

ORDINANCE NO. 031204-26

AN ORDINANCE ADOPTING THE FIRST AMENDMENT TO THE STRATEGIC PARTNERSHIP AGREEMENT BETWEEN THE CITY OF AUSTIN AND THE ANDERSON MILL MUNICIPAL UTILITY DISTRICT.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. The City Council approves the First Amendment to the Strategic Partnership Agreement between the City of Austin and the Anderson Mill Municipal Utility District, attached as Exhibit "A".

PART 2. The City Manager is authorized to execute the amendment on behalf of the City.

PART 3. This ordinance takes effect on December 15, 2003.

PASSED AND APPROVED

_____ December 4 _____, 2003

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§
§

Will Wynn
Mayor

APPROVED: _____
David Allan Smith
City Attorney

ATTEST: _____
Shirley A. Brown
City Clerk

EXHIBIT A

FIRST AMENDMENT TO
STRATEGIC PARTNERSHIP AGREEMENT BETWEEN
THE CITY OF AUSTIN AND
THE ANDERSON MILL MUNICIPAL UTILITY DISTRICT

THE STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF TRAVIS §

This "First Amendment to Strategic Partnership Agreement Between the City of Austin, Texas and the Anderson Mill Municipal Utility District" ("First Amendment") is made and entered into by and between the City of Austin, a municipal corporation, acting by and through its duly authorized City Manager ("City") and the Anderson Mill Municipal Utility District ("District"), formerly known as Williamson County Municipal Utility District No. 1, Williamson and Travis Counties, Texas, acting by and through its duly authorized Board of Directors under the authority of Section 43.0751 of the Texas Local Government Code ("Local Government Code").

I.

RECITALS

The District is a municipal utility district created under Chapters 49 and 54 of the Texas Water Code. All of the territory within the District is located either within the city limits or the extraterritorial jurisdiction of the City in Williamson and Travis Counties, Texas. The District encompasses approximately 1,105 acres, more or less. Its boundaries are generally R.M. 620, U.S. 183 and Anderson Mill Road and are more specifically described in Exhibit A and depicted on Exhibit F of the Agreement (as defined below).

1. The City is a municipal corporation established by and chartered under Chapter 90, page 634, of the Special Laws of Texas, 1909, 31st Legislature.
2. The City desires to annex all of the District which would result in the abolition of the District and the City succeeding to all of the District's powers, duties, assets, and obligations.
3. The District and its residents and property owners desire to postpone the City's annexation of the District and desire that the District continue to exist and, at such time that the City annexes the District, to provide for the conversion of the District to a limited district to perform some of the functions currently performed by the District.
4. The District and the City are parties to that certain agreement entitled "Strategic Partnership Agreement Between the City of Austin and the Anderson Mill Municipal Utility District" (the "Agreement") which Agreement became effective as of November 19, 1998, and is recorded in the real property records of Travis and Williamson Counties, Texas at _____.

5. Pursuant to Section 43.0751(h) of the Local Government Code, the District and the City now desire to amend the Agreement to change the earliest date when the City may annex the District for full purposes and when the District will be converted to a Limited District.
6. All procedural requirements imposed by state law for the adoption of this First Amendment have been met.

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

II.

AGREEMENT:

- 2.1. Recital No. 7 is hereby amended to read in its entirety as follows:

"7. Reserved."

- 2.2. Section 1.01 n. of the Agreement is hereby amended to read in its entirety as follows:

"n. "Residential Property" means all of the property in the District (other than the Full Purpose Commercial Property and the Limited Purpose Commercial Property) as depicted in Exhibit F attached to this Agreement to be annexed by the City pursuant to this Agreement."

- 2.3. Section 2.03 b. of the Agreement is hereby amended to read in its entirety as follows:

"b. The District and the City agree that the City may proceed to annex the Residential Property for full purposes no earlier than the year 2008, pursuant to Section 43.0751 of the Local Government Code and in accordance with the terms of this Agreement. The Parties further agree that, unless immediate full purpose annexation is required pursuant to Section 6.06 d. hereof, the full purpose annexation of the Residential Property will proceed on a schedule that permits such full purpose annexation to be effective no earlier than December 31, 2008."

- 2.4. Section 2.03 c. of the Agreement is hereby amended to read in its entirety as follows:

"c. The Period of Limited Purpose Annexation for the Limited Purpose Commercial Property shall end no sooner than December 31, 2008 in accordance with the provisions of this Agreement."

- 2.5. Section 2.03 d. of the Agreement is hereby amended to read in its entirety as follows:

"d. The District on behalf of all present and future owners of land within the District Boundaries hereby consents to the City's annexation of the Limited Purpose Commercial

Property for limited purposes as provided in this Agreement. The District on behalf of all present and future owners of land within the District Boundaries hereby consents to the City's full purpose annexation of the Full Purpose Commercial Property not previously annexed for full purposes by the City, all as provided in this Agreement. The District, on behalf of all present and future owners of land within the District Boundaries hereby consents to the City's full purpose annexation of the Residential Property, pursuant to the terms of this Agreement. It is the intent of the Parties that the consent granted in this Agreement shall bind the District and each owner and future owner of land within the District Boundaries."

2.6. Section 2.03 e. of the Agreement is hereby amended to read in its entirety as follows:

"e. The City has previously annexed the Full Purpose Commercial Property by enacting City Ordinance No. 981210-D. The City shall prepare a service plan for the Residential Property and the Limited Purpose Commercial Property and provide it to the Board of Directors of the District no later than nine (9) months prior to the date on which the City elects to annex for full purposes the Residential Property and the Limited Purpose Commercial Property. Delivery of the service plan to the District shall constitute notice that the City intends to annex the District on or about December 31, 2008. The service plan shall provide a description of services to be provided to the District and its successor Limited District by the City upon conversion of the District to the Limited District. The description of services shall be similar to the description of services provided under the terms of Section 43.056 of the Local Government Code. In preparing the service plan pursuant to this paragraph, the City will confer with the Board of Directors and residents of the District regarding the provisions of the service plan. At such time that the service plan for the Residential Property has been received by the District, the District and the City will develop a transition plan pursuant to which the District within sixty (60) days of such date will convey its water, wastewater, and reclaimed water facilities to the City for City ownership, operation and maintenance.

Within sixty (60) days of receipt of the service plan, on the date of conveyance agreed to by the City and the District within such sixty (60) day period (the "Conveyance Date"), the District shall convey, by one or more instruments in form and content acceptable to the City Attorney and the City's Water Utility, the District's water, reclaimed water, and wastewater facilities as well as associated land, easements, warranties, license agreements, as-built plans/record drawings, records, and all other documents and rights related to the conveyed water, reclaimed water, and wastewater facilities to the City for City ownership. On the Conveyance Date, the District shall also provide to the City a printed copy and computer file, in a form acceptable to the City, of each customer's full name, service address, billing address, type of service (single-family residential water/wastewater, commercial water/wastewater, multi-family water/wastewater, or single-family/commercial/multi-family irrigation water) and size of water meter(s). The District and the City agree that there will be a 30 calendar day period ("Transition Period") following the Conveyance Date for transferring facility operations, facility maintenance, customer service, and customer billing/collection responsibilities to the City. The District and the City may mutually agree upon a final date of meter reading for billing purposes or will use the 30th calendar day of the Transition Period as the final

date of meter reading. Prior to the final date of meter reading, the District shall continue its responsibilities for facility operations, facility maintenance, customer service, and customer billing/collection for the conveyed water, reclaimed water, and wastewater facilities. After the final date of meter reading, the City shall become solely responsible for facility operations, facility maintenance, customer service, and customer billing/collection services. The District shall own and retain all funds collected for retail water, wastewater, and reclaimed water service provided by the District on or before the date of the final meter reading. All funds collected for retail water, wastewater, and reclaimed water service after the date of final meter reading shall accrue and be payable to the City. On or before the date of the final meter reading, the District shall transfer to the City all customer accounts, deposits, contracts, records, data, documents, and information related to water, wastewater, and reclaimed water service, facility operations, facility maintenance, customer service, and customer billing and collection services. At its sole option and expense, the District may retain a copy of same. From and after the date of the final meter reading, the City shall be responsible for all functions related to the provision of retail water, wastewater, and reclaimed water service to the District customers transferred to the City, including those located within the District's out-of-district service areas."

2.7. Section 2.03 f. of the Agreement is hereby amended to read in its entirety as follows:

"f. The District and the City agree that the City may take any and all steps required by the Local Government Code to assure that full purpose annexation of all of the land within the District may be completed no sooner than December 31, 2008 as provided in Section 2.07 of this Agreement."

2.8. New Section 2.03 g. of the Agreement is hereby added to read in its entirety as follows:

"g. The District and the City agree that the "Water and Wastewater Contract" (the "Contract") effective as of June 9, 1977 and entered into by the City and Williamson County Municipal Utility District No. 1 of Williamson County, Texas (now known as the District) is hereby amended to extend the stated expiration date to December 31, 2008, if not earlier terminated by the District and the City pursuant to the terms of the Contract."

2.9. Section 2.04 of the Agreement is hereby amended to read in its entirety as follows:

"Upon limited purpose annexation of the Limited Purpose Commercial Property, the City shall have the authority (except as specially provided in this Agreement) within the territory annexed for limited purposes, during the Period of Limited Annexation, to:

- a. control and regulate the use of property and the density of structures;
- b. require compliance with reasonable zoning regulations;
- c. control and regulate the subdivision of property;
- d. adopt all reasonable regulations pertaining to health and safety as provided by law, and require compliance with such regulations; and

e. collect sales tax as provided in subsection (k) of Section 43.0751 of the Local Government Code; except that the City shall have no authority to levy any other taxes within the territory annexed for limited purposes during the Period of Limited Purpose Annexation.

2.10. Section 2.06 of the Agreement is hereby amended to read in its entirety as follows:

"a. The City and the District have agreed to limited purpose annexation of the Limited Purpose Commercial Property and the full purpose annexation of the Full Purpose Commercial Property not heretofore annexed as provided in Section 2.03 of this Agreement.

b. The District and the City agree that the limited purpose annexation of the Limited Purpose Commercial Property under this Agreement may be converted to full purpose annexation no sooner than December 31, 2008 as provided in Section 43.0751(f)(5)(A) of the Local Government Code. The City may, however, elect to follow the procedures contained in the Local Government Code for full purpose annexation of the Residential Property and the Limited Purpose Commercial Property provided that the full purpose annexation is consistent with the terms of this Agreement. The City shall, at a minimum, take formal action by Council setting forth the date of full purpose annexation.

c. The District on behalf of all present and future owners of land within the District hereby consents to the conversion of the limited purpose annexation of the Limited Purpose Commercial Property to annexation for full purposes at the time specified in this Agreement, it being the intent of the Parties that the consent granted in this Agreement shall bind the District and each owner and future owner of land within the District."

2.11. Section 2.08 of the Agreement is hereby amended to read in its entirety as follows:

"The District agrees to file the following notice concerning this Agreement in the real property records of Williamson and Travis Counties for the property within the District:

All of the property within the boundaries of Anderson Mill Municipal Utility District of Williamson and Travis Counties, Texas (the "District"), as depicted on the map attached hereto, is subject to the terms and conditions of a Strategic Partnership Agreement ("Agreement") between the District and the City of Austin, dated November 19, 1998, as amended. The Agreement establishes a timetable for the annexation by the City of Austin of the property in the District, part of which will be annexed directly for full purposes and other of which will be annexed initially for limited purposes and subsequently for full purposes. These areas and the specific annexation plan for each are shown on the attached map. The Agreement also provides for the conversion and the timing for conversion of the District to a Limited District and establishes the governmental and operational relationship between the City and the District while the District or the Limited District continues in existence, all as authorized by Section 43.0751, Texas Local Government Code. A copy of the

Agreement may be obtained by contacting the offices of the District, and questions concerning the Agreement may be directed to the District or the City of Austin Transportation, Planning and Sustainability Department, or successor department.

This notice with appropriate modifications shall also be included in the notice to purchasers of real property in the District in each future edition of the District's Information Form required to be recorded in the real property records of Williamson and Travis Counties, Texas, pursuant to Section 49.455 of the Texas Water Code."

2.12. Section 3.01 c. of the Agreement is hereby amended to read in its entirety as follows:

"c. The City has prepared a Limited Purpose Annexation Planning Study for the Limited Purpose Commercial Property, which is to be annexed initially for limited purposes by December 31, 1998. The study is contained in Exhibit G attached to this Agreement.

2.13. Sections 6.02 b.ii. and 6.02 b.iii. of the Agreement are hereby amended to read in their entirety as follows:

"ii. If a majority of the qualified voters voting at the election called pursuant to this Section 6.02 b. do not approve the proposition, the Limited District may call a subsequent election on a designated election date within one year after the first election. If a majority of the qualified voters voting at this subsequent election do not approve the proposition, the Limited District shall be automatically dissolved sixty days after the date of the election without the necessity of any further action by the City, whether litigation or otherwise, and all assets, obligations, indebtedness, and liabilities of the District shall be assumed by the City.

iii. If the second election fails, the Limited District shall continue to exist for sixty days after the second election date for the sole purpose of doing any and all acts or things necessary to transfer the assets, obligations, indebtedness, and liabilities to the City."

2.14 Section 6.06 b. of the Agreement is hereby amended to read in its entirety as follows:

"b. If any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement is modified in whole or in part as a result of modifications to the underlying state code and statutory authority for this Agreement, the Parties agree and understand that such modification may frustrate the purpose of this Agreement. Except as provided in Section 6.06 d., below, the parties agree that they will attempt to amend or revise this Agreement to accomplish to the greatest degree practical (i) the same purpose and objective of the part of this Agreement affected by the modification of the underlying state code and statutory authority and (ii) the original intent and purpose of this Agreement. If the Parties cannot agree on any such amendment or revision within ninety days from the effective date of modification of the state code and statutory authority for

this Agreement, then this Agreement shall terminate unless the Parties agree to an extension of time for negotiation of the modification.

2.15 Section 6.06 is amended to add a new Section 6.06 (d) as follows:

"d. Notwithstanding the foregoing, if the Texas Legislature modifies state law to require that the District's residents approve by election the annexation of the District by the City, or to require any other form of annexation approval, consent, or ratification by persons or entities other than the District or the City, then the District, on behalf of itself, its residents, and owners of property located within District Boundaries, consents to immediate full purpose annexation by the City, and waives any right to oppose such annexation. The City shall have, prior to the effective date of such modification to state law, the right to immediately annex the District for full purposes. Upon the effective date of such full purpose annexation, the District shall convert to a limited district pursuant to the terms of Article V hereof."

2.16 Except as specifically amended by this First Amendment, all terms and conditions of the Agreement shall remain in full force and effect.

2.17 Upon adoption, this First Amendment shall be filed by the City in the real property records of Williamson and Travis Counties, Texas.

IN WITNESS WHEREOF, this First Amendment is executed in duplicate counterparts to be effective on the date of the latter of the two signatures below.

City of Austin, Texas

Attest: _____

Deputy City Clerk

By: _____
Toby Futrell
City Manager

Date: _____

Anderson Mill Municipal Utility District

Attest: _____
Secretary

By: _____
David L. Harper
President

Date: _____

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ____ day of _____, 2003, by Toby Futrell, City Manager for the City of Austin, Texas, for and on behalf of the City of Austin, Texas.

Notary Public In and For the State of Texas
My Commission Expires: _____

THE STATE OF TEXAS §
§
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on the ____ day of _____, 2003, by David L. Harper, President of Anderson Mill Municipal Utility District for and on behalf of the Anderson Mill Municipal Utility District.

Notary Public In and For the State of Texas
My Commission Expires: