land is not included within the service area of an existing emergency services district.

**Section 7.04 Annexation of Certain Land into City Corporate Limits.** The City desires to expand its corporate limits and its extraterritorial jurisdiction in order to provide for the City's orderly expansion and extension of facilities. Under applicable provisions of the *Texas Local Government Code*, a municipality may generally not annex a tract of land that is less than 1,000 feet in width. Accordingly, the Developer agrees that, prior to the creation of the Districts by the Commission, the City may annex 1,000 foot strips out of the Land along and including the right-of-way for County Road 122, Arterial A, County Road 112, and County Road 110, as depicted on **Exhibit P** ("Annexation Tracts"). The Developer agrees to prepare, at its cost, and provide field notes for the Annexation Tracts to the City within 30 days of the date of the date of this Agreement. The City agrees to bear all other costs of such annexations and to complete the annexations within four months of the date of this Agreement. The Developer agrees to execute any necessary requests for or consents to such annexations if requested to do so by the City. The City acknowledges that the annexations must be completed prior to the creation of the Districts by the Commission.

**Section 7.06. Exclusion of Certain Portions of the Annexation Tracts.** The City agrees that, within 30 days after the Commission's issuance of orders creating the Districts, the City will initiate proceedings to exclude all portions of the Annexation Tracts which are located within the Districts and outside of the County road rights of way for County Road 122, Arterial A, County Road 112, and County Road 110. The City will bear all costs of such exclusions and will complete such exclusions within four months of the date of the Commission orders creating the Districts.

**Section 7.07 No Other Oversizing Required.** No further oversizing of facilities to serve the Land is anticipated by the City at this time. If, in the future, the City determines that it would be in its best interest to oversize additional facilities which are to be constructed by the Developer, then the City may request that such facilities be oversized and, provided that the oversizing does not result in a delay in construction and the City pays all costs resulting from its



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request for oversizing, the Developer agrees to cooperate with the City to accommodate such request. Except as provided in this Agreement, no other oversizing of or cost participation in upsizing of facilities will be required of the Developer or the Districts, unless such additional oversizing is required due to a change in the Developer's utility requirements or an increase in the density of development of the Land above that projected in the Concept Plan.

## ARTICLE VIII PARK AND RECREATIONAL AMENITIES

Section 8.01 **Parkland.** The Developer agrees that the park and open space land shown on the Concept Plan will be dedicated to the Districts, or another governmental agency for parks, open space, mitigation or other public purposes. The City agrees that the Developer will receive a 100% credit for such dedication against the City's parkland dedication requirements and that no additional parkland dedication or park fees will be required. Any trails within this park and open space land will be constructed in accordance with the City's standards and will be open to the public.

Section 8.02. **Improvements.** Any playground equipment constructed by the Developer will meet consumer product safety standards.

## ARTICLE XI AUTHORITY AND VESTING OF RIGHTS

Section 9.01 **Authority.** This Agreement is entered into, in part, under the statutory authority of Section 402.014, *Texas Local Government Code*, and Section 212.172, *Texas Local Government Code*. Section 212.172, *Texas Local Government Code*, authorizes the City to make written contracts with the owners of land establishing lawful terms and considerations that the parties agree to be reasonable, appropriate, and not unduly restrictive of business activities. The parties intend that this Agreement guarantee the continuation of the extraterritorial status of portions of the Land as provided in this Agreement; authorize certain land uses and development on the Land; provide for the uniform review and approval of plats and development plans for the Land; provide exceptions to certain ordinances; and provide other terms and consideration, including the continuation of land uses and zoning after annexation of the Land.

Section 9.02: **Vesting of Rights.** The Concept Plan submitted by the Developer on June 15, 2004, constituted an application by the Developer for the subdivision and development of the Land, and initiated the subdivision and development permit process for the Land. The City acknowledges that the Developer has the vested right to develop the Land in accordance with this Agreement, subject to any limitations contained in Chapter 245, *Texas Local Government Code*.

## ARTICLE X TERM, ASSIGNMENT AND REMEDIES

Section 10.01 **Term.** The term of this Agreement will commence on the Effective Date and continue for 15 years thereafter, unless terminated on an earlier date under other provisions of this Agreement or by written agreement of the City and the Developer. Upon the expiration of

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15 years, this Agreement may be extended, at the Developer's request, with City Council approval, for up to two successive 15-year periods.

**Section 10.02 Termination and Amendment by Agreement.** This Agreement may be terminated or amended as to all of the Land at any time by mutual written consent of the City and the Developer and, following creation of the Districts, the Districts and may be terminated or amended only as to a portion of the Land by the mutual written consent of the City and the owners of the portion of the Land affected by the amendment or termination and, following creation of the Districts, the District containing such portion of the Land.

## **Section 10.03 Assignment.**

a. This Agreement, and the rights of the Developer hereunder, may be assigned by the Developer, with the City's consent, to a subsequent developer of all or a portion of the undeveloped Land. Any assignment will be in writing, specifically set forth the assigned rights and obligations and be executed by the proposed assignee. The City's consent to any proposed assignment will not be unreasonably withheld or delayed.

b. If the Developer assigns its rights and obligations hereunder as to a portion of the Land, then the rights and obligations of any assignee and the Developer will be severable, and the Developer will not be liable for the nonperformance of the assignee and vice versa. In the case of nonperformance by one developer, the City may pursue all remedies against that nonperforming developer, but will not impede development activities of any performing developer as a result of that nonperformance.

c. This Agreement is not intended to be binding upon, or create any encumbrance to title as to, any ultimate consumer who purchases a fully developed and improved lot within the Land.

## **Section 10.04 Remedies.**

a. If the City defaults under this Agreement, the Developer may enforce this Agreement by seeking damages and/or a writ of mandamus from a Williamson County District Court, or may give notice setting forth the event of default ("Notice") to the City. If the City fails to cure any default that can be cured by the payment of Money ("Monetary Default") within 45 days from the date the City receives the Notice, or fails to commence the cure of any default specified in the Notice that is not a Monetary Default within 45 days of the date of the Notice, and thereafter to diligently pursue such cure to completion, the Developer may terminate this Agreement as to all of the Land owned by the Developer, or as to the portion of the Land affected by the default; however, any such remedy will not revoke the City's consent to the creation of the Districts.

b. If the Developer defaults under this Agreement, the City may enforce this Agreement by seeking damages and/or injunctive relief from a Williamson County District Court, or the City may give Notice to Developer. If the Developer fails to cure any Monetary Default within 45 days from the date it receives the Notice, or fails to commence the cure of any default specified in the Notice that is not a Monetary Default within 45 days of the date of the

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Notice, and thereafter to diligently pursue such cure to completion, the City may terminate this Agreement; however, any such remedy will not revoke the City's consent to the creation of the Districts.

c. If either party defaults, the prevailing party in the dispute will be entitled to recover its reasonable attorney's fees, expenses and court costs from the non-prevailing party.

## **Section 10.05 Cooperation.**

a. The City and the Developer each agree to execute such further documents or instruments as may be necessary to evidence their agreements hereunder.

b. The City agrees to cooperate with the Developer in connection with any waivers or approvals the Developer may desire from Williamson County in order to avoid the duplication of facilities or services in connection with the development of the Land.

c. In the event of any third party lawsuit or other claim relating to the validity of this Agreement or any actions taken hereunder, the Developer and the City agree to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution in their respective rights and obligations under this Agreement.

## **ARTICLE XI MISCELLANEOUS PROVISIONS**

**Section 11.01 Notice.** Any notice given under this Agreement must be in writing and may be given: (i) by depositing it in the United States mail, certified, with return receipt requested, addressed to the party to be notified and with all charges prepaid; or (ii) by depositing it with Federal Express or another service guaranteeing "next day delivery", addressed to the party to be notified and with all charges prepaid; (iii) by personally delivering it to the party, or any agent of the party listed in this Agreement, or (iv) by confirmed facsimile, with a confirming copy sent by one of the other described methods of notice set forth. Notice by United States mail will be effective on the earlier of the date of receipt or three days after the date of mailing. Notice given in any other manner will be effective only when received. For purposed of notice, the addresses of the parties will, until changed as provided below, be as follows:

CITY: City of Round Rock  
221 East Main Street  
Round Rock, Texas 78664  
Attn: City Manager

With Required Copy to: Steve Sheets  
Sheets & Crossfield  
309 E. Main Street  
Round Rock, Texas 78664-5264

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DEVELOPER: Blake Magee Investments, L.P.  
1011 N. Lamar Blvd.  
Austin, Texas 78703  
Attn: Blake Magee

With Required Copy to: Sue Brooks Littlefield  
Armbrust & Brown, L.L.P.  
100 Congress Avenue, Suite 1300  
Austin, Texas 78701

The parties may change their respective addresses to any other address within the United States of America by giving at least five days' written notice to the other party. The Developer may, by giving at least five days' written notice to the City, designate additional parties to receive copies of notices under this Agreement.

**Section 11.02 Severability; Waiver.** If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid or enforceable provision as is possible.

Any failure by a party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver thereof or of any other provision, and such party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

**Section 11.03 Applicable Law and Venue.** The interpretation, performance, enforcement and validity of this Agreement is governed by the laws of the State of Texas. Venue will be in a court of appropriate jurisdiction in Williamson County, Texas.

**Section 11.04 Entire Agreement.** This Agreement contains the entire agreement of the parties. There are no other agreements or promises, oral or written, between the parties regarding the subject matter of this Agreement. This Agreement can be amended only by written agreement signed by the parties. This Agreement supersedes all other agreements between the parties concerning the subject matter.

**Section 11.05 Exhibits, Headings, Construction and Counterparts.** All schedules and exhibits referred to in or attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice-versa. The parties acknowledge that each of them have been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting party will not be employed in interpreting this Agreement or any exhibits hereto. If there is any conflict or inconsistency between the provisions of this Agreement and otherwise applicable City

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ordinances, the terms of this Agreement will control. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts, individually or taken together, bear the signatures of all of the parties.

**Section 11.06 Time.** Time is of the essence of this Agreement. In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday or legal holiday.

**Section 11.07 Force Majeure.** If, by reason of *force majeure*, either party is rendered unable, in whole or in part, to carry out its obligations under this Agreement, the party whose performance is so affected must give notice and the full particulars of such *force majeure* to the other party within a reasonable time after the occurrence of the event or cause relied on, and the obligation of the party giving such notice, will, to the extent it is affected by such *force majeure*, be suspended during the continuance of the inability but for no longer period. The party claiming *force majeure* must endeavor to remove or overcome such inability with all reasonable dispatch.

The term "*force majeure*" means Acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas, or of any court or agency of competent jurisdiction or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, vandalism, explosions, breakage or accidents to machinery, pipelines or canals, or inability on the part of a party to perform due to any other causes not reasonably within the control of the party claiming such inability.

**Section 11.08 Authority for Execution.** The City each certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with its City Charter and City ordinances. The Developer hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the articles of incorporation and bylaws or partnership agreement of each entity executing on behalf of the Developer.

**Section 11.09 Exhibits.** The following exhibits are attached to this Agreement, and made a part hereof for all purposes:

- Exhibit A - Metes and Bounds Description of the Land
- Exhibit B - Concept Plan, including boundary roads and arterials
- Exhibit C - McNutt Interceptor Schematic Plan, including depiction of Line A, Line B and Line C
- Exhibit D - Line A Construction Schedule
- Exhibit E - Line A Preliminary Budget

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- Exhibit F Line B Construction Schedule
- Exhibit G - Intentionally Omitted
- Exhibit H - Off-Site Water Facilities Schematic Plan, including location of 20-foot waterline easement
- Exhibit I - Off-Site Water Facilities Construction Schedule
- Exhibit J - Calculation of Water Capacity Payment
- Exhibit K Calculation of Credit against Water Capacity Payment
- Exhibit L - County Road 122 improvements
- Exhibit M County Road 117/Waterline Easement
- Exhibit N - District Consent Resolution
- Exhibit O - Terms of Wholesale Water and Wastewater Services
- Exhibit P - Annexation Tracts

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the dates indicated below.

CITY OF ROUND ROCK

By: \_\_\_\_\_

Printed Name: NYLE MAXWELL

Title: MAYOR

Date: September 22, 2005

STATE OF TEXAS

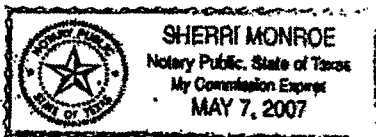
§

§

COUNTY OF WILLIAMSON

§

This instrument was acknowledged before me this 22 day of September 2005, by Nyle Maxwell, Mayor of the City of Round Rock, Texas, a Texas home-rule municipality, on behalf of the municipality..



Notary Public - State of Texas

Name: Sherri Monroe

My Commission Expires: May 7, 07

# Exhibit A

BLAKE MAGEE INVESTMENTS, L.P.

By: Blake Magee GP, LLC., a Texas limited liability company, its General Partner

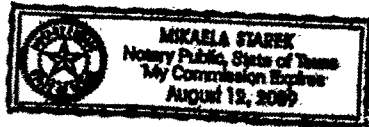
By: [Signature]  
Blake J. Magee, President

Date: 9/21/05

STATE OF TEXAS

COUNTY OF WILLIAMSON

This instrument was acknowledged before me this 21<sup>st</sup> day of September, 2005, by Blake J. Magee, President of Blake Magee GP, LLC., a Texas limited liability company, general partner of Blake Magee Investments, L.P., a Texas limited partnership, behalf of the corporation and the partnership.



[Signature]  
Notary Public - State of Texas  
Name: Mikaela Starck  
My Commission Expires: 8/12/2009

# Exhibit A

726.21 ACRES

A PARCEL OF LAND IN WILLIAMSON COUNTY, TEXAS, BEING A PART OF THE WILLIS DONAHO, JR. SURVEY, ABSTRACT No. 173; THE JOHN L. JUSTICE SURVEY, ABSTRACT No. 356; THE HENRY MILLARD SURVEY, ABSTRACT No. 452; THE WILLIAM DUNN SURVEY, ABSTRACT No. 196; AND THE ROBERT McNUTT SURVEY, ABSTRACT No. 422 THE SAME BEING A PART OF THAT 868.54 ACRE TRACT OF LAND CONVEYED TO TOM E. NELSON, JR., TRUSTEE, BY DEED RECORDED IN VOLUME 1133, PAGE 639 OF THE OFFICIAL RECORDS OF WILLIAMSON COUNTY, TEXAS, AND BEING A PART OF THAT 27.03 ACRE TRACT OF LAND CONVEYED TO NELSON HOMESTEAD FAMILY PARTNERSHIP, LTD., A TEXAS LIMITED PARTNERSHIP, BY DEED RECORDED IN DOCUMENT No. 9828298 OF THE OFFICIAL RECORDS OF WILLIAMSON COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE at concrete monument numbered 40 found for the Most Northerly Northeast Corner of the said 868.54 Acre Tract;

THENCE along the North and East Lines of the said 868.54 Acre Tract the following two (2) courses:

1. S.21°37'04"E., a distance of 645.74 feet to a fence corner post;
2. N.70°05'31"E., along a fence, a distance of 475.41 feet to a 1/2" iron rod found in the West Line of County Road 110 (formerly known as Bell Glen - Hutto Road), as said West Line is presently fenced;

THENCE S.16°37'39"E., along the said West Line of County Road 110, a distance of 349.01 feet to a 1/2" iron rod set in the North Line of County Road 112;

THENCE S.20°30'50"E., crossing County Road 112, a distance of 66.54 feet to a steel fence corner post in the South Line of County Road 112 and in the West Line of County Road 110;

THENCE S.18°46'14"E., along the West Line of County Road 110, a distance of 401.78 feet to the Point of Beginning;

THENCE continue along the West Line of County Road 110 the following four courses:

1. S.18°46'14"E., a distance of 647.53 feet to a 1/2" iron rod found;
2. S.17°43'50"E., a distance of 651.58 feet to a 1/2" iron rod found;
3. S.13°18'30"E., a distance of 1361.28 feet to a 1/2" iron rod found;
4. S.13°18'30"E., a distance of 51.10 feet;

THENCE departing the West Line of County Road 110 and crossing the 868.54 Acre Tract the following five courses:

1. S.63°09'04"W. a distance of 192.14 feet;
2. N.75°03'32"W. a distance of 75.15 feet;
3. S.11°10'29"W. a distance of 174.11 feet;
4. S.19°30'41"W. a distance of 353.88 feet to a point on a non-tangent curve to the right;



# Exhibit A

726.21 ACRES

5. Northeasterly along the arc of said curve, a distance of 513.14 feet (said curve having a radius of 1250.00 feet, a central angle of  $23^{\circ}31'14''$  and a chord bearing  $N.85^{\circ}49'12''E.$ , 509.54 feet) to the West Line of County Road 110;

THENCE  $S.08^{\circ}33'12''E.$ , along the West Line of County Road 110, a distance of 67.85 feet to a 60d nail set in a fence post, the same being the Most Northerly Corner of that 0.55 Acre Tract of land conveyed to Jonah Water Supply Corporation by deed recorded in Volume 987, Page 399 of the Official Records of Williamson County, Texas;

THENCE  $S.42^{\circ}17'48''W.$ , along the West Line of the said 0.55 Acre Tract, a distance of 57.96 feet to a point on a non-tangent curve to the left;

THENCE departing the West Line of the said 0.55 Acre Tract and crossing the said 868.54 Acre Tract the following four courses:

1. Southwesterly along the arc of said curve, a distance of 673.34 feet (said curve having a radius of 1150.00 feet, a central angle of  $33^{\circ}32'51''$  and a chord bearing  $S.58^{\circ}13'14''W.$ , 663.76 feet);
2.  $S.53^{\circ}56'11''E.$  a distance of 526.12 feet;
3.  $N.32^{\circ}35'36''E.$  a distance of 138.79 feet;
4.  $N.58^{\circ}46'46''E.$  a distance of 192.40 feet to the West Line of County Road 110;

THENCE  $S.29^{\circ}48'11''E.$ , along the West Line of County Road 110, a distance of 1905.99 feet to a  $\frac{1}{2}$ " iron rod set;

THENCE continue  $S.29^{\circ}48'11''E.$ , a distance of 215.73 feet to the North Line of County Road 122 as fenced;

THENCE  $N.89^{\circ}39'47''W.$ , along the North Line of County Road 122, as fenced, a distance of 2284.63 feet to a  $\frac{1}{2}$ " iron rod set in the East Line of that 6.51 Acre Tract of land conveyed to Lestey C. Madsen and Cheryl L. Madsen by deed recorded in Volume 669, Page 105 of the Official Records of Williamson County, Texas, from which point a  $\frac{1}{2}$ " iron rod found for an angle point in the East Line of the said 6.51 Acre Tract bears  $S.00^{\circ}15'41''W.$  9.28 feet;

THENCE  $N.00^{\circ}15'41''E.$ , along the East Line of the 6.51 Acre Tract, a distance of 254.64 feet to a  $\frac{1}{2}$ " iron rod found for the Northeast Corner of the 6.51 Acre Tract;

THENCE  $N.89^{\circ}55'14''W.$ , along the North Line of the said 6.51 Acre Tract, a distance of 591.06 feet to a 1" iron pipe found;

THENCE  $N.89^{\circ}59'04''W.$ , at a distance of 14.42 feet pass the Northwest Corner of the 6.51 Acre Tract and continue along the North Line of that 161.11 Acre Tract of land conveyed to Chester Madsen and Joyce Madsen by deed recorded in Volume 434, Page 176 of the Deed Records of Williamson County, Texas, in all a total distance of 938.71 feet to a 1" iron pipe set for the Northwest Corner of the said 161.11 Acre Tract;

# Exhibit A

726.21 ACRES

THENCE along the West Line of the said 161.11 Acre Tract the following three (3) courses:

1. S.01°38'39"E., a distance of 276.85 feet to a 60d nail set by a fence post;
2. S.02°11'03"W., a distance of 120.77 feet to a 1" iron pipe found;
3. S.00°30'11"W. a distance of 125.60 feet to a ½" iron rod found for the Northwest Corner of that 4.46 Acre Tract of land conveyed to Duval C. Jarl, Jr., and Geraldine K. Jarl by deed recorded in Volume 792, Page 319 of the Deed Records of Williamson County, Texas;

THENCE S.01°19'26"W., along the West Line of the said 4.46 Acre Tract, a distance of 551.22 feet to a ½" iron rod found for the Southwest Corner of the said 4.46 Acre Tract and the Northwest Corner of that 2.00 Acre Tract of land (Tract 2) conveyed to Marjorie S. Jarl by deed recorded in Volume 792, Page 304 of the Deed Records of Williamson County, Texas;

THENCE S.01°33'01"W., along the West Line of the said 2.00 Acre Tract, a distance of 240.91 feet to a ½" iron rod found for the Southwest Corner of said Tract 2 and the Northwest Corner of Tract 1 conveyed in the said deed recorded in Volume 792, Page 304;

THENCE S.01°10'24"W., along the West Line of said Tract 1, a distance of 273.52 feet to a ½" iron rod found in the North Line of County Road 122 for the Southwest Corner of said Tract 1;

THENCE along the North Line of County Road 117, as fenced, the following three (3) courses:

1. N.89°50'22"W., a distance of 1439.07 feet to a ½" iron rod set;
2. N.89°54'53"W., a distance of 1094.50 feet to a ½" iron rod set;
3. N.69°44'06"W., a distance of 52.85 feet to a ½" iron rod set;

THENCE along the East Line of County Road 117, as fenced, the following five (5) courses:

1. N.42°21'29"W., a distance of 49.82 feet to a ½" iron rod set;
2. N.18°21'23"W., a distance of 1696.94 feet to a fence post corner;
3. N.16°42'47"W., a distance of 256.40 feet to a ½" iron rod set;
4. N.76°21'25"W., a distance of 153.47 feet to a ½" iron rod found;
5. N.18°14'48"W., a distance of 1113.89 feet to a ½" iron rod found for the Southwest Corner of the said 27.03 Acre Tract;

THENCE N.18°14'20"W., along the West Line of the said 27.03 Acre Tract, the same being the East Line of County Road 117, a distance of 12.48 feet to a point on a non-tangent curve to the left;

THENCE crossing the said 20.03 Acre Tract and along the arc of said curve to the left a distance of 1529.61 feet, (said curve having a radius of 950.00 feet, a central angle of 92°15'11", and a chord bearing N.11°35'13"E., 1369.66 feet);

THENCE N.34°32'23"W., a distance of 180.52 feet to the South Line of County 112;

# Exhibit A

726.21 ACRES

THENCE along the South Line of County Road 112 the following eight courses:

1. N.57°46'29"E., a distance of 66.94 feet to a 1/2" iron rod set;
2. N.55°27'37"E., a distance of 180.43 feet to a 1/2" iron rod found;
3. N.62°57'39"E., a distance of 543.87 feet to a 1/2" iron rod set;
4. N.64°04'33"E., a distance of 668.47 feet to a 1/2" iron rod found;
5. N.62°38'45"E., a distance of 1119.31 feet to a 1/2" iron rod found;
6. N.62°40'40"E., a distance of 735.85 feet to a 1/2" iron rod set;
7. N.63°07'32"E., a distance of 1050.79 feet to a 1/2" iron rod set;
8. N.63°22'34"E., a distance of 929.21 feet;

THENCE departing the South Line of County Road 112 and crossing the said 868.54 Acre Tract the following four courses:

1. S.26°44'41"E. a distance of 574.93 feet;
2. N.43°53'37"E. a distance of 178.17 feet;
3. N.37°29'47"E. a distance of 806.07 feet;
4. N.70°59'25"E. a distance of 128.33 feet to the said Point of Beginning.

Containing 726.21 acres, more or less.

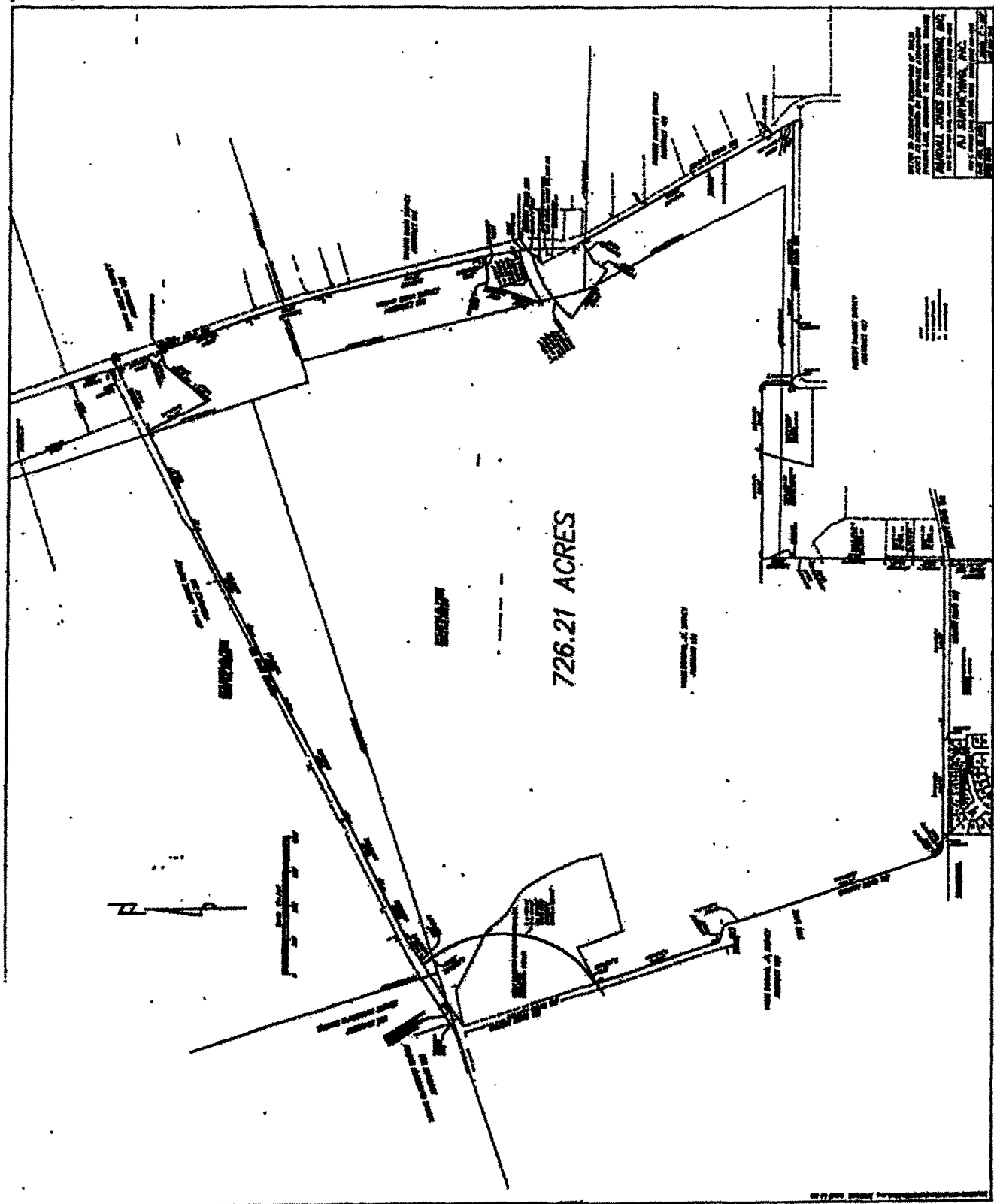
*John K. Weigand Aug. 30, 2005*  
J. Kenneth Weigand  
Registered Professional Land Surveyor No. 5741  
State of Texas



RJ Surveying, Inc.  
1212 East Braker Lane  
Austin, Texas 78753

This document was prepared under 22TAC 583.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

## Exhibit A





# Exhibit A

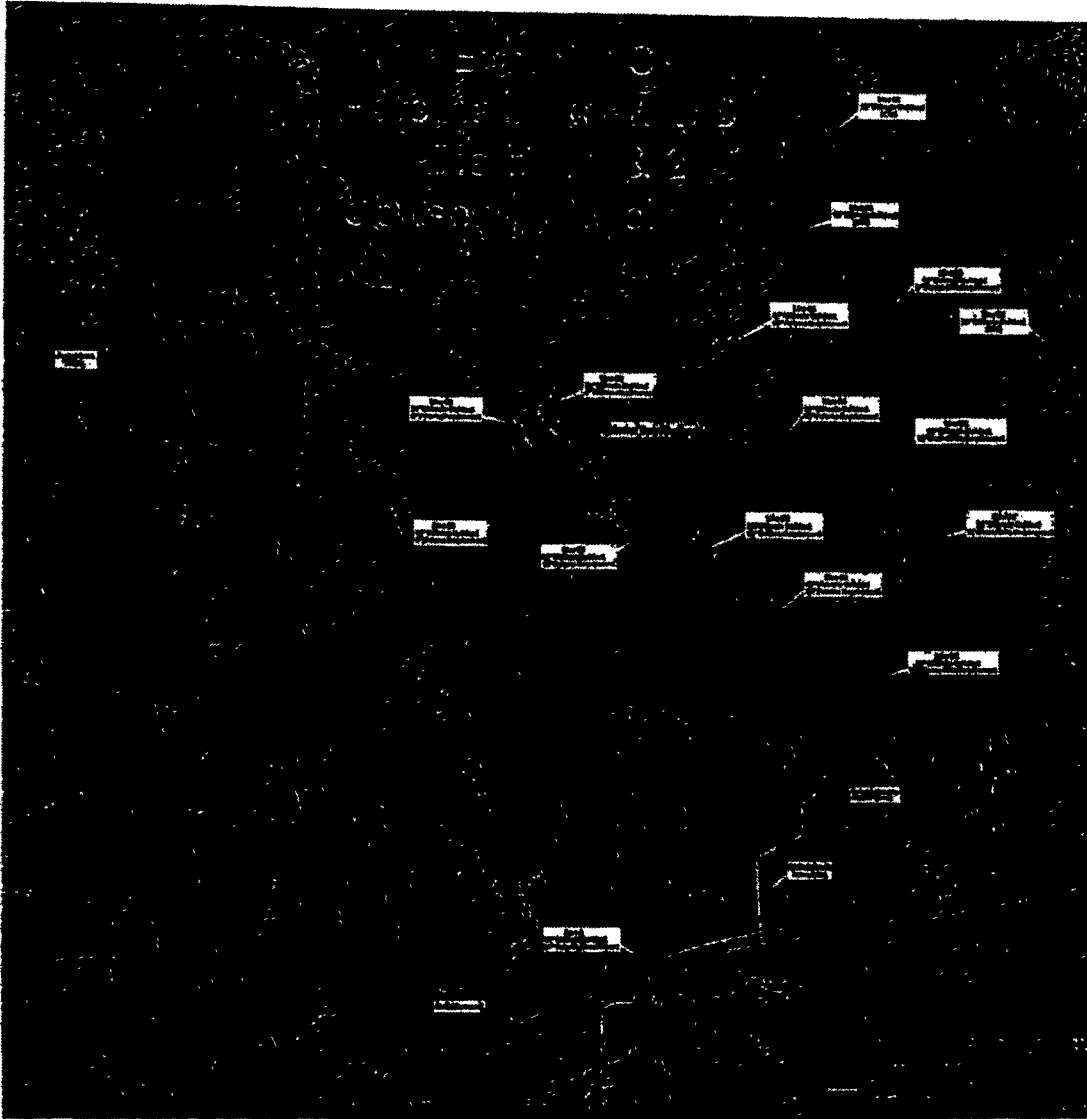


EXHIBIT C

# Exhibit A

## EXHIBIT D Line A Construction Schedule

<u>Item</u>	<u>Completion</u>
Select Engineer	Engineer selected
Preliminary Design, Survey and Geotechnical	March 2006
Land Acquisition	October 2006
Final Design	October 2006
Award Bid	November 2006
Final Acceptance	December 2007

# Exhibit A

## EXHIBIT E Line A Preliminary Budget

Capital Cost -	\$12,638,241
Land Acquisition -	16,728
Engineering Cost -	<u>1,271,680</u>
Total Estimated Budget	\$13,829,649



# Exhibit A

## Paloma Lake McNutt Interceptor Line B1 and B2 Design and Construction Schedule

### Exhibit F

Process/Task	Projected Start Date	Projected Duration
Construction Plans		
Road Survey	4/1/2006	90
Basement Acquisition	6/30/2006	120
Start construction plans	10/28/2006	60
Permit submitted	12/27/2006	30
City Review and Response	1/26/2007	120
Public Bid	5/26/2007	30
Precon	6/25/2007	200
Final Acceptance	1/11/2008	

Paloma-WW SCHEDULE

9/2/2006 9:28 AM

# Exhibit A

**EXHIBIT G**  
Intentionally Omitted

Exhibit G  
Page 1 of 1

193728-18 09/14/2005

PETR 0041

# Exhibit A

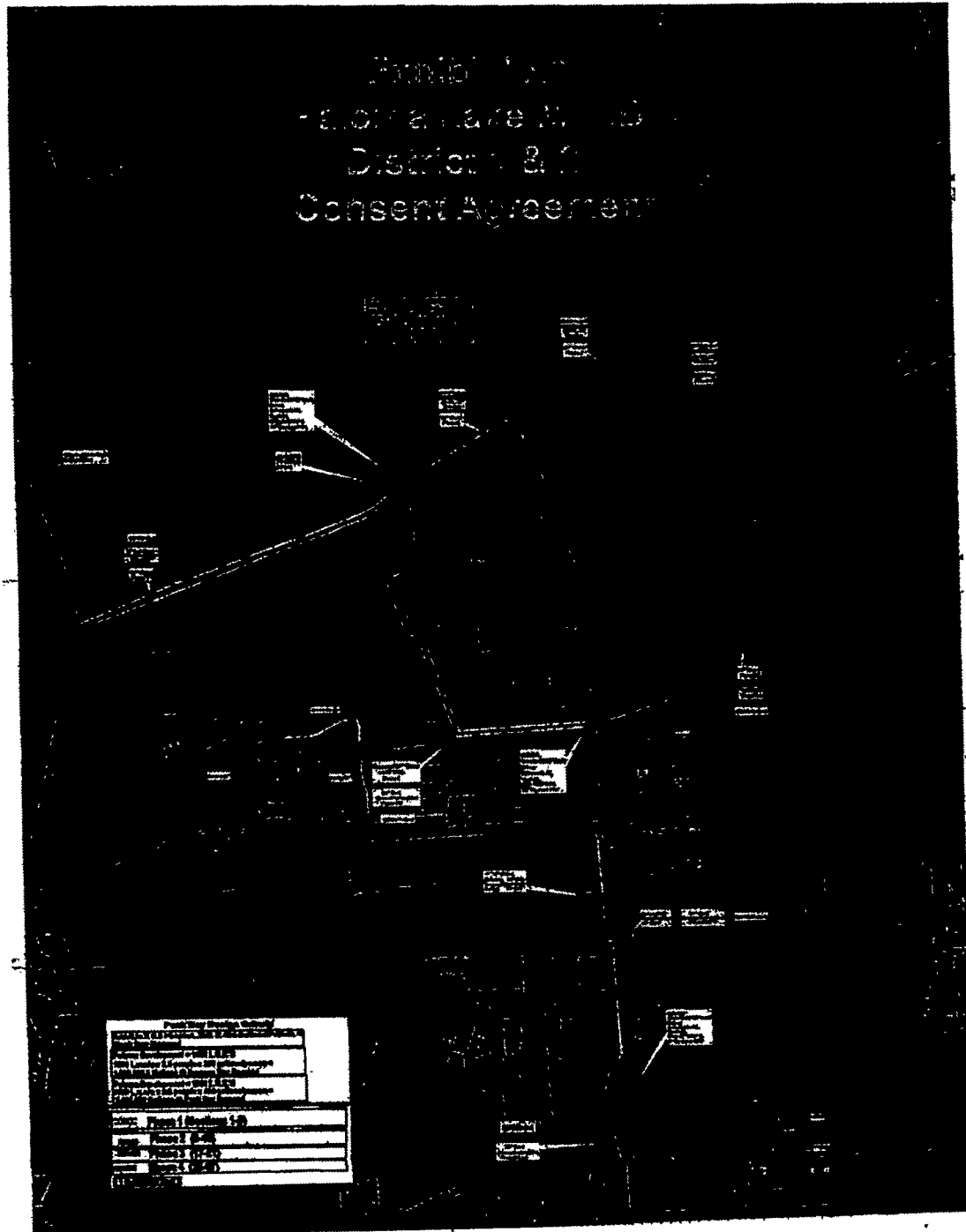


EXHIBIT H

# Exhibit A

## EXHIBIT I

### Off-Site Water Facilities Construction Schedule

<u>Item</u>	<u>Completion</u>
Select Engineer	November 2005
Preliminary Design, Survey and Geotechnical	March 2006
Land Acquisition	October 2006
Final Design	October 2006
Award Bid	November 2006
Final Acceptance	December 2007

# Exhibit A

**EXHIBIT J**  
**Calculation of Water Capacity Payment**

36" Water Line Water Capacity payment	\$546,624
24" Water Line Water Capacity Payment	\$150,516

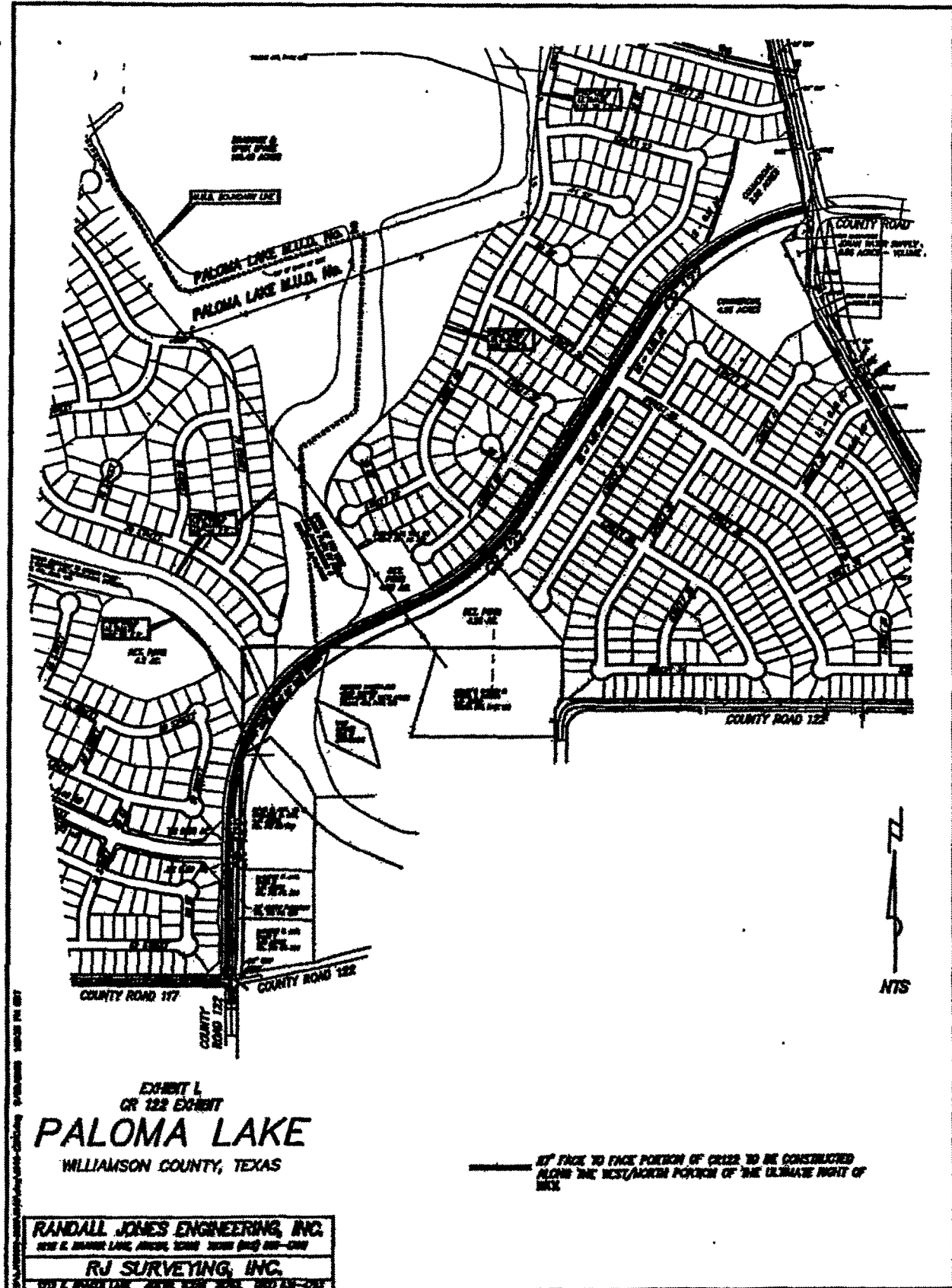
# Exhibit A

## EXHIBIT K Calculation of Credit Against Water Capacity Payment

36" Water Line Water Capacity payment	\$546,624.00
Paloma 2,000 LUE's X \$27.66 Credit	<u>\$ 55,310.10</u>
Capacity Payment less Credit	\$491,313.90
24" Water Line Water Capacity Payment	\$ 150,516.80
Paloma 2,000 LUE's X \$7.27 Credit	<u>\$ 14,542.99</u>
Capacity Payment less Credit	\$ 135,973.81

Note – 24" water line will be constructed when growth within the development dictates its construction as mutually agreed by City and Developer. Construction of 24" water line capacity payment will be paid when 24" water line is constructed. Progress payments to be paid by Developer under schedule provided in 2.01 (h).

# Exhibit A



# Exhibit A



EXHIBIT M



# Exhibit A

## EXHIBIT N

### A RESOLUTION GRANTING THE CONSENT OF THE CITY OF ROUND ROCK, TEXAS, TO THE CREATION OF PALOMA LAKE MUNICIPAL UTILITY DISTRICT NO. 1 AND PALOMA MUNICIPAL UTILITY DISTRICT NO. 2 WITHIN THE CITY'S EXTRATERRITORIAL JURISDICTION

RESOLUTION NO. \_\_\_\_\_

WHEREAS, the City of Round Rock, Texas has received a Petition for Consent to the Creation of Municipal Utility Districts, proposed to be known as Paloma Lake Municipal Utility District No. 1 and Paloma Lake Municipal Utility District No. 2, upon \_\_\_\_\_ acres located in the City's extraterritorial jurisdiction, a copy of which petition is attached as Exhibit 1; and

WHEREAS, Section 54.016 of the *Texas Water Code* and Section 42.042 of the *Texas Local Government Code* provide that land within a city's extraterritorial jurisdiction may not be included within a district without the city's written consent; NOW, THEREFORE,

#### BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROUND ROCK, TEXAS:

Section 1. That the City Council of the City of Round Rock, Texas, gives its written consent to the creation of two municipal utility districts, proposed to be known as Paloma Lake Municipal Utility District No. 1 and Paloma Lake Municipal Utility District No. 2, on \_\_\_\_\_ acres of land, as described in the attached petition.

Section 2. That the City Council agrees that each District described in Section 1 will contain a portion of the Land, as determined by the property owner. No further action on the part of the City will be required to the establishment of the Districts' boundaries; however, the City will provide confirmation of its consent if requested to do so by the owner of the Land or any District.

Section 3. That the City Council further agrees that each District may annex or exclude property within the Land and adjust its boundaries as necessary to facilitate the extension of utilities to and the development of the Land. No further action on the part of the City will be required to evidence its consent to the annexation or exclusion of portions of the Land by a District, but the City agrees to provide additional confirmation of its consent if requested to do so by the owner of the Land or any District.

PASSED AND APPROVED on the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Mayor, City of Round Rock

Exhibit N  
Page 1 of 3

193728-18 09/14/2005

PETR 0048

# Exhibit A

ATTEST:

APPROVED:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
City Attorney

Exhibit N  
Page 2 of 3

193728-18 09/14/2003

PETR 0049

# Exhibit A

## EXHIBIT 1

### PETITION FOR CONSENT TO THE CREATION OF MUNICIPAL UTILITY DISTRICTS

Exhibit N  
Page 3 of 3

# Exhibit A

## EXHIBIT O

### Terms of Wholesale Water and Wastewater Services

1. The City will provide wholesale water and wastewater utility services to the Districts, sufficient to serve the land uses shown on the Concept Plan, for cost of service wholesale water and wastewater utility rates. These rates may be reviewed and adjusted by the City annually, based on a cost of service study performed by the City. The City shall be entitled to include a reasonable rate of return in the utility rates. Water will be provided at a minimum pressure of 35 psi and a minimum flow rate of .6 gallons per minute per LUE, and in compliance with all applicable requirements for wholesale contracts for purchased water systems, including Section 290.45(f), *Texas Administrative Code*.

2. The City will provide potable water meeting the standards of the Texas Commission on Environmental Quality for human consumption and other domestic uses, and will receive, treat and dispose of all sewage generated by customers within the Districts. The City will maintain an adequate water supply and adequate wastewater treatment capacity at all times to serve the customers within the Districts at the same level these services are provided within the City. The City may limit service to the Districts in the same manner and to the same extent that service is limited inside the City limits. If there is a water shortage, the supply of water to the Districts may be reduced or diminished in the same proportions as water supply is reduced or diminished within the City's corporate limits.

3. All water delivered to the Districts will be measured by a master meter installed at each point of delivery. Each of the Districts will be responsible for installation and maintenance of the master metering equipment and related facilities that serve that District at its own expense, and will calibrate its master meters every 12 months, or more frequently upon request of the City; however, the cost of the calibration will be borne by the City if requested more frequently than once every 12 months.

4. Each District will impose and enforce, at a minimum, all conservation measures and use restrictions imposed by the City on its own customers with the City.

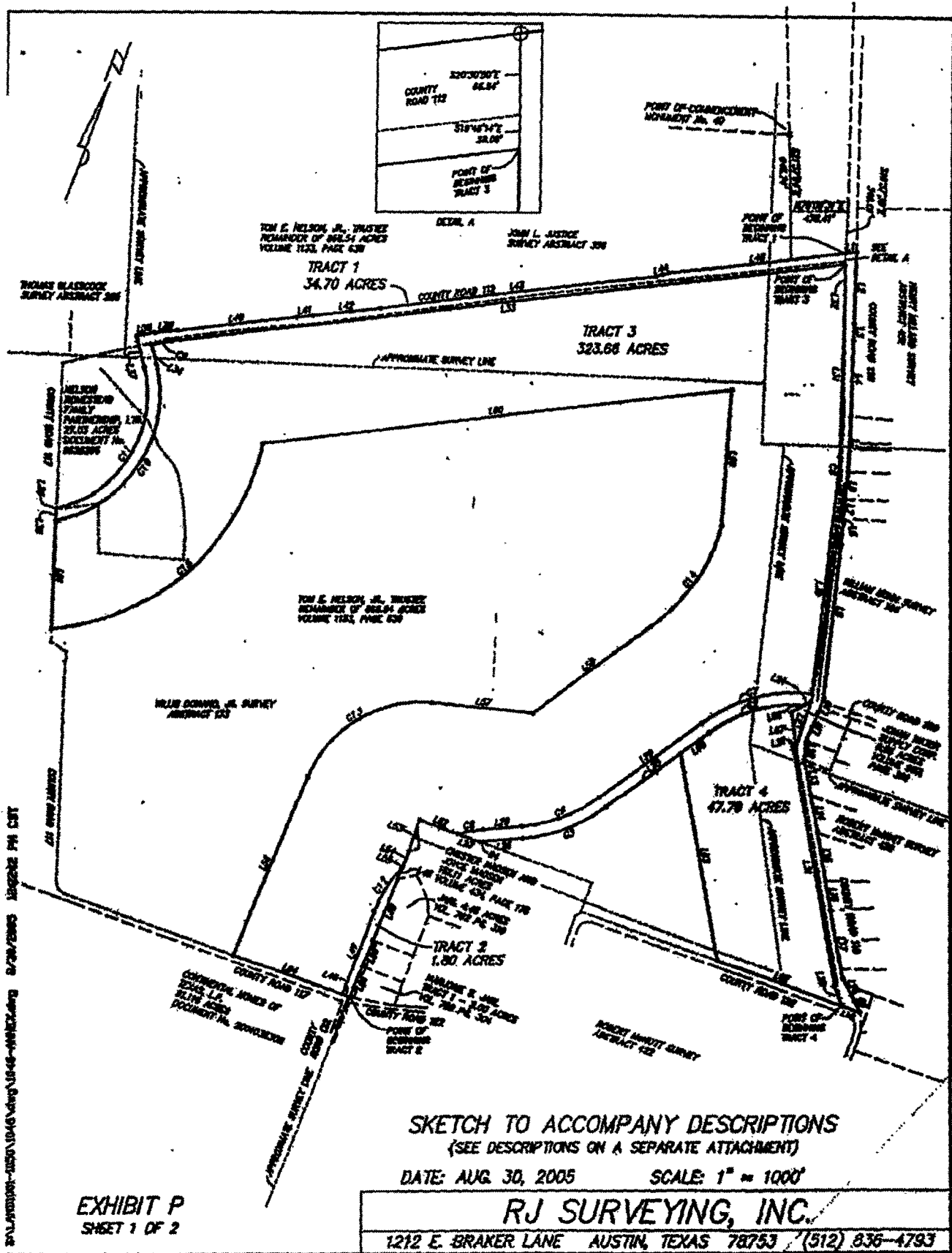
5. Upon the payment of applicable City water and wastewater capital recovery or impact fees, subject to any credits or waivers provided for in this Agreement, the Districts will have a guaranteed reservation and commitment of capacity in the City's water and wastewater utility systems for the amount of capacity for which these fees have been paid. The Districts will collect the applicable capital recovery or impact fees at the time the Districts' tap fees and other connection charged are collected, and will remit the collected fees to the City on a monthly basis. No service to a connection will be provided to a District until the City's capital recovery fees or impact fees have been paid by the customer requesting the connection.

6. Interim water service sufficient to serve 220 LUEs will be provided to the Districts via the Developer's extension of two existing City 12-inch waterlines located in the Settler's Crossing Subdivision to the boundary of the Land. Interim wastewater service sufficient to serve 220 LUEs will be provided to the Districts via the City's lift station in Settler's Crossing Subdivision.

# Exhibit A

7. The Developer will provide easements for all District maser meters in accordance with City Ordinance requirements.

# Exhibit A



# Exhibit A

LINE TABLE

LINE	LENGTH	BEARING
L1	92.47'	N63°13'41"E
L2	604.86'	S18°20'50"E
L3	139.53'	S18°02'18"E
L4	625.09'	S18°24'58"E
L5	466.48'	S17°35'24"E
L6	227.60'	S13°38'03"E
L7	161.86'	S14°03'20"E
L8	35.10'	S24°53'20"E
L9	1501.19'	S14°00'02"E
L10	120.00'	S01°12'04"W
L11	259.43'	S02°58'02"W
L12	165.35'	S15°29'41"E
L13	316.22'	S30°00'17"E
L14	312.51'	S29°33'51"E
L15	410.09'	S29°38'11"E
L16	252.44'	S29°40'41"E
L17	585.85'	S29°50'25"E
L18	204.28'	S47°37'23"E
L19	158.94'	N89°39'47"W
L20	170.20'	N38°16'30"W
L21	2056.63'	N29°46'06"W
L22	23.83'	N60°13'54"E
L23	396.05'	N01°27'05"W
L24	57.96'	S42°17'46"W
L25	1050.35'	S32°35'37"W
L26	326.88'	S65°19'19"W
L27	189.61'	N89°59'04"W
L28	326.88'	N65°19'19"E
L29	1050.35'	N32°35'37"E
L30	1793.03'	N13°19'30"W
L31	1371.13'	N18°31'32"W
L32	228.91'	N19°46'14"W
L33	5640.09'	S63°09'56"W
L34	165.15'	S34°32'23"E
L35	90.30'	N18°14'48"W

LINE	LENGTH	BEARING
L36	12.48'	N18°14'24"W
L37	260.82'	N34°32'23"W
L38	148.27'	N57°49'07"F
L39	188.92'	N64°58'03"E
L40	996.53'	N63°09'05"E
L41	134.26'	N63°47'20"E
L42	565.62'	N63°49'59"E
L43	2319.57'	N63°09'42"E
L44	107.55'	N51°48'29"E
L45	1472.74'	N63°13'41"E
L46	66.75'	N89°50'22"W
L47	747.24'	N00°16'42"E
L48	99.71'	S00°30'11"W
L49	551.22'	S01°19'26"W
L50	240.91'	S01°33'01"W
L51	273.52'	S01°10'24"W
L52	342.27'	N89°59'04"W
L53	276.85'	S01°38'39"E
L54	120.77'	S02°11'03"W
L55	25.89'	S00°30'11"W
L56	1617.91'	N01°48'43"E
L57	851.04'	N75°47'45"E
L58	1214.81'	N32°35'37"E
L59	1140.21'	N16°08'17"W
L60	3915.32'	S63°09'42"W
L61	911.94'	N18°14'48"W
L62	1098.69'	N89°39'47"W
L63	1777.88'	N29°45'27"W
L64	961.30'	N89°50'22"W
L65	122.44'	S42°17'46"W
L66	287.86'	N32°35'37"E
L67	293.56'	S26°35'54"E

CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	CHORD BRNG.	CHORD	TAN
C1	110.33	661.72	9°33'11"	S42°50'48"E	110.20	55.29
C2	851.04	1150.00	42°24'03"	S53°47'38"W	831.75	446.06
C3	748.30	1310.00	32°43'43"	S48°57'28"W	738.17	384.67
C4	39.71	950.00	2°23'42"	S64°07'28"W	39.71	19.86
C5	213.44	1050.00	11°38'48"	N59°29'55"E	213.07	107.09
C6	691.18	1210.00	32°43'43"	N48°57'28"E	681.82	355.30
C7	975.13	1250.00	44°41'49"	S54°56'31"W	950.60	513.90
C8	222.38	2450.00	5°12'02"	N15°55'31"W	222.31	111.27
C9	168.00	1950.00	4°56'10"	S60°41'50"W	167.95	84.05
C10	1715.56	1050.00	93°36'50"	S12°16'02"W	1531.01	1118.41
C11	1529.61	950.00	92°15'11"	N11°35'13"E	1369.66	988.11
C12	429.99	1050.00	23°27'48"	N12°00'36"E	426.99	218.05
C13	1291.26	1000.00	73°59'02"	N38°48'14"E	1203.41	753.33
C14	1044.44	1610.00	37°10'08"	N14°00'32"E	1026.22	541.34
C15	2499.52	1950.00	73°26'31"	S28°14'41"W	2331.89	1454.60

EXHIBIT P  
SHEET 2 OF 2

# Exhibit B

## PALOMA LAKE MUNICIPAL UTILITY DISTRICT NO. 1 WHOLESALE WATER AND WASTEWATER AGREEMENT

STATE OF TEXAS                   §  
  §       KNOW ALL MEN AT THESE PRESENTS:  
COUNTY OF WILLIAMSON       §

This Wholesale Water and Wastewater Agreement (this "Agreement") is entered into as of the date last herein written between the CITY OF ROUND ROCK, TEXAS (the "City"), a home rule municipality located in Williamson County, Texas, and PALOMA LAKE MUNICIPAL UTILITY DISTRICT NO. 1 (the "District"), a conservation and reclamation district created under Article XVI, Section 59 of the Texas Constitution and operating under the provisions of Chapters 49 and 54 of the Texas Water Code. In this Agreement, the City and the District are sometimes referred to individually as "a Party" and collectively as "the Parties".

### WITNESSETH:

WHEREAS, the City owns and operates a water treatment and distribution system serving territory within the City's extraterritorial jurisdiction as well as within the boundaries of the City; and

WHEREAS, the City owns wastewater collection facilities and capacity in regional wastewater treatment and disposal facilities serving territory within the City's extraterritorial jurisdiction as well as within the boundaries of the City; and

WHEREAS, the District is located within the City's extraterritorial jurisdiction and has been created, with the consent of the City, to provide, among other services, retail water and wastewater services to the land within its boundaries; and

WHEREAS, in accordance with the "Consent Agreement Between City of Round Rock, Texas and Blake Magee Investments, L.P. for Paloma Lake Municipal Utility District No. 1 and Paloma Lake Municipal Utility District No. 2" dated effective September 22, 2005, as amended (the "Consent Agreement"), the City has agreed to provide wholesale water and wastewater services to the District, and the District and the City now desire to enter into this Agreement to set forth the terms and conditions of such services;

NOW, THEREFORE, for and in consideration of the premises and the mutual obligations and benefits herein contained, the Parties agree as follows:

### ARTICLE I Definitions

**1.01** In addition to the terms defined in the preceding paragraphs of this Agreement, the following terms, when used in this Agreement, have the following meanings:



# Exhibit B

- a. "Board" or "Board of Directors" means the Board of Directors of the District.
- b. "Developer" means Paloma Lake Development, Inc.
- c. "Director" means the Director of the City's Water and Wastewater Utility.
- d. "Force Majeure" means acts of God, strikes, lockouts, or other industrial disturbances; acts of a public enemy; orders of the government of the United States or the State of Texas or any civil or military authority other than the Parties; insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, and droughts; restraint of government and people; civil disturbances; explosions, breakage or accidents to machinery, pipelines, or canals or other causes not reasonably within the control of the Party claiming the inability.
- e. "Impact Fees" means the amounts charged by the City to pay for a portion of the capital costs of the City's water supply and treatment system and wastewater collection, treatment and disposal system necessary to provide fresh water supply and wastewater collection, treatment, and disposal services to the District.
- f. "Living Unit Equivalent" or "LUE" means the amounts of water and wastewater service required to serve a service unit, as determined under City Ordinances.
- g. "McNutt Interceptor" means the City wastewater interceptor to be constructed as provided in the Consent Agreement which will transport wastewater generated by customers located within the McNutt drainage basin, including customers within the District, to the Brushy Creek Regional Wastewater Treatment Plant
- h. "Ordinances" means City ordinances, as amended from time to time.
- i. "Project" means the water distribution facilities and the wastewater collection facilities to be constructed or acquired, and owned and operated, by the District.
- j. "Commission" means the Texas Commission on Environmental Quality, or its successor agency.

## ARTICLE II. Impact Fees

2.01 The District will collect the City's standard water and wastewater Impact Fees on behalf of the City at the time it collects its own tap and connection fees, and prior to initiation of service to any new water and/or wastewater connection within the District. The District will not provide service to any new connection until the City's Impact Fees have been paid by the customer requesting the connection. Impact Fees collected by the District during each month will be remitted to the City by the 15<sup>th</sup> day of the following month. The City will give written notice to the District of any change in the City's Impact Fees at least 30 days prior to the change becoming effective, in order to allow the District adequate time to amend its rate order and adjust the amounts which it is collecting on behalf of the City under this Section.

# Exhibit B

2.02 Upon the payment of each water or wastewater Impact Fee described in this Article 2.02, the District will have a guaranteed reservation and commitment of capacity in the City Systems for the amount of capacity (in LUEs) for which a water and/or wastewater Impact Fee has been paid.

2.03 All other fees required by the City, including oversize fees, will be paid as required by City Ordinances and the Consent Agreement.

## **ARTICLE III.** **Project Acquisition**

3.01 Subject to the provisions of State law and the terms of the Consent Agreement, the District will finance and acquire the Project.

3.02 Plans and specifications for all District facilities will be subject to approval by the City.

3.03 The proceeds from the sale of the District bonds may be used to pay all costs and expenses permitted by State law and the rules of the Commission, including expenses and costs incurred in connection with engineering, inspecting, permitting, easement acquisition for, and constructing the Project, and all costs incurred in connection with the issuance, sale, and delivery of the bonds.

3.04 The District may enter into such contracts as are necessary to provide for purchase and construction of the Project, which contracts will be bid, approved and executed as required by State law and the rules of the Commission.

3.05 The City will have the right to inspect all portions of the Project located outside the District's boundaries which will be owned and operated by the City upon completion. The District will be responsible for reimbursing the City for the costs of such inspections.

## **ARTICLE IV.** **Water Services**

4.01 The City will sell and deliver water, which will be supplied from the City's water distribution system as extended pursuant to the Consent Agreement, to the boundaries of the District. The exact point or points of delivery of water to the District will be agreed upon by the Director and the District. The City presently has or will obtain an adequate water supply with which to provide water service to the District at the same level that water services are provided to customers within the City; however, the supply of water to the District may be reasonably limited by the City on the same basis and to the same extent as the supply of water to any other customers within the City. The City will provide potable water meeting the standards of the Commission for human consumption and other domestic uses at a minimum pressure of 35 psi at each customer meter and a minimum flow rate of 0.6 gallons per minute per LUE, and in compliance with all applicable requirements for wholesale contracts for purchased water systems, including Section 290.45(f), *Texas Administrative Code*, and any other applicable regulatory requirements. Service by the City to the District will be nondiscriminatory and consistent with the City's standard service policies and regulations, as established by the Round Rock City Council. The City will be the sole source of potable water to the

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District and the District will not seek to develop its own potable wells or alternate supplies, except in the event that the City is no longer able to provide potable water service as contemplated hereby.

**4.02** Retail water service within the District will be provided by the District. Water meters meeting City specifications for customers of the District will be provided by the District at the District's cost. The District will adopt a water conservation and drought management plan which is at least as stringent as the City's, as amended from time to time and will amend its plan from time to time to correspond with any amendments adopted by the City. The District will provide the City with a copy of said water conservation and drought management plan within forty-five (45) days after the effective date of this Agreement. In addition, the District will implement water rationing and water conservation measures under its water conservation and drought management plan when those measures are activated by the City. The City will give the District notice of any activation of water rationing and water conservation measures. The District may not sell or deliver water to any customer outside the boundaries of the District without the City's approval.

**4.03** Water delivered to the District will be measured by a master meter or meters installed at all connections to the City water distribution system. Metering equipment and related facilities, including a meter vault and standard-type devices required for properly measuring the quantity of water delivered to the District, will be installed at each point of delivery at the District's cost. The City will approve the meter facilities prior to installation. The District, at its expense, will construct the vault and provide and install the meter. The City, at the expense of the District, will operate and maintain the metering equipment. The District will calibrate the master meters annually, or more frequently at the City's request. The District will provide the City with a copy of the calibration report within ten (10) days of District's receipt of same. If the City requests calibration of a master meter more frequently than once every 12 months and, upon calibration, the master meter in question proves to be accurate, then the cost of the calibration will be borne by the City. Any master meter registering within three percent (3%) accuracy will be deemed to be accurate. If any master meter tests to be inaccurate by more than three percent (3%), all testing and calibration costs will be borne by the District, the master meter will be recalibrated or replaced, and a billing adjustment will be made based on the degree of the meter's inaccuracy, as determined by the test. If the Parties can reasonably estimate the time at which the master meter became inaccurate, the City will make a billing adjustment based on that time period. If the Parties cannot reasonably estimate the time at which the master meter became inaccurate, then the City will make a billing adjustment to no more than the previous six months' billings. If a master meter is out of service or under repair so that the amount of water delivered cannot be ascertained or computed from the readings, the water delivered during the period the master meter was out of service or repair will be estimated and agreed upon by the Parties based on the best data available. The District will read all master meters on a daily basis, except on weekends and state and federal holiday and will keep accurate records of all measurements of water passing through the master meters. Such records will be open to the City for inspection or copying at all times during the District's regular business hours. Both the District and the City will be entitled to access the master meters at all times and the City will read the master meters once each City billing cycle, for billing purposes.

**4.04** The initial rate to be charged by the City to the District for water supplied under this Agreement will be \$2.51 per 1,000 gallons. The rates set by the City and charged to the District may be reviewed and/or amended annually based on a cost of service study performed by the City. The

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City may include a reasonable rate of return in its rates. In the future, the wholesale rate may consist of two components, a demand charge and a volumetric charge.

**4.05** The District agrees to pay the City in accordance with City Ordinances, to bill users of potable water within the District and to set and maintain tax rates and rates sufficient to pay the following:

- a. For water delivered by the City pursuant to this Agreement.
- b. For all District operation and maintenance expenses as they come due.
- c. For debt service on any bonds issued by the District in an amount deemed appropriate by the Board of Directors.

**4.06** The District agrees to provide the City with a copy of each resolution or order adopted by the District setting water rates within seven days of adoption. The City agrees to give written notice to the District at least 30 days prior to approval of any wholesale rate change in order to allow the District to (i) review and comment upon the proposed change and (ii) adjust its own rates to its customers based on the increase in wholesale costs.

## ARTICLE V.

### Wastewater Collection, Treatment and Disposal Services

**5.01** The City will collect and transport wastewater generated by customers within the District, not to exceed 1100 LUEs, from the boundaries of the District, through its system, to the City's wastewater treatment facilities. The exact point or points of delivery of wastewater to the City will be agreed upon by the Director and the District. The City presently has or will obtain adequate wastewater collection, treatment and disposal facilities with which to provide service to the District. Retail wastewater collection service within the District will be provided by the District. The District will adopt an order prohibiting industrial waste from entering its collection system. The City will be the sole source of wastewater treatment services for the District and the District will not seek to develop its own sanitary treatment capacity or an alternate source of service, except in the event that the City is no longer able to provide wastewater collection, treatment and disposal service as contemplated hereby.

**5.02** The initial rate to be charged by the City to the District for wastewater services under this Agreement will be \$3.52 per 1,000 gallons. Unless the District and the City agree otherwise, the City will bill the District for wastewater services based on 70% of the District's then-current monthly water usage, excluding water used for irrigation purposes and measured by irrigation-only water meters. The District agrees that the rates set by the City and charged to the District may be reviewed and/or amended annually based on a cost of service study performed by the City. The City will be entitled to include a reasonable rate of return for said rates. In the future, the wholesale rate may consist of two components, a demand charge and a volumetric charge.

**5.03** The District agrees to pay the City in accordance with City Ordinances, to bill users of wastewater treatment services within the District and to set and maintain tax rates and rates sufficient to pay the following:

## Exhibit B

- a. For wastewater services provided by the City pursuant to this Agreement.
- b. For all District operation and maintenance expenses in an amount sufficient enough to meet such expenses as they come due.
- c. For debt service on any bonds issued by the District in an amount deemed appropriate by the Board of Directors.

5.04 The District agrees to supply the City with a copy of each resolution or order adopted by the District setting sewer rates within seven days of such adoption. The City agrees to give notice to the District at least 30 days prior to approval of any wholesale rate change in order to allow the District to (i) review and comment upon the proposed change and (ii) adjust its own rates to its customers based on the increase in wholesale costs.

5.05 In order to extend wastewater service to the District, the City and the Developer have agreed to cost participate in the construction of the McNutt Interceptor in accordance with the terms of the Consent Agreement. Upon completion, the McNutt Interceptor will be owned, operated and maintained by the City, subject to the reservation of 1100 LUEs of capacity in the McNutt Interceptor for the provision of wastewater service to the District and the Developer's right to reimbursement from the District for the District's reserved capacity as provided in the Consent Agreement.

5.06 Anything to the contrary contained in this Agreement notwithstanding, the District and Paloma Lake Municipal Utility District No. 2 will have the right to transfer LUEs of wastewater service between themselves as may be required for the ultimate development needs of both districts, provided that the maximum amount of wastewater service to both districts may not exceed a maximum of 2,000 LUEs, as provided in the Consent Agreement. The City's consent to any such transfer will not be required, but a copy of the transfer document, which must be in writing and signed by both the transferor district and the transferee district, must be delivered to the City.

### ARTICLE VI. Miscellaneous

6.01 If, by reason of Force Majeure, a Party is rendered unable, wholly or in part, to carry out its obligations under this Agreement, such Party will give written notice and the full particulars of such Force Majeure to the other Party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the Party giving such notice, to the extent it is affected by such Force Majeure, will be suspended during the continuance of the inability then claimed, but for no longer period, and any such Party will endeavor to remove or overcome such inability with all reasonable dispatch.

6.02 The City will not be liable to the District or any customer of the District for the failure of the City to provide water or wastewater treatment service where the failure results from Force Majeure.

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**6.03** This Agreement is subject to all valid rules, regulations and laws applicable thereto promulgated by the United States of America, the State of Texas, or any agency thereof or regulatory body having lawful jurisdiction.

**6.04** This Agreement will be for the sole and exclusive benefit of the City and the District and will not be construed to confirm any benefit or right upon any other parties.

**6.05** This Agreement may be amended by consent of both of the Parties.

**6.06** The provisions of this Agreement are severable and, if any word, phrase, clause, sentence, paragraph, section or other part of this Agreement or the application thereof to any person or circumstance is ever held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement will be construed as if such invalid provision was not contained herein.

**6.07** This Agreement will be in force and effect from the date of execution by both Parties and will continue in effect for 40 years thereafter. The foregoing notwithstanding, if all of the land within the District is annexed and the District is dissolved, this Agreement will terminate on the date of dissolution of the District.

**6.08** This Agreement will be construed under and in accordance with Texas law. Venue for any action arising hereunder will be in Williamson County, Texas.

**6.09** Any notice given under this Agreement must be in writing. Notice may be given: (i) by depositing the notice in the United States Mail, postage paid, certified, and addressed to the Party to be notified with return receipt requested; (ii) by delivering the notice to the Party, or an agent of the Party or (iii) by confirmed facsimile, provided that a copy of the notice is also given in one of the manners specified in (i) or (ii). Notice deposited in the mail in the manner specified will be effective three days after deposit. Notice given in any other manner will be effective only if and when received by the Party to be notified. For the purposes of notice, the addresses of the parties will, until changed as provided below, be as follows:

CITY: City of Round Rock  
221 East Main Street  
Round Rock, Texas 78664  
Attn: City Manager  
Facsimile: (512) 218-7097

DISTRICT: Paloma Lake Municipal Utility District No. 1  
c/o Armbrust & Brown, L.L.P.  
100 Congress Ave., Ste. 1300  
Austin, Texas 78701  
Attn: Sue Brooks Littlefield  
Facsimile: (512) 435-2360

# Exhibit B

The Parties may change their respective addresses for purposes of Notice by giving at least five days written notice of the new address to the other party.

**6.10** If any date or any period provided in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period will be extended to the next business day.

**6.11** Each party has been represented by legal counsel who have participated equally in the formulation, drafting, and approval of this Agreement. Therefore, in the event of any ambiguity, the provisions of this Agreement will not be construed for or against either party based on draftsmanship. Wherever appropriate, the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice versa.

IN WITNESS WHEREOF, the City and the District, acting under the authority of their respective governing bodies, have caused multiple counterparts of this Agreement to be duly executed, each of which will be of equal dignity, all as of the 13 day of September, 2007.

**CITY OF ROUND ROCK, TEXAS**

By: 

NYLE MAXWELL, Mayor

Date: 9-13-07

ATTEST:



CHRISTINE R. MARTINEZ

City Secretary

# Exhibit B

## PALOMA LAKE MUNICIPAL UTILITY DISTRICT NO. 1

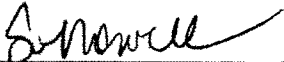
By: 

Printed Name: Bob W. Roberts, Jr.

Title: Vice President

Date: August 15, 2007

ATTEST:



Stephanie R. Norvell

Secretary, Board of Directors



# Exhibit B

## **AMENDMENT NO. 1 TO WHOLESALE WATER AND WASTEWATER AGREEMENT**

The **City of Round Rock, Texas**, a home rule city located in Williamson County, Texas (the "City"), and Paloma Lake Municipal Utility District No. 1, a political subdivision of the State of Texas, created and operating under Chapters 49 and 54, Texas Water Code (the "District") previously entered into a Wholesale Water and Wastewater Agreement dated September 13, 2007 (the "Wholesale Agreement") setting forth the terms upon which the City would provide wholesale water and wastewater service to the District. The City and the District now wish to amend the Wholesale Agreement as provided in this Amendment No. 1 to Wholesale Water and Wastewater Agreement (this "Amendment"). Therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the District agree as follows:

1. **AMENDMENT TO SECTION 1.01.** Section 1.01 of the Wholesale Agreement is amended by adding the following subsections (k) and (l):

(k) Winter-Average Usage: The District's average Water usage during the preceding Winter-Averaging Period

(l) Winter-Averaging Period: the months of December, January, and February, unless another winter-averaging period is approved by the City Council of the City.

2. **AMENDMENT TO SECTION 5.02.** Section 5.02 of the Wholesale Agreement is deleted and replaced with the following:

**5.02** The initial rate to be charged by the City to the District for wastewater services under this Agreement will be \$3.52 per 1,000 gallons. Unless the District and the City agree otherwise, the City will compute the District's monthly billing for wholesale Wastewater service on the basis of (a) the wholesale Wastewater rate for the District, as established by the City Council in accordance with this Agreement, multiplied by (b) the District's Winter-Average Usage. The District's Winter-Average Usage will be calculated by dividing the District's total Water usage during the Winter-Averaging Period, as determined by the District's master Water meter readings, less a deduction for (i) Water used for irrigation purposes and measured by irrigation-only water meters and (ii) Water measured by fire hydrant meters during the time period covered by the master meter readings in question, during the Winter-Averaging Period and dividing that adjusted total usage by the number of months in the Winter-Averaging Period. The Winter-Average Usage so determined will apply until a new Winter-Average Usage is determined during the next Winter-Averaging Period.

The City will read the master Water meter(s) and all irrigation and fire hydrant meters within the District on the same day of each month during the Winter-Averaging Period, and will

# Exhibit B

provide the District with an itemized report which reflects the master Water meter(s) and each irrigation and/or fire hydrant meter in use within the District and the water usage registered by those meters during the preceding usage period. The District agrees to provide the City access to the meters and otherwise cooperate with the City to enable it to perform the meter readings. The City will deduct the usage detailed on the itemized report from the District's total Water usage when calculating the District's Winter-Average Usage. The District will have the right to perform meter read checks and otherwise verify the information provided by the City in its itemized reports.

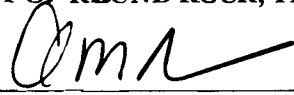
3. **DEFINED TERMS.** All terms delineated with initial capital letters in this Amendment that are defined in the Wholesale Agreement have the same meanings in this Amendment as in the Wholesale Agreement. Other terms have the meanings commonly ascribed to them.

4. **EFFECT OF AMENDMENT.** Except as specifically provided in this Amendment, the terms of the Wholesale Agreement continue to govern the rights and obligations of the parties, and all terms of the Wholesale Agreement remain in full force and effect. If there is any conflict or inconsistency between this Amendment and the Wholesale Agreement, this Amendment will control and modify the Wholesale Agreement.

5. **EXECUTION; COUNTERPARTS.** To facilitate execution, this Amendment may be executed in any number of counterparts, and it will not be necessary that the signatures of all parties be contained on any one counterpart. Additionally, for purposes of facilitating the execution of this Amendment: (a) the signature pages taken from separate, individually executed counterparts of this Amendment may be combined to form multiple fully executed counterparts; and (b) a facsimile signature will be deemed to be an original signature for all purposes. All executed counterparts of this Amendment will be deemed to be originals, but all such counterparts, when taken together, will constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned parties have executed this Amendment on the dates indicated below, to be effective for all billings on or after November 1, 2011.

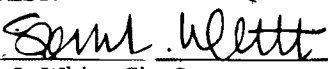
CITY OF ROUND ROCK, TEXAS

By: 

Alan McGraw, Mayor

Date: 9.22.11

ATTEST:

  
Sara L. White, City Secretary

# Exhibit B

**PALOMA LAKE MUNICIPAL UTILITY  
DISTRICT NO. 1**

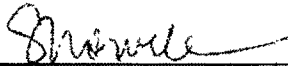
By: 

Bob W. Roberts, Jr.

Vice President, Board of Directors

Date: September 14, 2011

ATTEST:



Stephanie Norvell  
Secretary, Board of Directors

# Exhibit C

## PALOMA LAKE MUNICIPAL UTILITY DISTRICT NO. 2 WHOLESALE WATER AND WASTEWATER AGREEMENT

STATE OF TEXAS                   §  
  §       **KNOW ALL MEN AT THESE PRESENTS:**  
COUNTY OF WILLIAMSON       §

This Wholesale Water and Wastewater Agreement (this "Agreement") is entered into as of the date last herein written between the CITY OF ROUND ROCK, TEXAS (the "City"), a home rule municipality located in Williamson County, Texas, and PALOMA LAKE MUNICIPAL UTILITY DISTRICT NO. 2 (the "District"), a conservation and reclamation district created under Article XVI, Section 59 of the Texas Constitution and operating under the provisions of Chapters 49 and 54 of the Texas Water Code. In this Agreement, the City and the District are sometimes referred to individually as "a Party" and collectively as "the Parties".

### WITNESSETH:

WHEREAS, the City owns and operates a water treatment and distribution system serving territory within the City's extraterritorial jurisdiction as well as within the boundaries of the City; and

WHEREAS, the City owns wastewater collection facilities and capacity in regional wastewater treatment and disposal facilities serving territory within the City's extraterritorial jurisdiction as well as within the boundaries of the City; and

WHEREAS, the District is located within the City's extraterritorial jurisdiction and has been created, with the consent of the City, to provide, among other services, retail water and wastewater services to the land within its boundaries; and

WHEREAS, in accordance with the "Consent Agreement Between City of Round Rock, Texas and Blake Magee Investments, L.P. for Paloma Lake Municipal Utility District No. 1 and Paloma Lake Municipal Utility District No. 2" dated effective September 22, 2005, as amended (the "Consent Agreement"), the City has agreed to provide wholesale water and wastewater services to the District, and the District and the City now desire to enter into this Agreement to set forth the terms and conditions of such services;

NOW, THEREFORE, for and in consideration of the premises and the mutual obligations and benefits herein contained, the Parties agree as follows:

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**1.01** In addition to the terms defined in the preceding paragraphs of this Agreement, the following terms, when used in this Agreement, have the following meanings:

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- b. "Developer" means Paloma Lake Development, Inc.
- c. "Director" means the Director of the City's Water and Wastewater Utility.
- d. "Force Majeure" means acts of God, strikes, lockouts, or other industrial disturbances; acts of a public enemy; orders of the government of the United States or the State of Texas or any civil or military authority other than the Parties; insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, and droughts; restraint of government and people; civil disturbances; explosions, breakage or accidents to machinery, pipelines, or canals or other causes not reasonably within the control of the Party claiming the inability.
- e. "Impact Fees" means the amounts charged by the City to pay for a portion of the capital costs of the City's water supply and treatment system and wastewater collection, treatment and disposal system necessary to provide fresh water supply and wastewater collection, treatment, and disposal services to the District.
- f. "Living Unit Equivalent" or "LUE" means the amounts of water and wastewater service required to serve a service unit, as determined under City Ordinances.
- g. "McNutt Interceptor" means the City wastewater interceptor to be constructed as provided in the Consent Agreement which will transport wastewater generated by customers located within the McNutt drainage basin, including customers within the District, to the Brushy Creek Regional Wastewater Treatment Plant
- h. "Ordinances" means City ordinances, as amended from time to time.
- i. "Project" means the water distribution facilities and the wastewater collection facilities to be constructed or acquired, and owned and operated, by the District.
- j. "Commission" means the Texas Commission on Environmental Quality, or its successor agency.

## **ARTICLE II.** **Impact Fees**

2.01 The District will collect the City's standard water and wastewater Impact Fees on behalf of the City at the time it collects its own tap and connection fees, and prior to initiation of service to any new water and/or wastewater connection within the District. The District will not provide service to any new connection until the City's Impact Fees have been paid by the customer requesting the connection. Impact Fees collected by the District during each month will be remitted to the City by the 15<sup>th</sup> day of the following month. The City will give written notice to the District of any change in the City's Impact Fees at least 30 days prior to the change becoming effective, in order to allow the District adequate time to amend its rate order and adjust the amounts which it is collecting on behalf of the City under this Section.

# Exhibit C

2.02 Upon the payment of each water or wastewater Impact Fee described in this Article 2.02, the District will have a guaranteed reservation and commitment of capacity in the City Systems for the amount of capacity (in LUEs) for which a water and/or wastewater Impact Fee has been paid.

2.03 All other fees required by the City, including oversize fees, will be paid as required by City Ordinances and the Consent Agreement.

## **ARTICLE III.** **Project Acquisition**

3.01 Subject to the provisions of State law and the terms of the Consent Agreement, the District will finance and acquire the Project.

3.02 Plans and specifications for all District facilities will be subject to approval by the City.

3.03 The proceeds from the sale of the District bonds may be used to pay all costs and expenses permitted by State law and the rules of the Commission, including expenses and costs incurred in connection with engineering, inspecting, permitting, easement acquisition for, and constructing the Project, and all costs incurred in connection with the issuance, sale, and delivery of the bonds.

3.04 The District may enter into such contracts as are necessary to provide for purchase and construction of the Project, which contracts will be bid, approved and executed as required by State law and the rules of the Commission.

3.05 The City will have the right to inspect all portions of the Project located outside the District's boundaries which will be owned and operated by the City upon completion. The District will be responsible for reimbursing the City for the costs of such inspections.

## **ARTICLE IV.** **Water Services**

4.01 The City will sell and deliver water, which will be supplied from the City's water distribution system as extended pursuant to the Consent Agreement, to the boundaries of the District. The exact point or points of delivery of water to the District will be agreed upon by the Director and the District. The City presently has or will obtain an adequate water supply with which to provide water service to the District at the same level that water services are provided to customers within the City; however, the supply of water to the District may be reasonably limited by the City on the same basis and to the same extent as the supply of water to any other customers within the City. The City will provide potable water meeting the standards of the Commission for human consumption and other domestic uses at a minimum pressure of 35 psi at each customer meter and a minimum flow rate of 0.6 gallons per minute per LUE, and in compliance with all applicable requirements for wholesale contracts for purchased water systems, including Section 290.45(f), *Texas Administrative Code*, and any other applicable regulatory requirements. Service by the City to the District will be nondiscriminatory and consistent with the City's standard service policies and regulations, as established by the Round Rock City Council. The City will be the sole source of potable water to the

# Exhibit C

District and the District will not seek to develop its own potable wells or alternate supplies, except in the event that the City is no longer able to provide potable water service as contemplated hereby.

**4.02** Retail water service within the District will be provided by the District. Water meters meeting City specifications for customers of the District will be provided by the District at the District's cost. The District will adopt a water conservation and drought management plan which is at least as stringent as the City's, as amended from time to time and will amend its plan from time to time to correspond with any amendments adopted by the City. The District will provide the City with a copy of said water conservation and drought management plan within forty-five (45) days after the effective date of this Agreement. In addition, the District will implement water rationing and water conservation measures under its water conservation and drought management plan when those measures are activated by the City. The City will give the District notice of any activation of water rationing and water conservation measures. The District may not sell or deliver water to any customer outside the boundaries of the District without the City's approval.

**4.03** Water delivered to the District will be measured by a master meter or meters installed at all connections to the City water distribution system. Metering equipment and related facilities, including a meter vault and standard-type devices required for properly measuring the quantity of water delivered to the District, will be installed at each point of delivery at the District's cost. The City will approve the meter facilities prior to installation. The District, at its expense, will construct the vault and provide and install the meter. The City, at the expense of the District, will operate and maintain the metering equipment. The District will calibrate the master meters annually, or more frequently at the City's request. The District will provide the City with a copy of the calibration report within ten (10) days of District's receipt of same. If the City requests calibration of a master meter more frequently than once every 12 months and, upon calibration, the master meter in question proves to be accurate, then the cost of the calibration will be borne by the City. Any master meter registering within three percent (3%) accuracy will be deemed to be accurate. If any master meter tests to be inaccurate by more than three percent (3%), all testing and calibration costs will be borne by the District, the master meter will be recalibrated or replaced, and a billing adjustment will be made based on the degree of the meter's inaccuracy, as determined by the test. If the Parties can reasonably estimate the time at which the master meter became inaccurate, the City will make a billing adjustment based on that time period. If the Parties cannot reasonably estimate the time at which the master meter became inaccurate, then the City will make a billing adjustment to no more than the previous six months' billings. If a master meter is out of service or under repair so that the amount of water delivered cannot be ascertained or computed from the readings, the water delivered during the period the master meter was out of service or repair will be estimated and agreed upon by the Parties based on the best data available. The District will read all master meters on a daily basis, except on weekends and state and federal holiday and will keep accurate records of all measurements of water passing through the master meters. Such records will be open to the City for inspection or copying at all times during the District's regular business hours. Both the District and the City will be entitled to access the master meters at all times and the City will read the master meters once each City billing cycle, for billing purposes.

**4.04** The initial rate to be charged by the City to the District for water supplied under this Agreement will be \$2.51 per 1,000 gallons. The rates set by the City and charged to the District may be reviewed and/or amended annually based on a cost of service study performed by the City. The

# Exhibit C

City may include a reasonable rate of return in its rates. In the future, the wholesale rate may consist of two components, a demand charge and a volumetric charge.

**4.05** The District agrees to pay the City in accordance with City Ordinances, to bill users of potable water within the District and to set and maintain tax rates and rates sufficient to pay the following:

- a. For water delivered by the City pursuant to this Agreement.
- b. For all District operation and maintenance expenses as they come due.
- c. For debt service on any bonds issued by the District in an amount deemed appropriate by the Board of Directors.

**4.06** The District agrees to provide the City with a copy of each resolution or order adopted by the District setting water rates within seven days of adoption. The City agrees to give written notice to the District at least 30 days prior to approval of any wholesale rate change in order to allow the District to (i) review and comment upon the proposed change and (ii) adjust its own rates to its customers based on the increase in wholesale costs.

## ARTICLE V.

### Wastewater Collection, Treatment and Disposal Services

**5.01** The City will collect and transport wastewater generated by customers within the District, not to exceed 900 LUEs, from the boundaries of the District, through its system, to the City's wastewater treatment facilities. The exact point or points of delivery of wastewater to the City will be agreed upon by the Director and the District. The City presently has or will obtain adequate wastewater collection, treatment and disposal facilities with which to provide service to the District. Retail wastewater collection service within the District will be provided by the District. The District will adopt an order prohibiting industrial waste from entering its collection system. The City will be the sole source of wastewater treatment services for the District and the District will not seek to develop its own sanitary treatment capacity or an alternate source of service, except in the event that the City is no longer able to provide wastewater collection, treatment and disposal service as contemplated hereby.

**5.02** The initial rate to be charged by the City to the District for wastewater services under this Agreement will be \$3.52 per 1,000 gallons. Unless the District and the City agree otherwise, the City will bill the District for wastewater services based on 70% of the District's then-current monthly water usage, excluding water used for irrigation purposes and measured by irrigation-only water meters. The District agrees that the rates set by the City and charged to the District may be reviewed and/or amended annually based on a cost of service study performed by the City. The City will be entitled to include a reasonable rate of return for said rates. In the future, the wholesale rate may consist of two components, a demand charge and a volumetric charge.

**5.03** The District agrees to pay the City in accordance with City Ordinances, to bill users of wastewater treatment services within the District and to set and maintain tax rates and rates sufficient to pay the following:



# Exhibit C

- a. For wastewater services provided by the City pursuant to this Agreement.
- b. For all District operation and maintenance expenses in an amount sufficient enough to meet such expenses as they come due.
- c. For debt service on any bonds issued by the District in an amount deemed appropriate by the Board of Directors.

**5.04** The District agrees to supply the City with a copy of each resolution or order adopted by the District setting sewer rates within seven days of such adoption. The City agrees to give notice to the District at least 30 days prior to approval of any wholesale rate change in order to allow the District to (i) review and comment upon the proposed change and (ii) adjust its own rates to its customers based on the increase in wholesale costs.

**5.05** In order to extend wastewater service to the District, the City and the Developer have agreed to cost participate in the construction of the McNutt Interceptor in accordance with the terms of the Consent Agreement. Upon completion, the McNutt Interceptor will be owned, operated and maintained by the City, subject to the reservation of 900 LUEs of capacity in the McNutt Interceptor for the provision of wastewater service to the District and the Developer's right to reimbursement from the District for the District's reserved capacity as provided in the Consent Agreement.

**5.06** Anything to the contrary contained in this Agreement notwithstanding, the District and Paloma Lake Municipal Utility District No. 1 will have the right to transfer LUEs of wastewater service between themselves as may be required for the ultimate development needs of both districts, provided that the maximum amount of wastewater service to both districts may not exceed a maximum of 2,000 LUEs, as provided in the Consent Agreement. The City's consent to any such transfer will not be required, but a copy of the transfer document, which must be in writing and signed by both the transferor district and the transferee district, must be delivered to the City.

## **ARTICLE VI.** **Miscellaneous**

**6.01** If, by reason of Force Majeure, a Party is rendered unable, wholly or in part, to carry out its obligations under this Agreement, such Party will give written notice and the full particulars of such Force Majeure to the other Party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the Party giving such notice, to the extent it is affected by such Force Majeure, will be suspended during the continuance of the inability then claimed, but for no longer period, and any such Party will endeavor to remove or overcome such inability with all reasonable dispatch.

**6.02** The City will not be liable to the District or any customer of the District for the failure of the City to provide water or wastewater treatment service where the failure results from Force Majeure.

**6.03** This Agreement is subject to all valid rules, regulations and laws applicable thereto promulgated by the United States of America, the State of Texas, or any agency thereof or regulatory body having lawful jurisdiction.

# Exhibit C

**6.04** This Agreement will be for the sole and exclusive benefit of the City and the District and will not be construed to confirm any benefit or right upon any other parties.

**6.05** This Agreement may be amended by consent of both of the Parties.

**6.06** The provisions of this Agreement are severable and, if any word, phrase, clause, sentence, paragraph, section or other part of this Agreement or the application thereof to any person or circumstance is ever held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement will be construed as if such invalid provision was not contained herein.

**6.07** This Agreement will be in force and effect from the date of execution by both Parties and will continue in effect for 40 years thereafter. The foregoing notwithstanding, if all of the land within the District is annexed and the District is dissolved, this Agreement will terminate on the date of dissolution of the District.

**6.08** This Agreement will be construed under and in accordance with Texas law. Venue for any action arising hereunder will be in Williamson County, Texas.

**6.09** Any notice given under this Agreement must be in writing. Notice may be given: (i) by depositing the notice in the United States Mail, postage paid, certified, and addressed to the Party to be notified with return receipt requested; (ii) by delivering the notice to the Party, or an agent of the Party or (iii) by confirmed facsimile, provided that a copy of the notice is also given in one of the manners specified in (i) or (ii). Notice deposited in the mail in the manner specified will be effective three days after deposit. Notice given in any other manner will be effective only if and when received by the Party to be notified. For the purposes of notice, the addresses of the parties will, until changed as provided below, be as follows:

CITY: City of Round Rock  
221 East Main Street  
Round Rock, Texas 78664  
Attn: City Manager  
Facsimile: (512) 218-7097

DISTRICT: Paloma Lake Municipal Utility District No. 2  
c/o Armbrust & Brown, L.L.P.  
100 Congress Ave., Ste. 1300  
Austin, Texas 78701  
Attn: Sue Brooks Littlefield  
Facsimile: (512) 435-2360

The Parties may change their respective addresses for purposes of Notice by giving at least five days written notice of the new address to the other party.

**6.10** If any date or any period provided in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period will be extended to the next business day.

# Exhibit C

**6.11** Each party has been represented by legal counsel who have participated equally in the formulation, drafting, and approval of this Agreement. Therefore, in the event of any ambiguity, the provisions of this Agreement will not be construed for or against either party based on draftsmanship. Wherever appropriate, the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice versa.

IN WITNESS WHEREOF, the City and the District, acting under the authority of their respective governing bodies, have caused multiple counterparts of this Agreement to be duly executed, each of which will be of equal dignity, all as of the 13 day of September, 2007.

**CITY OF ROUND ROCK, TEXAS**

By: 

~~NYLE MAXWELL~~, Mayor

Date: 9-13-07

ATTEST:

  
CHRISTINE R. MARTINEZ

City Secretary

# Exhibit C

**PALOMA LAKE MUNICIPAL UTILITY  
DISTRICT NO. 2**

By: 

Printed Name: S. Thurman Blackburn, III

Title: President

Date: August 22, 2007

ATTEST:



Michael Shaw  
Secretary, Board of Directors

# Exhibit C

## **AMENDMENT NO. 1 TO WHOLESALE WATER AND WASTEWATER AGREEMENT**

The **City of Round Rock, Texas**, a home rule city located in Williamson County, Texas (the "City"), and Paloma Lake Municipal Utility District No. 2, a political subdivision of the State of Texas, created and operating under Chapters 49 and 54, Texas Water Code (the "District") previously entered into a Wholesale Water and Wastewater Agreement dated September 13, 2007 (the "Wholesale Agreement") setting forth the terms upon which the City would provide wholesale water and wastewater service to the District. The City and the District now wish to amend the Wholesale Agreement as provided in this Amendment No. 1 to Wholesale Water and Wastewater Agreement (this "Amendment"). Therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the District agree as follows:

1. **AMENDMENT TO SECTION 1.01.** Section 1.01 of the Wholesale Agreement is amended by adding the following subsections (k) and (l):

(k) Winter-Average Usage: The District's average Water usage during the preceding Winter-Averaging Period

(l) Winter-Averaging Period: the months of December, January, and February, unless another winter-averaging period is approved by the City Council of the City.

2. **AMENDMENT TO SECTION 5.02.** Section 5.02 of the Wholesale Agreement is deleted and replaced with the following:

**5.02** The initial rate to be charged by the City to the District for wastewater services under this Agreement will be \$3.52 per 1,000 gallons. Unless the District and the City agree otherwise, the City will compute the District's monthly billing for wholesale Wastewater service on the basis of (a) the wholesale Wastewater rate for the District, as established by the City Council in accordance with this Agreement, multiplied by (b) the District's Winter-Average Usage. The District's Winter-Average Usage will be calculated by dividing the District's total Water usage during the Winter-Averaging Period, as determined by the District's master Water meter readings, less a deduction for (i) Water used for irrigation purposes and measured by irrigation-only water meters and (ii) Water measured by fire hydrant meters during the time period covered by the master meter readings in question, during the Winter-Averaging Period and dividing that adjusted total usage by the number of months in the Winter-Averaging Period. The Winter-Average Usage so determined will apply until a new Winter-Average Usage is determined during the next Winter-Averaging Period.

The City will read the master Water meter(s) and all irrigation and fire hydrant meters within the District on the same day of each month during the Winter-Averaging Period, and will

# Exhibit C

provide the District with an itemized report which reflects the master Water meter(s) and each irrigation and/or fire hydrant meter in use within the District and the water usage registered by those meters during the preceding usage period. The District agrees to provide the City access to the meters and otherwise cooperate with the City to enable it to perform the meter readings. The City will deduct the usage detailed on the itemized report from the District's total Water usage when calculating the District's Winter-Average Usage. The District will have the right to perform meter read checks and otherwise verify the information provided by the City in its itemized reports.

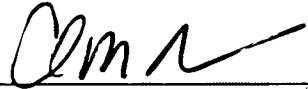
3. **DEFINED TERMS.** All terms delineated with initial capital letters in this Amendment that are defined in the Wholesale Agreement have the same meanings in this Amendment as in the Wholesale Agreement. Other terms have the meanings commonly ascribed to them.

4. **EFFECT OF AMENDMENT.** Except as specifically provided in this Amendment, the terms of the Wholesale Agreement continue to govern the rights and obligations of the parties, and all terms of the Wholesale Agreement remain in full force and effect. If there is any conflict or inconsistency between this Amendment and the Wholesale Agreement, this Amendment will control and modify the Wholesale Agreement.

5. **EXECUTION; COUNTERPARTS.** To facilitate execution, this Amendment may be executed in any number of counterparts, and it will not be necessary that the signatures of all parties be contained on any one counterpart. Additionally, for purposes of facilitating the execution of this Amendment: (a) the signature pages taken from separate, individually executed counterparts of this Amendment may be combined to form multiple fully executed counterparts; and (b) a facsimile signature will be deemed to be an original signature for all purposes. All executed counterparts of this Amendment will be deemed to be originals, but all such counterparts, when taken together, will constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned parties have executed this Amendment on the dates indicated below, to be effective for all billings on or after November 1, 2011.

CITY OF ROUND ROCK, TEXAS

By:   
Alan McGraw, Mayor  
Date: 9.22.11

ATTEST:

  
Sara L. White, City Secretary

# Exhibit C

**PALOMA LAKE MUNICIPAL UTILITY  
DISTRICT NO. 2**

By: \_\_\_\_\_

Carter Breed

President, Board of Directors

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

9/14/11

ATTEST:

\_\_\_\_\_  
Christopher Blackburn

Secretary, Board of Directors

# Exhibit D

ORDINANCE NO. 2269

AN ORDINANCE GRANTING THE CONSENT OF THE CITY OF ROUND ROCK TO THE CREATION OF WILLIAMSON COUNTY MUNICIPAL UTILITY DISTRICT NO. 9, SUBJECT TO VARIOUS TERMS AND CONDITIONS.

WHEREAS, an amended petition has been filed for consent from the City to create a municipal utility district to be known as Williamson County Municipal Utility District No. 9 (hereafter referred to as "District") to include the land described in Exhibit "1" attached hereto and made a part hereof for all purposes; and,

WHEREAS, the City Council has evaluated the amended petition for consent to creation of the District and related documents and determined that consent should be granted; Now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS:

PART 1. That the City of Round Rock hereby grants (a) its consent to the inclusion of the land described in Exhibit "1" within the District; (b) its consent to the creation of the District; and (c) its consent to the issuance of bonds by the District. The foregoing consent is specifically subject to and conditional upon the following:

1. That the City, L & N Land Corp., and the District shall enter into and execute the agreement attached hereto as Exhibit "2", entitled Water and Wastewater Agreement, and the Mayor is hereby authorized to execute such agreement on behalf of the City. The agreement is incorporated herein and made a part hereof for all purposes. The agreement in its entirety and its present form is of utmost importance to the consent granted hereby and but for its execution by L & N Land Corp. and the District, such consent would not be granted.

2. That the District shall acquire fire protection powers sufficient to permit the District to acquire a fire station for use by the City of Round Rock in accordance with the Water and Wastewater Agreement, and, thereafter, the District shall issue bonds, warrants, or other debt obligations, in the manner and to the extent authorized by the Constitution and laws of the State of Texas, for the purposes of financing the costs of construction of a fire station in the District.

3. That water or sewer service shall not be furnished to any user in any subdivision within the boundaries of the District unless such subdivision complies with all applicable ordinances of the City of Round Rock concerning subdivisions and the Master Plan of the City of Round Rock.

4. That no land within the District shall be allowed, at any time in the future, to incorporate, join in an incorporation, or be annexed into any incorporated city other than the City of Round Rock.

5. That any restrictions by the City on the terms and provisions of the District's bonds and notes issued to provide facilities and services of the land and conditions on the sale of the District's bonds and notes will not render the bonds and notes of the District unmarketable.

6. That the City shall have the right to audit and inspect the books and records of the District at any time.

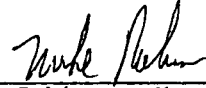
PART 2. That the City Secretary is hereby directed to file a copy of such Ordinance in the permanent records of her office.



# Exhibit D

By motion duly made, seconded and passed with an affirmative vote of all the Council members present, the requirement for reading this Ordinance on two separate days was dispensed with.

READ, PASSED, and ADOPTED on first reading this 22<sup>nd</sup> day of January, 1987.



Mike Robinson, Mayor  
City of Round Rock, Texas

ATTEST:



Joanne Land, City Secretary

WCMUD2/01

# Exhibit D

JULY 29, 1986 JOB NO. 846-0000-21 FIELD NOTE NO. 800-26  
316.018 ACRE TRACT, SAM BASS-316

A DESCRIPTION OF A 316.018 ACRE TRACT OF LAND OUT OF THE WASHINGTON ANDERSON SURVEY, ABSTRACT NO. 15, SITUATED IN WILLIAMSON COUNTY, TEXAS, BEING ALL OF THAT CERTAIN 316.05 ACRE TRACT OF LAND CONVEYED TO SAM BASS 316 BY DEED RECORDED IN VOLUME 951, PAGE 128 OF THE DEED RECORDS OF WILLIAMSON COUNTY, TEXAS, SAID 316.018 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2 inch iron rod found at the intersection of the north right-of-way (R.O.W.) line of F.M. 1431 (a 200 foot wide R.O.W.) and the east R.O.W. line of County Road No. 175 ( a variable width R.O.W.), being the southwest corner hereof;

THENCE departing the north R.O.W. line of F.M. 1431, along the east R.O.W. line of County Road No. 175, as generally fenced the following four (4) courses:

1. N 22°05'00"W, a distance of 1019.00 feet to a 1/2 inch iron rod found,
2. N 20°36'10"W, a distance of 791.13 feet to a 1/2 inch iron rod found,
3. N 21°13'16"W, a distance of 411.51 feet to a 1/2 inch iron rod found, and
4. N 23°30'15"W, a distance of 424.64 feet to a 1/2 inch rod found on the south line of that certain 511 acre tract of land conveyed to Perry O. Mayfield by deed recorded in Volume 258, Page 214 of the said deed records for the northwest corner hereof;

THENCE departing the east R.O.W. line of County Road No. 175 along the said south line of the 511 acre tract being the north line hereof, as generally fenced the following five (5) courses:

1. N 68°57'11"E, a distance of 1282.36 feet to a 1/2 inch iron rod found,
2. N 69°42'35"E, a distance of 904.69 feet to a 1/2 inch iron rod found,
3. N 69°54'34"E, a distance of 1074.77 feet to a 5/8 inch iron rod set,
4. N 71°25'13"E, a distance of 535.98 feet to a 1/2 inch iron rod found in a Mesquite stump, and
5. N 68°08'00"E, a distance of 1251.92 feet to a 1/2 inch iron rod found at the southeast corner of said 511 acre tract, on the west line of that certain 1437.45 acre tract of land conveyed to Tom E. Nelson, Jr. Trustee, by deed recorded in Volume 571, Page 446 of the said deed records being the northeast corner hereof;

# Exhibit D

THENCE along the west line of the said 1437.45 acre tract, as generally fenced, being the east line hereof, the following two (2) courses:

1. S 20°06'40"E, a distance of 1802.71 feet to a 1/2 inch iron rod found in a rock mound, and
2. S 20°03'30"E, a distance of 1028.48 feet to a 1/2 inch iron rod found on the curving north R.O.W. line of F.M. 1431 at the southeast corner hereof;

THENCE along the north R.O.W. line of F.M. 1431 , as generally fenced, the following five (5) courses:

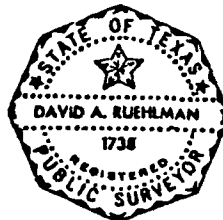
1. a distance of 86.24 feet along the arc of a curve to the right having a central angle of 0°26'06", a radius of 11359.16 feet and a chord bearing S 70°48'57"W, a distance of 86.24 feet to a 1/2 inch iron rod found at the point of tangency,
2. S 71°02'00"W, a distance of 3252.17 feet to a 1/2 inch iron rod found at the point of curvature,
3. a distance of 325.38 feet along the arc of a curve to the right having a central angle of 1°38'00", a radius of 11414.06 feet and a chord bearing S 71°51'00"W, a distance of 325.37 feet to a 1/2 inch rod found at the point of tangency
4. S 72°40'00"W, a distance of 1,132.29 feet to a 1/2 inch iron rod found at the point of curvature, and
5. a distance of 179.08 feet along the arc of a curve to the left having a central angle of 1°19'33", a radius of 7739.44 feet and a chord bearing S 72°00'14"W, a distance of 179.08 feet to the POINT OF BEGINNING, containing 316.018 acres of land more or less.

THE STATE OF TEXAS :  
COUNTY OF TRAVIS :

KNOW ALL MEN BY THESE PRESENTS

That I, David A. Ruehlman, a Registered Public Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas  
this the 31<sup>st</sup> day of July, 1986 A.D.



*David A. Ruehlman*  
David A. Ruehlman, RPS No. 1738  
Registered Public Surveyor  
State of Texas

# Exhibit D

**VISTA OAKS MUNICIPAL UTILITY DISTRICT**  
**AMENDED AND RESTATED**  
**WHOLESALE WATER AND WASTEWATER AGREEMENT**

STATE OF TEXAS                   §  
  §       **KNOW ALL MEN AT THESE PRESENTS:**  
COUNTY OF WILLIAMSON       §

This Amended and Restated Wholesale Water and Wastewater Agreement (this "Amended Agreement") is entered into as of the date last herein written between the CITY OF ROUND ROCK, TEXAS (the "City"), a home rule municipality located in Williamson County, Texas, and VISTA OAKS MUNICIPAL UTILITY DISTRICT, formerly known as Williamson County Municipal Utility District No. 9 (the "District"), a conservation and reclamation district created under Article XVI, Section 59 of the Texas Constitution and operating under the provisions of Chapters 49 and 54 of the Texas Water Code. In this Amended Agreement, the City and the District are sometimes referred to individually as "a Party" and collectively as "the Parties".

**WITNESSETH:**

WHEREAS, the City owns and operates a water treatment and distribution system serving territory within the City's extraterritorial jurisdiction as well as within the boundaries of the City; and

WHEREAS, the City owns wastewater collection facilities and capacity in regional wastewater treatment and disposal facilities serving territory within the City's extraterritorial jurisdiction as well as within the boundaries of the City; and

WHEREAS, the District is located within the City's extraterritorial jurisdiction and has been created, with the consent of the City, to provide, among other services, retail water and wastewater services to the land within its boundaries; and

WHEREAS, the City, the District, and L&N Land Corp. (the "Developer") previously entered into that one certain Water and Wastewater Agreement dated the 22<sup>nd</sup> day of January, 1987 (as amended, modified, and supplemented, the "1987 Agreement"); and

WHEREAS, the City and the District, as between themselves, now desire to enter into this Amended Agreement to amend and restate the 1987 Agreement to update the terms and conditions upon which the City will provide wholesale water and wastewater services to the District, such that upon the Effective Date, this Amended Agreement will supersede and replace the 1987 Agreement in its entirety, as between the City and the District;

NOW, THEREFORE, for and in consideration of the premises and the mutual obligations and benefits herein contained, the Parties agree as follows:

# Exhibit D

## Article I. Definitions

1.01 In addition to the terms defined in the preceding paragraphs of this Amended Agreement, the following terms, when used in this Amended Agreement, have the following meanings:

- a. "Board" or "Board of Directors" means the Board of Directors of the District.
- b. "Director" means the Director of the City's Water and Wastewater Utility.
- c. "Force Majeure" means acts of God, strikes, lockouts, or other industrial disturbances; acts of a public enemy; orders of the government of the United States or the State of Texas or any civil or military authority other than the Parties; insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, and droughts; restraint of government and people; civil disturbances; explosions, breakage or accidents to machinery, pipelines, or canals or other causes not reasonably within the control of the Party claiming the inability.
- d. "Living Unit Equivalent" or "LUE" means the amounts of water and wastewater service required to serve a service unit, as determined under City Ordinances.
- e. "Ordinances" means City ordinances, as amended from time to time.
- f. "Commission" means the Texas Commission on Environmental Quality, or its successor agency.

## Article II. Water Service

2.01 The City will sell and deliver water to the District, which will be supplied from the City's water distribution system as extended to the boundaries of the District for commercial and domestic uses. The District will have a guaranteed reservation and commitment of capacity in the City's water system for 1,400 LUEs. The City presently has or will obtain an adequate water supply with which to provide water service to the District at the same level that water services are provided to customers within the City. The supply of water to the District may be reasonably limited by the City on the same basis and to the same extent as the supply of water to any other customers within the City. The City will provide potable water meeting the standards of the Commission for human consumption and other domestic uses and in compliance with all applicable requirements for wholesale contracts for purchased water systems, including Section 290.45(f), *Texas Administrative Code*, and any other applicable regulatory requirements. Service by the City to the District will be nondiscriminatory and consistent with the City's standard service policies and regulations, as established by the Round Rock City Council.

2.02

except in the event that the City is no longer able to provide potable water service as contemplated hereby. Regardless of the foregoing, the City understands that the District has two irrigation wells and the City has no objection to the District using these wells for strictly irrigation purposes.

# Exhibit D

2.03 Retail water service within the District will be provided by the District. Water meters meeting City specifications for customers of the District will be provided by the District at the District's cost.

2.04 The District will adopt a water conservation and drought management plan which is at least as stringent as the City's, as amended from time to time and will amend its plan from time to time to correspond with any amendments adopted by the City. The District will provide the City with a copy of said water conservation and drought management plan within forty-five (45) days after the Effective Date. In addition, the District will implement water rationing and water conservation measures under its water conservation and drought management plan when those measures are activated by the City. The City will give the District prompt notice of any activation or deactivation of water rationing and/or water conservation measures and any amendments to the City's water conservation and drought management plan.

2.05 The District may not sell or deliver water to any customer outside the boundaries of the District without the City's approval.

2.06 Water delivered to the District will be measured by a master meter or meters installed at all connections to the City water distribution system (each, a "Water Point of Delivery"). The existing Water Points of Delivery are depicted on Exhibit A. Metering equipment and related facilities, including a meter vault and standard-type devices required for properly measuring the quantity of water delivered to the District, will be installed at each Water Point of Delivery at the District's cost. The meter facilities must be approved by the City prior to installation. The District, at its expense, will construct the vault and provide and install the meter. The City, at the expense of the District will operate and maintain the metering equipment. The District, at its cost, will calibrate the master meters annually, or more frequently at the City's request. The District will provide the City with a copy of the calibration report within ten (10) days of District's receipt of same. If the City requests calibration of a master meter more frequently than once every 12 months and, upon calibration, the master meter in question proves to be accurate, then the cost of the calibration will be borne by the City. Any master meter registering within three percent (3%) accuracy will be deemed to be accurate. If any master meter tests to be inaccurate by more than three percent (3%), all testing and calibration costs will be borne by the District, the master meter will be recalibrated or replaced, and a billing adjustment will be made based on the degree of the meter's inaccuracy, as determined by the test. If the Parties can reasonably estimate the time at which the master meter became inaccurate, the City will make a billing adjustment based on that time period. If the Parties cannot reasonably estimate the time at which the master meter became inaccurate, then the City will make a billing adjustment to no more than the date of the most recent calibration. If a master meter is out of service or under repair so that the amount of water delivered cannot be ascertained or computed from the readings, the water delivered during the period the master meter was out of service or repair will be estimated and agreed upon by the Parties based on the best data available.

2.07 The District will read all master meters on a daily basis, except on weekends and state and federal holiday and will keep accurate records of all measurements of water passing through the master meters. Such records will be open to the City for inspection or copying at all times during the District's regular business hours. Both the District and the City will be entitled to access the master meters at all times and the City will read the master meters once each City billing cycle, for billing purposes.

## Exhibit D

2.08 The rates to be charged by the City to the District for water supplied under this Amended Agreement will consist of a base monthly charge plus a volume rate per 1,000 gallons. For the periods set forth below, the rates will be as follows:

- a. From October 1, 2010 through September 30, 2011:

Base Monthly Charge:	\$10,500.00
Rate per 1,000 gallons:	\$ 2.22

- b. From October 1, 2011 through September 30, 2012:

Base Monthly Charge:	\$10,750.00
Rate per 1,000 gallons:	\$ 2.50

Thereafter, the rates set by the City and charged to the District may be reviewed and/or amended annually based on a cost of service study performed by the City. The City may include a reasonable rate of return in its rates. The amount of water passed-through the District's water system pursuant to and as determined by any pass-through water service agreements will not be included in any amounts owed by the District to the City for water service under this Amended Agreement.

2.09 The District agrees to pay the City in accordance with City Ordinances, to bill users of potable water within the District and to set and maintain tax rates and rates sufficient to pay the following:

- a. For water delivered by the City pursuant to this Amended Agreement.
- b. For all District operation and maintenance expenses as they come due.
- c. For debt service on any bonds issued by the District in an amount deemed appropriate by the Board of Directors.

2.10 The District agrees to provide the City with a copy of each resolution or order adopted by the District setting water rates within seven days of adoption. The City agrees to give written notice to the District at least 30 days prior to approval of any wholesale rate change in order to allow the District to (i) review and comment upon the proposed change and (ii) adjust its own rates to its customers based on the increase in wholesale costs.

2.11 Any bonds issued by the District may be secured by a pledge of the net revenues from the operation of the District's water and sewer and/or drainage systems.

### **Article III. Wastewater Collection, Treatment and Disposal Service**

3.01 The City will collect and transport wastewater generated by customers within the District, from the boundaries of the District at the point of delivery shown on **Exhibit A** (the "***Wastewater Point of Delivery***"), through its system, to the City's wastewater treatment facilities. The District will have a guaranteed reservation and commitment of capacity in the City's wastewater system for 1,400 LUEs. The City presently has or will obtain adequate wastewater collection,

# Exhibit D

treatment and disposal facilities with which to provide service to the District. Retail wastewater collection service within the District will be provided by the District. ~~The City will be the sole source of wastewater treatment and disposal service for the District. The City will not seek to develop its own wastewater treatment and disposal facilities or service, except in the event that the City is no longer able to provide wastewater collection, treatment and disposal service as contemplated hereby.~~

3.02 The rate to be charged by the City to the District for wastewater services under this Amended Agreement will be as follows:

- a. \$3.50 per 1,000 gallons through September 30, 2011; and
- b. \$3.90 per 1,000 gallons from October 1, 2011 through September 30, 2012.

Thereafter, the District agrees that the rates set by the City and charged to the District may be reviewed and/or amended annually based on a cost of service study performed by the City. The City will be entitled to include a reasonable rate of return for said rates.

Unless the District and the City agree otherwise, the City will bill the District for wastewater services on the basis of the wholesale wastewater rate in effect under this Amended Agreement multiplied by the actual average monthly water usage as determined by the District's master water meter readings ("Winter-Average Usage") during the preceding months of December, January, and February or other winter-averaging period approved by the City and the District (the "Winter-Averaging Period"), but excluding usage from fire hydrant, fire line, dedicated irrigation meter, and pass-through water service connections (the "Winter-Average Exclusion"). The City will read the master water meter(s) and all irrigation and fire hydrant meters within the District on the same day during the Winter-Averaging Period, and will provide the District with an itemized report which reflects the master water meter(s) and each irrigation and/or fire hydrant meter in use within the District, the water usage registered by those meters, and the Winter-Average Exclusion during the preceding usage period. The District agrees to provide the City access to the meters and otherwise cooperate with the City to enable it to perform the meter readings. The District will have the right to perform meter read checks and otherwise verify the City's calculation of the Winter-Average Exclusion. The City agrees that any wastewater metering equipment previously used for billing purposes under the 1987 Agreement will be the property of the District. The amount of wastewater passed-through the District's wastewater system pursuant to and as determined by any pass-through wastewater service agreements will not be included in any amounts owed by the District to the City for wastewater services under this Amended Agreement.

3.03 The District agrees to pay the City in accordance with City Ordinances, to bill users of wastewater treatment services within the District and to set and maintain tax rates and rates sufficient to pay the following:

- a. For wastewater services provided by the City pursuant to this Amended Agreement.
- b. For all District operation and maintenance expenses in an amount sufficient enough to meet such expenses as they come due.



# Exhibit D

- c. For debt service on any bonds issued by the District in an amount deemed appropriate by the Board of Directors.

3.04 The District agrees to supply the City with a copy of each resolution or order adopted by the District setting sewer rates within seven days of such adoption. The City agrees to give notice to the District at least 30 days prior to approval of any wholesale rate change in order to allow the District to (i) review and comment upon the proposed change and (ii) adjust its own rates to its customers based on the increase in wholesale costs.

3.05 Discharges of wastewater generated within the District to the City's wastewater system will be governed by the pretreatment regulations promulgated by City Ordinances, the Environmental Protection Agency (the "EPA") and the Texas Commission on Environmental Quality (the "Commission"). The District will adopt an order prohibiting industrial waste, as defined by applicable state and federal regulations, from entering its collection system and will coordinate with the City to maintain pretreatment standards consistent with those of the EPA and the Commission. The City will be obligated to receive into the City's system at the Wastewater Point of Delivery only wastewater meeting the quality requirements of this Section 3.05, and any actual and reasonable expenses incurred by the City in receiving, transporting, treating, and disposing of non-compliant wastewater shall be charged directly to the District by the City, upon demonstrating that such wastewater was generated within the District. Notwithstanding the foregoing, the City will be responsible for ensuring that all discharges of wastewater from City customers that is passed through the District's wastewater system comply with federal, state, and City requirements regarding pretreatment and monitoring of industrial waste and other prohibited waste. The City will not impose any fee, charge, or fine upon the District for any violation of any ordinance, rule, regulation, or agreement caused by wastewater from City customers that is passed through the District's wastewater system, nor will the City impose upon the District any surcharge that is caused by wastewater from City customers that is passed through the District's wastewater system.

3.06 Title to and responsibility for the reception, transportation, delivery, and disposal of all wastewater generated within the District and discharged hereunder shall remain with the District to the Wastewater Point of Delivery. Upon passing through a Wastewater Point of Delivery, title to and all responsibility for such wastewater shall pass to the City, and City will be responsible for the proper reception, transportation, treatment, disposal, and/or reuse of all wastewater, meeting the applicable quality standards, received by it at the Wastewater Point of Delivery.

## Article IV. Miscellaneous

4.01 If, by reason of Force Majeure, a Party is rendered unable, wholly or in part, to carry out its obligations under this Amended Agreement, such Party will give written notice and the full particulars of such Force Majeure to the other Party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the Party giving such notice, to the extent it is affected by such Force Majeure, will be suspended during the continuance of the inability then claimed, but for no longer period, and any such Party will endeavor to remove or overcome such inability with all reasonable dispatch.

# Exhibit D

**4.02** The City will not be liable to the District or any customer of the District for the failure of the City to provide water or wastewater treatment service where the failure results from Force Majeure.

**4.03** This Amended Agreement is subject to all valid rules, regulations and laws applicable thereto promulgated by the United States of America, the State of Texas, or any agency thereof or regulatory body having lawful jurisdiction.

**4.04** This Amended Agreement constitutes the entire agreement of the Parties with respect to wholesale water and wastewater service to the District and, upon the Effective Date, supersedes the 1987 Agreement as to the Parties. The Parties understand that Section 8.04 of the 1987 Agreement provides that the 1987 Agreement may be amended by consent of all of the parties. The City and the District each waive such provision with respect to each other and this Amended Agreement, inasmuch as the Developer is not a party to this Amended Agreement, and agree that this Amended Agreement will be effective and binding upon the Parties hereto.

**4.05** This Amended Agreement will be for the sole and exclusive benefit of the City and the District and will not be construed to confirm any benefit or right upon any other parties.

**4.06** This Amended Agreement may be amended by consent of both of the Parties.

**4.07** The provisions of this Amended Agreement are severable and, if any word, phrase, clause, sentence, paragraph, section or other part of this Amended Agreement or the application thereof to any person or circumstance is ever held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Amended Agreement will be construed as if such invalid provision was not contained herein.

**4.08** This Amended Agreement will be in force and effect from the date of execution by both Parties and will continue in effect for 40 years thereafter. The foregoing notwithstanding, if all of the land within the District is annexed and the District is dissolved, this Amended Agreement will terminate on the date of dissolution of the District.

**4.09** This Amended Agreement will be construed under and in accordance with Texas law. Venue for any action arising hereunder will be in Williamson County, Texas.

**4.10** Any notice given under this Amended Agreement must be in writing. Notice may be given: (i) by depositing the notice in the United States Mail, postage paid, certified, and addressed to the Party to be notified with return receipt requested; (ii) by delivering the notice to the Party, or an agent of the Party or (iii) by confirmed facsimile, provided that a copy of the notice is also given in one of the manners specified in (i) or (ii). Notice deposited in the mail in the manner specified will be effective three days after deposit. Notice given in any other manner will be effective only if and when received by the Party to be notified. For the purposes of notice, the addresses of the parties will, until changed as provided below, be as follows:

# Exhibit D

CITY: City of Round Rock  
221 East Main Street  
Round Rock, Texas 78664  
Attn: City Manager  
Facsimile: (512) 218-7097

DISTRICT: Vista Oaks Municipal Utility District  
c/o Armbrust & Brown, PLLC  
100 Congress Avenue, Suite 1300  
Austin, Texas 78701  
Attn: John Bartram  
Facsimile: (512) 435-2360

The Parties may change their respective addresses for purposes of Notice by giving at least five days written notice of the new address to the other party.

4.11 If any date or any period provided in this Amended Agreement ends on a Saturday, Sunday or legal holiday, the applicable period will be extended to the next business day.

4.12 Each party has been represented by legal counsel who have participated equally in the formulation, drafting, and approval of this Amended Agreement. Therefore, in the event of any ambiguity, the provisions of this Amended Agreement will not be construed for or against either party based on draftsmanship. Wherever appropriate, the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice versa.

IN WITNESS WHEREOF, the City and the District, acting under the authority of their respective governing bodies, have caused multiple counterparts of this Amended Agreement to be duly executed, each of which will be of equal dignity, all as of the 29th day of August, 2011 (the "Effective Date").


# Exhibit D

CITY OF ROUND ROCK, TEXAS

By:   
ALAN MCGRAW, Mayor

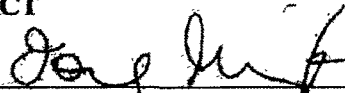
Date: 8.25.11

ATTEST:

  
Sara White  
City Secretary

# Exhibit D

## VISTA OAKS MUNICIPAL UTILITY DISTRICT

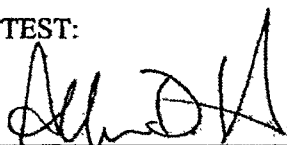
By: 

Printed Name: Douglas Mink

Title: President, Board of Directors

Date: August 29, 2011

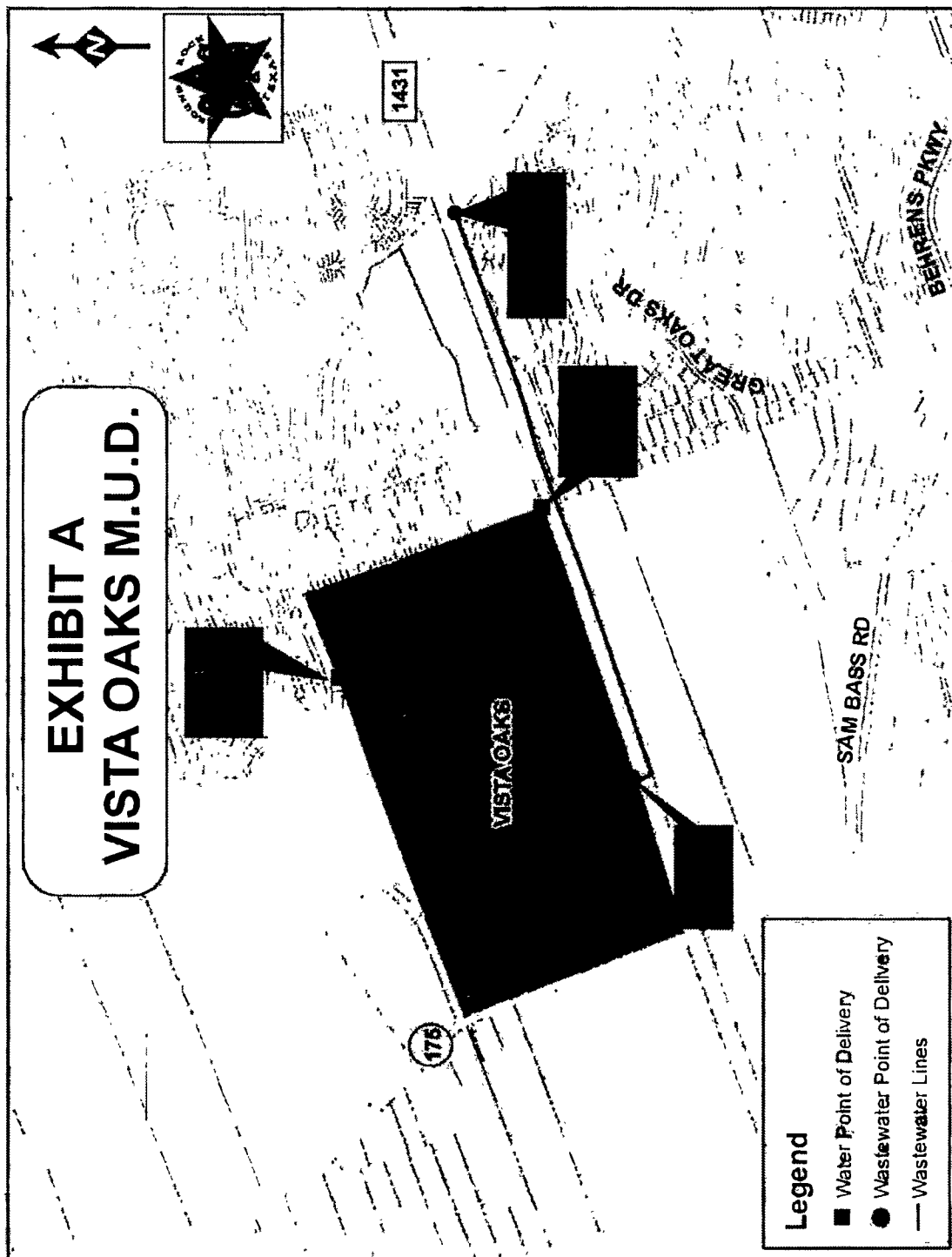
ATTEST:



Allen Douthitt

Asst. Secretary, Board of Directors

# Exhibit D



# Exhibit E

PD

THE STATE OF TEXAS \*

COUNTY OF WILLIAMSON \*

CITY OF ROUND ROCK \*

I, JOANNE LAND, Assistant City Manager/City Secretary of the City of Round Rock, Texas, do hereby certify that I am the custodian of the public records maintained by the City. The attached is a true and correct copy of Resolution No. R-98-08-27-10A1, for the creation of Municipal Utility District Nos. 10 and 11 within the City's Extraterritorial Jurisdiction. The resolution was approved by the Round Rock City Council of the City of Round Rock, Texas, at a meeting held on the 27th day of August, 1998, and is recorded in the minutes of the City of Round Rock Book 39.

CERTIFIED by my hand and seal of the City of Round Rock, Texas on this 16th day of September 1998.

  
\_\_\_\_\_  
JOANNE LAND, Assistant City Manager/  
City Secretary

# Exhibit E

## Residential Districts Consent Resolution

RESOLUTION NO. R-98-08-27-10A1

**A RESOLUTION GRANTING THE CONSENT OF THE CITY OF ROUND ROCK, TEXAS, TO THE CREATION OF WILLIAMSON COUNTY MUNICIPAL UTILITY DISTRICTS NOS. 10 AND 11 WITHIN THE CITY'S EXTRATERRITORIAL JURISDICTION.**

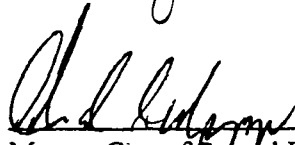
WHEREAS, the City of Round Rock received a Petition for Consent to the Creation of (i) a MUNICIPAL UTILITY DISTRICT (to be known as Williamson County Municipal Utility District No. 10) for 447.561 acres located in the City's extraterritorial jurisdiction, a copy of which petition is attached as Exhibit F-1 and (ii) a MUNICIPAL UTILITY DISTRICT (to be known as Williamson County Municipal Utility District No. 11) for 447.800 acres located in the City's extraterritorial jurisdiction, a copy of which petition is attached as Exhibit F-2; and

WHEREAS, Section 54.016 of the Texas Water Code and Section 42.042 of the Local Government Code provide that land within a city's extraterritorial jurisdiction may not be included within a district without the city's written consent; NOW, THEREFORE,


**BE IT RESOLVED BY THE CITY COUNCIL  
OF THE CITY OF ROUND ROCK, TEXAS:**

That the City Council of the City of Round Rock, Texas, gives its written consent to (i) the creation of Williamson County Municipal Utility District No. 10 on 447.561 acres of land, as described in the attached petition and the consent conditions attached thereto, and (ii) the creation of Williamson County Municipal Utility District No. 11 on 447.800 acres of land, as described in the petition and the consent conditions attached thereto.


PASSED AND APPROVED on the 27<sup>th</sup> day of August, 1998.

  
\_\_\_\_\_  
Mayor, City of Round Rock

ATTEST:

  
\_\_\_\_\_  
City Secretary

APPROVED:

  
\_\_\_\_\_  
City Attorney



# Exhibit E

## EXHIBIT F-1

### PETITION FOR CONSENT TO THE CREATION OF A MUNICIPAL UTILITY DISTRICT

TO THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF ROUND ROCK, TEXAS:

The undersigned (herein the "Petitioner"), holding title to land hereinafter described by metes and bounds, and acting pursuant to the provisions of Chapters 49 and 54, Texas Water Code, respectfully petitions the City Council of the City of Round Rock, Texas, for its written consent to the creation of a municipal utility district and would show the following:

I.

The name of the proposed District shall be WILLIAMSON COUNTY MUNICIPAL UTILITY DISTRICT NO. 10 (the "District").

II.

The District shall be created and organized under the terms and provisions of Article XVI, Section 59 of the Constitution of Texas and Chapters 49 and 54, Texas Water Code.

III.

The District shall contain an area of 447.561 acres of land, more or less, situated in Williamson County, Texas. All of the land to be included in the District is within the extraterritorial jurisdiction of the City of Round Rock, Texas (the "City"). All of the land proposed to be included may properly be included in the District. The land proposed to be included within the District consists of one tract described by metes and bounds in Exhibit "F-1A", which is attached hereto and incorporated herein for all purposes.

IV.

Petitioner holds title to land within the District and is the owner of a majority in value of such land, as indicated by the tax rolls of Williamson County, Texas.

V.

The Petitioner represents that attached hereto as Exhibit "F-1B" are the consent of all lienholders on the subject property.

VI.

The general nature of the work to be done by the District at the present time is the design, construction, acquisition, maintenance and operation of a waterworks and sanitary sewer system for domestic and commercial purposes, and the construction, acquisition, improvement, extension, maintenance and operation of works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District, and to control, abate and amend local storm waters or other harmful excesses of waters, and such other construction, acquisition,

# Exhibit E

improvement, maintenance and operation of such additional facilities, systems, plants and enterprises as shall be consonant with all of the purposes for which the District is created.

## VII.

There is, for the following reasons, a necessity for the above-described work. The area proposed to be within the District is urban in nature, is within the growing environs of the City of Round Rock, Texas, and is in close proximity to populous and developed sections of Williamson County, Texas. There is not now available within the area, which will be developed for single family residential and commercial uses, an adequate waterworks system, sanitary sewer system, or drainage and storm sewer system. The health and welfare of the present and future inhabitants of the area and of the territories adjacent thereto require the purchase, design, construction, acquisition, ownership, operation, repair, improvement and extension of an adequate waterworks system, sanitary sewer system, and drainage and storm sewer system. A public necessity, therefore, exists for the creation of the District, to provide for the purchase, design, construction, acquisition, ownership, operation, repair, improvement and extension of such waterworks system, sanitary sewer system, and drainage and storm sewer system, to promote the purity and sanitary condition of the State's waters and the public health and welfare of the community.

## VIII.

Petitioner, by submission of this Petition, requests the City's consent to the creation of the District containing the land as described by metes and bounds in the attached Exhibit "F-1A," under the same conditions set forth in Exhibit "F-1C" which is attached hereto and incorporated herein for all purposes.

## IX.

A preliminary investigation has been made to determine the cost of the proposed District's project, and it is now estimated by the Petitioner, from such information as it has at this time, that such cost will be approximately \$21,250,000.

WHEREFORE, Petitioner prays that this petition be heard and that your Honorable Body duly pass and approve an ordinance or resolution granting the consent to the creation of the District and authorizing the inclusion of the land described herein within the District.

RESPECTFULLY SUBMITTED this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

NEWLAND-ROUND ROCK ASSOCIATES, LP.,  
a Texas limited partnership

By: NEWLAND ASSOCIATES ROUND ROCK,  
INC.,  
a Texas corporation,  
General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

# Exhibit E

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE STATE OF TEXAS       §  
                                     §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 1998,  
by \_\_\_\_\_, as \_\_\_\_\_ of Newland Associates Round Rock,  
Inc., a Texas corporation, the general partner of Newland-Round Rock Associates, L.P., on behalf of said  
corporation.

\_\_\_\_\_  
Notary Public, State of Texas

(NOTARY SEAL)

THE STATE OF TEXAS       §  
                                     §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 1998,  
by \_\_\_\_\_, as \_\_\_\_\_ of Newland Associates Round Rock,  
Inc., a Texas corporation, the general partner of Newland-Round Rock Associates, L.P., on behalf of said  
corporation.

\_\_\_\_\_  
Notary Public, State of Texas

(NOTARY SEAL)

# Exhibit E

**Metes and Bounds Description**  
**Williamson County Municipal Utility District No. 10**  
**447.561 Acres (19,495,752 Square Feet)**  
**Barney C. Low Survey, A-385**  
**Williamson County, Texas**

BEING a tract containing 447.561 acres (19,495,752 square feet) of land situated in the Barney C. Low Survey, A-385 of Williamson County, Texas and a portion of a called 895.35 acre tract described in deed to Newland Round Rock Associates L.P. in deed recorded under Document Number 9801109 of the Official Records Williamson County, Texas (O.R.W.C.T.). Said 447.561 acre tract being more particularly described by metes and bounds as follows with all bearings referenced to the Texas State Plane Coordinate System, Central Zone and based on published NAD 83/93 HARN values for City of Georgetown monumentation network, monument numbers 96005 and 96007:

**BEGINNING** at the northwest corner of said Newland 895.35 acre tract and being a point in a southerly line of a called 74.79 acre tract described in deed to Ray Isaacks recorded in Volume 633, Page 235 of the Williamson County Deed Records (W.C.D.R.);

**THENCE**, along the lines common to the northerly lines of said Newland 895.35 acre tract, the southerly line of said 74.79 acre tract, the southerly lines of a called 100 acre and a 20 acre tract described in deed to D. L. Hawkins recorded in Volume 314, Page 83 W.C.D.R. and the southerly lines of a called 82.060 acre tract described in deed to Joe D. Anderson et ux recorded in Volume 848, Page 511 W.C.D.R. the following eight (8) courses:

1. North 68°59'13" East, a distance of 1,326.73 feet to a point for corner;
2. North 70°52'42" East, a distance of 236.21 feet to a point for corner;
3. North 62°52'35" East, a distance of 37.04 feet to a point for corner;
4. North 55°50'58" East, a distance of 339.83 feet to a point for corner;
5. North 21°09'21" West, a distance of 176.20 feet to a point for corner;
6. North 74°18'41" East, a distance of 769.18 feet to a point for corner;
7. North 73°31'41" East, a distance of 576.46 feet to a point for corner;
8. North 71°36'44" East, a distance of 921.28 feet to a point for corner;

*Page 1 of 4*  
*MUDA.doc*