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PUC DOCKET NO. _____

PETITION BY SWWC UTILITIES, INC.	§	BEFORE THE PUBLIC UTILITY
D/B/A HORNSBY BEND UTILITY	§	
COMPANY, INC. AND CITY OF	§	COMMISSION OF TEXAS
AUSTIN, TEXAS, FOR TEXAS WATER	§	
CODE § 13.248 APPROVAL AND	§	
ENFORCEMENT OF A CONTRACT	§	
AND ITS AMENDMENTS	§	
DESIGNATING WATER AND	§	
WASTEWATER SERVICE AREAS IN	§	
TRAVIS COUNTY, TEXAS	§	

**SWWC UTILITIES, INC. D/B/A HORNSBY BEND UTILITY COMPANY, INC. AND
CITY OF AUSTIN’S PETITION UNDER TEXAS WATER CODE § 13.248**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COME NOW, SWWC Utilities, Inc. d/b/a Hornsby Bend Utility Company, Inc. (HBUC) and City of Austin, Texas, (City) (collectively, Applicants) and hereby file this Petition for approval and enforcement of a contract and its amendments designating water and wastewater service areas, and customers to be served by the Applicants in those areas, pursuant to Texas Water Code (TWC) § 13.248 and 16 Texas Administrative Code (TAC) § 24.253 (Petition or Application). The relief requested affects land within the City’s extraterritorial jurisdiction in Travis County. In support thereof, Applicants show the following.

I. PURPOSE OF THE PETITION

Applicants file this Petition to request the Commission act to approve and enforce a contract and its amendments as a follow up to a Texas Commission on Environmental Quality (TCEQ) approval in 2003.¹ The original 2003 contract was executed to settle administrative litigation involving competing certificate of convenience and necessity (CCN) applications and related service area issues between the Applicants (the Settlement Agreement).² HBUC provides

¹ **Exhibit 1** - Order in TCEQ Docket Nos, 2002-189-UCR, 2000-0112-UCR, 2002-0756-UCR, and 2002-1197-UCR (Nov. 16, 2004); **Exhibit 2** - Settlement Agreement between City of Austin and Hornsby Bend Utility Company, Inc. (Oct. 20, 2003). All exhibits are hereafter attached and incorporated by reference.

² *Id.* SWWC Utilities, Inc. d/b/a Hornsby Bend Utility Company, Inc. is the successor-in-interest to the rights of

retail public water and wastewater utility services under CCN Nos. 11978 and 20650, respectively. The City provides retail public water and wastewater utility services under CCN Nos. 11322 and 20636, respectively, but also serves uncertificated properties outside its CCN boundaries as generally permitted by the TWC and other applicable law. After the TCEQ approved the Settlement Agreement, the TCEQ incorporated the Applicants' service area designations into their respective CCN service territories.³

The Settlement Agreement was amended in 2014, 2017, and 2020, but was most recently amended on June 1, 2021 to resolve a recent service area dispute between the Applicants.⁴ The First and Second Amendments did not alter any of the agreed designated service areas from the Settlement Agreement.⁵ The Third Amendment did not alter any of the agreed designated service areas either, although it did update the Settlement Agreement service area designation map to include the location of Highway 130 which was non-existent at the time of the Settlement Agreement.⁶ Conversely, the Fourth Amendment revises the service area designations and customers to be served within those areas in part when compared with the original Settlement Agreement map.⁷ There are also terms detailed within the Fourth Amendment the Applicants would like the Commission to approve and enforce which may bear on separate CCN applications to be filed with the Commission in the future, including, but not limited to, a HBUC filing to put part of the CCN service areas released in Docket No. 51166 back into HBUC's CCNs with support of the petitioning landowner in Docket No. 51166.⁸

Hornsby Bend Utility Company, Inc.

³ See TWC 13.248 and **Exhibit 1**.

⁴ **Exhibit 3** – First Amendment to the Settlement Agreement (Dec. 4, 2014); **Exhibit 4** – Second Amendment to the Settlement Agreement (May 24, 2017); **Exhibit 5** – Third Amendment to the Settlement Agreement (Sep. 20, 2020); **Exhibit 6** – Fourth Amendment to the Settlement Agreement (Jun 1, 2021).

⁵ **Exhibit 3** – First Amendment to the Settlement Agreement (Dec. 4, 2014); **Exhibit 4** – Second Amendment to the Settlement Agreement (May 24, 2017)

⁶ **Exhibit 5** – Third Amendment to the Settlement Agreement (Sep. 20, 2020)

⁷ **Exhibit 6** – Fourth Amendment to the Settlement Agreement (Jun 1, 2021).

⁸ *Id.*

No facilities or customers of either Applicant are currently located in the designated service areas reflected in the Fourth Amendment. Additionally, neither Applicant's existing CCNs will require Commission revision as a result of this Application. The Applicants do require Commission approval of the Settlement Agreement, as amended by the First, Second, Third, and Fourth Amendments to the Settlement Agreement, to resolve their most recent CCN dispute reflected in the Fourth Amendment.⁹ Ideally, the Applicants would receive this approval by November 1, 2021 so as to avoid their currently scheduled temporary injunction hearing scheduled in December 2021.

II. REQUEST FOR APPROVAL AND ENFORCEMENT

Pursuant to 16 TAC § 24.253, implementing TWC § 13.248, Applicants hereby provide the following information in furtherance of Commission approval for the CCN service area designations contemplated by this Petition:

1. Maps of the subject service area designations prepared in accordance with 16 TAC § 24.257(a) are included with the executed Fourth Amendment in **Exhibit 6** at **Exhibits A-1** and **A-2**.¹⁰
2. A copy of the executed Settlement Agreement and each amendment thereto, the entirety of which are included as **Exhibits 2, 3, 4, 5, and 6**.¹¹
3. The number of customers to be transferred is: 0.¹²
4. The Settlement Agreement and this Application do not require formal approval by the City of Austin City Council and HBUC is not one of the types of retail public utilities listed in 16 TAC § 24.253(c)(2).

The Commission has no standardized application form for the relief sought in this Petition and, thus, Applicants are relying on certain requirements included in 16 TAC § 24.253 for the contents of this Petition. However, that rule states that “any other information required by the

⁹ *Id.*

¹⁰ 16 TAC § 24.253(b)(1).

¹¹ 16 TAC § 24.253(b)(2).

¹² 16 TAC § 24.253(b)(3).

commission” should be submitted.¹³ Applicants respectfully request that the Commission inform Applicants if any other information is required. The undersigned will be the point of contact for this Petition, and the City has authorized this filing in the Fourth Amendment.

The Applicants emphasize that the terms of the Settlement Agreement as amended do not require any CCN boundary adjustments at this time. However, the Applicants may request CCN adjustments in line with the Settlement Agreement as amended in the future through separate application in accordance with the Applicants’ Fourth Amendment terms. Thus, they request the Commission approve the Applicants’ collective contract terms reflected in the Settlement Agreement as amended by the First, Second, Third, and Fourth Amendments.

III. REQUEST FOR INFORMAL DISPOSITION

Pursuant to 16 TAC § 22.35, Applicants request informal disposition processing for this Application without a hearing as all requirements for the same are met.¹⁴ 16 TAC § 24.253 does not impose any special notice requirements for this application because no customer transfers are contemplated.¹⁵ Further, if the Application is approved, the decision will not be adverse to any party or the public interest.¹⁶ Thus, a hearing should not be required and informal disposition is appropriate.¹⁷

IV. CONCLUSION

SWWC Utilities, Inc. d/b/a Hornsby Bend Utility Company, Inc. and City of Austin, Texas, respectfully request the Commission process this Petition under TWC § 13.248 and 16 TAC § 24.253 with respect to the Settlement Agreement and its First, Second, Third, and Fourth Amendments. Applicants request the Commission approve and enforce same. If for any reason

¹³ 16 TAC § 24.253(b)(5).

¹⁴ 16 TAC § 22.35(a)(1)-(3).

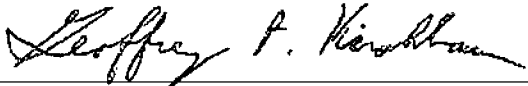
¹⁵ 16 TAC §§ 22.35(a)(1) and 24.253(c)(1)-(3).

¹⁶ 16 TAC § 22.35(a)(2).

¹⁷ 16 TAC § 22.35(a)(3).

the Commission finds the information submitted with this Petition is insufficient for Application acceptance, Applicants respectfully request that they be notified immediately and provided an opportunity to cure any deficiencies identified.

Respectfully submitted,

By: 
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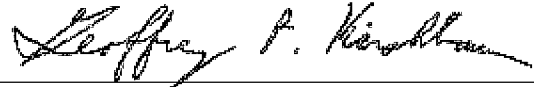
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D/B/A HORNSBY BEND UTILITY COMPANY,
INC.**

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ATTORNEYS FOR THE CITY OF AUSTIN

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on August 2, 2021, in accordance with the Orders Suspending Rules issued in Project No. 50664.



Geoffrey P. Kirshbaum

The City of Austin currently provides water and sewer utility service in Williamson and Travis Counties, Texas, and seeks to also provide water and sewer utility service in Hays County, Texas, and is a retail public utility as defined in Section 13.002(19) of the Code. Hornsby Bend provides water and sewer utility service in Travis County, Texas, and is a retail public utility as defined in Section 13.002(19) of the Code.

On August 13, 2001, the City of Austin filed two applications with the Commission, pursuant to Section 13.241, *et seq.* of the Code, to obtain water and sewer CCNs in Hays, Williamson, and Travis Counties, Texas. The applications were declared administratively complete on August 20, 2001, were accepted for filing on August 31, 2001, by the Commission and assigned Application Nos. 33562-C and 33563-C. The City of Austin provided mailed notice of its water CCN application to neighboring utilities and affected persons on September 25, and 26, 2001, and mailed notice of its sewer CCN application to neighboring utilities and affected persons on September 25, 2001.

Notices by the City of Austin for both the water and sewer CCN applications were published on the following dates in the following publications: September 24, and October 1, 2001, in the Austin American-Statesman, a newspaper generally circulated in Travis County, Texas; September 25, and October 2, 2001, in the San Marcos Daily Record, a newspaper generally circulated in Hays County, Texas; and September 26, and October 3, 2001, in the Williamson County Sun, a newspaper generally circulated in Williamson County, Texas.

The notices of the City of Austin's applications to obtain water and sewer CCNs complied with the notice requirements of 30 Texas Administrative Code (TAC) Section 291.106 and were sufficient to place affected persons on notice of the applications. The Commission received requests for a contested case hearing on the City of Austin's applications from the following entities: Lower Colorado River Authority, Creedmoor-Maha Water Supply Corporation, Capital Pacific Holdings, L.L.C., AquaSource Utility, Inc., AquaSource Development Company, City of Mustang Ridge,

Manville Water Supply Corporation, City of Round Rock, Mr. Kent Taylor (Taylor Commercial), Mr. Ed Wolf, Dessau Utilities, Inc., Ms. H. C. Caruthers, Onion Creek Wastewater Corporation, Hornsby Bend Utility Company, Inc., and Mr. Jack Condon (Legends Way).

Hornsby Bend filed four applications with the Commission: (1) Application No. 32800-C to amend sewer CCN No. 20650, filed October 15, 1999, declared administratively complete on November 23, 1999, and accepted for filing on November 29, 1999; (2) Application No. 33738-C to amend water CCN No. 11978, filed December 31, 2001, declared administratively complete on January 16, 2002, and accepted for filing on January 30, 2002; (3) Application No. 33988-C to amend water CCN No. 11978, filed June 25, 2002, declared administratively complete on July 18, 2002, and accepted for filing on August 1, 2002; and (4) Application No. 33989-C to amend sewer CCN No. 20650, filed June 25, 2002, declared administratively complete on July 18, 2002, and accepted for filing on August 1, 2002.

Hornsby Bend mailed notice of Application No. 32800-C, seeking to amend sewer CCN No. 20650, to neighboring utilities and affected persons on December 3, 1999. Notice of Application No. 32800-C was published on December 7, and 4, 1999, in the Austin American-Statesman, a newspaper generally circulated in Travis County, Texas.

Hornsby Bend mailed notice of Application No. 33738-C, seeking to amend water CCN No. 11978, to neighboring utilities and affected persons on February 11, 2002. Notice of Application No. 33738-C was published on February 18, and 25, 2002, in the Austin American-Statesman, a newspaper generally circulated in Travis County, Texas.

Hornsby Bend mailed notice of Application Nos. 33988-C and 33989-C, seeking to amend water CCN No. 11978 and sewer CCN No. 20650, to neighboring utilities and affected persons on August 15, 2002. Notice of Application Nos. 33988-C and 33989-C was published on August 16, and 23, 2002, in the Austin American-Statesman, a newspaper generally circulated in Travis County, Texas.

The notices of Hornsby Bend's applications to amend water CCN No. 11978 and sewer CCN No. 20650 complied with the notice requirements of 30 TAC Section 291.106 and were sufficient to place affected persons on notice of the applications. The Commission received requests from the City of Austin for a contested case hearing on all four Hornsby Bend applications.

On July 9, 2002, the Honorable Kerry Sullivan, an administrative law judge (ALJ) of the State Office of Administrative Hearings (SOAH), held a preliminary hearing on the City of Austin's water and sewer CCN applications and Hornsby Bend's Application No. 32800-C to amend sewer CCN No. 20650. Judge Sullivan established jurisdiction and designated the following parties: the City of Austin (City), represented by Ken Ramirez and Monica Jacobs of Bracewell & Patterson, L.L.P.; the Executive Director (ED), represented by John Deering and Geoffrey Kirshbaum; the Public Interest Counsel (PIC), represented by Scott Humphrey; the "Aligned Parties," consisting of AquaSource Development, AquaSource Utility, City of Mustang Ridge, and Creedmoor-Maha Water Supply Corporation, represented by Mark Zeppa; Capital Pacific Holdings, L.L.C. (Capital) represented by Gary Bradley; Hornsby Bend Utility Company, Inc. (Hornsby Bend) represented by John Carlton of Ambrust & Brown, L.L.P.; and the Lower Colorado River Authority (LCRA) represented by Ronald Freeman and Madison Jechow.

On July 16, 2002, Judge Sullivan issued Order No. 1 granting a motion to consolidate the dockets for the City of Austin's Application Nos. 33562-C and 33563-C and Hornsby Bend's Application No. 32800-C (seeking to amend sewer CCN No. 20650) into one docket number, SOAH Docket No. 582-02-3056. On July 16, 2002, the ALJ issued Order No. 2 confirming the action taken during the July 9, 2002, preliminary hearing on those applications and establishing a procedural schedule. The order established a discovery schedule and control plan, relevant substantive and procedural rules, requirements for pre-filed testimony and exhibits, hearing and pre-hearing dates and locations, the order of presentation for the hearing on the merits, and addressed procedure for the resolution of other pending motions. Discovery commenced in August 2002.

On September 3, 2002, the ALJ held a preliminary hearing on Hornsby Bend's Application No. 33738-C to amend water CCN No. 11978. The ALJ established jurisdiction and consolidated the application with the City of Austin and other Hornsby Bend applications already pending in SOAH Docket No. 582-02-3056.

On December 12, 2002, the ALJ held a preliminary hearing on Hornsby Bend's Application No. 33988-C to amend water CCN No. 11978 and Application No. 33989-C to amend sewer CCN No. 20650. The ALJ established jurisdiction and consolidated the applications with the City of Austin and other Hornsby Bend applications already pending in SOAH Docket No. 582-02-3056.

All parties were eventually dismissed as parties to the contested case hearing on the City of Austin and Hornsby Bend's CCN applications except for the City of Austin, Hornsby Bend, the ED, and the TCEQ PIC (who did not participate in the contested case hearing on these applications). Capital Pacific Holdings, L.L.C.'s request to withdraw party status was granted on October 1, 2002. AquaSource Utility, Inc. and AquaSource Development Company's motion to withdraw party status was granted on February 3, 2003. LCRA was formally dismissed as a party on June 13, 2003. Finally, Creedmoor-Maha Water Supply Corporation and the City of Mustang Ridge were dismissed as parties on July 14, 2003.

On July 14, 2003, the ALJ extended the deadline for filing prefiled testimony and exhibits to August 8, 2003. On July 25, 2003, pursuant to 30 TAC Section 80.101, the ALJ partially granted the City of Austin's motion to sever and remand the portions of the City of Austin's water and sewer CCN applications seeking service area south of the Colorado River to the ED as a severed proceeding involving an uncontested item. The action was taken based on Hornsby Bend's admission that it would not be negatively affected if TCEQ granted the City of Austin water and sewer CCNs for that area. The ALJ dismissed Hornsby Bend as a party to the severed proceeding. The ALJ denied the City of Austin's motion to sever and remand the portions of the City of Austin's water and sewer CCN applications seeking service area north of the Colorado River.

On August 1, 2003, August 22, 2003, and September 17, 2003, the ALJ granted joint motions by the parties to extend the time for filing prefiled testimony and an agreed motion to abate in order to accommodate settlement negotiations. On October 21, 2003, the City of Austin and Hornsby Bend filed a Joint Motion to Remand their applications, supported by the ED, stating that a comprehensive Settlement Agreement had been reached and that no facts or issues remained controverted. The Settlement Agreement is included as "Attachment A" to the Joint Motion to Remand. The motion requested remand to the ED of the remaining portions of City of Austin's CCN applications and Hornsby Bend's applications pursuant to 30 TAC Section 80.101. The ALJ granted the Joint Motion to Remand on November 7, 2003, dismissed the proceeding from the SOAH docket, and remanded the proceeding to the TCEQ ED pursuant to 30 TAC Section 80.101.

As part of the City of Austin and Hornsby Bend's Settlement Agreement, executed on October 20, 2003, maps depicting revised, but not expanded, proposed service areas were agreed upon. Subsequently, those maps were submitted to the ED amending the water and sewer CCN applications originally submitted to the Commission by the City of Austin and Hornsby Bend.

On October 8, 2004, a letter requesting a further amendment to City of Austin's applications was submitted to the Commission. In the letter, the City of Austin requested that its existing CCN numbers be used for the new CCN areas requested in its applications. Effectively, City of Austin's applications to obtain new water and sewer CCNs were revised to request amendments to existing City of Austin water CCN number 11322 and to existing City of Austin sewer CCN number 20636.

The City of Austin possesses the financial, managerial and technical capability to provide continuous and adequate water and sewer utility service to every customer in the area proposed to be included in amended water CCN No. 11322 and amended sewer CCN No. 20636, and the certification of the City of Austin is necessary for the service, accommodation, convenience, or safety of the public. Hornsby Bend possesses the financial, managerial and technical capability to provide continuous and adequate water and sewer utility service to every customer in the area

proposed to be included in amended water CCN No. 11978 and amended sewer CCN No. 20650, and the certification of Hornsby Bend is necessary for the service, accommodation, convenience, or safety of the public.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

The applications by the City of Austin to amend water and sewer Certificates of Convenience and Necessity Nos. 11322 and 20636 in Hays, Williamson, and Travis Counties, Texas, as reflected in the attached copies of the Commission's official water and sewer service area maps, are hereby approved.

The applications by Hornsby Bend Utility Company, Inc. to amend water and sewer Certificates of Convenience and Necessity Nos. 11978 and 20650 in Travis County, Texas, as reflected in the attached copies of the Commission's official water and sewer service area maps, are hereby approved.

The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to the parties. The Commission shall issue amended water and sewer Certificates of Convenience and Necessity to the City of Austin and Hornsby Bend Utility Company, Inc.

If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date: **NOV 16 2004**

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY



For the Commission

SETTLEMENT AGREEMENTPREAMBLE

This Agreement is entered into October 20, 2003 by the City and Hornsby.

RECITALS

A. Hornsby currently has three CCN applications on file with TCEQ: (1) a wastewater CCN amendment application covering the 759 acres of the Austin Estates Limited Partnership tract and other tracts; (2) a water CCN amendment application for 350 acres related to properties already within or adjacent to its wastewater CCN (Austin's Colony and Forest Bluff); and (3) an amendment application for approximately 7,800 acres of water service area located south of FM 969 and approximately 26,000 acres of wastewater service area located east of FM 973, south of Highway 290, and north of the Colorado River.

B. The City currently has applications for water and wastewater CCNs on file with TCEQ, which encompass much of its eastern ETJ.

C. The Applications overlap in the areas generally located in the City's ETJ, south of US Highway 290 and north of the Colorado River. These areas are shown on Exhibit A as "Hornsby Bend's CCN Service Area" and "City's CCN Service Area."

D. The City's and Hornsby's protests of each other's Applications are consolidated in SOAH Docket No. 582-02-3056 and TCEQ Docket Nos. 2002-0189-UCR and 2000-0112-UCR.

E. The City and Hornsby enter this Agreement to resolve water and wastewater service area issues between the Parties and to divide the service area that is generally located south of US Highway 290, and north of the Colorado River. The intent of the Parties is that the agreed service areas will not overlap any existing CCNs held by other entities or the ETJs of other municipalities.

DEFINED TERMS

Unless specifically defined elsewhere by this Agreement, a word or term listed below has the meaning indicated in this Agreement.

1. "Agreement" shall mean this settlement agreement, its counterparts, and any attached exhibits.

2. "ALJ" shall mean the administrative law judge assigned to the consolidated proceeding described in Recital D.

3. "Applications" shall mean the City's Water and Wastewater Applications and Hornsby's Water and Wastewater Applications.

4. "As-Built Plans" shall mean Construction Plans showing facilities as actually constructed.

5. “CCN” shall mean Certificate of Convenience and Necessity.
6. “City” shall mean, unless otherwise noted, the City of Austin’s Water and Wastewater Utility.
7. “City Wastewater Application” shall mean the City’s application for a wastewater CCN, Application No. 33563-C.
8. “City Water Application” shall mean the City’s application for a water CCN, Application No. 33562-C.
9. “City’s STM” shall mean the Sale, Transfer and Merger application filed by the City with TCEQ, requesting the transfer, on Hornsby’s behalf, of the Transferred Area shown on Exhibit A.
10. “Commission” shall mean the body comprised of the TCEQ Commissioners.
11. “Construction Plans” or “Plans” shall mean plans for the construction of Offsite Improvements and Internal Lines constructed by Hornsby or on Hornsby’s behalf within the City’s ETJ. Construction Plans does not include plans for the construction of water or wastewater treatment plants and water wells.
12. “Design Criteria” shall mean the City’s design criteria and standards, including standard products, as amended from time to time.
13. “Director” shall mean the City’s Director or representative.
14. “ED” shall mean the Executive Director of TCEQ, who is also a party to the SOAH proceeding described in Recital D, but is not a party to this Agreement.
15. “Effective Date” shall mean the date the Agreement is executed as stated in the Preamble.
16. “Engineer” shall mean an engineer licensed in the State of Texas and mutually selected by the Parties.
17. “ETJ” shall mean extraterritorial jurisdiction.
18. “Force Majeure” shall mean acts of God, governmental action, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, arrests and restraint of government and people, civil disturbances, explosions, major breakage or accident of machinery, extreme and unforeseeable delays in transportation, and any other causes, whether of the kind enumerated or otherwise, not reasonably within the control of the Party claiming the Force Majeure.
19. “Hornsby” shall mean Hornsby Bend Utility Company, Inc., a Texas Corporation.
20. “Hornsby Wastewater Applications” shall mean Hornsby’s applications to amend wastewater CCN No. 20650, Application Nos. 32800-C and 33989-C.

21. “Hornsby Water Applications” shall mean Hornsby’s applications to amend water CCN No. 11978, Application Nos. 33738-C and 33988-C.

22. “Internal Lines” shall mean a proposed subdivision’s water distribution and wastewater collection mains and appurtenances that are directly connected to each structure’s service lines. For the purposes of this definition, service lines are lines connecting the structures to the water distribution and/or wastewater collection system.

23. “Manville” shall mean Manville Water Supply Corporation.

24. “Offsite Improvements” shall mean infrastructure such as force mains, lift stations, water pump stations, water storage reservoirs/tanks, water distribution and wastewater collection system mains, and appurtenances that are connected to Internal Lines.

25. “Parties” shall mean both the City and Hornsby and their successors and permitted assigns.

26. “Party” shall mean either the City or Hornsby and their successors and permitted assigns.

27. “SOAH” shall mean the State Office of Administrative Hearings or such governmental authority as may succeed to SOAH’s jurisdiction over administrative hearings.

28. “TCEQ” shall mean the Texas Commission on Environmental Quality or such governmental authority as may succeed to TCEQ’s jurisdiction over CCNs.

ARTICLE 1

CCN PROTESTS AND CONTESTED CASE HEARING

Section 1.1 Withdrawal of Protests.

- (a) The Parties shall jointly seek the ED’s written approval of the service area division shown on Exhibit A. The Parties shall seek this approval in as expeditious a manner as possible, recognizing that time is of the essence.
- (b) Within seven calendar days of the receipt of the ED’s approval of the areas shown on Exhibit A, Hornsby and the City shall withdraw their protests to each other’s Applications and request that the ALJ remand the Applications to TCEQ for administrative disposition by the Commission that confirms the terms of this Agreement.
- (c) If the Parties do not obtain the ED’s approval of the service area division, the Parties shall be bound by the terms of this Agreement as set forth in Sections 1.3, 7.2 and 7.3.

Section 1.2 Amendment of Applications.

- (a) Hornsby and the City shall amend or otherwise modify their respective Applications to match the areas on Exhibit A designated as “Hornsby Bend’s CCN Service Area” and the “City’s CCN Service Area.”
- (b) Hornsby and the City shall submit these modifications to the ED no later than 15 calendar days after the Effective Date regardless of whether the ALJ has issued an order remanding the Applications to TCEQ.

Section 1.3 Continuation of Contested Case Hearing.

If the ED does not agree to recommend the granting by the Commission of CCNs to the Parties as depicted on Exhibit A, or if the ALJ does not remand the Applications to TCEQ, Hornsby and the City agree to continue the contested case hearing described in Recital D as aligned parties, each at their own cost unless the Parties agree otherwise in writing. As aligned parties, Hornsby and the City shall diligently pursue the resolution of the service area issues in the manner described in this Agreement and shall not make arguments that are inconsistent with the service area positions expressed in this Agreement.

Section 1.4 Appearance before the Commission.

When the Parties appear before the Commission regarding the issuance of the Parties’ CCNs, as they are described in Section 1.2(a), the Parties shall jointly seek the Commission’s approval of the CCNs. The Parties’ arguments, if any, before the Commission shall be consistent with the terms of this Agreement.

ARTICLE 2

SERVICE AREA

Section 2.1 Hornsby’s CCN Service Area.

- (a) As provided by Section 1.2, the City shall request the ED to remove from the City’s Water and Wastewater Applications tracts identified on Exhibit A as “Hornsby Bend’s CCN Service Area.” These tracts are generally located south of Gilleland Creek, north of the Colorado River, and east of proposed State Highway 130.
- (b) As provided by Section 1.2, the City shall also request the ED to remove from the City’s Wastewater Application tracts identified on Exhibit A as “Hornsby Bend’s CCN Service Area.” These tracts are generally located east of Blake-Manor Road and north of Hog Eye Road.

Section 2.2 CCN Area Transferred from Hornsby to the City.

- (a) Hornsby agrees to transfer to the City:
 - (i) Hornsby's existing CCN area east of FM 973, north of Decker Lane and south of Blake-Manor Road; and
 - (ii) Hornsby's existing CCN area west of proposed State Highway 130 and north of FM 969.
- (b) The tracts to be transferred from Hornsby to the City are shown on Exhibit A as "Transferred Area."
- (c) The City shall file the City's STM no later than 15 calendar days after the Effective Date.
 - (i) The City shall pay the filing fee for the City's STM; however, after payment of the filing fee by the City, each Party is responsible for its own costs related to the City's STM proceedings.
 - (ii) Hornsby agrees to cooperate and provide all necessary information related to the City's STM within five business days of receipt of a written request by the City for such information.
- (d) Hornsby agrees that the City may provide wastewater service to the Transferred Area as of the Effective Date.
 - (i) Under this section, the right to provide wastewater service by the City includes all rights and actions necessary to effectuate such service.
 - (ii) If the City provides service to the Transferred Area before the CCN for the Transferred Area is transferred to the City, Hornsby agrees that any infrastructure constructed by the City in the Transferred Area shall be owned, operated and maintained by the City unless the City agrees otherwise in writing. In addition, under such circumstances, all customers and revenue associated with the provision of wastewater service to the platted developments in the Transferred Area shall be retained by the City with no compensation to Hornsby other than that provided for in Section 5.1.
- (e) If the City's STM is not approved by TCEQ, Hornsby and the City shall enter into all necessary agreements authorizing the City to provide retail service to the Transferred Area, and Hornsby agrees

not to enforce its CCN rights with TCEQ, or any other agency or in any court of law as against the City.

Section 2.3 City's CCN Service Area.

- (a) As provided by Section 1.2, Hornsby shall request the ED to remove from Hornsby's Water and Wastewater Applications tracts identified as on Exhibit A "City's CCN Service Area." These tracts are generally located west of proposed State Highway 130.
- (b) As provided by Section 1.2, Hornsby shall request the ED to remove from Hornsby's Wastewater Applications tracts identified as on Exhibit A "City's CCN Service Area." These tracts are generally located east of FM 973, north of Decker Lane, FM 969 and Gilleland Creek and south of Blake-Manor and Hog Eye Roads.

ARTICLE 3

DESIGN CRITERIA

Section 3.1 General.

Article 3 shall apply only to Design Criteria, plan review, and inspection requirements of the City's Water and Wastewater Utility. This Agreement does not address any other development requirements, review, permits, or inspections required by other City of Austin departments.

Section 3.2 Design Criteria.

- (a) All new and replacement Offsite Improvements constructed by Hornsby or on Hornsby's behalf within the City of Austin's ETJ shall comply with the Design Criteria that exist at the time Hornsby or its agent submits Construction Plans for Offsite Improvements to the City for review and approval in accordance with Section 3.3.
- (b) Water or wastewater treatment plants and wells constructed by Hornsby are not required to meet the Design Criteria.
- (c) Internal Lines within the City of Austin's ETJ, constructed by Hornsby on behalf of a landowner or developer, shall be constructed to meet the Design Criteria.
- (d) Hornsby is not required to use the type of telemetry used by the City, but Hornsby shall provide sufficient space within its infrastructure for the addition of the telemetry required by the City at the time the Construction Plans or any revisions are submitted to the City in accordance with Section 3.3.

- (e) Hornsby may request an exception to the Design Criteria. Such requests shall be submitted in writing and shall articulate the reason for the exception. The final decision as to whether an exception will be granted is at the sole discretion of the City.

Section 3.3 Review of Plans.

- (a) Hornsby shall submit Construction Plans and any revisions to Construction Plans for facilities described in Sections 3.2(a) and 3.2(c) for review and approval by the City before initiating construction and installation of these facilities.
- (b) The City shall complete the review of Hornsby's Construction Plans and any revisions no later than 30 calendar days after the date of receipt of the Plans or revisions to the Plans.
 - (i) Within this 30 day period, the City shall provide written comments to Hornsby regarding those portions of the Construction Plans that do not comply with the Design Criteria.
 - (ii) If the Construction Plans submitted by Hornsby meet all the Design Criteria, the City shall approve the Plans within the 30 day period.
 - (iii) The City is not required to approve Hornsby's Construction Plans until all portions of the Plans comply with the Design Criteria or any agreed exceptions.
 - (iv) If the City fails to provide written comments to Hornsby regarding its Construction Plans or approval of its Plans within the 30 day period, the provisions of Article 6 shall apply.

Section 3.4 Retrofitting.

The City may not require Hornsby to retrofit to the Design Criteria any infrastructure that is installed and operating on the Effective Date. In addition, the City may not require Hornsby to retrofit future infrastructure to accommodate changes in the Design Criteria that were not in effect at the time Hornsby's Construction Plans for such infrastructure were submitted to the City for approval.

Section 3.5 Inspection.

- (a) Approval of Hornsby's Construction Plans by the City constitutes notice to the City to assign an inspector to the project.

- (b) Only construction projects and facilities the plans for which are subject to City approval under Sections 3.2 and 3.3 shall be inspected by the City.
- (c) Except as otherwise set forth in this Agreement, Hornsby shall follow the City's administrative procedures regarding submission of Construction Plans, in existence at the time Hornsby submits its Construction Plans.
- (d) Hornsby is not required to pay inspection costs required by the City's policies for construction projects of Offsite Improvements totaling less than \$100,000.
 - (i) To establish that a construction project is below the \$100,000 threshold requirement, Hornsby shall submit a copy of the executed construction contract between Hornsby and its contractor to the City along with a written "waiver" request.
 - (ii) Hornsby acknowledges that construction projects for Internal Lines are not covered by Section 3.5(d) or 3.5(e).
- (e) Hornsby agrees to pay one-half of the inspection costs, as established by City policies, for Offsite Improvements construction projects that total \$100,000 or greater.
- (f) The City shall inspect Hornsby's construction projects as soon as is practicable given the magnitude of the project and the availability of Hornsby representatives. The Parties shall use best efforts to coordinate scheduling of inspections in a timely manner. The Parties recognize that timeliness under this section will vary with the type of project. Disputes over timeliness shall be resolved in good faith between the Parties. Hornsby shall provide all required information for the inspection to the City. Hornsby shall provide written notice of the failure to inspect to the City. The City shall have 10 business days, after the date of receipt of Hornsby's notice, to complete or waive inspection. If the City does not inspect or waive inspection within 10 business days, the City will be subject to liquidated damages under Section 6.2, and Hornsby may continue construction, in accordance with the Plans previously approved by the City; if a project is complete, Hornsby may commence use of the infrastructure.
- (g) If the City's inspector determines that Hornsby's infrastructure is or has not been constructed in accordance with the Design Criteria, the inspector shall review the matter with the Director before notifying Hornsby of the deficiency. The City shall notify Hornsby of the nature of the deficiency within five business days of the discovery of the deficiency.

- (i) If Hornsby disagrees with the City's notice of deficiency, Hornsby shall provide written notice and explanation to the City of the points upon which it disagrees within five business days of receipt of the City's notice of deficiency. The City shall have 10 business days after the receipt of Hornsby's notice to evaluate Hornsby's response and explanation. The City shall provide a written response communicating its final conclusion within five business days of receipt of Hornsby's response.
- (ii) If there is a continued dispute between the Parties as to whether Hornsby's construction complies with the Design Criteria, the Parties shall retain an Engineer under the process provided in Section 3.5(g)(iv) to resolve the dispute. If the Engineer determines that Hornsby has not fully complied with the Design Criteria, then Hornsby shall pay the Engineer's fees and costs for performing this determination and damages in accordance with Sections 6.2 and 3.5(g)(iii). If the Engineer determines that Hornsby has fully complied with the Design Criteria, then the City shall pay the Engineer's fees and costs for performing this determination and damages in accordance with Sections 6.2 and 3.5(g)(iii).
- (iii) Liquidated damages under this section shall begin to accrue upon the date that Hornsby notifies the City that it desires to hire the Engineer. Liquidated damages shall stop accruing upon the date the Engineer completes the written determination. Payments for damages incurred under this section shall be made within 90 calendar days of the receipt of the Engineer's written decision by the Party owing damages.
- (iv) To select the Engineer, each Party shall submit a list of five independent engineers that are acceptable to that Party. The Parties shall continue to submit names until a name is common to both lists or the Parties otherwise reach agreement.
- (h) Hornsby shall replace or repair, at its sole cost, infrastructure that is determined to be in non-compliance with the Design Criteria, within a mutually agreed upon time period, which shall not exceed 180 calendar days after the date of mutual agreement regarding non-compliance or receipt of the Engineer's written decision.
- (i) Hornsby shall provide the City, in accordance with the City's procedures, one set of As-Built Plans no later than 30 calendar days after construction is complete. The As-Built Plans shall be certified, by an engineer licensed in Texas, that the constructed

facilities have been built in accordance with approved Construction Plans.

ARTICLE 4

MISCELLANEOUS ISSUES RELATING TO THE PROVISION OF SERVICE AND SERVICE AREAS

Section 4.1 Wholesale Service.

Hornsby and the City agree to negotiate in good faith any future wholesale water and wastewater agreements between the Parties, with the recognition that any such agreement shall be subject to review by the Water and Wastewater Commission and approval by the Austin City Council.

Section 4.2 Discharge Permits.

- (a) The City agrees not to protest Hornsby's discharge permit applications, within "Hornsby Bend's CCN Service Area" as shown on Exhibit A, as long as those applications provide for effluent to be discharged to the Colorado River or its tributaries.
- (b) Hornsby agrees not to protest the City's discharge permit applications, within the "City's CCN Service Area" as shown on Exhibit A, as long as those applications provide for effluent to be discharged to the Colorado River or its tributaries.

Section 4.3 Manville's Water Service Area.

Hornsby shall not protest the sale and transfer of any water CCN area from Manville to the City, and the City shall not protest the sale and transfer of any water CCN area from Manville to Hornsby for the areas on Exhibit A designated as "Hornsby Bend's CCN Service Area," "City's CCN Service Area," "Transferred Area," and "Hornsby Bend Utility Co., Inc." area.

Section 4.4 State Highway 130.

The Parties acknowledge that the center line of the final alignment of proposed State Highway 130 may change in the future. The Parties agree that the eastern right of way of proposed State Highway 130 as finally determined by the State constitutes the boundary of the certificated areas between the Parties. No further compensation shall be paid by either Party as a result of changes in the final alignment of proposed State Highway 130.

ARTICLE 5
COMPENSATION

Section 5.1 Connections.

- (a) The City agrees to pay fees to Hornsby for wastewater connections in the areas identified on Exhibit A as “Transferred Area” and “AELP Property” under the terms of the provisions of this Article. The payment shall be \$400 per new wastewater connection up to a maximum of 3,000 wastewater connections for a total payment of \$1,200,000. Hornsby agrees that the City shall not be obligated to pay more than \$400,000 in any given fiscal year. Any amount due to Hornsby in excess of \$400,000 shall be paid by the City on October 1 of the next fiscal year. For example, if in Year One 1,500 connections are made, the City shall pay Hornsby for 1,000 connections for a total of \$400,000. Then, in Year Two, if 100 connections are made, the City shall pay Hornsby for 100 connections for Year Two plus 500 connections that are carried over from Year One, for a total payment of \$240,000. If, however, 1,500 connections are made in Year Two, the City shall again pay \$400,000 for Year Two, and the 500 connections from Year One and 500 connections from Year Two will roll over, this time into the payment for Year Three.
- (b) The City shall pay such wastewater connection fees on an annual basis on October 1 or the next business day. The City shall also provide a report that details the address of each wastewater connection. The City shall provide additional information reasonably requested by Hornsby to verify the number of wastewater connections.

Section 5.2 Transferred Area.

- (a) Upon receipt of the TCEQ order transferring the CCN for the Transferred Area, the City will pay Hornsby \$200,000, but this payment shall occur no sooner than October 1, 2004. In consideration for delaying this payment until October 1, 2004 or thereafter, the City shall pay Hornsby an additional \$3,000 on the date that the \$200,000 payment is made. The City shall also pay Hornsby \$100,000 on October 1, 2005.
- (b) If the TCEQ order is not received until after October 1, 2004, the City shall pay Hornsby the first payment within 30 calendar days after the City’s receipt of the TCEQ order.
- (c) The City shall not be obligated to make the payments described in Section 5.2(a) until the order transferring the Transferred Area from Hornsby to the City is issued by the Commission.

- (d) Hornsby represents and warrants that there are no customers within the Transferred Area as of the Effective Date.
- (e) Hornsby represents and warrants that the only existing agreement concerning the Transferred Area is the "Agreement to Provide Wastewater Service" between Hornsby Bend Utility Company, Inc. and Austin Estates Limited Partnership executed on February 2, 2000. Hornsby assigns to the City, pursuant to Exhibit B, all rights and obligations of the Agreement to Provide Wastewater Service.
- (f) Hornsby represents and warrants that it has received a total of \$25,000 from Austin Estates Limited Partnership. Within ten calendar days of issuance of the TCEQ order transferring the CCN for the Transferred Area, Hornsby shall pay the City \$25,000, but this payment shall occur no sooner than October 1, 2004. If it is determined after October 1, 2004 that Hornsby has received more than \$25,000 from Austin Estates Limited Partnership, Hornsby shall pay the City the amount in excess of \$25,000, within 30 calendar days of such determination.

ARTICLE 6

DEFAULT AND DAMAGES

Section 6.1 Default by a Party, Notice and Cure.

- (a) In the event of a default by either Party under this Agreement, the non-defaulting Party shall have the right to give written notice to the defaulting Party specifying the nature of the default and demanding that the same be remedied within 30 calendar days after receipt of such notice by the defaulting Party unless otherwise provided by this Agreement. Upon receipt of notice of default, the defaulting Party shall promptly initiate curative action and continue diligently and expeditiously to cure the default within the shortest reasonable period of time to do so.
- (b) If the defaulting Party in its reasonable judgment determines that the default cannot be cured within the 30 day period, the defaulting Party shall promptly give written notice to the non-defaulting Party of the circumstances and reasons why the default cannot be cured within 30 days and the time by which the defaulting Party reasonably expects to be able to remedy the default with continuous effort and diligence. The non-defaulting Party acting in good faith and based on its reasonable determination of the circumstances shall not be bound by the defaulting Party's determination of the grounds for the extension of time in which to cure the default. If the non-defaulting Party disagrees with the defaulting Party's assessment of the time period necessary to cure

the default, the non-defaulting Party shall promptly notify the defaulting Party, and the Parties shall proceed according to Section 6.1(c).

- (c) The Parties agree that they shall use good faith and reasonable efforts to resolve any dispute by agreement, which may include engaging in non-binding arbitration or mediation, before initiating any lawsuit to enforce their respective rights under this Agreement.
- (d) Should the defaulting Party fail to cure the default within the 30 day period (or such period mutually agreed to under Section 6.1(b) or 6.1(c)), or should the Parties be unable to reach agreement regarding the time reasonably necessary to cure if the defaulting Party asserts that the default cannot be cured within 30 days, the non-defaulting Party shall be entitled to exercise its remedies against the defaulting Party under Section 6.2.

Section 6.2 Damages and Remedies.

- (a) Except as noted in Sections 3.5(f) and 3.5 (g)(iii), after receiving notice and the opportunity to cure in accordance with Section 6.1 and after failing to cure within the designated time, the defaulting Party shall be liable for damages in the amount of \$500 per business day until the default is cured or the Parties agree otherwise.
- (b) In addition, the non-defaulting Party may pursue all additional remedies, at law or in equity, including payment of reasonable attorneys' fees, that it deems appropriate to redress such default.
- (c) Nothing in this Agreement shall be construed to limit any Party's right to recover damages or seek other appropriate curative remedies if a non-defaulting Party files a breach of contract action relating to this Agreement. Nothing herein shall be construed as a waiver of a Party's right to seek emergency relief in the event of an emergency, nor waiver of the rights of a Party existing under the laws of the State of Texas.

ARTICLE 7

TCEQ APPROVAL AND REGULATIONS

Section 7.1 Regulations.

The Parties agree that this Agreement is subject to governing statutes and TCEQ regulations promulgated pursuant to those statutes, especially 30 TAC Chapter 291, and no terms shall be construed to contradict these statutes or regulations.

Section 7.2 Commission Approval of Service Areas Agreed to by the Parties.

The Parties anticipate that the ED will recommend that CCNs be granted to the Parties that match the areas depicted on Exhibit A. If CCNs are not granted to the Parties in accordance with Exhibit A, the other terms of this Agreement relating to the Transferred Area, Design Criteria, etc., shall survive. In addition, if the Parties are not granted CCNs that match Exhibit A, the Parties agree that they shall not: (1) apply for CCNs in areas designated as the other Party's service area on Exhibit A, unless agreed by the Parties in writing; and (2) protest each other's CCN applications as long as those applications are for area within the applicant's service area as it is depicted on Exhibit A.

Section 7.3 Provision of Service Before Commission Approval of Service Areas Agreed to by the Parties.

The Parties agree that, as of the Effective Date and to the extent allowed by law, they may each provide service within their respective service areas, as shown on Exhibit A, and that they shall not protest the provision of service by the other Party in those agreed areas.

ARTICLE 8

MISCELLANEOUS

Section 8.1 Section Headings.

Section and other headings contained in this Agreement are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of any provision.

Section 8.2 Governing Law and Venue.

This Agreement, and the obligations of the Parties, shall be governed by and be construed in accordance with the laws of the State of Texas. Venue for all disputes involving this Agreement shall be in the appropriate District Court in Travis County, Texas.

Section 8.3 Severability.

Every provision of this Agreement is intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement. If any term or provision of this Agreement is found to be void or unenforceable by a court or agency of competent jurisdiction or by agreement of the Parties: (1) the Agreement shall remain in full force and effect as to all other terms and purposes and shall be construed as if such invalid portion had never been contained in the Agreement; and (2) the

Parties will negotiate new terms to replace the invalid one(s), and such terms will be drafted to preserve the intent of the invalid terms.

Section 8.4 Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

Section 8.5 Parties in Interest.

Each and all of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the undersigned Parties and the legal representatives, successors and permitted assigns of such Parties. Whenever a reference to any Party is made in this Agreement such reference shall be deemed to include a reference to the legal representatives, successors and permitted assigns of such Party.

Section 8.6 Time.

(a) Time is of the essence in the performance of the Parties' obligations under this Agreement.

(b) Time shall be computed under this Agreement as follows: The Parties shall begin counting the day after the period starts. The day the time period begins (e.g., the date of receipt) is not counted. For example, if a Party must fulfill an obligation under the Agreement within 15 calendar days of the Effective Date, and the Effective Date is September 10, September 11 counts as the first day of the 15-day period. Legal holidays shall not count in the computation of time.

Section 8.7 Force Majeure.

In the event of either Party being rendered unable, wholly or in part, by reason of Force Majeure, to carry out its obligations under this Agreement, it is agreed that, on such Party giving notice and full particulars of such Force Majeure in writing to the other Party within a reasonable time after the occurrence of the cause relied on, the obligations of the Party giving such notice, so far as they are affected by such Force Majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall so far as possible be remedied as quickly as possible. The Parties shall use their reasonable efforts to mitigate the effects of such Force Majeure and to cooperate to develop and implement a plan of remedial and reasonable alternative measures.

Section 8.8 Third Party Beneficiary.

No person other than the Parties may rely on or be a beneficiary of this Agreement.

Section 8.9 Assignment.

This Agreement and the rights of the Parties hereunder may not be assigned in whole or in part to any third party without the written consent of the Parties. Neither Party shall unreasonably withhold consent to the assignment of this contract or rights to a third party.

Section 8.10 Entire Agreement.

This Agreement constitutes the entire Agreement between the City and Hornsby and supercedes any prior understanding or oral or written agreements respecting the subject matter of this Agreement.

Section 8.11 Good Faith Dealings.

The Parties undertake to act in good faith in relation to the performance and implementation of this Agreement and to take such other reasonable measures as may be necessary for the realization of its purposes and objectives. Each Party agrees that it will not initiate a dispute against the other Party unless the Party raising the dispute in good faith believes its position is legitimate. The Parties agree to attempt to resolve all disputes arising hereunder promptly, equitably, and in a good faith manner. The Parties further agree to provide each other with reasonable access during normal business hours to any and all non-privileged records, information, and data pertaining to any such dispute.

Section 8.12 Notice.

- (a) Any notice required or permitted to be delivered hereunder may be given to the other Party via hand delivery or U.S. Postal Service, postage prepaid, to the address of the other Party shown below or at such other physical address as that Party may specify writing:

Hornsby:
Hornsby Bend Utility Company, Inc.
c/o Armbrust & Brown, L.L.P.
100 Congress Avenue
Suite 1300
Austin, TX 78701

Michael Quinn
c/o Southwest Utility Group
1 Wilshire Building
624 S. Grand Avenue, Suite 2900
Los Angeles, CA 90017

Latius Prikryl
Phillips & Prikryl
515 Congress, Suite 2600
Austin, TX 78701

and

Bill Jasura
Hornsby Bend Utility Company, Inc.
c/o Eco Resources
9511 Ranch Road 620 North
Austin, Texas 78726

City:
City of Austin
Water & Wastewater Utility
P.O. Box 1088
Austin, TX 78701
Attention: Director

- (b) Notice shall be deemed given by one Party to the other Party upon either of the following dates:
 - (i) The date of the mailing, as shown by a United States Postal Service receipt, if mailed to the other Party by registered or certified mail; or
 - (ii) The date of the receipt by such other Party, if personally delivered.

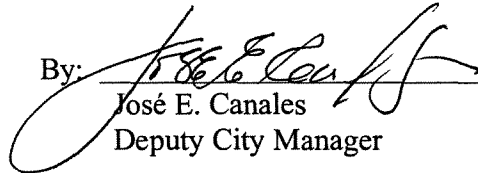
Section 8.13 No Presumption Against Drafter.

The Parties understand, agree and acknowledge that:

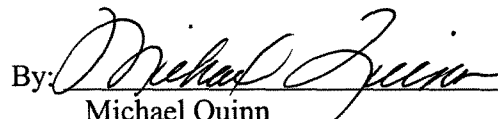
- (a) This Agreement has been freely negotiated by the Parties; and
- (b) In any dispute or controversy over the meaning, validity or enforceability of this Agreement or any of its terms and conditions, there shall be no interference, presumption, or conclusion drawn whatsoever against any Party by virtue of that Party having drafted the document or any portion thereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective for all purposes as of the date first written above.

CITY OF AUSTIN

By:  _____
José E. Canales
Deputy City Manager

HORNSBY BEND UTILITY COMPANY, INC.

By:  _____
Michael Quinn
President

STATE OF TEXAS §
 § **FIRST AMENDMENT TO THE**
 § **SETTLEMENT AGREEMENT**
COUNTY OF TRAVIS §

THIS FIRST AMENDMENT TO THE SETTLEMENT AGREEMENT (“**First Amendment**”) is entered into by and between the **City of Austin** (the “**City**”), a Texas municipal corporation; and **SWWC Utilities, Inc.**, a Delaware corporation (“**SWWC**”) d/b/a **Hornsby Bend Utility Company, Inc.** (collectively, the **City** and **SWWC** are referred to herein as the “**Parties**”).

I.
RECITALS:

- A.** The **City** and **SWWC**, doing business as **Hornsby Bend Utility Company, Inc.** (“**Hornsby Bend**”), entered into a **Settlement Agreement** (“**Agreement**”) on October 20, 2003, to resolve a dispute concerning the **Parties’** competing certificate of convenience and necessity (“**CCN**”) applications pending before the **Texas Commission on Environmental Quality** (“**TCEQ**”).
- B.** On December 6, 2011, the **City** initiated a legal proceeding in **Travis County District Court** seeking clarification of the rights and obligations of the **Parties** under the **Agreement** (the “**Lawsuit**”).
- C.** The **Parties** mutually wish to amicably dismiss the **Lawsuit** and to amend the **Agreement** to, among other matters, clarify the meaning and intent of certain provisions of the **Agreement** that are currently in dispute.

NOW THEREFORE, in consideration of the foregoing premises, the mutual covenants of each party set forth below, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the **City** and **SWWC** agree as follows:

II.
TERMS

- A.** The **Parties** agree to file an **Agreed Notice of Nonsuit** dismissing all claims and counterclaims by both **Parties** in **Travis County District Court** (Cause No. D-1-GV-11-001900) within five business days of the execution of this **First Amendment**. The **Parties** agree to assume responsibility for their own costs and attorney fees associated with the **Lawsuit**.
- B.** It is understood and agreed that this **First Amendment** shall be binding upon and inure to the benefit of the **Parties**, and their respective representatives, agents, successors, and assigns.
- C.** The **City** and **SWWC**, doing business as **Windermere Utility Co., Inc.** (“**Windermere**”), are parties to that certain **Agreement for Wholesale Water Service and Resolution of**

Related Matters dated April 12, 2002 (the “**Windermere Agreement**”). Upon the first applicable billing cycle after the execution of this First Amendment, the City agrees to establish the wholesale water service rate for Windermere at the City’s current average wholesale rate. Any future wholesale rate changes will be made using the City’s cost of service methodology as approved by the Austin City Council and conform to the City’s standard practices for wholesale rate making.

D. A new Article is hereby added to the Agreement:

“ARTICLE 9

9.01 Intent of the Agreement

The Parties agree that the service areas identified in the Agreement and certified by TCEQ were identified and certified solely for the purpose of settling competing CCN applications that were pending before the TCEQ at the time of the Agreement. The Parties also agree that all current and amended rules and regulations of the Public Utility Commission of Texas (“**PUC**”) concerning CCNs apply to the Agreement. Without limiting the generality of the foregoing, the Parties specifically agree that the following actions are permitted and authorized, and shall not constitute a breach of the Agreement:

- i. A landowner may seek decertification from a CCN and seek service from a different retail public utility, and the PUC may authorize the different retail public utility to provide service, and may further authorize such different retail public utility to actually provide the landowner’s requested service. In other words, each Party may provide retail service on property formally within or not included in the other’s CCN, upon authorization by the PUC. The Party providing retail service to the decertified property will notify the PUC and prior CCN holder of its intent to provide retail service within 30 days of the PUC’s final order decertifying the property.
- ii. Either Party may purchase, acquire or transfer all or any portion of any certificated area, the PUC may authorize such Party to provide service in such purchased, acquired or transferred certificated area, and such Party may actually provide service within such certificated area pursuant to such authorization.

9.02 District Creation within Hornsby Bend’s CCN

If a conservation and reclamation district created by authority of Section 59, Article XVI of the Texas Constitution, as amended, or Section 52(b)(1) and (2), Article III of the Texas Constitution, as amended (regardless of how created), or a public improvement district governed by Chapter 372 of the Texas Local Government Code, as amended, or any other type of district created in the future (any such district being referred to herein as a “**District**”), is formed to include property that is located within all or a part of Hornsby Bend’s CCN, Hornsby Bend will be the District’s wholesale water and wastewater provider. Except for master metering facilities, Hornsby Bend will not own any water or wastewater infrastructure located within the District. Upon the City’s annexation of such District, Hornsby Bend will remain the wholesale provider in accordance with the terms of both this

Agreement and the wholesale agreement between Hornsby Bend and the District, and the City will become the retail service provider and owner of the District's water and wastewater infrastructure. Hornsby Bend agrees not to charge or apply fees to the City for the actualization of the City's annexation of the district and the acquisition of the district's water and wastewater utility assets. However, the City shall pay Hornsby Bend's wholesale water and wastewater rates, to be set in accordance with Hornsby Bend's tariff as approved by the PUC as just and reasonable, with recovery of operating expenses limited to those reasonable and necessary, upon the City's annexation of the district. The City retains the right to protest such wholesale rates and fees at the PUC."

E. Section 3.5 of the Agreement is hereby amended in its entirety and restated as follows:

"The City will not inspect new construction in Hornsby Bend's CCN. Hornsby Bend agrees, at no cost to the City, to cause its engineer provide a certified letter with his seal to the City that the construction plans approved by the City were constructed as designed, and such letter will be accompanied by one copy of as-built plans of the constructed infrastructure no later than 30 business days after Final Completion of construction. Final Completion is defined as the date the engineer certifies to Hornsby Bend that construction is complete and Hornsby Bend issues final payment to the contractor."

F. Section 6.2 (a) of the Agreement is hereby amended and restated as follows:

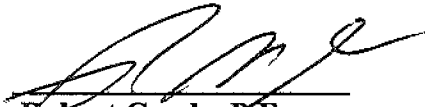
"If the City does not receive a copy of as-built construction plans and the engineer's certified letter within 30 business days after construction is completed and Hornsby Bend has not remedied the default within 30 days after the City's written notice, then Hornsby Bend shall pay liquidated damages of \$100 per business day to the City until the default is cured."

III. MISCELLEANOUS

- A. **Agreement Provisions.** All other provisions of the Agreement remain in full force and effect. In the event of conflict between this First Amendment and any provision of the Agreement, this First Amendment shall control.
- B. **Effective Date.** This First Amendment will be effective upon execution by all parties.
- C. **Defined Terms.** Any capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Agreement.

[Signature Pages to Follow]

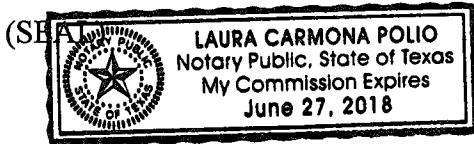
CITY OF AUSTIN:

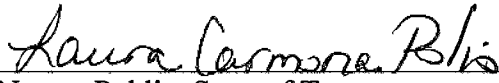
By: 
Robert Goode, P.E.
Assistant City Manager

Date: 12/9, 2014

STATE OF TEXAS)
)
COUNTY OF TRAVIS)

THIS INSTRUMENT was acknowledged before me on this 9 day of December, 2014, by Robert Goode, P.E., Assistant City Manager of the City of Austin, a Texas municipal corporation, on behalf of that municipal corporation.




Notary Public, State of Texas

[Signatures Continue on Next Page]


SWWC Utilities, Inc. doing business as HORNSBY BEND UTILITY COMPANY, INC.

By: Charles W. Profilet, Jr.
Charles W. Profilet, Jr.
Vice President and Managing Director

Date: DEC. 5, 2014

STATE OF TEXAS)
)
COUNTY OF Fort Bend)

THIS INSTRUMENT was acknowledged before me on this 5th day of December, 2014, by Charles W. Profilet, Jr. Vice President of SWWC Utilities, Inc. doing business as Hornsby Bend Utility Company, Inc., a Delaware corporation, on behalf of that corporation.

(SEAL)  Silvia Marleni Alvarez
Notary Public, State of Texas
My Commission Expires
November 20, 2016 Notary Public, State of Texas

STATE OF TEXAS §
 § **SECOND AMENDMENT TO THE**
 § **SETTLEMENT AGREEMENT**
COUNTY OF TRAVIS §

THIS SECOND AMENDMENT TO THE SETTLEMENT AGREEMENT (“**Second Amendment**”) is entered into by and between the **City of Austin** (the “**City**”), a Texas municipal corporation; and **SWWC Utilities, Inc.**, a Delaware corporation (“**SWWC**”) d/b/a **Hornsby Bend Utility Company, Inc.** (collectively, the City and SWWC are referred to herein as the “**Parties**”).

I.
RECITALS:

- A. The City and SWWC, d/b/a Hornsby Bend Utility Company, Inc. (“**Hornsby Bend**”), entered into a Settlement Agreement (“**Agreement**”) on October 20, 2003, to resolve a dispute concerning the Parties’ competing certificate of convenience and necessity (“**CCN**”) applications pending before the Texas Commission on Environmental Quality (“**TCEQ**”).
- B. The City initiated a legal proceeding in District Court in Travis County after determining that the Parties had differing interpretations as to portions of the Agreement.
- C. On December 4, 2014, the City and SWWC d/b/a Hornsby Bend entered into a First Amendment to the Agreement pursuant to which the Parties mutually agreed to dismiss the Lawsuit and amend the Agreement to clarify the meaning and intent of certain provisions of the Agreement in dispute (the “**First Amendment**”).
- D. The Parties now desire to further amend the Agreement to, among other matters, clarify the meaning and intent of certain provision of Section 9.02 of the First Amendment of the the Agreement

NOW THEREFORE, in consideration of the foregoing premises, the mutual covenants of each party set forth below, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are acknowledged, the City and SWWC agree as follows:

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[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

II.
AGREEMENT

- A. Section 9.02 of the First Amendment is replaced with the following:

“9.02 District Creation within Hornsby Bend’s CCN

If a conservation and reclamation district created by authority of Section 59, Article XVI of the Texas Constitution, as amended, or Section 52(b)(1) and (2), Article III of the Texas Constitution, as amended (regardless of how created), or a public improvement district governed by Chapter 372 of the Texas Local Government Code, as amended, or any other type of district created in the future (any such district being referred to herein as a “**District**”), is formed to include property that is located within all or a part of Hornsby Bend’s CCN, Hornsby Bend will be the District’s wholesale water and wastewater provider for that portion of the District that will be located within its CCN (“Hornsby Wholesale Area”). Except for master water metering facilities, Hornsby Bend will not own any water or wastewater infrastructure located within the District. The City, at its sole discretion, may serve as the retail provider of water and wastewater service within the District or may designate the District as the retail provider of water and wastewater service. Hornsby Bend agrees to use its reasonable best efforts to effectuate this Section of the Agreement by transferring its CCNs within the Hornsby Wholesale Area to the City or the District and assisting the City or the District in obtaining the Public Utility Commission’s (“PUC”) approval of such. The execution of a wholesale water and wastewater agreement between the Hornsby Bend and the City or the District shall occur within 180 days from the execution date of a consent agreement between the City and the District and shall precede any filings to formally transfer the CCNs in the Hornsby Wholesale Area to the City or the District. The retail provider of water and wastewater service will file the PUC application and pay for any associated PUC application fees. Each Party shall pay their own costs including but not limited to legal, consultant, and expert witness. Upon the City’s annexation of such District, Hornsby Bend will remain the wholesale provider in accordance with the terms of both this Agreement and the wholesale agreement between Hornsby Bend and the City or the District, and the City will continue to be or will become the retail service provider and owner of the District’s water and wastewater infrastructure. Hornsby Bend agrees not to charge or apply fees to the City for the actualization of the City’s annexation of the District and the acquisition of the District’s water and wastewater utility assets. However, the City shall pay Hornsby Bend’s wholesale water and wastewater rates, to be set in accordance with Hornsby Bend’s tariff as approved by the PUC as just and reasonable, with recovery of operating expenses limited to those reasonable and necessary, upon the City’s annexation of the District. The City retains the right to protest such wholesale rates and fees at the PUC.”

II.

MISCELLEANOUS

- A. Agreement Provisions.** All other provisions of the Agreement and First Amendment remain in full force and effect. In the event of conflict between this Second Amendment and

any provision of the Agreement and the First Agreement, this Second Amendment shall control.

- B. **Effective Date.** This Second Amendment will be effective upon the last day that this document is fully executed by the parties.
- C. **Defined Terms.** Any capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Agreement and the First Amendment.

[Signature Pages to Follow]

CITY OF AUSTIN:

By: [Signature]
Robert Goode, P.E.
Assistant City Manager

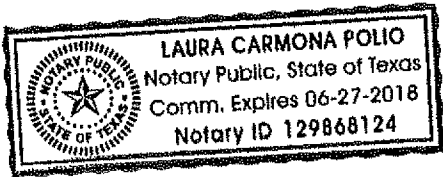
Date: 5/29, 2017

STATE OF TEXAS)
)
COUNTY OF TRAVIS)

THIS INSTRUMENT was acknowledged before me on this 24th day of may, 2017,
by Robert Goode, P.E., Assistant City Manager of the City of Austin, a Texas municipal corporation,
on behalf of that municipal corporation.

(SEAL)

[Signature]
Notary Public, State of Texas



[Signatures Continue on Next Page]


SWWC Utilities, Inc. d/b/a HORNSBY BEND UTILITY COMPANY, INC.

By: Charles W Profilet, Jr.
Charles W. Profilet, Jr.
Vice President and Managing Director

Date: May 17, 2017

STATE OF TEXAS)
COUNTY OF Fort Bend)

THIS INSTRUMENT was acknowledged before me on this 17th day of May, 2017, by Charles W. Profilet, Jr. Vice President of SWWC Utilities, Inc. d/b/a Hornsby Bend Utility Company, Inc., a Delaware corporation, on behalf of that corporation.

(SEAL)  Silvia Marleni Alvarez
Notary Public, State of Texas

STATE OF TEXAS §
 § **THIRD AMENDMENT TO THE**
 § **SETTLEMENT AGREEMENT**
 COUNTY OF TRAVIS §

THIS THIRD AMENDMENT TO THE SETTLEMENT AGREEMENT (“Third Amendment”) is entered into by and between the City of Austin (the “City”), a Texas municipal corporation and SWWC Utilities, Inc., a Delaware corporation (“SWWC”) d/b/a/ Hornsby Bend Utility Company, Inc. (collectively, the City and SWWC are referred to herein as the “Parties”).

**I.
 RECITALS:**

- A. The Parties entered into a Settlement Agreement on October 20, 2003 (the “**Settlement Agreement**”), resolving competing certificate of convenience and necessity (“CCN”) applications pending before the Texas Commission on Environmental Quality.
- B. On December 4, 2014, the Parties entered into a First Amendment to the Settlement Agreement clarifying disputed provisions of the Settlement Agreement and agreeing to dismiss litigation (the “**First Amendment**”).
- C. On May 24, 2017, the Parties entered into a Second Amendment to the Settlement Agreement (the “**Second Amendment**”) further clarifying certain provisions of the Settlement Agreement as amended by the First Amendment.
- D. The Parties desire to further amend the Settlement Agreement, as amended by the First and Second Amendments, to incorporate an updated Exhibit A to accurately reflect the location of Highway 130 in relation to the CCNs of the parties and delete terms inconsistent with the mutually agreed intent of the Parties to provide retail water and wastewater services in accordance with their respective CCNs with neither party relying on the other for wholesale services.

NOW THEREFORE, in consideration of the foregoing premises, the mutual covenants of each party set forth below, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are acknowledged, the Parties agree as follows:

II.
AGREEMENT


- A. Exhibit A of the Settlement Agreement is replaced in its entirety with the attached Exhibit A, which is incorporated herein by reference for all purposes to depict the CCN boundaries of the Parties.
- B. Article 9 of the Settlement Agreement is deleted in its entirety.

III.
MISCELLANEOUS

- A. **Agreement Provisions.** All terms of the Settlement Agreement, as amended by the First and Second Amendments, provided those terms are not otherwise inconsistent with the changes made by this Third Amendment, remain in full force and effect. In the event of a conflict in terms, the terms of this Third Amendment shall control.
- B. **Effective Date.** This Third Amendment will be effective upon the last day that this document is fully executed by the Parties.
- C. **Defined Terms.** Any capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Settlement Agreement, as amended by the First and Second Amendments.

[SIGNATURE PAGES TO FOLLOW]

CITY OF AUSTIN

By: 
Name: Greg Meszaros
Title: Director, Austin Water

Approved as to form:

Clark Cornwell
Assistant City Attorney

SWWC UTILITIES, INC. d/b/a HORNSBY BEND UTILITY COMPANY, INC.


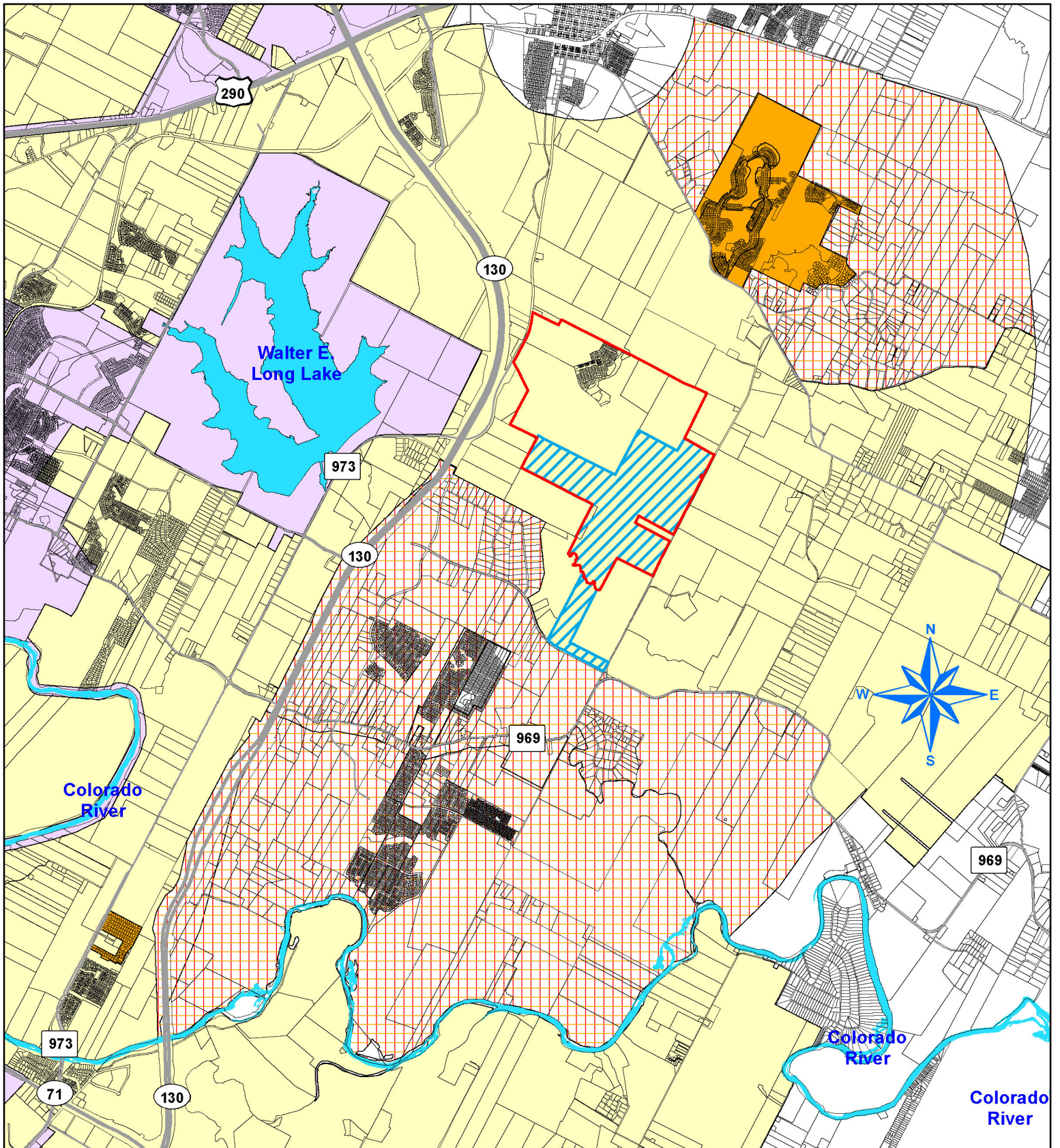








By: 
Name: Jeffrey L. McIntyre
Title: President

EXHIBIT A

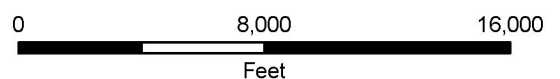
[Attached]



-  Transfer Area
-  Basemap Polygon
-  ATI
-  Hornsby Bend Utility Co. Inc.
-  Austin Wastewater CCN
-  AELP
-  Austin City Limits
-  Austin Limited Purpose Jurisdiction



City of Austin
Austin Water
January, 2020



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Produced by Utility Development Services

STATE OF TEXAS §
 §
 § **FOURTH AMENDMENT TO THE**
 § **SETTLEMENT AGREEMENT**
COUNTY OF TRAVIS §

THIS FOURTH AMENDMENT TO THE SETTLEMENT AGREEMENT (“Fourth Amendment”) is entered into by and between the City of Austin (the **“City”**), a Texas municipal corporation and SWWC Utilities, Inc., a Delaware corporation (**“SWWC”**) d/b/a/ Hornsby Bend Utility Company, Inc. (collectively, the City and SWWC are referred to herein as the **“Parties”**).

I.
RECITALS:

- A. The Hornsby Bend Utility Company, Inc., now known as SWWC Utilities, Inc. d/b/a Hornsby Bend Utility Company, Inc., and the City entered into a Settlement Agreement on October 20, 2003 (the **“Settlement Agreement”**), resolving competing certificate of convenience and necessity (**“CCN”**) applications pending before the Texas Commission on Environmental Quality and designating certain respective water and sewer service areas in Travis County.
- B. On December 4, 2014, the Parties entered into a First Amendment to the Settlement Agreement clarifying disputed provisions of the Settlement Agreement and agreeing to dismiss litigation (the **“First Amendment”**).
- C. On May 24, 2017, the Parties entered into a Second Amendment to the Settlement Agreement (the **“Second Amendment”**) further clarifying certain provisions of the Settlement Agreement as amended by the First Amendment.
- D. On September 20, 2020, the Parties entered into a Third Amendment to the Settlement Agreement (the **“Third Amendment”**) rescinding an Article 9 added by the First and Second Amendments and adding an updated exhibit map to the Settlement Agreement.
- E. On April 27, 2021, SWWC filed a lawsuit against the City and its officials in Cause No. D-1-GN-21-001858, SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. v. City of Austin, et al., in the 200th Judicial District Court of Travis County, Texas (the **“City Lawsuit”**).
- F. SWWC obtained a temporary restraining order against the City in the City Lawsuit, temporarily precluding the City from serving the CRP Property (**“TRO”**).
- G. SWWC and Colorado River Project, LLC’s, an affiliate of Tesla, have reached an agreement pursuant to which the City can provide water and wastewater to the turquoise area depicted on the attached Exhibit A-2.
- H. The Parties have agreed to seek entry of an agreed extension and modification of the TRO in the City Lawsuit contemporaneously with this Fourth Amendment allowing the City to provide

water and wastewater to the turquoise area depicted on the attached Exhibit A-2 in accordance with SWWC and Colorado River Project, LLC's agreement.

- I. To avoid the cost, uncertainty, and inconvenience of further litigation and to buy peace, SWWC and the City mutually desire to compromise and settle all claims and obligations among them relating to the transaction and occurrences that gave rise to the City Lawsuit and enter into a further amendment to the Settlement Agreement (as amended), to incorporate an updated Exhibit A in relation to the service areas of the parties and clarify the mutually agreed intent of the Parties to provide retail water and wastewater services in accordance with their respective service areas as depicted on Exhibit A.

NOW THEREFORE, in consideration of the foregoing premises, the mutual covenants of each party set forth below, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are acknowledged, the Parties agree as follows:

II. AGREEMENT

- A. Exhibit A of the Settlement Agreement is replaced in its entirety with the attached Exhibit A-1 and A-2, which is incorporated herein by reference for all purposes to depict the CCN boundaries of the Parties.
- B. A new Article 9 is added to the Settlement Agreement as follows:

“ARTICLE 9.

Section 9.01 TWC § 13.248 Agreement.

SWWC Utilities, Inc. d/b/a Hornsby Bend Utility Company, Inc. (“SWWC” or “Hornsby Bend”) and the City agree that the Settlement Agreement previously approved by the Texas Commission on Environmental Quality (“TCEQ”) as amended by the First, Second, Third, and Fourth Amendments all constitute a contract between retail public utilities designating areas to be served and customers to be served by those retail public utilities pursuant to Texas Water Code (“TWC”) § 13.248.

Promptly following the date on which this Fourth Amendment is executed, the Parties shall cooperate in the filing of, and use their best efforts to obtain the approval of an application pursuant to TWC § 13.248 with the Public Utility Commission of Texas (“PUC”) (“13.248 Application”) to approve the Settlement Agreement as amended by the First, Second, Third, and Fourth Amendments and to have the water and wastewater service areas depicted in **Exhibits A-1** and **Exhibit A-2** to this Fourth Amendment approved as each Party's respective designated customer service areas and incorporated into each Party's respective CCN areas as appropriate. Subject to PUC approval of the 13.248 Application and, with respect to the “714 Acre Area,” subject to PUC recertification as provided in subsection 9(C), the Parties agree that:

- (i) SWWC will not provide water or wastewater service within the area designated as the City's service area on **Exhibit A-1** hereto and, except as provided below, within the area designated as the "City Service Area" on Exhibit A-2 which shall also be part of the City's service area (even with respect to any area within the City's service area that is decertified or otherwise removed by the PUC from the City's CCNs) and;
- (ii) the City will not provide water or wastewater service within the area designated as SWWC's service area on **Exhibit A-2** hereto, which shall exclude the "City Service Area" (even with respect to any area within SWWC's service area that is decertified or otherwise removed by the PUC from SWWC's CCNs).

Each party's agreement in this Section 9.01 is subject to the PUC's jurisdiction to approve the 13.248 Application and to subsequently adjudicate the effect its approval of the 13.248 Application has upon its authority to issue subsequent orders to the parties regarding service in the areas depicted in **Exhibits A-1** or **A-2**.

If SWWC receives a request for water or wastewater service to real property within the area depicted in turquoise as the "**City Service Area**" on the attached **Exhibit A-2**, and such area is not already receiving service from the City, the Parties agree to prepare and file applications for additional regulatory approval(s) of subsequent Settlement Agreement amendment(s) pursuant to TWC § 13.248 and will support SWWC CCN amendment applications as needed to ensure SWWC may serve those areas not receiving service from the City. The City shall not object to or otherwise challenge such SWWC applications.

Within 30 days of execution of this Agreement, SWWC agrees to provide a Hach 2100Q Handheld Turbidity Meter that is EPA compliant as additional consideration for the Settlement Agreement as amended. For the sake of clarity, the Parties intend and agree that the Settlement Agreement, as amended by the First, Second, Third, and Fourth amendments, constitutes an agreement for providing goods and services by SWWC to the City, and is subject to the provisions of Subchapter I of Chapter 271, Texas Local Government Code, as amended, and any successor statutes(s). In accordance with Sections 271.152 and 271.153 thereof, the City hereby waives any constitutional, statutory or common law right to sovereign or governmental immunity from liability or suit and expressly consents to be sued and liable as described in said statutes, but only as to SWWC and this Agreement."

- C. Provided SWWC files an application for recertification in accordance with its separate agreement with CRP, LLC, executed contemporaneously with this Fourth Amendment, the City will not object to or undertake any action that would prejudice a SWWC CCN amendment application that includes a request to recertify any or all of the geographic area depicted in pink shading on **Exhibit A-2** as the "714 Acre Area" that is a portion of the property released from CCN Nos. 11978 and 20650 in PUC Docket No. 51166 into those CCNs and will honor this Agreement with respect to those areas after PUC recertification.

- D. Contemporaneously with execution of this Agreement, SWWC will execute, file, and seek Court entry of the Agreed Motion to Modify and Extend TRO and Agreed Order Modifying and Extending TRO in the form attached to this Agreement as Exhibits B-1 and B-2, respectively.
- E. In the event that the PUC approves this Agreement prior to the date set for a temporary injunction hearing under the Agreed Order Modifying and Extending TRO, SWWC will promptly dismiss the City Lawsuit with prejudice by signing, filing, and seeking entry of a Joint Notice of Nonsuit with Prejudice and Order Granting Nonsuit with Prejudice.

**III.
MISCELLANEOUS**

- A. **Agreement Provisions.** All terms of the Settlement Agreement, as amended by the First, Second and Third Amendments, provided those terms are not otherwise inconsistent with the changes made by this Fourth Amendment, remain in full force and effect. In the event of a conflict in terms, the terms of this Fourth Amendment shall control.
- B. **Further Assurances.** The Parties agree that they will work in good faith and use their respective best efforts to obtain approval of the 13.248 Application. In the event that the PUC has not issued a final order on the 13.248 application prior to the date set for a temporary injunction hearing under the Agreed Order Modifying and Extending TRO, the Parties shall cooperate in seeking an extension of such Agreed Order.
- C. For avoidance of doubt, with the exception of the City Service Area and the 714 Acre Area, the maps attached as Exhibits A-1 and A-2 are for descriptive purposes and intended only to reflect and confirm existing CCN and service areas and not to transfer any service area from one party to another. The parties will work in good faith to develop conforming maps to be filed as part of the 13.248 Application.
- D. **Effective Date.** This Fourth Amendment will be effective upon the last day that this document is fully executed by the Parties.
- E. **Defined Terms.** Any capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Settlement Agreement, as amended by the First, Second, and Third Amendments.

[SIGNATURE PAGES TO FOLLOW]

CITY OF AUSTIN

By: GA
Name: Greg Meszans
Title: Director Austin Water
Dated: 6/1/21

Approved as to form:

[Signature]
Assistant City Attorney

Dated: 6/1/21

SWWC UTILITIES, INC. d/b/a HORNSBY BEND UTILITY COMPANY, INC.

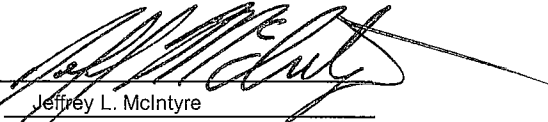
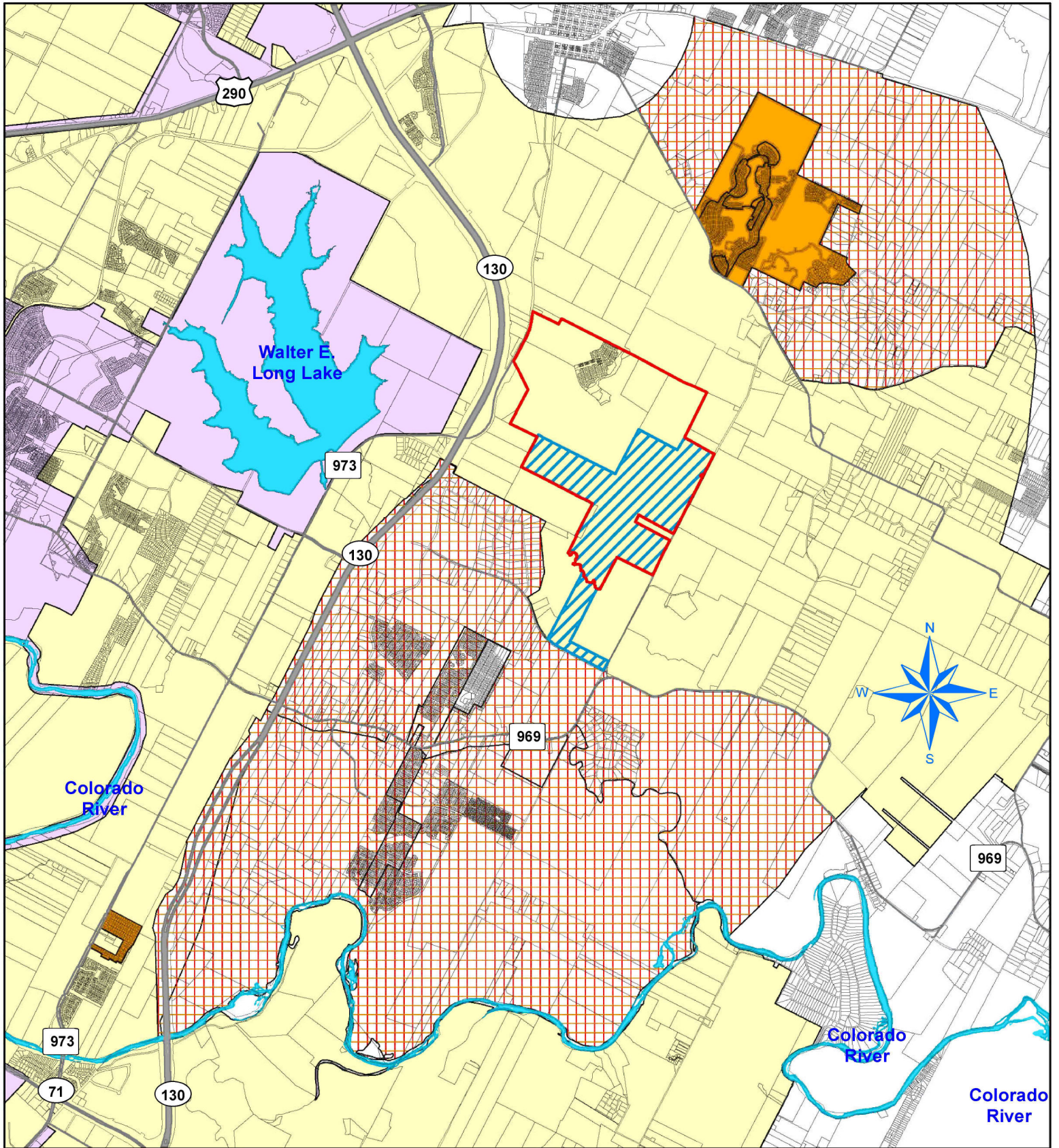








By: 
Name: Jeffrey L. McIntyre
Title: President
Dated: 1 June 2021

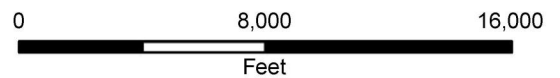
EXHIBIT A-1
[See attached]



-  Transfer Area
-  Basemap Polygon
-  ATI
-  Hornsby Bend Utility Co. Inc.
-  Austin Wastewater CCN
-  AELP
-  Austin City Limits
-  Austin Limited Purpose Jurisdiction



City of Austin
Austin Water
January, 2020



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Produced by Utility Development Services

Exhibit A

EXHIBIT A-2

[See attached]

714 Acre Area
City Service Area
Water and Wastewater Service Area
Wastewater Service Area

0 1 2 Miles

N

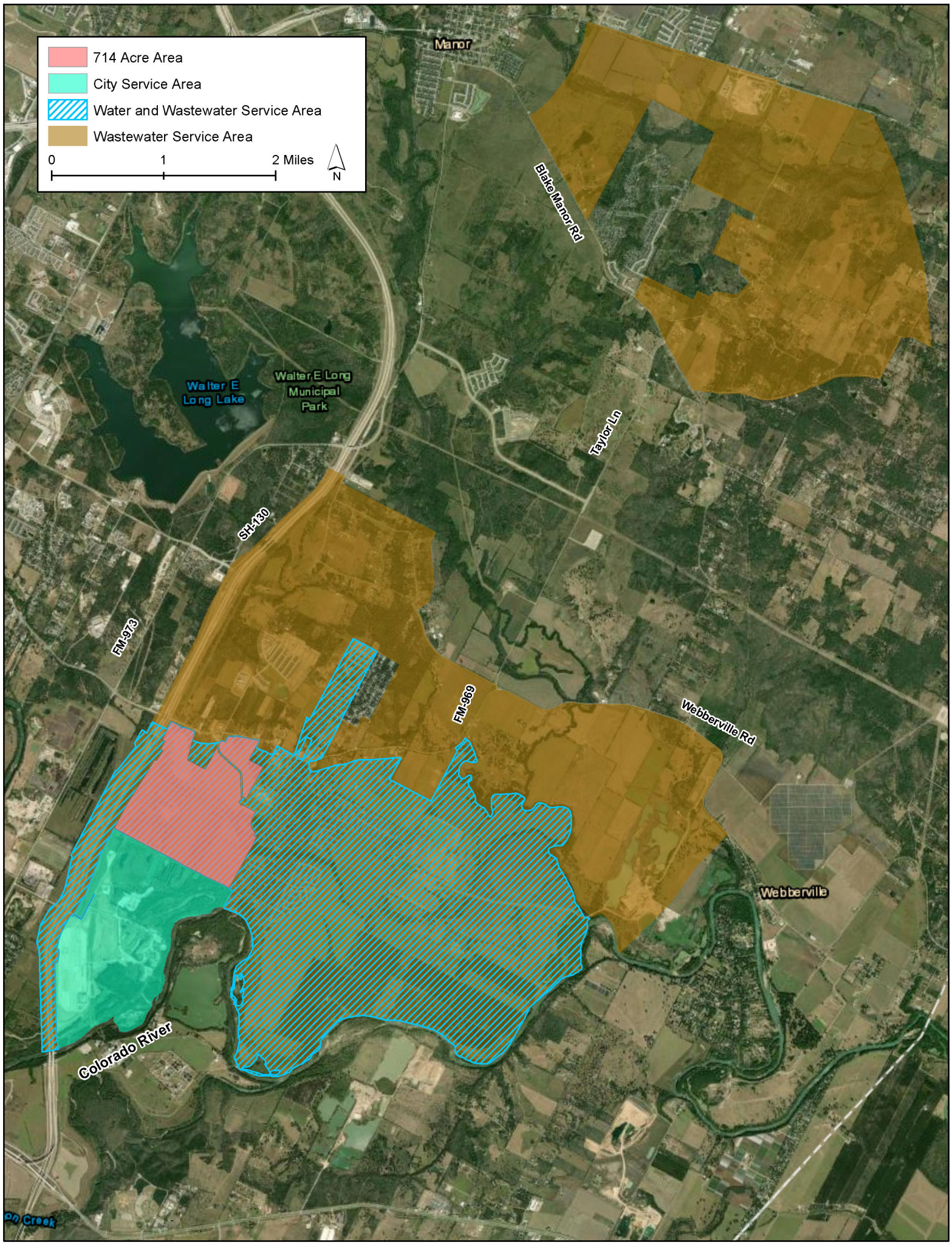


EXHIBIT B-1

[See attached]

SWWC UTILITIES, INC. dba HORNSBY	§	IN THE DISTRICT COURT
BEND UTILITY COMPANY, INC.,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	200th JUDICIAL DISTRICT
CITY OF AUSTIN, TEXAS; STEVE ADLER,	§	
in his official capacity as Mayor of the City of	§	
Austin; and GREG MESZAROS, in his official	§	
capacity as Director of Austin Water of the	§	
City of Austin,	§	TRAVIS COUNTY, TEXAS
<i>Defendants.</i>	§	

AGREED MOTION TO MODIFY AND EXTEND
TEMPORARY RESTRAINING ORDER

TO THE HONORABLE JUDGE CONNOR:

1. On May 21, 2021, after a hearing on Plaintiff SWWC Utilities, Inc.’s Application for Temporary Restraining Order held May 20, 2021, this Court entered a Temporary Restraining Order in this cause restraining the City of Austin, or any of its officers, agents, servants, employees, attorneys, representatives, or any persons in active concert or participation with them who receive actual notice of this Order from providing water or wastewater services to the area designated as Hornsby Bend Utility Co. Inc.’s Service Area in Exhibit A to the Third Amendment to the Settlement Agreement (attached hereto as Exhibit A).
2. Plaintiff has since reached a settlement agreement with Colorado River Project, LLC (“CRP”) under which the City may provide water and wastewater services to a portion of the area owned by CRP and decertified from Plaintiff’s Certificates of Convenience and Necessity (CCNs) in Public Utility Commission Docket No. 51166, which is located in Hornsby Bend Utility Co. Inc.’s Service Area in Exhibit A to the Third Amendment to the Settlement Agreement. In addition, Plaintiff and the City of Austin have entered into a Fourth Amendment to the Settlement

Agreement to resolve their differences, subject to the Public Utility Commission approving that Fourth Amendment to the Settlement Agreement under Section 13.248 of the Texas Water Code.

In light of Plaintiff's settlement with CRP and Plaintiff and the City's agreement to the Fourth Amendment to the Settlement Agreement, the parties jointly move for and request modification and extension of the Temporary Restraining Order entered May 21, 2021. In particular, the Parties request (1) that this Court modify the Temporary Restraining Order entered May 21, 2021 by carving out an exception allowing the City to provide water and wastewater service to the turquoise area (the "City Service Area") and the pink area (the "714 Acre Area") as depicted on the attached Exhibit B; and (2) extend the Temporary Restraining Order, as modified, until the Public Utility Commission issues a final order approving or disapproving the Fourth Amendment to the Settlement Agreement under Texas Water Code Section 13.248 or until the court can rule on the merits of Plaintiff's temporary injunction application after a hearing, which will be rescheduled for December 20, 2021 at 9 A.M., whichever is sooner.

RELIEF REQUESTED

For the foregoing reasons, Plaintiff and Defendants respectfully request (1) that this Court modify the Temporary Restraining Order entered May 21, 2021 by carving out an exception allowing the City to provide water and wastewater service to the turquoise area (the "City Service Area") and the pink area (the "714 Acre Area") as depicted on the attached Exhibit B; and (2) extend the Temporary Restraining Order pursuant to the agreement of Plaintiff and Defendants, as modified, until the Public Utility Commission issues a final order approving or disapproving the Fourth Amendment to the Settlement Agreement under Texas Water Code Section 13.248 or until the court can rule on the merits of Plaintiff's temporary injunction application after a hearing,

which will be rescheduled by agreement of Plaintiff and Defendants for December 20, 2021 at 9 A.M., whichever is sooner.

RESPECTFULLY SUBMITTED,

A. Boone Almanza
State Bar No. 01579001
Martha Dickie
State Bar No. 00000081
Ethan J. Ranis
State Bar No. 24098303
balmanza@abdmlaw.com
mdickie@abdmlaw.com
eranis@abdmlaw.com
ALMANZA, BLACKBURN DICKIE & MITCHELL, LLP
2301 S. Capital of Texas Highway, Building H
Austin, Texas 78746
(512) 474-9486; (512) 478-7151 (Fax)

Paul M. Terrill III
State Bar No. 00785094
Ryan D. V. Greene
State Bar No. 24012730
TERRILL & WALDROP
810 West 10th Street
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Tel (512) 474-9100
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pterrill@terrillwaldrop.com
rgreene@terrillwaldrop.com

ATTORNEYS FOR PLAINTIFF

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, CHIEF, LITIGATION DIVISION

Hannah M. Vahl
Assistant City Attorney
State Bar No. 24082377
Email: hannah.vahl@austintexas.gov

Miguel E. Bustilloz
Assistant City Attorney
State Bar No. 24069450
Email: miguel.bustilloz@austintexas.gov
CITY OF AUSTIN LAW DEPARTMENT
P.O. Box 1546
Austin, Texas 78767-1546
(512) 974-2346 (tel.)
(512) 974-1311 (fax)

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties in compliance with the Texas Rules of Civil Procedure on June 1, 2021 as follows:

Via e-service to:

Hannah M. Vahl

Assistant City Attorney

State Bar No. 24082377

Email: hannah.vahl@austintexas.gov

Miguel E. Bustilloz

Assistant City Attorney

State Bar No. 24069450

Email: miguel.bustilloz@austintexas.gov

CITY OF AUSTIN LAW DEPARTMENT

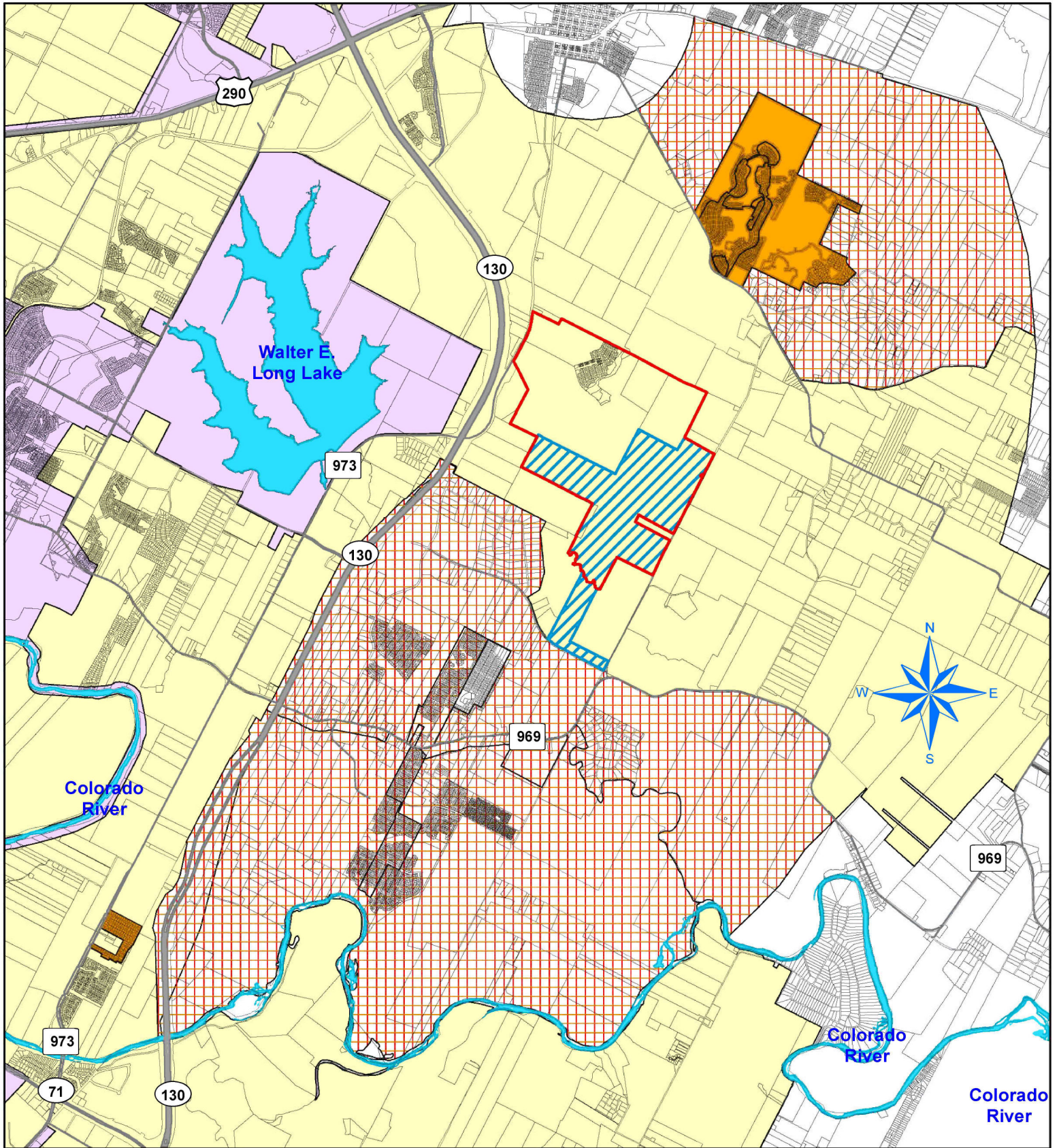
P.O. Box 1546









Austin, Texas 78767-1546

(512) 974-2346 (tel.)

(512) 974-1311 (fax)

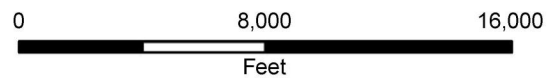
A. Boone Almanza



-  Transfer Area
-  Basemap Polygon
-  ATI
-  Hornsby Bend Utility Co. Inc.
-  Austin Wastewater CCN
-  AELP
-  Austin City Limits
-  Austin Limited Purpose Jurisdiction



City of Austin
Austin Water
January, 2020




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Produced by Utility Development Services

Exhibit A

714 Acre Area
 City Service Area
 Water and Wastewater Service Area
 Wastewater Service Area

0 1 2 Miles
 

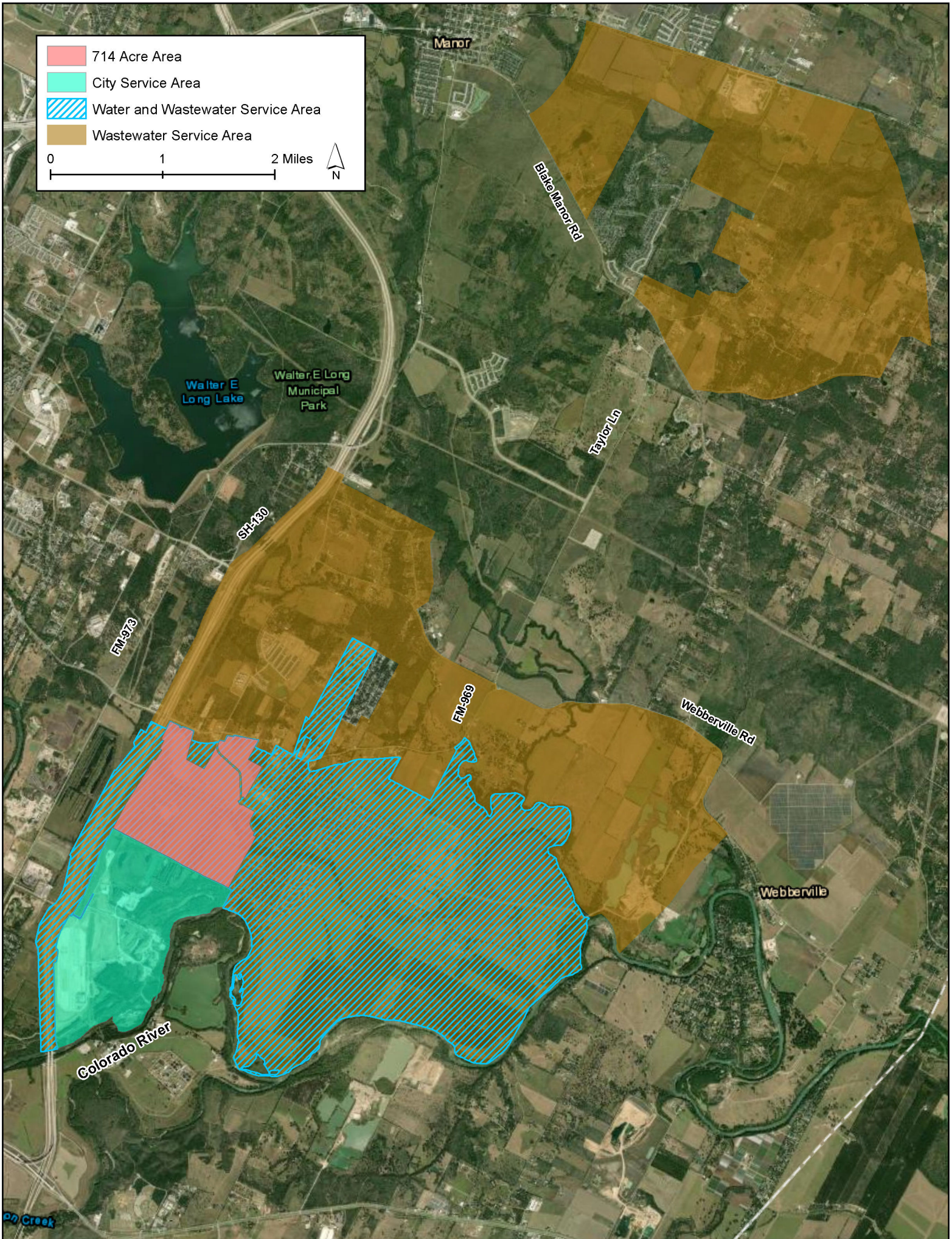


EXHIBIT B-2

[See attached]

SWWC UTILITIES, INC. dba HORNSBY	§	IN THE DISTRICT COURT
BEND UTILITY COMPANY, INC.,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	200th JUDICIAL DISTRICT
CITY OF AUSTIN, TEXAS; STEVE ADLER,	§	
in his official capacity as Mayor of the City of	§	
Austin; and GREG MESZAROS, in his official	§	
capacity as Director of Austin Water of the	§	
City of Austin,	§	TRAVIS COUNTY, TEXAS
<i>Defendants.</i>	§	

AGREED ORDER MODIFYING AND EXTENDING
TEMPORARY RESTRAINING ORDER

On this day came to be heard Plaintiff SWWC Utilities, Inc. and Defendants City of Austin, Texas, Steve Adler, and Greg Meszaros’s Agreed Motion Modifying and Extending Temporary Restraining Order.

Having considered the Motion and noting that it is agreed, the Court hereby FINDS as follows:

The Court previously granted a Temporary Restraining Order on May 21, 2021 after finding that immediate and irreparable injury, loss, or damage would result to Plaintiff before a hearing could be held on the application for a temporary injunction unless the City is restrained. The Court found that immediate and irreparable injury, loss, or damage would result from the City imminently connecting to provide water and wastewater service to the Plaintiff’s designated service areas in the Settlement Agreement between Plaintiff and the City, which the Court found would constitute a anticipatory breach of the Parties’ 2003 contract and subsequent amendments. Accordingly, the Court found that, should the City of Austin provide service to Plaintiff’s

designated service areas, it will cause irreparable injury and Plaintiff will not have an adequate remedy at law.

The Court now FINDS, based on the Agreed Motion, that Plaintiff has since reached an agreement with Colorado River Project, LLC (“CRP”) under which the City may provide water and wastewater services to a portion of the area owned by CRP and decertified from Plaintiff’s Certificates of Convenience and Necessity (CCNs) in Public Utility Commission Docket No. 51166 and Plaintiff and the City of Austin have since entered into a Fourth Amendment to the Settlement Agreement to resolve their differences.

Given these changed circumstances, the Court hereby ORDERS as follows:

The Court hereby MODIFIES the Temporary Restraining Order it entered on May 21, 2021 by carving out an exception to allow the City to provide water and wastewater service to the turquoise area (the “City Service Area”) and to the pink area (the “714 Acre Area”) as depicted in Exhibit B attached thereto. It is therefore,

ORDERED that the Clerk of this Court issue a Modified Temporary Restraining Order, operative until the hearing date below as agreed to by the Plaintiff and Defendants, restraining the City of Austin, or any of its officers, agents, servants, employees, attorneys, representatives, or any persons in active concert or participation with them who receive actual notice of this Order from providing water or wastewater services to the area designated as Hornsby Bend Utility Co. Inc.’s Service Area in Exhibit A to the Third Amendment to the Settlement Agreement (attached hereto as Exhibit A), with the exception of the turquoise area (the “City Service Area”) and the pink area (the “714 Acre Area”) as depicted in Exhibit B attached hereto.

It is further ORDERED, based on the parties’ agreement to extend the Temporary Restraining Order as modified, that the Temporary Restraining Order, as modified, is hereby

extended until the Public Utility Commission issues a final order approving or disapproving the Fourth Amendment to the Settlement Agreement under Texas Water Code Section 13.248 or until the court can rule on the merits of Plaintiff's temporary injunction application after a hearing, which based upon the agreement of Plaintiff and Defendants will be rescheduled for December 20, 2021 at 9 A.M., whichever is sooner.

It is further ORDERED that the bond executed by Plaintiff in the sum of \$500, paid to the District Clerk of Travis County, shall continue to serve as bond supporting this Modified and Extended Temporary Restraining Order.

Pursuant to the existing Emergency Orders resulting from the COVID-19 pandemic, this hearing will take place remotely, using Zoom videoconferencing, which is free to download at <https://zoom.us>, and is available as an app for smart phones and tablets. Since several cases may be scheduled at the same time, your case may be called later in the day [and possibly later in the week if it is on the long docket], and you must be available when your case is called. Prior to the hearing, the assigned court will email all counsel and self-represented parties for whom it has current email addresses, the court's instructions and procedures, with information on how to access the hearing on Zoom.

If your current email address is not on file, you do not receive the instructions and procedures from the court at least two days prior to the hearing, or you do not have access to the internet over a smart phone, tablet, or computer, please contact the Court Administrator's office at 512-854-2484 for information on how to participate in the hearing.

SIGNED this ____ day of June, 2021

PRESIDING JUDGE

AGREED AS TO FORM AND CONTENT:

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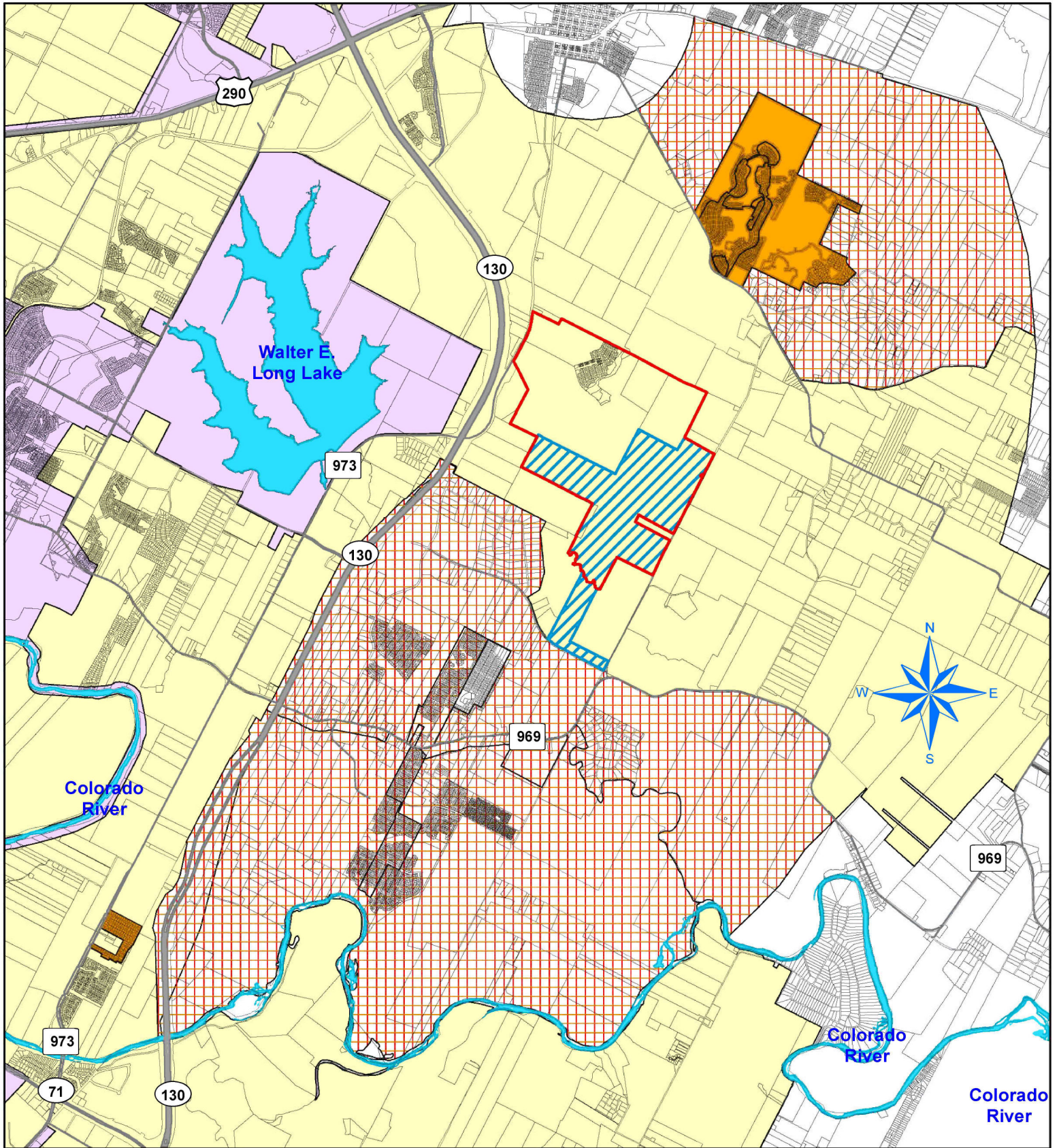
ATTORNEYS FOR PLAINTIFF









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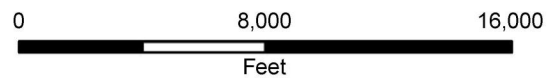
ATTORNEYS FOR DEFENDANTS



-  Transfer Area
-  Basemap Polygon
-  ATI
-  Hornsby Bend Utility Co. Inc.
-  Austin Wastewater CCN
-  AELP
-  Austin City Limits
-  Austin Limited Purpose Jurisdiction



City of Austin
Austin Water
January, 2020



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. This product has been produced by Austin Water for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

Produced by Utility Development Services

Exhibit A

714 Acre Area
 City Service Area
 Water and Wastewater Service Area
 Wastewater Service Area

0 1 2 Miles
 