

STATE OF TEXAS                   §  
COUNTY OF TRAVIS         §

KNOW ALL MEN BY THESE PRESENTS:

**PREMISES:**

NOW, THEREFORE, in consideration of the foregoing premises, the promises and conditions provided herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**1. ASSIGNMENT OF CONDITIONS, COVENANTS, RIGHTS AND OBLIGATIONS.**

Owen hereby relinquishes all right, title, and interest in and to the Development Agreement that affects or relates to the Property, and hereby assigns and transfers to Rowe Lane said portion of the Development Agreement as it affects and relates to the Property, effective as of the date hereof, together with all rights, requirements, and obligations of any nature arising therefrom.

**2 ASSUMPTION OF CONDITIONS, COVENANTS, RIGHTS AND OBLIGATIONS.** Rowe Lane hereby accepts the rights and obligations of the Development Agreement as it affects and relates to the Property and agrees to carry out and perform all of the conditions, covenants and obligations of Developer as stated therein accruing from and after the date hereof and to assume all responsibilities therefore accruing from and after the date hereof.

**3. CONSENT TO ASSUMPTION.** The City hereby consents to the assumption of all rights, title, interests and obligations of Owen under the Development Agreement by Rowe Lane as Developer from Owen, as it affects and relates to the Property described in Exhibit C hereto.

**4. CONFIRMATION OF NON-ANNEXATION COVENANTS.** Pursuant to Section 3.2 of the Development Agreement, the City confirms and agrees that upon confirmation of the District in an election held for that purpose, when presented with a strategic partnership agreement executed by the District in the form attached as Exhibit E to the Development Agreement, the City will, at its discretion, either (i) execute the strategic partnership agreement with the District, or (ii) execute an amendment to the Development Agreement that incorporates the same covenants for non-annexation of the MUD 2 Tract (including the Property) as are set forth in the strategic partnership agreement attached as Exhibit E to the Development Agreement.

**5. BUILDING PERMITS.** Rowe Lane hereby agrees that all residential and non-residential vertical construction requiring a building permit within the MUD 2 Tract shall comply with the City's Construction Code that is in effect at the time a building permit is issued for construction of the applicable structures.

**6. ENTIRE AGREEMENT.** This Consent to Assumption contains the entire understanding between the parties hereto concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, between or among the parties hereto, relating to the subject matter of this Consent to Assumption, which are not fully expressed herein.

7. FURTHER ACTS. Each party hereto agrees to perform any and all such further and additional acts and execute and deliver any and all such further and additional instruments and documents as may be reasonably necessary in order to carry out the provisions and effectuate the intent of this Consent to Assumption.

8. AUTHORITY. Each party hereto represents and warrants that it has full authority to execute the Consent to Assumption and bind to the Consent to Assumption its respective partners, trustees, beneficiaries, remaindermen, directors, officers, employees, agents, advisors, attorneys, successors, assigns and personal representatives. Rowe Lane warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of Texas and is duly authorized and in good standing to conduct business in the State of Texas.

9. SEVERABILITY. If any provision hereof is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provisions shall be duly severable; this Consent to Assumption shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the severance of the illegal, invalid, or unenforceable provision or provisions.

10. GOVERNING LAW AND VENUE. This Consent to Assumption shall be governed by and construed in accordance with the laws of the State of Texas. The terms of this Consent to Assumption shall be specifically performable in Travis County, Texas.

11. BREACH. Should any party breach any part of this Consent to Assumption, and litigation ensue, the parties agree that the prevailing party shall be entitled to its reasonable attorneys' fees and costs in prosecuting or defending its claims.

12. PARAGRAPH HEADINGS. All paragraph headings set forth in this Consent to Assumption are for purposes of identification and are intended for convenience only, and shall not control or affect the meaning, construction or effect of this Consent to Assumption or any provision hereof.

13. COUNTERPART EXECUTION. This Consent to Assumption may be executed in multiple counterparts, each of which shall be fully effective as an original, for which together shall constitute only one (1) instrument.

14. NOTICE. Except as otherwise provided in this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of the Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to City of Pflugerville:      City of Pflugerville  
   Attention: City Manager  
   100 East Main, Suite 300  
   Pflugerville, Texas 78660

If to Rowe Lane:                      Rowe Lane Development, Ltd.  
   4421 Rowe Lane  
   Pflugerville, Texas 78660

or such other person or address as may be given in writing by either party to the other in accordance with the aforesaid.

IN WITNESS WHEREOF, the parties execute this Assignment and Consent to Assumption of Development Agreement and made it effective as of \_\_\_\_\_, 2015.

**Signature Page for  
Assignment and Consent to Assumption of Development Agreement**

**OWEN NS2, L.P.**

By: Owen NS2 GP, LLC

By: \_\_\_\_\_  
Joe Owen, Manager

**STATE OF TEXAS**                   §  
  §  
**COUNTY OF** \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_ 2015, by Joe Owen, Manager of Owen NS2 GP, LLC, a Texas limited liability company, general partner of Owen NS2, L.P., a Texas limited partnership, on behalf of said company and partnership.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

**ROWE LANE DEVELOPMENT, LTD.**

By: Tiemann Land and Cattle Development, Inc.

By: \_\_\_\_\_  
Name: Robert M. Tiemann  
Title: President  
Date: \_\_\_\_\_

**STATE OF TEXAS**                   §  
  §  
**COUNTY OF TRAVIS**           §

This instrument was acknowledged before me on \_\_\_\_\_, 2015, by Robert M. Tiemann, President of Tiemann Land and Cattle Development, Inc. a Texas corporation, general partner of Rowe Lane Development, Inc., a Texas limited partnership, on behalf of said corporation and partnership.

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

**Signature Page for  
Assignment and Consent to Assumption of Development Agreement**

**CITY OF PFLUGERVILLE, TEXAS  
A TEXAS MUNICIPAL CORPORATION**

By: \_\_\_\_\_  
Brandon Wade, City Manager

**STATE OF TEXAS                   §  
   §  
COUNTY OF TRAVIS         §**

This instrument was acknowledged before me on \_\_\_\_\_, 2015, by  
Brandon Wade, City Manager, City of Pflugerville, Texas, a Texas municipal corporation, on  
behalf of said corporation.

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

**EXHIBIT "A"**  
**NEW SWEDEN DEVELOPMENT AGREEMENT**

## NEW SWEDEN DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is entered into this 14th day of March, 2007 ("Effective Date"), by and between the City of Pflugerville, Texas, a home-rule city located in Travis County, Texas (the "City"), and Wilson Family Communities, Inc., a Delaware corporation ("Wilson"), R.M.D. Holdings, L.P., a Texas Limited Partnership ("RMD") and New Sweden MPC, L.P. a Texas Limited Partnership ("NSMPC"). Collectively, Wilson, RMD and NSMPC and their assignees as permitted herein are singularly referred to as the "Developer" and collectively referred to as the "Developers"

### RECITALS

A. The Developers have purchased, or are considering purchasing, multiple tracts of land near the intersection of F.M. 973 and New Sweden Gin Road. (the "Tract"). The Tract is more fully described on the attached Exhibit A.

B. If one of the Developers purchases the Tract or any part of the Tract, that Developer agrees to the development plan and standards set forth in this Agreement and consents to inclusion in the extraterritorial jurisdiction of the City when the City's extraterritorial jurisdiction becomes contiguous to the parts of the Tract owned by that Developer. Each Developer's rights and obligations under this Agreement pertain only to the portion of the Tract which such Developer owns or acquires and not to other portions of the Tract not owned by such Developer (even if the term "Developers" is used herein). By way of example, if Wilson does not acquire those parts of the Tract referred to herein as MUD 2 and MUD 3, then Wilson shall have no obligations regarding or relating to such parts of the Tract.

C. The City is authorized to make and enter into this Agreement with Developer in accordance with Subchapter G, Chapter 212, Local Government Code.

D. Section 3.1 of this Agreement contemplates that the Developers have created, or will create, up to three (3) municipal utility districts (to be known as New Sweden MUD 1 ("MUD 1"), New Sweden MUD 2 ("MUD 2") and New Sweden MUD 3 ("MUD 3"), respectively) over or including parts of the Tract, with the areas currently anticipated to be included within and/or served by a district being shown on Exhibit A hereto and referred to as the "MUD 1 Tract," the "MUD 2 Tract" and the "MUD 3 Tract," respectively.

E. Sections 1.4 and 1.5 of this Agreement contemplate that the Developers will dedicate sites for a school and fire station.

F. At the time of execution of this Agreement, Wilson has purchased the MUD 1 Tract. At the time of execution of this Agreement, MUD 1 and MUD 2 have been created and exist over the MUD 1 Tract and the MUD 2 Tract and the petition for creation of MUD 3 over the MUD 3 Tract is pending at the Texas Commission on Environmental Quality.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developers and the City (collectively the "Parties") agree as follows:



## ARTICLE I. AGREEMENTS OF THE DEVELOPER

**1.1 ETJ Expansion.** Each Developer agrees to file a petition to include the Tract, or any portion thereof, in the extraterritorial jurisdiction of the City and to develop the Tract in accordance with the development standards in this Agreement if the Developer purchases the Tract or any portion of the Tract and when the Tract is contiguous with any part of the City's then-existing extraterritorial jurisdiction. Each Developer also agrees to oppose inclusion of any part, or all, of the Tract, within the ETJ or boundaries of any municipality other than those of the City.

**1.2 Development Plan.** The attached Exhibits B-1 and B-2 (for the MUD 1 Tract and the MUD 2 Tract, respectively) and the requirements in this Agreement together are the "Development Plan." Developer agrees to the Development Plan unless Travis County regulations regarding land use and development supersede the standards in this Agreement as of the Effective Date.

**1.3 Commercial Areas.** Commercial areas must be within, and are limited to, the areas designated as such on the Development Plan; provided, however, the location of the commercial areas may be changed by the Developers based on the alternative road alignments as shown in the alternative alignments of Kelly Lane in **Exhibits B-1** and **B-2** hereto and as otherwise permitted in Sections 1.7 and 1.8 of this Agreement and so long as the amount of total acreage devoted to commercial area is not decreased.

**1.4 School Site.** Developers have previously conveyed an approximately 12 acre tract of land within the Tract to Pflugerville Independent School District for an elementary school.

**1.5 Fire Station.** Developers agree to, and will, convey an approximately 2.5 acre site for a fire station in the Tract to Travis County Emergency Services District No. 2.

**1.6 Design and Construction Standards.** Developers agree to City's subdivision design standards as set forth in the City's May 2005 Engineering Design Guidelines and Construction Standards Manual and the City's Site Development Code Standards as currently set forth in Chapter 155 of the City Code except as otherwise provided in this Agreement and except for the following:

**A.** Developers will not be required to backfill utility trenches with compacted base materials, but will backfill utility trenches as provided for by the City's 1993 Construction Standards Manual Specification Item 0533;

**B.** Open drainage channels, earthen embankments and detention ponds will be constructed in accordance with Section 82.207 "Stormwater, Drainage, and Floodplains" of the "Travis County Code: Standards for Construction of Streets and Drainage in Subdivisions," effective on the date of this Agreement and all other Travis County regulations relevant to drainage channels, earthen embankments, and detention

**E.** Landscaping for each residential Lot must include two trees for non-corner Lots and four trees for corner Lots (the "Required Trees"). Each Required Tree must: (i) be of a minimum caliper of two inches, as measured in accordance with the Texas Association of Nurserymen, Grades and Standards at the time it is planted; and (ii) comply with the landscaping standards and restrictions set forth in **Exhibit C** attached hereto and incorporated herein by reference. All landscaping installed by a residential home builder including, but not limited to, trees and shrubs, must comply with the landscaping standards and restrictions set forth in **Exhibit C** attached hereto and incorporated herein by reference.

**F.** Disputes related to the duty to maintain parks and enforce deed covenants both before and after the Tract's inclusion in the City's extraterritorial jurisdiction shall be resolved in accordance with the provisions of Section 4.13 of this Agreement.

**1.10 Parks and Recreation Facilities.** Parks and recreation facilities will be developed in accordance with the Development Plan in **Exhibits B-1 and B-2**. Developers will pay any park fees required and comply with Section 82.208, "Dedication of Parkland" of the "Travis County Code: Standards for Construction of Streets and Drainage in Subdivisions" and all other Travis County regulations applicable to parkland, as the same exist at the time of preliminary plan approval, provided such plan approval does not expire.

**1.11 Cul-de Sac Limitation.** Cul-de-sac lots located in the Tract must be 100 or more feet deep.

**1.12 Lot Size.** Except for cul-de-sacs, all lots must be a minimum of 40 feet wide and 110 feet deep. For the MUD 1 Tract, of the total single family lots, there will be no more than 1,771 total single family lots with no more than 33.1% of those lots being forty foot wide single family lots and no less than 18.6% of those lots being sixty foot wide single family lots when the MUD 1 Tract is finally platted. For the MUD 2 Tract, of the total single family lots, there will be no more than 1,676 single family lots with no more than 37.3% being forty foot wide single family lots and no less than 19.4% being sixty foot wide single family lots when the MUD 2 Tract is finally platted. For the MUD 3 Tract, of the total single family lots, there will be no more than 809 single family lots with no more than 29% being forty foot wide single family lots and no less than 16.7% being sixty foot wide single family lots when the MUD 3 Tract is finally platted.

**1.13 Water.** Developers agree that City will not be responsible for providing retail water or wastewater to the Tract. Developers agree that each of MUDs 1 and 2 will use their best efforts to provide retail water and wastewater service for their respective boundaries and MUD 3 will use reasonable efforts to provide retail water and wastewater service for its boundaries.

**1.14 Fire Flow.** Notwithstanding Section 1.15 of this Agreement, Developers agree that the Tract must meet the City's fire flow standards found in the City's May 2005 Engineering Design Guidelines and Construction Standards Manual.

**1.15 Water Reuse.** Developers will exercise reasonable efforts to evaluate common green space and school sites to allow for water reuse.

**1.16 Wastewater Service.** Wastewater service to the Tract shall also be governed by that certain “Agreement Concerning Wastewater Service” between the City and 973 Wastewater Company attached as **Exhibit D** hereto. However, the Parties’ rights and obligations under this Agreement are not dependent upon or otherwise connected to the Parties’ rights and obligations under the “Agreement Concerning Wastewater Service” between the City and 973 Wastewater Company.

## **ARTICLE II.**

### **STRATEGIC PARTNERSHIP AGREEMENT AND AGREEMENT NOT TO SEEK ANNEXATION BY ANY OTHER ENTITY**

**2.1 Strategic Partnership Agreements.** When the Tract is included in the City’s extraterritorial jurisdiction, Developers and the City agree that Developers will take all actions necessary and appropriate to cause the City and all districts created in the Tract to enter into separate strategic partnership agreements (the “Strategic Partnership Agreements”) pursuant to Chapter 43, Texas Local Government Code. The Strategic Partnership Agreements shall be in substantially the form attached hereto as **Exhibit E**. In the event of a conflict between this Agreement and the Strategic Partnership Agreements, this Agreement shall control.

**2.2 Inclusion in City’s Extraterritorial Jurisdiction.** Developers and City agree that the City may include the Tract in its extraterritorial jurisdiction at any time, but that once all preliminary plans for subdivision of the Tract and the creation of the districts over the Tract have been approved, Developers must request that any parts of the Tract owned by Developer be included within the City’s extraterritorial jurisdiction. The Developers and the City will cooperate to coordinate the appropriate timing of any such requests.

**2.3 Waiver of Subdivision Fees; No Building Permits Required.** City agrees that all City subdivision fees will be waived and no building permits will be required of the Developers in exchange for the Developers’ agreement to construct the first three phases of the wastewater plant up to 0.95 MGD as provided in **Exhibit D**, to construct Kelly Lane as required in this Agreement and to provide the Texas Commission on Environmental Quality (TCEQ) Municipal Utility District financial reports or audits to the City as frequently as provided to TCEQ. City and Developers agree that Travis County will assess subdivision fees.

**2.4 Agreement not to Seek Annexation by Another Entity.** In furtherance of the purposes of this Agreement, the Developers agree, to the extent allowed by law, that Developer(s) will not seek or support any effort to incorporate the Tract or any part thereof, or to include the Tract within the boundaries of any incorporated entity other than City or the districts consented to in Section 3.1 of this Agreement without the prior written consent of the City.

### ARTICLE III. AGREEMENTS OF THE CITY

**3.1 Consent to Creation of Districts.** The City gives its consent to the creation and inclusion of land in not less than one (1) nor more than three (3) districts (MUDs 1, 2 and 3, as previously identified in the Recitals hereto), with no one (1) district containing more than 1,100 acres, created under the authority of Article XVI, Section 59 of the Texas Constitution to include all or any parts of the Tract in Exhibit A; provided, however, the area as identified in Exhibit F hereto shall be excluded, if necessary, from the boundaries of MUD 1 after its creation. Developers agree to petition, or cause 973 Wastewater Company or the other then owners of the area as identified in Exhibit F, to petition, the City for full purpose annexation of the tract identified in Exhibit F after its exclusion from MUD 1 and when the tract identified in Exhibit F becomes adjacent to the City's corporate limits. The City agrees to not annex the balance of the approximately 10 acre site of 973 Wastewater Company's wastewater treatment plant that is adjacent to the tract identified in Exhibit F until and unless the City purchases that wastewater treatment plant as permitted under the Agreement Concerning Wastewater Service attached hereto as Exhibit D. The parties agree that the Tract will be annexed by the City in the future as provided in this Agreement and in the Strategic Partnership Agreements. To the extent that the City's consent to creation, division or conversion of, or inclusion of land in, MUDs 1, 2 or 3 in the Tract is required by either Section 42.042, Texas Local Government Code, or Section 54.016, Texas Water Code, or other provisions of law, this Agreement serves as the City's consent to the creation, division, or conversion of, or inclusion of land in, MUDs 1, 2 and 3 and no additional consent will be required. The Developers will provide the City with information showing the original and revised boundaries of MUDs 1, 2 and 3 created pursuant to this Agreement. The terms and conditions applicable to a district upon assignment of this Agreement will apply to any such district so created, divided or converted.

**3.2 Timing of Annexation of Portions of the Tract Within a District.** The Developers agree that the City may annex portions of the Tract within MUDs 1, 2 or 3 in accordance with the terms of the Strategic Partnership Agreements, the form of which is attached hereto as Exhibit E. The parties agree to use their best efforts to have each of said districts and the City approve and enter into Strategic Partnership Agreements in the form attached hereto as Exhibit E.

### ARTICLE IV. MISCELLANEOUS PROVISIONS

**4.1 Remedies.** In the event either party fails or refuses to timely comply with such party's obligations under this Agreement or is unable to do so as the result of such party's act or failure to act, the non-defaulting party may enforce specific performance of the defaulting party's obligations under this Agreement. Specific performance will not be available upon completion of the City's or Developers' required commitments.

**4.2 Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable, said invalidity, illegality or unenforceability will not affect any other provision of this Agreement and this Agreement will be construed as if the invalid, illegal or unenforceable provision was never part of this Agreement.

**4.3 Modification.** This Agreement may only be modified by a written instrument signed by both Parties.

**4.4 Memorandum of Agreement; Assignment; Acquisition of Portions of Tract by Developer.** A memorandum of this Agreement substantially in the form attached hereto as Exhibit G shall be recorded in the Official Records of Travis County as the Developers acquire portions of the Tract, and such memorandum of agreement shall apply to said portions of the Tract so acquired. This Agreement (or a portion thereof) may only be assigned by a Developer to an affiliate or to a subsequent purchaser in connection with the sale of all (or part) of the Tract. In such an event, the Developer must: (1) provide prior written notice thereof to the City; (2) provide the City with a copy of the assignment document and approval, which will not be unreasonably withheld or delayed and (3) require the assignee to assume, in writing, all obligations of the Developer under this Agreement, whereupon the Developer shall be fully released and discharged from any and all obligations under this Agreement so assigned. Notwithstanding anything herein to the contrary, a Developer's obligations under this Agreement in relation to the Tract shall only apply to the portions of the Tract purchased by any of the Developers or Developers' successors or assigns.

**4.5 Applicable Law.** This Agreement is to be construed under the laws of the State of Texas and the obligations of the Parties will be performable in Travis County, Texas.

**4.6 Parties at Interest.** This Agreement will be for the exclusive benefit of the Parties hereto and does not confer any benefit on any third party (unless said third party is an assignee of a Developer as provided for in this Agreement).

**4.7 Effective Date.** This Agreement becomes effective upon its execution by both Parties and remains in effect until such time as the Developers and City have fulfilled its respective obligations hereunder.

**4.8 Term.** This Agreement is effective as of the date of execution by both Parties and will continue thereafter for a period of thirty (30) years.

**4.9 Notice.** Any notice required under this Agreement must be in writing and sent to the address reflected on the signature page of this Agreement or at such other address as a party hereto may specify by notice in compliance with the requirements of this paragraph. The Developers are responsible for maintaining a current address and telephone number with the City.

**4.10 Force Majeure.** Except for any obligations under this Agreement that can be satisfied solely with the payment of money, the duties of each party to observe or perform any of the obligations or provisions of this Agreement on its part to be performed or observed, will be excused for a period of time equal to the period of any prevention, delay or stoppage due to causes beyond the control of the party charged with performance or observation, whether by

reason of strikes, civil riots, work stoppages, weather delays, fire or other casualty, acts of God, or other similar events or occurrences; provided, however, that in each event, the party charged with performance or observation must take such steps as are reasonable under the circumstances to mitigate the effects of the applicable force majeure situation.

**4.11 No Additional Waiver Implied.** The failure of any party hereto to insist, in any one or more instances, upon performance of any of the terms, covenants, or conditions of the Agreement will not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition of any party hereto, but the obligation of such other party with respect to such future performance will continue in full force and effect.

**4.12 Construction of Agreement.** The Parties agree that this Agreement will not be construed in favor of or against any Party on the basis that the Party did or did not author this Agreement.

**4.13 Consent to Jurisdiction and Forum Selection.** The Parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the Municipal Court of Pflugerville and the County and State Courts located in the County of Travis, State of Texas. The aforementioned choice of venue is intended by the Parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the Parties with respect to or arising out of this Agreement in any jurisdiction other than that specified in this paragraph. Each Party hereby waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulates that the Municipal Court of the City of Pflugerville and the County and State Courts located in the County of Travis, State of Texas shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Agreement. Each Party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this paragraph by registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this Agreement. Any final judgment rendered against a Party in any action or proceeding shall be conclusive as to the subject of such final judgment and may be enforced in other jurisdictions in any manner provided by law. Further, the Developers agree to record a Memorandum of this Agreement in the Real Property Records reflecting the fact that the MUD 1, 2 and 3 Tracts are subject to the provisions of this Agreement.

**4.14 Exhibits.** The following exhibits are incorporated into and made a part hereof for all purposes:

**Exhibit A** Description of Tract of Land and the MUD 1, 2 and 3 Tracts.

**Exhibits B-1 and B-2** Map of Development Plan for the Tract.

**Exhibit C** Landscaping Requirements

**Exhibit D** Agreement Concerning Wastewater Service

**Exhibit E** Form of Strategic Partnership Agreement

**Exhibit F** Area to Be Excluded from MUD 1

**Exhibit G** Form of Memorandum of Agreement

MAR-13-2007 11:23

Wilson Family

512 732 0959 P.06

Executed in multiple copies, each of which constitutes an original, on this 14<sup>th</sup> day of March, 2007.

Address:

P.O. Box 589  
Pflugerville, Texas 78691  
(512) 251-3076

CITY:

CITY OF PFLUGERVILLE, TEXAS  
By: David Buesing  
David Buesing, City Manager

Address:

8121 Bee Caves Road  
Austin, Texas 78746  
(512) 732-0932 (telephone)  
(512) 732-0959 (fax)

DEVELOPERS:

WILSON FAMILY COMMUNITIES, INC.  
By: Don Johnson  
Name: ARIN KARRA  
Title: Chief Financial Officer

c/o  
RMD Holdings, L. P.  
1717 West Sixth St., Ste. 260  
Austin, Texas 78703  
(512) 482-8806 (telephone)  
(512) 482-8807 (fax)

RMD HOLDINGS, L.P.  
By: RMD Company, Inc., Its General Partner  
By: Rhett Dawson  
Rhett Dawson, President

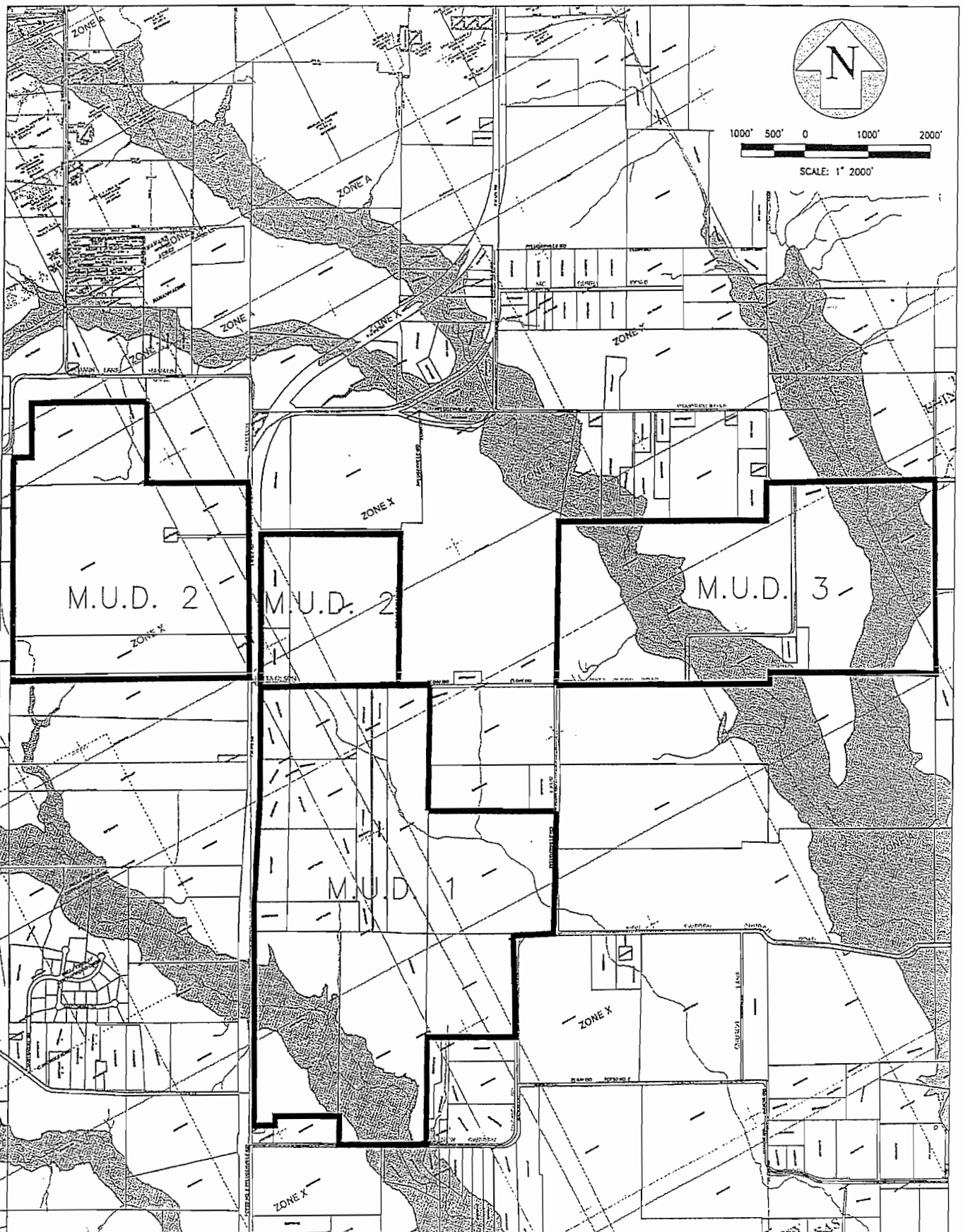
c/o  
RMD Holdings, L. P.  
1717 West Sixth St., Ste. 260  
Austin, Texas 78703  
(512) 482-8806 (telephone)  
(512) 482-8807 (fax)

NEW SWEDEN MPC, L.P.  
By: RMD Company, Inc., Its General Partner  
By: Rhett Dawson  
Rhett Dawson, President

**EXHIBIT A**

**DESCRIPTION OF THE TRACT**





PETE PROJECT NO. 097401300	NO.	DATE	REVISIONS	BY
DESIGN: K.M.				
DRAWN: R.C.				
CHECKED:				
DATE:				
SHEET				

PROJECT:

## EXHIBIT A DESCRIPTION OF TRACT OF LAND

**PATE ENGINEERS**  
 HOUSTON • DALLAS • AUSTIN • FORT WORTH  
 ARLINGTON • SAN ANTONIO  
 7801 NORTH CAPITAL OF  
 TEXAS HIGHWAY, SUITE 220  
 AUSTIN, TEXAS 78731  
 PH: (512) 340-0600  
 FAX: (512) 340-0604  
 WWW.PATEENG.COM

EXHIBIT A  
NEW SWEDEN MUNICIPAL UTILITY DISTRICT NO. 1  
419.4 ACRES  
IN THE  
THEOPHILUS ELLISON SURVEY, A-260  
THOMAS SHARP SURVEY, A-745  
THOMAS SHARP SURVEY, A-746  
TRAVIS COUNTY, TEXAS

ONE TRACT OF LAND TOTALING 419.4 ACRES DESCRIBED AS FOLLOWS:

TRACT 1

All that certain 419.4 acres of land, which is the 0.60 acre tract described in the deed from Winnifred Mikus to Douglas T. Mikus and Donald R. Mikus recorded under Document No. 2005046790, in the Official Public Records of Travis County, Texas, the 83.1454 acre tract described in the deed from Coffee & Goldston to Kermit Hees, et al recorded under Document No. 2002199973, in the Official Public Records of Travis County, Texas, the 49.49 acre tract described in the deed from George Ralph Green, et ux to Kermit Hees, et ux recorded under Volume 3824, Page 590, in the Deed Records of Travis County, Texas, the 18.00 acre tract described in the deed from Benard A. Mokry, et ux to Bernard Mokry, Inc. recorded under Volume 9569, Page 985, in the Deed Records of Travis County, Texas, the 2.00 acre tract described in the deed from Benard A. Mokry, et ux to Bernard Mokry, Inc. recorded under Volume 9569, Page 985, in the Deed Records of Travis County, Texas, and the 20.00 acre tract described in the deed from Benard A. Mokry, et ux to Bernard Mokry, Inc. recorded under Volume 9569, Page 985, in the Deed Records of Travis County, Texas, and out of the the 33 1/3 acre tract described as Tract 1 in the deed from Bernard A. Mokry, et ux to Bernard A. Mokry, Inc. recorded under Volume 10609, Page 784, in the Deed Records of Travis County, Texas, the 63-3/4 acre tract described in the deed from Bernard A. Mokry, et ux to Bernard A. Mokry, Inc. recorded under Volume 10609, Page 784, in the Deed Records of Travis County, Texas, the 116.88 acre tract described in the deed from Thomas Mikus, et ux to Douglas T. Mikus and Donald R. Mikus recorded under Volume 12172, Page 573, in the Deed Records of Travis County, Texas, the 100 acre tract described in the deed from Herman Hees, et ux to Raymond Hees, et ux recorded under Volume 1851, Page 271, in the Deed Records of Travis County, Texas, and out of the 100 acre tract listed in the deed from Edwin Magnuson, et ux to Magnuson Family Partnership, Ltd. recorded under Volume 13122, Page 2385, in the Deed Records of Travis County, Texas, further described in the deed from Martin T. Berkman to Edwin S. Magnuson recorded under Volume 632, Page 495, in the Deed Records of Travis County, Texas, in the Theophilus Ellison Survey, A-260, the Thomas Sharp Survey, A-745, and the Thomas Sharp Survey, A-746, Travis County, Texas, and more particularly described by metes and bounds as follows: (All bearings are based on the Texas State Plane Coordinate System, Central Zone)

**BEGINNING** at a found Texas Department of Transportation Type I concrete monument, common to the southwest corner of the herein described tract, in the east right-of-way line of F.M. Highway No. 973 (R.O.W. Varies);

**THENCE** along said east right-of-way line the following four (4) courses and distances:

1. North 30°15'55" East - 100.13' to a Texas Department of Transportation Type I concrete monument found for an angle corner, common to an angle corner of aforesaid 0.60 acre tract;
2. North 27°24'08" East - 331.49' to a 1" iron pipe found for the northwest corner of said 0.60 acre tract, common to an angle corner of the herein described tract;

3. North 27°09'20" East – 2520.83 (at 2043.05' passing a Texas Department of Transportation Type II concrete monument, at 2409.24' passing a Texas Department of Transportation Type II concrete monument) to a Texas Department of Transportation Type II concrete monument found for a point on a curve to the right, having a central angle of 02°51'09", a radius of 11,359.18, and from which point the center of the circle of said curve bears South 62°09'02" East;
4. Along said curve to the right, in a northerly direction, an arc distance of 565.52' to a found ½" iron rod with aluminum cap, common to the most westerly northwest corner of the herein described tract, in the south line of the 41.45 acre tract described in the deed from Carroll E. Berggren, et al to Nelda Mae Walenta recorded under Volume 4655, Page 24, in the Deed Records of Travis County, Texas;

**THENCE** South 62°19'56" East - 1614.07', along said south line, to a ½" iron rod set for an angle corner of the herein described tract, common to the southeast corner of said 41.45 acre tract, in the west line of aforesaid 18.00 acre tract;

**THENCE** North 27°45'04" East - 3244.78', along said west line, common to the east line of said 41.45 acre tract, the east line of the 40.00 acre tract described in the deed from Clarice E. Smith to Ronald Walenta, et al recorded under Document No. 2000162361, in the Official Public Records of Travis County, Texas and the 40.00 acre tract described in the deed from Carroll E. Berggren, et al to Carroll E. Berggren recorded under Volume 4655, Page 24, in the Deed Records of Travis County, Texas (at 1108.64' passing a ½" iron rod found for the northeast corner of the of said 41.45 acre tract, common to the southeast corner of said 40.00 acre tract (200162361), at 2176.51' passing the northeast corner of said 40.00 acre tract (200162361), common to the southeast corner of said 40.00 acre tract (4655/24)), to a ½" iron rod found for the northeast corner of said 40.00 acre tract (4655/24), common to the northwest corner of said 18.00 acre tract and the most northerly northwest corner of the herein described tract, in the south right-of-way line of New Sweden Gin Road;

**THENCE** South 62°41'20" East - 1106.15', along said south right-of-way line, to a ½" iron rod set for the most northerly northeast corner of the herein described tract, in the east line of aforesaid 33-1/3 acre tract, common to the west line of the 76.81 acre tract described in the deed from Hattie Beth Northrup, Independent Executrix to Raymond D. Robbins recorded under Volume 5314, Page 889, in the Deed Records of Travis County, Texas;

**THENCE** South 27°39'10" West - 1867.74', along said common line, to a 1" axle found for the northwest corner of aforesaid 83.1454 acre tract, common to the southwest corner of said 76.81 acre tract;

**THENCE** South 62°16'17" East - 1925.27', along the south line of said 76.81 acre tract and the south line of the 6.00 acre tract described in the deed from Hattie Beth Northrup, Independent Executrix to Raymond D. Robbins recorded under Volume 5314, Page 874, in the Deed Records of Travis County, Texas (at 1535.43 passing a ½" iron rod found for the southwest corner of said 6.00 acre tract) to a ½" iron rod set for the most easterly northeast corner of the herein described tract, in the west right-of-way line of Axell Road;

**THENCE** South 27°39'10" West - 1855.27', along the said west right-of-way line, to a ½" iron rod found for the southeast corner of aforesaid 83.1454 acre tract, at the intersection of said west right-of-way line, and the north right-of-way line of New Sweden Church Road;

**THENCE** North  $62^{\circ}20'50''$  West - 320.65', along said north right-of-way line, to a  $\frac{1}{2}$ " iron rod found for a point on a curve to the left, having a central angle of  $23^{\circ}54'07''$ , a radius of 347.05', and from which point the center of the circle of said curve bears South  $27^{\circ}39'13''$  West;

**THENCE** along said curve to the left, continuing along said north right-of-way line, in a westerly direction, an arc distance of 144.78' to a  $\frac{1}{2}$ " iron rod found for a point on a curve to the left, having a central angle of  $53^{\circ}03'34''$ , a radius of 281.95', and from which point the center of the circle of said curve bears South  $05^{\circ}53'55''$  East;

**THENCE** along said curve to the left, continuing along said north right-of-way line, in a southwesterly direction, an arc distance of 261.10' to a  $\frac{1}{2}$ " iron rod set for the end of curve, in the west right-of-way line of aforesaid New Sweden Church Road;

**THENCE** South  $27^{\circ}25'21''$  West - 1291.32', along said west right-of-way line, to a  $\frac{1}{2}$ " iron rod set for an angle corner of the herein described tract, common to the southeast corner of aforesaid 49.49 acre tract, common to the northeast corner of the 8.89 acre tract described in the deed from Joe W. Pustejovsky, et ux to Willie Guajardo, et ux recorded under Volume 5419, Page 302, in the Deed Records of Travis County, Texas;

**THENCE** North  $62^{\circ}44'29''$  West - 1349.82', along the south line of said 49.49 acre tract, common to the north line of said 8.89 acre tract, the north line of the 7.21 acre tract described in the deed from James Phillip Covey, et ux to Leon R. Ortega and Joe Arellano recorded under Volume 3903, Page 2054, in the Deed Records of Travis County, Texas, and the north line of the 5.352 acre tract described in the deed from Joe Arellano, et ux to Phillip Arellano and Rebecca Ann Lopez-Arellano recorded under Document No. 2000100100, in the Official Public Records of Travis County, Texas, to a  $\frac{1}{2}$ " iron rod found for the northwest corner of said 5.352 acre tract;

**THENCE** South  $28^{\circ}03'24''$  West - 1627.61', along the west line of said 5.352 acre tract and the west line of said 7.21 acre tract, to a  $\frac{1}{2}$ " iron rod set for the southeast corner of the herein described tract, common to the southwest corner of said 7.21 acre tract, in the north right-of-way line of aforesaid New Sweden Church Road;

**THENCE** North  $62^{\circ}19'26''$  West - 182.57', along said north right-of-way line, to a  $\frac{1}{2}$ " iron rod set for an angle corner of the herein described tract;

**THENCE** departing said north right-of-way line and across aforesaid 100 acre tract (1851/271), the following twelve (12) courses and distances;

1. North  $28^{\circ}03'24''$  East - 489.69' to a  $\frac{1}{2}$ " iron rod set for the Point of Curvature of a curve to the left, having a central angle of  $17^{\circ}05'48''$ , and a radius of 350.00';
2. Along said curve to the left, in a northerly direction, an arc distance of 104.44', to a  $\frac{1}{2}$ " iron rod set for the end of curve;
3. North  $10^{\circ}57'36''$  East - 312.84' to a  $\frac{1}{2}$ " iron rod set for an angle corner of the herein described tract;
4. North  $28^{\circ}03'24''$  East - 516.34' to a  $\frac{1}{2}$ " iron rod set for an angle corner of the herein described tract;

5. North 61°56'36" West - 768.14' to a ½" iron rod set for an angle corner of the herein described tract;
6. South 28°03'24" West - 504.00' to a ½" iron rod set for an angle corner of the herein described tract;
7. South 61°56'36" East - 712.03' to a ½" iron rod set for an angle corner of the herein described tract;
8. South 10°57'36" West - 341.13' to a ½" iron rod set for the Point of Curvature of a curve to the right, having a central angle of 17°05'48", and a radius of 300.00';
9. Along said curve to the right, in a southerly direction, an arc distance of 89.52' to a ½" iron rod set for the end of curve;
10. South 28°03'24" West - 342.29' to a ½" iron rod set for an angle corner of the herein described tract;
11. South 41°00'20" West - 124.33' to a ½" iron rod set for an angle corner of the herein described tract;
12. South 28°03'24" West - 26.74' to a ½" iron rod set for an angle corner of the herein described tract, in the north right-of-way line of aforesaid New Sweden Church Road;

**THENCE** North 62°19'26" West - 1099.65', along said north right-of-way line, to a ½" iron rod found for an angle corner of the herein described tract, in the west line of aforesaid 100 acre tract (1851/271);

**THENCE** North 27°39'10" East - 433.34', along said west line, to a ½" iron rod set for an angle corner of the herein described tract;

**THENCE** North 62°32'06" West - 1017.32', along the north line of the 9.99 acre tract described in the deed from Jack Kevin Beckham, et ux to Jessica N. Antolik and Jennifer J. Antolik recorded under Document No. 2002103178, in the Official Records of Travis County, Texas, to a ½" iron rod found for the northwest corner of said 9.99 acre tract, common to an angle corner of the herein described tract;

**THENCE** South 27°32'26" West - 161.24', along the west line of said 9.99 acre tract, to a ¾" iron pipe found for the northeast corner of the 1.40 acre tract described in the deed from Raymond Charles Boswell to Sharon Louise Boswell recorded under Volume 12727, Page 111, in the Deed Records of Travis County, Texas, common to the most southerly southeast corner of aforesaid 116.88 acre tract and an angle corner of the herein described tract;

**THENCE** North 62°01'22" West - 127.53', along the north line of said 1.40 acre tract, common to a south line of said 116.88 acre tract, to a ½" iron rod set for an angle corner of the herein described tract, common to the most northerly northwest corner of said 1.40 acre tract and the northeast corner of aforesaid 0.60 acre tract;

**THENCE** South 30°19'31" West - 134.26', along a west line of said 1.40 acre tract, common to the east line of said 0.60 acre tract to a ½" iron rod set for an angle corner of the herein described tract, common to an angle corner of said 1.40 acre tract and the southeast corner of said 0.60 acre tract;

**THENCE** North 63°06'29" West - 194.48', along a north line of said 1.40 acre tract, common to the south line of said 1.40 acre tract, to the **POINT OF BEGINNING** of the herein described tract and containing 419.4 acres of land;



*Neil Hines*

Certification Date  
September, 2005

THIS LEGAL DESCRIPTION IS ISSUED IN CONJUNCTION WITH THE DISTRICT BOUNDARY MAP OF NEW SWEDEN MUNICIPAL UTILITY DISTRICT NO. 1. TRACT 1 IN THIS DOCUMENT WAS PREPARED BASED ON THE SURVEY CONDUCTED BY PATE SURVEYORS DATED SEPTEMBER 8, 2005.

## EXHIBIT A

NEW SWEDEN MUNICIPAL UTILITY DISTRICT NO. 2  
426.0 ACRES  
IN THE  
JAMES P. KEMPE SURVEY, A-463  
BEJAMIN ALLEN SURVEY, A-37  
McHENRY WINDBURN SURVEY, A-825  
THOMAS SHARP SURVEY, A-745  
TRAVIS COUNTY, TEXAS

TWO TRACTS OF LAND TOTALING 426.0 ACRES DESCRIBED AS FOLLOWS:

TRACT 1

All that certain 309.5 acres of land, out of the 200 acres of land listed in the deeds from Alvin H. Bohls, et ux to the Bohls children recorded under Volume 5332, Pages 1966, 1968, 1970, 5676, Volume 5362, Pages 177, 179, 181, and 183, and also listed in the deeds from Fred O. Bohls, et ux to the Bohls children recorded under Volume 5676, Pages 1563 and 1566, out of the 49.62 acre tract described in the deed from Paul A. Moebus to Laura Moebus recorded under Document No. 2002105845, in the Official Public Records of Travis County, Texas, out of the 78.112 acre tract described in the deed from Estelle Henze, et al to KB3, LC recorded under Document No. 2005123655, in the Official Public Records of Travis County, Texas, and out of Lots 3, 4, 5, and 6 of the Subdivision of the Jas P. Kemp 1280 Acre Survey according to the plat thereof recorded under Volume 1, Page 16, in the Plat Records of Travis County, Texas, in the James P. Kempe Survey, A-463, Travis County, Texas, and more particularly described by metes and bounds as follows: (All bearings are based on the Texas State Plane Coordinate System, Central Zone)

COMMENCING at a ½" iron rod found for the northwest corner of the 58.825 acre tract described in the deed from Thomas Gola, et ux to David L. Everetts and Giao Ly recorded under Document No. 2006001403, in the Official Public Records of Travis County, Texas, in the south right-of-way line of Hamann Lane (40' R.O.W.), from which a ½" iron rod found for the most northerly northeast corner of said 58.825 acre tract bears South 62°19'12" East - 1527.23'; THENCE South 27°04'16" West - 252.44' along the west line of said 58.825 acre tract, common to the east line of aforesaid 78.112 acre tract to a ¾" iron rod set for the most northerly northeast corner and **POINT OF BEGINNING** of the herein described tract;

THENCE South 27°04'16" West - 1356.40', continuing along said common line, to a ¾" iron rod set for an angle corner of the herein described tract, common to the southwest corner of said 58.825 acre tract and the southeast corner of said 78.112 acre tract, in the north line of aforesaid Lot 5;

THENCE South 62°24'20" East - 1572.75', along said north line, common to the south line of said 58.825 acre tract, to the most easterly northeast corner of the herein described tract, common to the southeast corner of said 58.825 acre tract, in the west right-of-way line of F.M. Highway No. 973 (R.O.W. Varies);

THENCE South 27°28'53" West - 1000.70', along said west right-of-way line, to a Texas Department of Transportation Type II concrete monument found for an angle corner;

THENCE South 27°18'48" West - 1918.11', continuing along said west right-of-way line, to a ¾" iron rod set for the southeast corner of the herein described tract, common to the southeast corner of aforesaid 49.62 acre tract, common to the northeast corner of the 49.723 acre tract described in the deed from Barry G. Wanslow and Kimberly S. Wanslow to Susan M. King and Richard L. King recorded under Volume 12568, Page 602, in the Real Property Records of Travis County, Texas, from which a Texas Department of Transportation Type II concrete monument bears South 27°18'48" West - 544.78';

**THENCE** North 62°35'56" West - 3706.19', along the south line of said 49.62 acre tract, common to the north line of said 49.723 acre tract, to a 2" iron rod found for the southwest corner of said 49.62 acre tract, common to the northwest corner of said 49.723 acre tract and the southwest corner of the herein described tract, in the west line of aforesaid Lot 3;

**THENCE** North 27°30'01" East - 583.34', along said west line, common to the west line of said 49.62 acre tract, to a metal t-post found for the northwest corner of said 49.62 acre tract, common to the northwest corner of said Lot 3 and the southwest corner of aforesaid Lot 4

**THENCE** North 27°24'04" East - 2781.39', along the west line of said Lot 4, the west line of aforesaid Lot 5, and the west line of aforesaid Lot 6, common to the west line of aforesaid 200 acre tract and the west line of aforesaid 78.112 acre tract, to a ¾" iron rod set for the most westerly northwest corner of the herein described tract, in the south right-of-way line of Cameron Road (60' R.O.W.);

**THENCE** South 62°59'08" East - 28.22', along said south right-of-way line, to a ¾" iron rod set for an angle corner of the herein described tract, at the intersection of said south right-of-way line and the east right-of-way line of said Cameron Road (60' R.O.W.);

**THENCE** North 27°15'21" East - 64.00', along said east right-of-way line, to a ¾" iron rod set for an angle corner of the herein described tract;

**THENCE** South 62°59'08" East - 250.00' to a ¾" iron rod set for an angle corner of the herein described tract;

**THENCE** North 27°15'21" East - 853.89' to a ¾" iron rod set for the northwest corner of the herein described tract;

**THENCE** South 62°56'05" East - 658.59' to a ¾" iron rod set for an angle corner of the herein described tract;

**THENCE** South 62°13'12" East - 1188.65' to the **POINT OF BEGINNING** of the herein described tract and containing 309.5 acres of land; **SAVE AND EXCEPT** all that certain 1.000 acre of land, which is the 0.083 acre tract described in the deed from Stephen Frederick Bohls, et al to Aqua Water Supply Corporation recorded under Volume 6038, Page 876, in the Deed Records of Travis County, Texas, and the 0.917 acre tract described in the deed from Stephen Frederick Bohls, et al to Aqua Water Supply Corporation recorded under Document Nos. 1999052513, 1999052514, 1999052515, and 1999052516, in the Official Public Records of Travis County, Texas, in the James P. Kempe Survey, A-463, Travis County, Texas, and more particularly described by metes and bounds as follows: (All bearings are based on the Texas State Plane Coordinate System, Central Zone)

**COMMENCING** at a ¾" iron rod found at the northeast corner of the 1.006 acre tract (40' permanent easement and right-of-way) from Stephen Frederick Bohls, et al to Aqua Water Supply Corporation recorded under Document Nos. 1999052513, 1999052514, 1999052515, and 1999052516, in the Official Public Records of Travis County, Texas, in the west right-of-way line of F.M. Highway No. 973 (R.O.W. Varies), from which a Texas Department of Transportation Type II concrete monument bears North 27°28'53" East - 286.08'; **THENCE** North 62°33'23" West - 1095.33', along the north line of said 1.006 acre tract, to a ¾" iron rod found for the northwest corner of said 1.006 acre tract, in the east line of aforesaid 0.917 acre tract; **THENCE** North 27°26'37" East - 104.30', along said east line to a ¾" iron rod found for the northeast corner of said 0.917 acre tract, common to the the northeast corner and **POINT OF BEGINNING** herein described tract;



**THENCE** South 27°26'37" West - 208.71' to a ¾" iron rod found for the southeast corner of said 0.917 acre tract, common to the southeast corner of the herein described tract;

**THENCE** North 62°33'23" West - 208.71' to a ¾" iron rod found for the southwest corner of said 0.917 acre tract, common to the southwest corner of the herein described tract;

**THENCE** North 27°26'37" East - 208.71' to a ¾" iron rod found for the northwest corner of said 0.917 acre tract, common to the northwest corner of the herein described tract;

**THENCE** South 62°33'23" East - 208.71' to the **POINT OF BEGINNING** of the herein described tract and containing 1.000 acres of land.

**FOR A NET AREA OF 308.5 ACRES OF LAND**

**TRACT 2**

All that certain 117.5 acres of land, out of the 126.2 acre tract described in the deed from F.O. Bohls, et ux to Stephen Bohls and Brian Bohls recorded under Volume 7876, Page 998, Volume 8388, Page 345, Volume 8444, Page 921, Volume 9189, Page 776, and Volume 10551, Page 226, in the Deed Records of Travis County, Texas, in the Benjamin Allen Survey, A – 37, the McHenry Windburn Survey, A-825, and the Thomas Sharp Survey, A- 745, Travis County, Texas and more particularly described by metes and bounds as follows: (All bearings are based on the Texas State Plane Coordinate System, Central Zone)

**COMMENCING** at a ¾ iron rod found for the southeast corner of the 217.52 acre tract described in the deed from James Vandehey to Charles Colvin, et al recorded under Volume 12524, Page 1846, in the Official Public Records of Travis County, Texas, in the north right-of-way line of New Sweden Gin Road (Britta Olson Road) (R.O.W. Varies); **THENCE** North 62°38'33" West – 2448.00', along said north right-of-way line, at 1618.00' passing a 1/2" iron rod found for an angle corner of said 217.52 acre tract, common to the southwest corner of the 2.00 acre tract described in the deed to New Sweden Co-Op Gin recorded under Volume 1466, Page 225, in the Deed Records of Travis County, Texas, continuing to a ½" iron rod set for the southeast corner and **POINT OF BEGINNING** of the herein described tract, common to the southwest corner of said 217.52 acre tract and the southeast corner of aforesaid 126.2 acre tract;

**THENCE** North 62°31'51" West - 2157.22', continuing along said north right-of-way line, to a 3/4" iron rod set for the southwest corner of the herein described tract, at the intersection of said north right-of-way line and the east right-of-way line of F.M. Highway No. 973;

**THENCE** North 27°20'08" East - 2368.21', along said east right-of-way line, to a ¾" iron rod set for the northwest corner of the herein described tract, in the north line of aforesaid 126.2 acre tract, common to the south line of the 102.41 acre tract described in the deed from Irene Ollie to Thomas H. Ollie recorded under Document No. 2001214920, in the Official Public Records of Travis County, Texas;

**THENCE** South 62°31'45" East - 2166.38', along said common line, to a ¾" iron rod set for the northeast corner of the herein described tract, common to the northeast corner of said 126.2 acre tract, in a west line of aforesaid 217.52 acre tract;

**THENCE** South 27°33'27" West - 2368.14', along said west line, common to the east line of said 126.2 acre tract, to the **POINT OF BEGINNING** of the herein described tract and containing 117.5 acres of land.

**TWO TRACTS TOGETHER COMPRISING AN AGGREGATE OF 426.0 ACRES OF LAND**



*Rocky J. Bradshaw*  
\_\_\_\_\_  
Certification Date  
March 13, 2006

THIS LEGAL DESCRIPTION IS ISSUED IN CONJUNCTION WITH THE DISTRICT BOUNDARY MAP OF NEW SWEDEN MUNICIPAL UTILITY DISTRICT NO. 2. THIS DOCUMENT WAS PREPARED BASED ON THE SURVEY CONDUCTED BY PATE SURVEYORS DATED MARCH 13, 2006.

# EXHIBIT A MUD 1 ANNEXATION TRACTS

## METES AND BOUNDS DESCRIPTION OF 40.18 ACRES OF LAND IN THE THOMAS SHARP SURVEY, A-746 AND McHENRY WINDBURN SURVEY, A-825 TRAVIS COUNTY, TEXAS

All that certain 40.18 acres of land, out of the 41.45 acre tract described in the deed from Carroll E. Berggren, et al to Nelda Mae Walenta recorded under Volume 4655, Page 34, in the Deed Records of Travis County, Texas, in the Thomas Sharp Survey, A-746 and the McHenry Winburn Survey, A-825, Travis County, Texas, and more particularly described by metes and bounds as follows: (All bearings are based on the Texas State Plane Coordinate System, Central Zone)

**COMMENCING** at a ½" iron rod found for the northeast corner of the 40.00 acre tract described in the deed from Carroll E. Berggren, et al to Carroll E. Berggren recorded under Volume 4655, Page 34, in the Deed Records of Travis County, Texas, common to the northwest corner of the 18.00 acre tract described in the deed from Benard A. Mockry, et ux to Benard A. Mockry, Inc. recorded under Volume 9569, Page 985, in the Deed Records of Travis County, Texas, in the south right-of-way line of New Sweden Gin Road (R.O.W. Varies); **THENCE** South 27°45'04" West - 2135.93', along the west line of said 18.00 acre tract, common to the east line of said 40.00 acre tract, the east line of the 40.00 acre tract described in the deed from Clarice E. Smith to Ronald Walenta, et al recorded under Document No. 2000162361, in the Official Public Records of Travis County, Texas and the 37.338 acre tract described in the deed from Ronald Walenta and Frost National Bank of Austin to An V. Vu, et ux recorded under Document No. 2005017706, in the Official Public Records of Travis County, Texas, to a ½" iron rod found for the southeast corner of said 40.00 acre tract (2000162361), common to the southeast corner of said 37.338 acre tract, the northeast corner of aforesaid 41.45 acre tract and the northeast corner and **POINT OF BEGINNING** of the herein described tract;

**THENCE** South 27°45'04" West - 1108.85', continuing along said west line, common to the east line of said 41.45 acre tract, to a ¾" iron rod set for the southeast corner of the herein described tract, common to the southeast corner of said 41.45 acre tract and the northeast corner of the 116.88 acre tract described in the deed from Thomas Mikus, et ux to Douglas T. Mikus and Donald R. Mikus recorded under Volume 12173, Page 573, in the deed records of Travis County, Texas;

**THENCE** North 62°19'56" West - 1614.07', along the south line of said 41.45 acre tract, common to the north line of said 116.88 acre tract, to a ¾" iron rod set for the southwest corner of the herein described tract, in the east right-of-way line of F.M. Highway No. 973 (R.O.W. Varies) according to Document No. 1999048539, in the Official Public Records of Travis County, Texas, from which point a found ½" iron rod with a Texas Department of Transportation aluminum cap bears South 30°56'48" West - 2.03', and common to a point on a curve to the right having a central angle of 00°25'49", a radius of 11359.18', and from which point the center of the circle of said curve bears South 59°17'53" East;

**THENCE** along said curve to the right, along said east right-of-way line, in a northeasterly direction, an arc distance of 85.31' to a ¾" iron rod set for the end of curve;

Page 2 - 40.18 Acres

**THENCE** North  $31^{\circ}07'56''$  East - 1021.04', continuing along said east right-of-way line, to a  $\frac{1}{4}$ " iron rod set for the northwest corner of the herein described tract, in the north line of aforesaid 41.45 acre tract, common to the south line of aforesaid 40.00 acre tract (2000162361);

**THENCE** South  $62^{\circ}29'56''$  East - 1549.15', along said common line, to the **POINT OF BEGINNING** of the herein described tract and containing 40.18 acres of land.

Prepared by:  
PATE SURVEYORS  
a division of  
Pate Engineers, Inc.  
Job No. 974-014-06-A520



*Neil Hines*

Certification Date  
May 31, 2006

THIS LEGAL DESCRIPTION IS ISSUED AS "PART TWO", IN CONJUNCTION WITH THE LAND TITLE SURVEY BY PATE SURVEYORS LAST CERTIFIED MAY 31, 2006. REFERENCE IS HEREBY MADE TO THE SURVEY AS "PART ONE".

**METES AND BOUNDS DESCRIPTION  
OF 36.98 ACRES OF LAND  
IN THE THOMAS SHARP SURVEY, A-745  
THE THOMAS SHARP SURVEY, A-746  
AND THE McHENRY WINDBURN SURVEY, A-825  
TRAVIS COUNTY, TEXAS**

All that certain 36.98 acres of land, out of the 40.00 acre tract described in the deed from Carroll E. Berggren, et al to Carroll E. Berggren recorded under Volume 4655, Page 34, in the Deed Records of Travis County, Texas, in the Thomas Sharp Survey, A-745, the Thomas Sharp Survey, A-746, and the McHenry Winburn Survey, A-825, Travis County, Texas, and more particularly described by metes and bounds as follows: (All bearings are based on the Texas State Plane Coordinate System, Central Zone)

**BEGINNING** at a ½" iron rod found for the northeast corner of the 40.00 acre tract described in the deed from Carroll E. Berggren, et al to Carroll E. Berggren recorded under Volume 4655, Page 34, in the Deed Records of Travis County, Texas, common to the northwest corner of the 18.00 acre tract described in the deed from Benard A. Mockry, et ux to Benard A. Mockry, Inc. recorded under Volume 9569, Page 985, in the Deed Records of Travis County, Texas, in the south right-of-way line of New Sweden Gin Road (R.O.W. Varies);

**THENCE** South 27°45'04" West - 1068.06', along the east line of said 40.00 acre tract, common to the west line of said 18.00 acre tract, to the southeast corner of the herein described tract, common to the southeast corner of said 40.00 acre tract, the northeast corner of the 40.00 acre tract described in the deed from Clarice E. Smith to Ronald Walenta, et al recorded under Document No. 2000162361, in the Official Public Records of Travis County, Texas, and the northeast corner of the 37.338 acre tract described in the deed from Ronald Walenta and Frost National Bank of Austin to An V. Vu, et ux recorded under Document No. 2005017706, in the Official Public Records of Travis County, Texas, from which a ½" iron rod found for the southeast corner of said 40.00 acre tract (2000162361), common to the northeast corner of the 41.45 acre tract described in the deed from Carroll E. Berggren, et al to Nelda Mae Walenta recorded under Volume 4655, Page 34, in the Deed Records of Travis County, Texas, bears South 27°45'04" West - 1067.87';

**THENCE** North 62°29'56" West - 1508.22', along the south line of said 40.00 acre tract (4655/34), common to the north line of said 40.00 acre tract (2000162361) and the north line of said 37.388 acre tract, to a ¾" iron rod set for the southwest corner of the herein described tract, common to the northwest corner of said 37.338 acre tract, in the east right-of-way line of F.M. Highway No. 973 (R.O.W. Varies) according to Document No. 1999045924, in the Official Public Records of Travis County, Texas, common to a point on a curve to the left, having a central angle of 00°15'04", a radius of 11559.18', and from which point the center of the circle of said curve bears North 62°24'49" West;

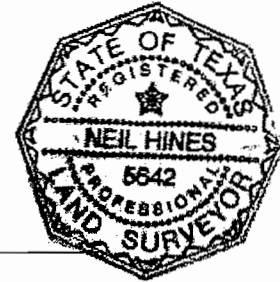
**THENCE** along said curve to the left, along said east right-of-way line, in a northeasterly direction, an arc distance of 50.66' to a ¾" iron rod set for the end of curve;

**THENCE** North 27°20'06" East - 1012.36', continuing along said east right-of-way line, to a ¾" iron rod set for the northeast corner of the herein described tract, at the intersection of said east right-of-way line and the south right-of-way line of aforesaid New Sweden Gin Road;

Page 2 - 36.98 ACRES

**THENCE** South 62°41'20" East - 1515.85', along said south right-of-way line, to the **POINT OF BEGINNING** of the herein described tract and containing 36.98 acres of land.

Prepared by:  
PATE SURVEYORS  
a division of  
Pate Engineers, Inc.  
Job No. 974-014-06-A520



*Neil Hines*

Certification Date

May 31, 2006

THIS LEGAL DESCRIPTION IS ISSUED AS "PART TWO", IN CONJUNCTION WITH THE LAND TITLE SURVEY BY PATE SURVEYORS LAST CERTIFIED MAY 31, 2006. REFERENCE IS HEREBY MADE TO THE SURVEY AS "PART ONE".

**METES AND BOUNDS DESCRIPTION  
OF 37.32 ACRES OF LAND  
IN THE THOMAS SHARP SURVEY, A-746  
AND McHENRY WINDBURN SURVEY, A-825  
TRAVIS COUNTY, TEXAS**

All that certain 37.32 acres of land, out of the 40.00 acre tract described in the deed from Clarice E. Smith to Ronald Walenta, et al recorded under Document No. 2000162361, in the Official Public Records of Travis County, Texas and the 37.338 acre tract described in the deed from Ronald Walenta and Frost National Bank of Austin to An V. Vu, et ux recorded under Document No. 2005017706, in the Official Public Records of Travis County, Texas, in the Thomas Sharp Survey, A-746 and the McHenry Winburn Survey, A-825, Travis County, Texas, and more particularly described by metes and bounds as follows: (All bearings are based on the Texas State Plane Coordinate System, Central Zone)

**COMMENCING** at a ½" iron rod found for the northeast corner of the 40.00 acre tract described in the deed from Carroll E. Berggren, et al to Carroll E. Berggren recorded under Volume 4655, Page 34, in the Deed Records of Travis County, Texas, common to the northwest corner of the 18.00 acre tract described in the deed from Benard A. Mockry, et ux to Benard A. Mockry, Inc. recorded under Volume 9569, Page 985, in the Deed Records of Travis County, Texas, in the south right-of-way line of New Sweden Gin Road (R.O.W. Varies); **THENCE** South 27°45'04" West - 1068.06', along the east line of said 40.00 acre tract (4655/34), common to the west line of said 18.00 acre tract, to the southeast corner of said 40.00 acre tract (4655/34), common to the northeast corner of aforesaid 40.00 acre tract (2000162361), the northeast corner of aforesaid 37.338 acre tract, and the northeast corner and **POINT OF BEGINNING** of the herein described tract, from which a found ½" iron rod (bent) bears South 20°44'02" West - 1.16';

**THENCE** South 27°45'04" West - 1067.87', continuing along said west line, common to the east line of said 40.00 acre tract (2000162361) and the east line of said 37.338 acre tract, to a ½" iron rod found for the southeast corner of said 40.00 acre tract (2000162361), common to the southeast corner of said 37.338 acre tract and the northeast corner of the 41.45 acre tract described in the deed from Carroll E. Berggren, et al to Nelda Mae Walenta recorded under Volume 4655, Page 34, in the Deed Records of Travis County, Texas;

**THENCE** North 62°29'56" West - 1549.15', along the south line of said 40.00 acre tract (2000162361), common to the north line of said 41.45 acre tract, to a ¾" iron rod set for the southwest corner of the herein described tract, in the east right-of-way line of F.M. Highway No. 973 (R.O.W. Varies) according to Document No. 1999047577, in the Official Public Records of Travis County, Texas, from which a ½" iron rod found with a Texas Department of Transportation aluminum cap bears South 22°30'40" West - 2.79';

**THENCE** North 31°07'56" East - 353.71', along said east right-of-way line, to a ¾" iron rod set for the Point of Curvature of a curve to the left, having a central angle of 03°32'45", and a radius of 11559.18';

**THENCE** along said curve to the left, continuing along said east right-of-way line, in a northeasterly direction, an arc distance of 715.35' to a ¾" iron rod set for the northwest corner of the herein described tract, common to the northwest corner of aforesaid 37.338 acre tract, in the north line of aforesaid 40.00 acre tract (2000162361), common to the south line of aforesaid 40.00 acre tract (4655/34);

Page 2 - 37.32 Acres

**THENCE** South 62°29'56" East - 1508.22', along said common line, to the **POINT OF BEGINNING** of the herein described tract and containing 37.32 acres of land.

Prepared by:  
PATE SURVEYORS  
a division of  
Pate Engineers, Inc.  
Job No. 974-014-06-A520



*Neil Hines*

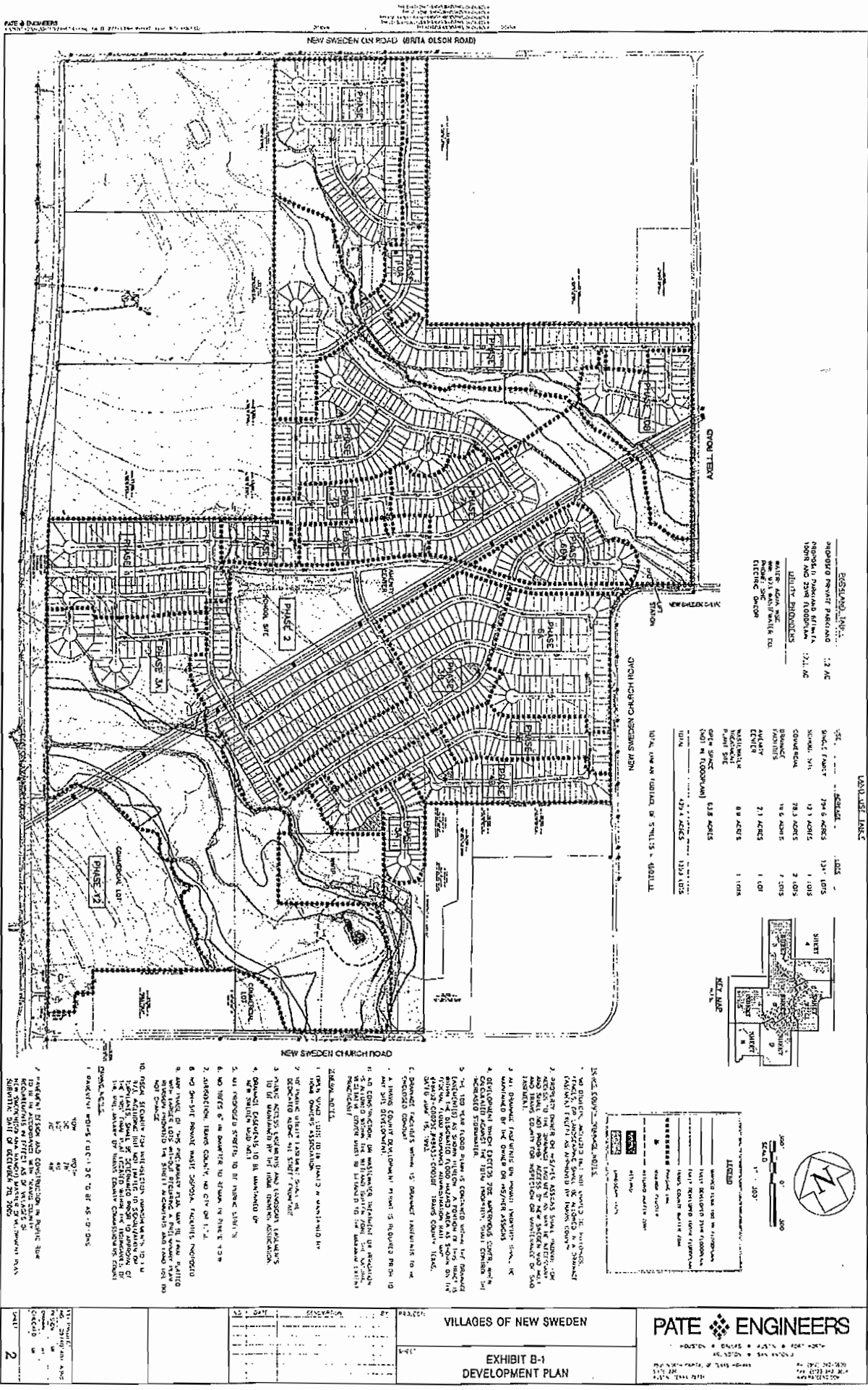
Certification Date  
May 31, 2006

THIS LEGAL DESCRIPTION IS ISSUED AS "PART TWO", IN CONJUNCTION WITH THE LAND TITLE SURVEY BY PATE SURVEYORS LAST CERTIFIED MAY 31, 2006. REFERENCE IS HEREBY MADE TO THE SURVEY AS "PART ONE".



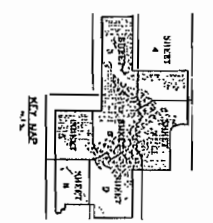
**EXHIBITS B-1 AND B-2**

**DEVELOPMENT PLAN**

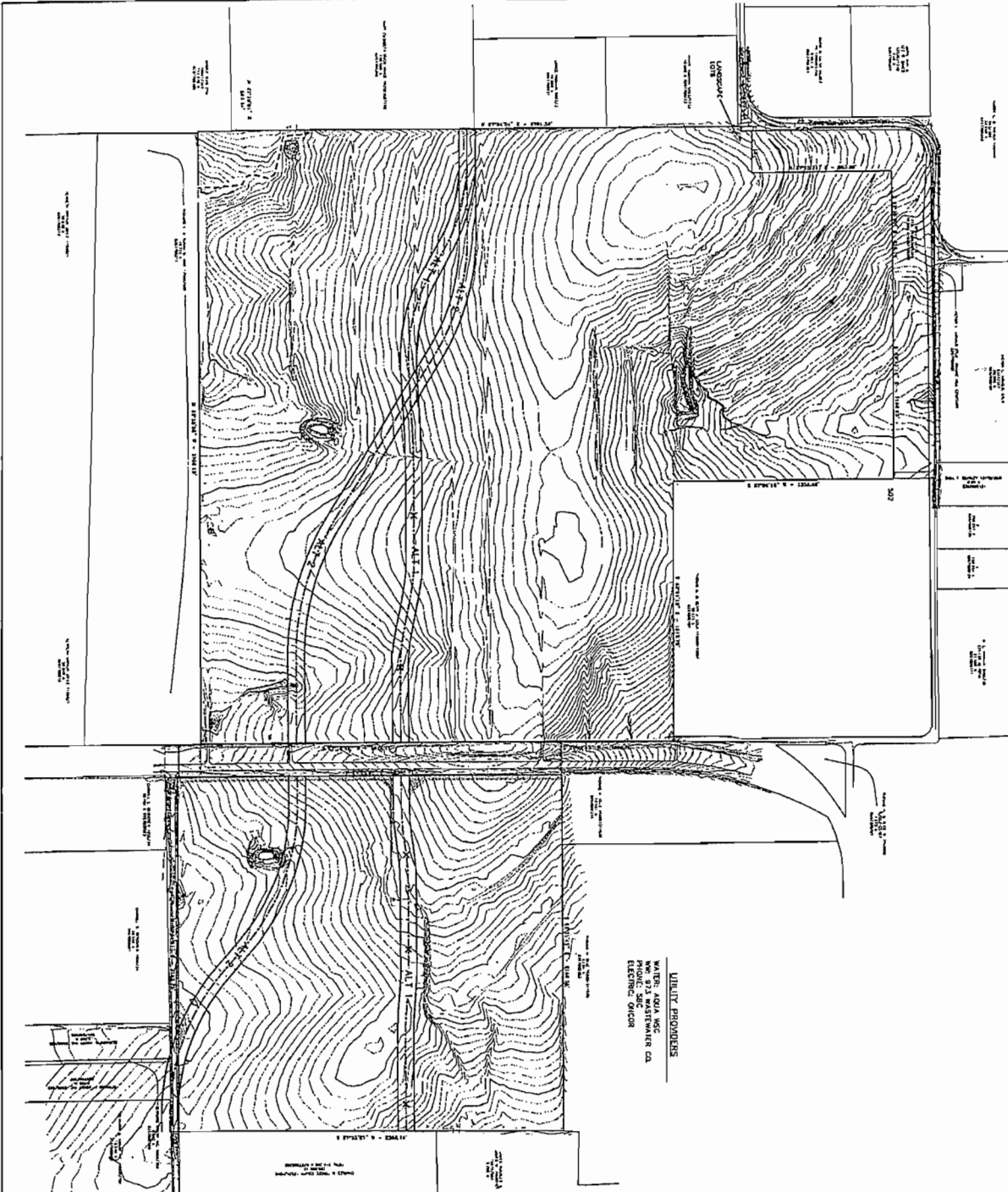


**EXISTING INFO:**  
APPROXIMATELY 1.2 AC  
REMOVAL OF EXISTING INFRASTRUCTURE  
100% AND 20% RECONSTRUCTION  
22.06  
WATER, SEWER, GAS, AND  
ELECTRIC UTILITIES  
EXISTING UTILITIES

ITEM	QUANTITY	UNIT
1. GRAVEL	134	1000 YDS
2. ASPHALT	134	1000 YDS
3. CONCRETE	78.3	1000 YDS
4. CEMENT	78.3	1000 YDS
5. SAND	78.3	1000 YDS
6. GRAVEL	78.3	1000 YDS
7. ASPHALT	78.3	1000 YDS
8. CONCRETE	78.3	1000 YDS
9. CEMENT	78.3	1000 YDS
10. SAND	78.3	1000 YDS
11. GRAVEL	78.3	1000 YDS
12. ASPHALT	78.3	1000 YDS
13. CONCRETE	78.3	1000 YDS
14. CEMENT	78.3	1000 YDS
15. SAND	78.3	1000 YDS
16. GRAVEL	78.3	1000 YDS
17. ASPHALT	78.3	1000 YDS
18. CONCRETE	78.3	1000 YDS
19. CEMENT	78.3	1000 YDS
20. SAND	78.3	1000 YDS



- NOTES:**
1. ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.
  2. ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.
  3. ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.
  4. ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.
  5. ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.
  6. ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.
  7. ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.
  8. ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.
  9. ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.
  10. ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.
  11. ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.
  12. ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.
  13. ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.
  14. ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.
  15. ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.
  16. ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.
  17. ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.
  18. ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.
  19. ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.
  20. ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.



- BOHLS TRACT**
- EXHIBIT B-2**
- DEVELOPMENT PLAN**
- LEGEND**
- WATER, FLOOD, AND EROSION CONTROL
  - LANDSCAPE LOT
  - WATER, FLOOD, AND EROSION CONTROL
  - LANDSCAPE LOT
- BOHLS TRACT**
- EXHIBIT B-2**
- DEVELOPMENT PLAN**
- LEGEND**
- WATER, FLOOD, AND EROSION CONTROL
  - LANDSCAPE LOT
  - WATER, FLOOD, AND EROSION CONTROL
  - LANDSCAPE LOT
- BOHLS TRACT**
- EXHIBIT B-2**
- DEVELOPMENT PLAN**
- LEGEND**
- WATER, FLOOD, AND EROSION CONTROL
  - LANDSCAPE LOT
  - WATER, FLOOD, AND EROSION CONTROL
  - LANDSCAPE LOT

NO.	DATE	DESCRIPTION	BY	PROJECT	SHEET
1	07/20/2006	PRELIMINARY DEVELOPMENT PLAN		BOHLS TRACT	2
2	07/20/2006	FINAL DEVELOPMENT PLAN		BOHLS TRACT	2

**PATE ENGINEERS**

HOUSTON • DALLAS • AUSTIN • FORT WORTH  
 ARLINGTON • SAN ANTONIO

7801 NORTH CAPITAL OF TEXAS HIGHWAY  
 SUITE 200  
 AUSTIN, TEXAS 78731

PH: (512) 340-0000  
 FAX: (512) 340-0004  
 WWW.PATEENG.COM

**EXHIBIT C**

**LANDSCAPING REQUIREMENTS**

# XERISCAPE PLANTS FOR PFLUGERVILLE

Revised February 2001

## TURF

Bermudagrass  
*Cynodon dactylon*

Buffalograss  
*Buchloe dactyloides*

## TREES

### EVERGREEN

Afghan Pine  
*Pinus eldarica*

Live Oak  
*Quercus virginiana*

Deodar Cedar  
*Cedrus deodara*

Cherry Laurel  
*Prunus caroliniana*

Mountain Laurel  
*Sophora secundiflora*

### DECIDUOUS

Bald Cypress  
*Taxodium distichum*

Honey Mesquite  
*Prosopis glandulosa*

Mexican White Oak  
*Quercus polymorpha*

Bradford Pear  
*Pyrus calleryana* 'Bradford'

Mexican Buckeye  
*Ungnadia speciosa*

Goldenrain tree  
*Koelerutena paniculata*

Burr Oak  
*Quercus macrocarpa*

Mexican Plum  
*Prunus mexicana*

Western Soapberry  
*Sapindus saponaria* var. *drummondii*

Cedar Elm  
*Ulmus carassifolia*

Pecan  
*Carya illinoensis*

Chinese Pistache  
*Pistachia chinensis*

Shumard Oak (Red)  
*Quercus shumardii*

Chinquapin Oak  
*Quercus muhlenbergii*

Texas Ash  
*Fraxinus texensis*

Crape Myrtle  
*Lagerstroemia indica*

Texas Persimmon  
*Diospyros texana*

Desert Willow  
*Chilopsis linearis*

Texas Redbud  
*Cercis canadensis* var. *texensis*

Escarpment Cherry  
*Prunus serotina* 'Escarpment'

Texas Red Oak  
*Quercus texana*

Flameleaf Sumac  
*Rhus copallina* and *lanceolata*

Vitex, Lilac Tree  
*Vitex agnus-castus*

## **SHRUBS**

### **EVERGREEN**

Agave

*Berberis trifoliolata*

Burford Holly

*Ilex cornuta 'Burfordii'*

Damianita

*Chrysanthemum mexicanum*

Dwarf Burford Holly

*Ilex cornuta 'Burfordii Nana'*

Dwarf Chinese Holly

*Ilex cornuta 'Dwarf Chinese'*

Dwarf Yaupon Holly

*Ilex vomitoria 'Nana'*

Elaeagnus

*Elaeagnus pungens*

Indian Hawthorn

*Raphiolepis indica*

Nandina

*Nandina domestica*

Scullcap

*Scutellaria suffrutescens*

### **SEMI-EVERGREEN**

Aspidistra

*Aspidistra elatior*

Autumn Sage

*Salvia greggii*

Glossy Abelia

*Abelia grandiflora*

Mexican Oregano

*Polioanthus longiflorus*

Rose Mallow

*Pavonia lasiopetala*

Red Yucca

*Yucca parviflora*

Rock Cotoneaster

*Cotoneaster horizontalis*

Rosemary

*Rosmarinus officinalis*

Sacahuista, Bear Grass

*Nolina texana*

Silverleaf Cotoneaster

*Cotoneaster glaucophylla*

Texas Sage

*Leucophyllum frutescens*

Texas Sotol

*Dasylirion texanum*

Yaupon Holly

*Ilex vomitoria*

Evergreen Sumac

*Rhus virens*

Orange Zexmenia

*Zexmenia hispida*

Pineapple Guava

*Feijoa sellowiana*

Pomegranate

*Punica granatum*

Primrose Jasmine

*Jasminum mesnyi*

## DECIDUOUS

American Beautyberry  
*Callicarpa americana*

Rose Of Sharon  
*Hibiscus syriacus*

Butterflybush  
*Buddleja spp*

Trailing Lantana  
*Lantana montevidensis*

Black Dalea  
*Dalea frutescens*

Texas Lantana  
*Lantana horrida*

Possumhaw Holly  
*Ilex decidua*

Prairie Flameleaf Sumac  
*Rhus lanceolata*

Flame Acanthus  
*Anisacanthus wrightii*

Bird of Paradise  
*Caesalpinia gilliesii*

Roughleaf Dogwood  
*Cornus drummondii*

## VINES & GROUNDCOVERS

Asian Jasmine  
*Trachelospermum asiaticum*

Bigleaf Periwinkle  
*Vinca major*

Carolina Jessamine  
*Gelsemium sempervirens*

Coral Honeysuckle  
*Lonicera sempervirens*

Cross Vine  
*Bignonia capreolata*

English Ivy  
*Hedera helix*

Fig Vine  
*Ficus pumila*

Halls Honeysuckle  
*Lonicera japonica*

Lady Banksia Rose  
*Rosa banksia*

Liriope  
*Liriope muscari*

Littleleaf Periwinkle  
*Vinca minor*

Monkey grass  
*Ophiopogon japonicus*

## DECIDUOUS

Boston Ivy  
*Parthenocissus tricuspidata*

Cypress Vine  
*Quamoclit pennata*

Gregg Dalea  
*Dalea greggii*

Mustang Grape  
*Vitis mustangensis*

Old Man's Beard  
*Clematis drummondii*

Passion Vine  
*Passiflora incarnata*

Queen's Wreath / Coral Vine  
*Antigonon leptopus*

Trumpet Creeper  
*Campsis radicans*

Virginia Creeper  
*Parthenocissus quinquefolia*

Wooly Stemodia  
*Stemodia tomentosa*

## DECIDUOUS

American Beautyberry  
*Callicarpa americana*

Rose Of Sharon  
*Hibiscus syriacus*

Butterflybush  
*Buddleja spp*

Trailing Lantana  
*Lantana montevidensis*

Black Dalea  
*Dalea frutescens*

Texas Lantana  
*Lantana horrida*

Possumhaw Holly  
*Ilex decidua*

Prairie Flameleaf Sumac  
*Rhus lanceolata*

Flame Acanthus  
*Anisacanthus wrightii*

Bird of Paradise  
*Caesalpinia gilliesii*

Roughleaf Dogwood  
*Cornus drummondii*

## VINES & GROUNDCOVERS

Asian Jasmine  
*Trachelospermum asiaticum*

Bigleaf Periwinkle  
*Vinca major*

Carolina Jessamine  
*Gelsemium sempervirens*

Coral Honeysuckle  
*Lonicera sempervirens*

Cross Vine  
*Bignonia capreolata*

English Ivy  
*Hedera helix*

Fig Vine  
*Ficus pumila*

Halls Honeysuckle  
*Lonicera japonica*

Lady Banksia Rose  
*Rosa banksia*

Liriope  
*Liriope muscari*

Littleleaf Periwinkle  
*Vinca minor*

Monkey grass  
*Ophiopogon japonicus*

## DECIDUOUS

Boston Ivy  
*Parthenocissus tricuspidata*

Cypress Vine  
*Quamoclit pennata*

Gregg Dalea  
*Dalea greggii*

Mustang Grape  
*Vitis mustangensis*

Old Man's Beard  
*Clematis drummondii*

Passion Vine  
*Passiflora incarnata*

Queen's Wreath / Coral Vine  
*Antigonon leptopus*

Trumpet Creeper  
*Campsis radicans*

Virginia Creeper  
*Parthenocissus quinquefolia*

Wooly Stemodia  
*Stemodia tomentosa*



## FLOWERING PERENNIALS

Black-eyed Susan  
*Rudbeckia hirta*

Blackfoot Daisy  
*Melampodium leucanthum*

Cedar Sage  
*Salvia roemeriana*

Coreopsis  
*Coreopsis lanceolata*

Whitemouth Dayflower  
*Commelina erecta*

Daylily  
*Hemerocallis sp.*

Gayfeather  
*Liatris mucronata*

Toothleaf Goldeneye  
*Viguiera dentata*

Heartleaf Hibiscus  
*Hibiscus cardiophyllus*

Hinckley's Columbine  
*Aquilegia 'hinckleyana'*

Clustered Gold Flower  
*Hymenoxys scaposa*

Indian Blanket  
*Gaillardia sp.*

Yarrow  
*Achillea millefolium*

Rock Penstemon  
*Penstemon baccharifolius*

Mexican Marigold Mint  
*Tagetes lucida*

Maximilian Sunflower  
*Helianthus maximiliani*

Mealy Blue Sage  
*Salvia farinacea*

Mexican Sage  
*Salvia leucantha*

Michaelmas Daisy  
*Aster triflorus*

Oxeye Daisy  
*Chrysanthemum leucanthemum*

Peruvian Verbena  
*Verbena peruviana*

Blue Plumbago  
*Plumbago auriculata*

Purple Coneflower  
*Echinacea purpurea*

Royal Scarlet Sage  
*Salvia coccinea*

Spiderwort  
*Tradescantia sp.*

Turk's Cap  
*Malvastrum drummondii*

Yellow Bells  
*Tecoma stans*

Greggs Mistflower  
*Eupatorium greggii*

Copper Canyon Daisy  
*Tagetes lemmonii*

## ORNAMENTAL GRASSES

**Muhly Grass**  
*Muhlenbergia* spp.

**Side Oats Gramma**  
*Bouteloua curtipendula*

**Zebra Grass**  
*Miscanthus sinensis* 'Zebra'

**Maiden Grass**  
*Miscanthus sinensis* 'Gracillimus'

**EXHIBIT D**

**AGREEMENT CONCERNING WASTEWATER SERVICE**

## AGREEMENT CONCERNING WASTEWATER SERVICE

This Agreement Concerning Wastewater Service (the "Agreement") is entered into among the City of Pflugerville, a home-rule city located in Travis County, Texas (the "City") and RMD Construction, Inc. d/b/a 973 Wastewater Company or its successors or assigns as permitted herein ("973 Wastewater Company"). Collectively, the City and 973 Wastewater Company are hereafter referred to sometimes as the "Parties;"

Whereas, the City and Wilson Family Communities, Inc., R.M.D. Holdings, L.P., a Texas Limited Partnership and its affiliate, New Sweden MPC, L.P. a Texas Limited Partnership or their successors or assigns as permitted herein (collectively, the "Developers") are entering into that certain "New Sweden Development Agreement" (the "Development Agreement") contemporaneously with the execution of this Agreement;

Whereas, the Development Agreement contemplates that the Developers will create up to three (3) municipal utility districts (to be known as New Sweden MUDs 1 ("MUD 1"), New Sweden MUD 2 ("MUD 2") and New Sweden MUD 3 ("MUD 3"), respectively) (said area shown on Exhibit A hereto and referred to hereafter as the "Tract"), with the parts of the Tract currently anticipated to be included within or served by a district also being shown on Exhibit A hereto and referred to as the "MUD 1 Tract," the "MUD 2 Tract" and the "MUD 3 Tract," respectively;

Whereas, Section 1.16 of the Development Agreement contemplates that the Parties will enter into this Agreement to govern certain aspects of the provision of wastewater service to the "Tract" (as defined in the Development Agreement); and

Whereas, 973 Wastewater Company intends to initially provide wholesale wastewater service for the MUD 1 Tract and the MUD 2 Tract, and is constructing wastewater transmission facilities with capacity to serve the entire Tract and other areas outside of the Tract ("Other Areas"); **Now, therefore,**

### **It is Hereby Agreed Between the Parties as Follows.**

**Sec. 1 Capitalized Terms.** If a word or term is capitalized, but not defined, in this Agreement it shall have the meaning provided in the Development Agreement, which is hereby incorporated herein by reference for such purpose, unless this Agreement clearly provides for a different meaning for such capitalized word or term.

### **Sec. 2 Wastewater Service.**

**A. The Treatment Plant.** 973 Wastewater Company has obtained a wastewater treatment and disposal TPDES Permit No. WQ0014642001 (the "Permit") for, and to construct, own and operate (i) a 0.95 million gallons per day ("MGD") wastewater treatment and disposal facility and associated rights of access to the site for the plant (the "Treatment Plant") to provide wholesale wastewater treatment and disposal service to the MUD 1 Tract and the MUD 2 Tract. The Treatment Plant shall include the assets listed on Exhibit B to this Agreement. The total capacity of the 0.95 MGD Treatment Plant

and Permit is reserved for the exclusive use of the MUD 1 Tract and the MUD 2 Tract for the term of the wholesale agreements between 973 Wastewater Company and the Developers of the MUD 1 Tract and the MUD 2 Tract as discussed later herein. The Treatment Plant will be owned and operated by the 973 Wastewater Company. 973 Wastewater Company has obtained the initial Permit from the Texas Commission on Environmental Quality ("TCEQ") to enable it to construct the Treatment Plant to provide wholesale wastewater service for the Tract in an amount up to 0.95 MGD, in three phases: the first phase for a capacity of 150,000 gallons per day ("Phase I"); the second phase for a capacity of 475,000 gallons per day ("Phase II"); and the third phase for a capacity of 950,000 gallons per day ("Phase III"). Phases I, II and III of the Treatment Plant are reserved to serve solely the MUD 1 Tract and the MUD 2 Tract. The MUD 3 Tract shall have no capacity reserved in Phases I, II or III of the Treatment Plant.

**B. The Transmission Facilities.** 973 Wastewater Company intends to cause to be constructed wastewater transmission facilities and appurtenances thereto leading to the Treatment Plant (the "Transmission Facilities") to provide wastewater transportation service to all or portions of the Tract and adjacent areas to be served by the City. The Transmission Facilities will be owned and operated by the Developers, MUD 1 or MUD 2. The Transmission Facilities are intended to serve the entire Tract and the Other Areas. The total amount of capacity in the Transmission Facilities, and the amount of such capacity in the Transmission Facilities reserved for the exclusive use of the MUD 1 Tract, the MUD 2 Tract and the MUD 3 Tract is shown on Exhibit C hereto. The capacity reserved in the Transmission Facilities shall be reserved for the term of the wholesale agreements between 973 Wastewater Company and the Developers of the MUD 1 Tract and the MUD 2 Tract or the City and MUD 3 for the MUD 3 Tract as discussed later herein; provided, however, if MUD 3 or the Developers of the MUD 3 Tract do not begin to utilize the capacity reserved for the MUD 3 Tract in the Transmission Facilities within ten (10) years after execution of this Agreement, then the capacity reserved for the MUD 3 Tract in the Transmission Facilities shall no longer be reserved for the exclusive use of the MUD 3 Tract.

**C. Excess Transmission Capacity Over and above Reserved Capacity; Project.** The portions of the capacity of the Treatment Plant, the Permit and the Transmission Facilities reserved for the exclusive use of the MUD 1 Tract, the MUD 2 Tract and the MUD 3 Tract as described in subsections A and B above shall be referred to as the "Reserved Capacity." The excess capacity in the Transmission Facilities over and above the Reserved Capacity therein is hereafter referred to as the "Excess Transmission Capacity." The Permit, the Treatment Plant and the Excess Transmission Capacity are hereafter referred to, collectively, as the "Project." The Project is generally described on Exhibit D hereto. The Permit and the Treatment Plant shall be as described in Section 2. A of this Agreement. The Excess Transmission Capacity shall mean the amounts of capacity in the various parts of the Transmission Facilities described as Excess Transmission Capacity in Exhibit C hereto.

**D. Wastewater Service to the Tract.** The City hereby consents to 973 Wastewater Company providing wholesale wastewater treatment and disposal service to all or any portions of the Tract, subject to the other provisions of this Agreement. Retail

wastewater service to all or any part of the Tract acquired by the Developers may be provided by MUDs 1, 2 or 3.

**Sec. 3 Construction and Expansion of Project.** The City hereby consents to 973 Wastewater Company constructing, or causing the construction of, Phases I, II and III of the Treatment Plant and the Transmission Facilities. If the Option to acquire the Project granted to the City in Section 4 of this Agreement expires or is terminated, 973 Wastewater Company may construct expansions of the Treatment Plant beyond Phase III pursuant to the provisions of this Agreement to serve the MUD 3 Tract and the Other Areas. The Project (to be constructed, or caused to be constructed, by 973 Wastewater Company) and the wastewater collection facilities (to be constructed by the Developers) within, or serving, the Tract will be built to the City of Pflugerville Engineering Design Guidelines and Construction Standards Manual and the City's Site Development Code Standards as currently set forth in Chapter 155 of the City Code (collectively referred to as "City Standards") except that 973 Wastewater Company and the Developers shall not be required to backfill utility trenches with compacted base materials, but will backfill utility trenches as provided for by the City's 1993 Construction Standards Manual Specification Item 0533. The City is hereby granted access to, and shall have the right to inspect, all such construction for all purposes, including but not limited to compliance with City Standards. 973 Wastewater Company agrees, however, to allow the City to expand the Treatment Plant on the current site of the Treatment Plant (the "Site") and to seek amendments to the Permit to enable the City to construct expansions of the Treatment Plant beyond Phase III to serve the MUD 3 Tract and the Other Areas provided the City exercises the option to acquire the Project as provided by this Agreement. 973 Wastewater Company will cooperate with City to enable City (i) to apply for and obtain such permit amendments and (ii) provided the City exercises the option to acquire the Project, to construct and operate expansions of the Treatment Plant to serve the MUD 3 Tract and the Other Areas as provided herein.

**Sec. 4 Option to Purchase Project.** The City shall have an option to purchase the Project (the "Option") under the following terms and conditions:

**A. Description of Option.** The Option shall commence upon execution of this Agreement and continue thereafter for a period ending at the earlier of (i) one (1) year after the City obtains an order from the Texas Commission on Environmental Quality (the "TCEQ") approving an amendment to the Permit, or a separate permit as provided below, to expand the Treatment Plant beyond 0.95 MGD on the Site as discussed below or (ii) the date that is sixty (60) days after the TCEQ has given written notice to the City that the City's application for such permit, or amendment to the Permit, has been denied (the "Option Period"). During the Option Period, (i) 973 Wastewater Company agrees not to offer for sale, or enter into any agreement to sell, the Project to any Third Party and (ii) the City agrees, at its sole expense, to use "diligent efforts" to enter into agreements with other potential wastewater customers within the MUD 3 Tract and the Other Areas and to obtain, in the name of both the City and 973 Wastewater Company, a permit, or an amendment to the Permit of 973 Wastewater Company, in the amount of an additional 2.05 MGD and to construct, or cause to be constructed, a wastewater plant expansion on the Site to serve such customers. When used in the preceding sentence, the term "diligent

efforts” shall mean that the City (a) must file an application for a permit, or amendment to the Permit, for an additional 2.05 MGD by the ninetieth (90<sup>th</sup>) day after execution of this Agreement by the Parties; (b) the application shall be determined to be administratively complete by the TCEQ by the one hundred and eightieth (180<sup>th</sup>) day after execution of this Agreement by the Parties; and (c) the application shall be granted by the TCEQ by five hundred and fortieth (540<sup>th</sup>) day after execution of this Agreement by the Parties. These deadlines may be changed by agreement of the parties in writing. If the City does not exercise the Option during the Option Period, and subsequently purchase the Project from 973 Wastewater Company, or if the City fails to meet one of the deadlines for using “diligent efforts” to obtain the Permit, or amendment to the Permit, as set forth in the preceding sentence, then 973 Wastewater Company shall have the right to notify the City, in writing, that the Option has expired and the City shall assign to 973 Wastewater Company the City’s interest in any permit, or amendment of the Permit, or application therefor, if requested by 973 Wastewater Company, for expansion of the Treatment Plant on the Site free and clear of any liens, claims or encumbrances and pursuant to such documents as may be reasonably agreed to by 973 Wastewater Company; provided, however, if the these deadlines are not met due to circumstances beyond the reasonable control of the City and for so long as the City continues to use diligent efforts to accomplish such matters, 973 Wastewater Company shall not terminate the Option for failure to meet the deadlines.

**B. Exercise of Option.** If the City desires to exercise the Option during the Option Period, then the City shall first provide written notice to 973 Wastewater Company, with a copy to MUDs 1, 2 and 3; provided, however, the City shall be deemed to have delivered such written notice to 973 Wastewater Company to exercise the Option if (i) the City obtains a permit, or an amendment to the Permit, for expansion of the Treatment Plant on the Site and (ii) the City enters into the draft wholesale wastewater agreement with MUD 3 as discussed later herein or an agreement with another customer in areas of the Tract outside of the MUDs 1, 2 and 3 Tracts or in the Other Areas for the provision of wastewater service to such other customer from the Treatment Plant expansion permitted to the City on the Site. If the City provides, or is deemed to have provided, such notice to 973 Wastewater Company, then (i) the City shall be obligated to purchase, and 973 Wastewater Company to sell, the Project under the other terms of this Section 5 and (ii) 973 Wastewater Company agrees not to offer for sale, or enter into any agreement to sell, the Project to any Third Party so long as the City is not in material breach of this Section 4.

The purchase price for the City to purchase the Project shall be the costs of the Treatment Plant, the Site and the Permit (not including any costs of the Transmission Facilities) incurred by or on behalf of 973 Wastewater Company, including, without limitation, all costs of design, engineering, materials, labor, construction and inspection arising in connection with the Treatment Plant; all reasonable payments arising under any contracts entered into for the construction of the Treatment Plant; all costs incurred in connection with obtaining governmental approvals for the Treatment Plant, including the Permit; the 10 acre Site (at \$180,000.00) and all out-of-pocket expenses incurred in connection with the construction of the Treatment Plant (collectively, the “Project Costs”); together with interest on such Project Costs (“Interest”) from the time they are

incurred by 973 Wastewater Company at a rate which is one and one-half percent (1.5%) above the prime rate of interest (for example, if the prime rate is 5.5% then the interest rate for this Agreement is 7.0%) payable quoted in the Wall Street Journal or a similar financial periodical of national circulation as the per annum base rate on corporate loans at large U.S. Money Center Commercial Banks on the date of "Closing," as hereafter defined. The Project Costs as adjusted by the Interest are hereafter referred to as the "Purchase Price".

The Project Costs (i. e., exclusive of the Interest) of the Permit and the Site are listed on Exhibit E hereto. The Parties understand that, except as to Permit and Site costs, the remainder of the Project Costs (i. e., exclusive of the Interest) of the Phases of the Treatment Plant are not known yet. The Parties have therefore described on Exhibit E hereto the Project Costs for all three Phases of the Treatment Plant, the unpaid portion of which are still estimated and therefore unknown at the time of execution of this Agreement. The Parties agree to the following process for determination of the Project Cost (i. e., exclusive of the Interest portion of the Purchase Price) for Phases I, II and III of the Treatment Plant. Within ten (10) days after execution of this Agreement by the City and 973 Wastewater Company, 973 Wastewater Company shall provide to the City copies of all invoices for Project Costs paid for by 973 Wastewater Company to date and shown in Exhibit E. Within ten (10) business days from receipt of copies of invoices related to the Project Costs shown in Exhibit E, the City must reject such invoices in writing to the extent the City finds an invoice objectionable. If the City does not reject a timely submitted invoice within ten (10) business days, the cost evidenced by the invoice shall be deemed accepted by the City as part of the Project Cost for that Phase. For all other invoices, 973 Wastewater Company shall provide to the City copies of invoices that will constitute part of the Project Cost of any Phase of the Treatment Plant within ten (10) days after receipt by 973 Wastewater Company for the City's review. The City must reject such invoice in writing within ten (10) business days after receipt. If the City does not reject a timely submitted invoice within ten (10) business days, the cost evidenced by the invoice shall be deemed accepted by the City as part of the Project Cost for that Phase. Within thirty (30) days after completion of construction of any Phase of the Treatment Plant listed on Exhibit E hereto, and thirty (30) days prior to the time of Closing of the purchase of the Phase of the Treatment Plant, 973 Wastewater Company shall present an invoice to the City specifying the portion of the Purchase Price consisting of the total Project Costs for that Phase of the Treatment Plant, which total Project Costs shall be the sum of all invoices presented to the City by 973 Wastewater Company for that Phase. If

- (i) the City has not objected to any of the invoices previously presented by 973 Wastewater Company for that Phase, or
- (ii) the total Project Costs for that Phase as presented by 973 Wastewater Company in the final invoice that specifies the total Project Costs for that Phase, are less than or equal to one hundred and five percent (105% ) of the product of the original estimated cost of the Phase for which Closing is occurring as shown on Exhibit E hereto times a fraction, the denominator of



which shall be the Consumer Price Index-All Urban Consumers, 1982-1984 = 100) published by the Bureau of Labor Statistics of the U. S. Department of Labor, South Region (or if such index shall cease to be published, then a regularly published index derived by using the same or substantially the same data and methodologies) for the initial month of this Agreement and the numerator of which shall be the same index for the month in which the invoice for the Phase is calculated,

then the final total invoice reflecting the portion of the Purchase Price consisting of the Project Costs presented by 973 Wastewater Company for that Phase of the Treatment Plant shall represent the agreed Project Costs for that Phase. In no event, however, shall the City be obligated to pay more than the actual costs incurred, plus interest as otherwise agreed to in this Agreement, for any Phase or all Phases of the Project.

If

- (i) the City has objected to any individual invoice for a Phase of the Treatment Plant, and
- (ii) the total Project Costs for that Phase as presented by 973 Wastewater Company in the final invoice is more than one hundred and five percent (105% ) of the product of the original estimated cost of the Phase on Exhibit E hereto, times a fraction, the denominator of which shall be the Consumer Price Index-All Urban Consumers, 1982-1984 = 100) published by the Bureau of Labor Statistics of the U. S. Department of Labor, South Region (or if such index shall cease to be published, then a regularly published index derived by using the same or substantially the same data and methodologies) for the initial month of this Agreement and the numerator of which shall be the same index for the month in which the invoice for the Phase is calculated,

then the Parties agree upon and appoint a third party arbitrator to determine the amount of Project Costs for that Phase of the Treatment Plant to be included in the Purchase Price, which amount may not be more than the actual costs incurred, plus interest as otherwise agreed to in this Agreement, for any Phase or all Phases of the Project, and which amount must at least be equal to one hundred and five percent (105% ) of the product of the original estimated cost of the Phase on Exhibit E hereto times a fraction, the denominator of which shall be the Consumer Price Index-All Urban Consumers, 1982-1984 = 100) published by the Bureau of Labor Statistics of the U. S. Department of Labor, South Region (or if such index shall cease to be published, then a regularly published index derived by using the same or substantially the same data and methodologies) for the initial month of this Agreement and the numerator of which shall be the same index for the month in which the invoice for the Phase is calculated.

If the parties cannot agree on an arbitrator, then they shall allow one to be appointed by the American Arbitration Association. The parties shall have a period of twenty (20) business days after appointment of the arbitrator to present any evidence, in writing to the arbitrator with copy to the other party. The arbitrator shall determine the amount of Project Costs for the Phase of the Treatment Plant to be included in the Purchase Price for that Phase, subject to the limitations of this Agreement, within forty (40) days after being appointed, unless both Parties agree to extend that period. The arbitrator shall approve disputed costs if he finds that they were reasonable in amount and reasonably needed for construction of the Phase, reasonably needed to meet the terms of the Permit or needed to implement the terms of any settlement agreements between 973 Wastewater Company and any protesters to the Permit for the Treatment Plant in existence at the time of execution of this Agreement by the Parties and which are within the categories of costs shown in Exhibit E as either known or estimated costs. The arbitrator's decision shall be binding on the Parties so long as it is within the limits of this Agreement. The expenses of the arbitrator shall be split equally by the Parties.

**C. Closing(s).** If the City exercises the Option by notifying 973 Wastewater Company of the City's intent to purchase the Project, the sale of the Project shall take place in up to three (3) separate closings (the "Closing(s)"), one for each completed Phase of the Project, with each such Closing to be on or before the later to occur of (a) sixty (60) days after completion of construction and commencement of operation of each Phase or (b) 10 months after the previous phase reached 50% capacity (the "Closing Date(s)"). On the Closing Date(s) for each Phase, the full Purchase for that Phase being purchased shall be paid by the City to 973 Wastewater Company in cash, subject to the provisions of Section 4, Paragraph B, above.

Conveyance of the Project shall be free and clear of any liens, claims or encumbrances arising either in tort, contract, or otherwise from any and all actions or inactions of 973 Wastewater Company or any other entity involved in the construction, planning, design, engineering, operations or maintenance of the Project. The transferor of the Project shall notify City of any liens, claims, or encumbrances of which transferor is aware. The Project shall be transferred as is and without any warranties or representations as to their condition, except for any construction contractor's warranties then in effect; however, the transferor shall notify the City of any deficiencies in the condition of the Project at the time of conveyance if and to the extent the transferor is aware of such deficiencies.

**D. Escrow Account for Phases II and III.** For Phases II and III of the Project, the City shall deposit an Escrow Amount to secure payment of the Purchase Price for such Phases in accordance with this subsection D as follows:

(1) At the time of, and as a condition to, Closing for Phase I of the Project, the City shall deliver a certified cashiers check (or other form of payment approved by 973 Wastewater Company in writing) in the amount of \$250,000 to be placed in escrow (the "Escrow Account") with Independence Title Company of Austin, Texas (the "Escrow Agent"). The

amount in the Escrow Account, including any interest earnings thereon, if any, is hereafter referred to as the "Escrow Amount."

(2) The Escrow Account shall be held by the Escrow Agent for the sole purpose of applying the Escrow Amount, plus any interest earned thereon, if any, towards the City's payment of the Purchase Price on the future Closing Date for Phase II of the Project; provided further, however, on the date of Closing for, and as a condition to, the City's purchase of Phase II of the Project, the City shall deposit an amount of \$250,000 into the Escrow Account, with such future Escrow Amount, including any interest earnings thereon, if any, in the Escrow Account at the time of any future Closing for Phase III to be credited to the Purchase Price otherwise owed by the City at the Closing for Phase III.

**E. Remedies for Failure to Close.** After exercising the Option described in Subsection 4. A., above, and after Closing on Phase I of the Project, if the City fails to close the purchase of Phase II or Phase III of the Project for any reason other than 973 Wastewater Company's failure to comply with its obligations to consummate the Closing of the sale of Phase II or Phase III thereof, to the City at a Closing under this Agreement, then in addition to the transfer of the City's interest in any permit, or amendment to the Permit, obtained by the City for expansion of the Treatment Plant on the Site, the Escrow Agent shall immediately pay the Escrow Amount to 973 Wastewater Company as full compensation of any and all damages suffered by 973 Wastewater Company for the City's failure to purchase the Project, or any Phase thereof, on such Closing Date and the Parties shall have no further rights or obligations with respect to the City's Option to purchase the Project and this Section 4 shall expire; provided, however, 973 Wastewater Company may alternatively seek specific performance or mandamus against the City or its officials to require the City to consummate the purchase of such future Phases and the provisions of this Section 4 shall continue for such purposes.

**F. Conveyance at Closing.** At the time the City purchases the Project, or any Phase thereof, on a Closing Date, then the Parties agree as follows:

(1) 973 Wastewater Company shall convey to the City the Project, or relevant Phase thereof, including the Treatment Plant (or Phase thereof), the Excess Transmission Capacity (or so much thereof as exists at the time of Closing), the Site (subject to 973 Wastewater Company's right to use the Site as hereinafter provided in relation to future Phases of the Treatment Plant) and an undivided interest in the portion of the Permit relevant to the Phase being purchased at each Closing, free and clear of any other liens, claims or encumbrances not otherwise agreed to in writing by the City (it being specifically understood that the City may consent to the terms of any operating contract for the Project between 973 Wastewater Company and ECO Resources, Inc., or its affiliates) and 973 Wastewater Company shall assign 973 Wastewater Company Services Contract dated June 9, 2006 to the City upon request by the City; provided, however, any such conveyance shall also be subject to the following:

(i) The Reserved Capacity of the Treatment Plant, or any Phase thereof purchased at a Closing, as specified in Exhibit C hereto shall in all events be reserved for the provision of wholesale wastewater treatment and disposal services for the use by the Developers or MUDs 1 and 2 pursuant to the rights of the Developers (or their successors) and such districts under those two certain agreements entitled "Amended and Restated Wholesale Wastewater Service Agreement" and "Wholesale Wastewater Service Agreement" between one or more of the Developers (for the benefit of and/or as assigned to MUD 1 and/or MUD 2, respectively) and 973 Wastewater Company dated July 28, 2006 (the "Wholesale Agreements"), and the only charges for such Reserved Capacity and service shall be the charges specified in the Wholesale Agreements;

(ii) The Reserved Capacity in the Transmission Facilities as specified in Exhibit C hereto as being reserved for MUDs 1, 2 and 3 shall be in all events reserved, at no cost, except for such MUDs' pro rata shares (based on relative reserved capacities) of any costs incurred by MUD 1 and/or MUD 2 to repair and maintain the Transmission Facilities, for the provision of wholesale wastewater transmission services for the use by the Developers or MUDs 1 and 2 for the MUD 1 Tract and the MUD 2 Tract pursuant to the rights of the Developers and MUDs 1 and 2 under the Wholesale Agreements and for use by the Developers or MUD 3 for the MUD 3 Tract under the terms of that certain draft Wholesale Wastewater Services Agreement attached as Exhibit F hereto (which the City hereby approves and agrees to enter into with MUD 3 promptly after creation of MUD 3), provided that the Developers or MUD 3 begin to use such portion of the Reserved Capacity for the MUD 3 Tract within ten (10) years after execution of this Agreement;

(iii) The Excess Capacity of the Transmission Facilities as described on Exhibit C shall be reserved for the exclusive use of the City at no cost to the City except that the City agrees to pay its pro rata share (based on relative reserved capacities) of any costs incurred by MUD 1 and/or MUD 2 to repair and maintain the Transmission Facilities and provided further the Parties shall cooperate to allow the City access to the Transmission Facilities for the City to construct its own lift station, if necessary, to utilize the City's Excess Capacity in the Transmission Facilities since the Excess Capacity transferred to the City does not include any capacity in the lift station that is part of the Transmission Facilities;

(iv) Any Reserved Capacity in the Transmission Facilities not utilized by MUDs 1, 2 or 3 at full development of those MUDs shall be transferred to the City from time to time as appropriate at such time as any of such Districts is fully developed; and

(v) If at the time of Closing, not all of the Excess Capacity of the Transmission Facilities is conveyed to the City because some of such Excess Capacity does not exist on the Closing Date, then such un-conveyed portion of the Excess Capacity of the Transmission Facilities shall be conveyed to the City thereafter within thirty (30) days after completion of construction of such un-conveyed Excess Capacity of the Transmission Facilities.

(2) 973 Wastewater Company shall assign to the City from and after the first Closing, and the City shall accept, all of the 973 Wastewater Company's rights and obligations under the Wholesale Agreements except for the rights and obligations described in subsections (3) and (4) below (the "Reserved Rights").

(3) 973 Wastewater Company shall retain the rights under the Wholesale Agreements to receive payments by the Developers and MUDs 1 and 2 of the LUE Fees under Section 3.02 of the Wholesale Agreements along with the rights to all Irrevocable Letters of Credit posted with 973 Wastewater Company under Section 3.03 of the Wholesale Agreements.

(4) 973 Wastewater Company shall retain right, and the obligation, under the Wholesale Agreements with the Developers and MUDs 1 and 2 to construct any remaining Phases II and III of the Project, subject to the City's right and obligation to purchase Phases II and III of the Project pursuant to the Option granted to the City herein.

(5) The Parties will cooperate to enable the City to provide wholesale wastewater service to MUDs 1, 2 and 3 as provided herein, and to provide wastewater services to the Other Areas.

In the event a Closing is prior to the date of completion of construction and commencement of operation of Phase III of the Project and 973 Wastewater Company is therefore, entitled and obligated by subsection (4) above to thereafter continue to construct any of any remaining Phases II and/or Phase III of the Project, the City shall purchase from 973 Wastewater Company such Phases II and/or Phase III on or before the later to occur of: (a) 60 days after completion of construction and commencement of operation of same under the terms and conditions as previously provided herein or (b) 10 months after the previous phase reaches 50% capacity.

**G. Conveyance of Transmission Facilities.** Notwithstanding anything herein to the contrary, if the City desires, at any time after a Closing and after MUD 1 or MUD 2 has obtained legal title to the Transmission Facilities, and provided MUD 1 and MUD 2 determine that such will not impair the ability of MUDs 1, 2 or 3 to reimburse the costs incurred by the Developers in such MUDs 1, 2 and 3 for the Transmission Facilities or the capacity therein, the City may request that the District or Districts owning title to the Transmission Facilities convey the same to the City at no cost and the District or Districts shall so convey title to the City and the City shall thereafter own and operate the Transmission Facilities at the City's expense and further provided that the Wholesale

Wastewater Service Agreements between MUD 1 and MUD 2 are amended to enable the City to charge MUD 1 and MUD 2 for their respective pro rata shares (based on relative shares of reserved capacity) of the cost of maintenance and operation of the transferred Transmission Facilities. Conveyance of the Transmission Facilities shall be free and clear of any liens, claims or encumbrances arising either in tort, contract, or otherwise from any and all actions or inactions of 973 Wastewater Company or any other entity involved in the construction, planning, design, engineering, operations or maintenance of the Transmission Facilities. The transferor of the Transmission Facilities shall notify City of any liens, claims, or encumbrances of which transferor is aware. The Transmission Facilities shall be transferred as is and without any warranties or representations as to their condition, except for any construction contractor's warranties then in effect; however, the transferor shall notify the City of any deficiencies in the condition of the Transmission Facilities at the time of conveyance if and to the extent the transferor is aware of such deficiencies.

**H. Cooperation with City Expansions of Treatment Plant.** 973 Wastewater Company agrees that, after the initial Closing, as 973 Wastewater Company constructs Phases II or III of the Project, it will cooperate with the City to attempt to accommodate any City-initiated expansions of the Treatment Plant that the City desires. Any such matters shall be subject to the execution of an amendment to this Agreement or a separate agreement specifying such matters.

**Section 5 973 Wastewater Company's Rights to Use Site After Closing.** At the time of any Closing of the City's purchase of Phases I and II of the Project, the conveyance documents shall specifically reserve to 973 Wastewater Company from the conveyance of the Site and the Permit, the right for 973 Wastewater Company to continue to use the Site and the Permit for the purpose of performing the obligations of 973 Wastewater Company under this Agreement and the Wholesale Agreements to construct Phases II and III of the Treatment Plant. Such documents shall further provide that the City shall be solely responsible for operation of the Treatment Plant and for compliance with the terms of the Permit and that 973 Wastewater Company shall have absolutely no responsibility for operation of the Treatment Plant or for compliance with the terms of the Permit following the Closing date(s).

**Sec. 6 Right of First Refusal to Purchase Project, or Relevant Portions Thereof.** In the event 973 Wastewater Company receives a bona fide acceptable offer to purchase the Project from any third party ("Third Party"), 973 Wastewater Company shall offer the Project, or relevant portion thereof, to the City upon the same price, terms and conditions as contained in the bona fide offer. 973 Wastewater Company shall give the City written notice of receipt of such bona fide acceptable offer, which notice shall contain the price, terms and conditions of such offer, together with a copy of such offer. The City shall have sixty (60) days from receipt of such notice from 973 Wastewater Company to give 973 Wastewater Company notice of the City's decision to exercise its right to purchase the Project, or relevant portion thereof, on the same price, terms and conditions set forth in said offer. If the City does not so notify 973 Wastewater Company of the City's decision to exercise its right to purchase the Project, or relevant portion thereof, within such sixty (60) day period, 973 Wastewater Company shall be entitled to

sell the Project, or relevant portion thereof, to the Third Party at a price of not more than ten percent (10%) less than the price, and on terms and conditions not materially better for the Third Party than the terms and conditions set forth in 973 Wastewater Company's notice to the City. If 973 Wastewater Company is unable to close the sale to said Third Party at such price and on such terms and conditions, the City's rights, and 973 Wastewater Company's obligations, under this Article shall not expire. If the City notifies 973 Wastewater Company of the City's decision to exercise its right to purchase the Project, or relevant portion thereof, as provided herein, the City and 973 Wastewater Company must enter into a completed and signed contract within ninety (90) days after the date of 973 Wastewater Company's original notice to the City, or the City's right to purchase the Project, or relevant portion thereof, on the price, terms and conditions in the written notice will terminate. The provisions of this Article shall not apply to the sale or transfer of the Project, or relevant portion thereof, to an affiliate of 973 Wastewater Company which becomes a successor in interest to 973 Wastewater Company in regard to this Agreement.

**Section 7 Acquisition of Land in Other Area by Concordia University.** If Concordia University acquires a portion of the Other Area, the Parties agree to use their best efforts to enter into appropriate amendments of this Agreement to enable either Party to provide wastewater service to the Concordia tract.

**Section 8 Assignment.** This Agreement may be assigned by 973 Wastewater Company to an affiliate or another entity with the prior written consent of the City, such consent not to be unreasonably withheld, conditioned or delayed. If the assignment requires the assignee to assume, in writing, all obligations of 973 Wastewater Company under this Agreement, 973 Wastewater Company shall be fully released and discharged from any and all obligations under this Agreement so assigned.

**Section 9 Exhibits.** The following Exhibits attached to this Agreement are hereby incorporated herein by reference:

**Exhibit A** Description of the Tract.

**Exhibit B** Treatment Plant Assets.

**Exhibit C** Reserved and Excess Capacity.

**Exhibit D** The Project.

**Exhibit E** Project Costs

**Exhibit F** Wholesale Agreement Between the City and MUD 3.

Executed in multiple copies, each of which constitutes an original, on this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Address:  
P.O. Box 589  
Pflugerville, Texas 78691  
(512) 251-3076

Address:  
Attn: Mr. Rhett Dawson  
1717 West Sixth St., Ste. 260  
Austin, Texas 78703  
(512) 482-8806 (telephone)  
(512) 482-8807 (fax)

CITY:  
CITY OF PFLUGERVILLE, TEXAS

By: \_\_\_\_\_  
David Buesing, City Manager

973 WASTEWATER COMPANY:

RMD CONSTURCTION, INC.  
d/b/a 973 WASTEWATER COMPANY

By: \_\_\_\_\_  
Rhett Dawson, President







**Exhibit E  
Project Costs**

<b>Phase</b>	<b>Cost</b>	<b>Engineering</b>	<b>Permit</b>	<b>Total</b>
<b>Phase I</b>	\$ 3,040,126	\$ 405,854	\$ 377,681	\$ 3,823,661
<b>Phase II</b>	\$ 2,134,741	\$ 284,986	\$ -	\$ 2,419,727
<b>Phase III</b>	\$ 2,123,070	\$ 283,428	\$ -	\$ 2,406,498
<b>Total</b>	\$ 7,297,937	\$ 974,268	\$ 377,681	\$ 8,649,886

**Above numbers do not include agreed-upon Site costs of \$180,000**

973 WWTP Phase 1  
02/21/07

Description	Qty	Unit	Unit Price	Total
Moblization	1	LS	\$ 173,056	\$ 173,056
Base Material	907	YD	\$ 65	\$ 58,577
Concrete	572	YD	\$ 760	\$ 434,866
Site Concrete	1	LS	\$ 20,430	\$ 20,430
Yard Piping	1	LS	\$ 91,429	\$ 91,429
Silt Fence	3300	LF	\$ 4	\$ 13,240
Filter	1	EA	\$ 292,347	\$ 292,347
Paint Walls	3550	FT	\$ 15	\$ 54,173
Plant Equipment	1	LS	\$ 652,499	\$ 652,499
Electrical	1	LS	\$ 135,503	\$ 135,503
Gen Set	1	EA	\$ 84,854	\$ 84,854
Site Work	1	LS	\$ 80,466	\$ 80,466
Storm Water Drainage	1	LS	\$ 54,189	\$ 54,189
Blower Cover	1	EA	\$ 19,185	\$ 19,185
Fence 830'	830	LF	\$ 51	\$ 42,016
CL System	1	EA	\$ 21,529	\$ 21,529
Lift Station	1	EA	\$ 502,331	\$ 502,331
1" Water line	1	LS	\$ 43,559	\$ 43,559
Landscape	1	LS	\$ 106,781	\$ 106,781
Entry road	1	LS	\$ 159,095	\$ 159,095
<b>Subtotal</b>				<b>\$ 3,040,126</b>
<b>Engineering</b>				<b>\$ 405,854</b>
<b>Total</b>				<b>\$ 3,445,980</b>

973 WWTP Phase 2  
02/21/07

Description	Qty	Unit	Unit Price	Total
Mobilization	1	LS	\$ 176,274	\$ 176,274
Base Material	1550	YD	\$ 53	\$ 82,755
Concrete	700	YD	\$ 759	\$ 531,314
Site Concrete	1	LS	\$ 20,430	\$ 20,430
Yard Piping	1	LS	\$ 91,429	\$ 91,429
Silt Fence	3300	LF	\$ 4	\$ 13,240
ETT Equip	1	LS	\$ 877,831	\$ 877,831
Paint Walls	1	FT	\$ 84,312	\$ 84,312
Electrical	1	LS	\$ 154,947	\$ 154,947
Site Work	1	LS	\$ 17,911	\$ 17,911
Road	1	LS	\$ 41,241	\$ 41,241
CL System	1	EA	\$ 7,176	\$ 7,176
Lift Station	1	EA	\$ 35,882	\$ 35,882
<b>Subtotal</b>				<b>\$ 2,134,741</b>
<b>Engineering</b>				<b>\$ 284,986</b>
<b>Total</b>				<b>\$ 2,419,727</b>

973 WWTP Phase 3  
2/7/2007

Description	Qty	Unit	Unit Price	Total
Mobilization	1	LS	\$ 176,273	\$ 176,273
Base Material	1550	YD	\$ 53	\$ 82,755
Concrete	620	YD	\$ 760	\$ 471,033
Site Concrete	1	LS	\$ 20,429	\$ 20,429
Yard Piping	1	LS	\$ 91,428	\$ 91,428
Silt Fence	3300	LF	\$ 4	\$ 13,239
ETT Equip	1	LS	\$ 734,309	\$ 734,309
Filter	1	LS	\$ 292,347	\$ 292,347
Paint Walls	3040	FT	\$ 16	\$ 47,570
Electrical	1	LS	\$ 132,715	\$ 132,715
Site Work	1	LS	\$ 17,910	\$ 17,910
CL System	1	EA	\$ 7,176	\$ 7,176
Lift Station	1	EA	\$ 35,884	\$ 35,884
<b>Subtotal</b>				<b>\$ 2,123,070</b>
<b>Engineering</b>				<b>\$ 283,428</b>
<b>Total</b>				<b>\$ 2,406,498</b>

## WHOLESALE WASTEWATER SERVICE AGREEMENT

This AGREEMENT is entered into by and between the CITY OF PFLUGERVILLE, TEXAS (the "City"), and NEW SWEDEN MUNICIPAL UTILITY DISTRICT NO. 3 (the "Customer").

### RECITALS

A. The City owns, or has the right to acquire Permit No. WQ0014642001 to authorize the discharge of treated wastewater from a wastewater treatment plant located 2,500 feet east of the intersection of FM 973 and New Sweden Church Road. The proposed wastewater treatment plant will have a Phase I with a design capacity of 150,000 GPD, a Phase II with a design capacity of 475,000 GPD, and a final Phase III with a design capacity of 950,000 GPD.

B. The City and the Customer desire to enter into a wholesale wastewater service agreement setting out the terms and conditions for the City's provision of wholesale wastewater service to the Customer.

### AGREEMENT

For and in consideration of the mutual promises, covenants, obligations, and benefits described in this Agreement, the City and the Customer agree as follows:

### ARTICLE I. DEFINITIONS

**Section 1.01. Definitions.** As used in this Agreement each of the following terms has the meaning given to it as set out below:

**"Capital Costs"** means all costs of planning, designing, acquiring, constructing, developing, permitting, implementing, expanding, improving, enlarging, bettering and replacing the Wastewater Treatment Plant and the Transmission Facilities, including the interest on any funds borrowed to pay the costs of the design and construction of the Wastewater Treatment Plant and Transmission Facilities.

**"City"** means the City of Pflugerville, Texas, and its successors and assigns.

**"Customer"** means New Sweden Municipal Utility District No. 3 and its successors and permitted assigns.

**"Daily Average Flow"** has the meaning set out in the Permit.

**“Delivery Point”** means the point designated on Exhibit A at which the Customer shall deliver Wastewater to the City for transmission by the City to Wastewater Treatment Plant for treatment and disposal.

**“Domestic Activity Waste”** means wastewater that, when analyzed, indicates that the concentration of Biochemical Oxygen Demand (BOD<sub>5</sub>) does not exceed 200 milligram per liter (mg/L), Total Suspended Solids (TSS) does not exceed 200 mg/L and Chemical Oxygen Demand (COD<sub>5</sub>) does not exceed 450 mg/L.

**“Effective Date”** will mean the date of execution by both parties.

**“GPD”** means gallons per day.

**“Initial Phase”** means the initial expansion of the Wastewater Treatment Plant constructed by the City under the Permit Expansion.

**“Initial Phase Approval Date”** means the date that the TCEQ has both issued the Permit Expansion and approved the construction plans for the Initial Phase.

**“LUE”** means an amount of capacity equal to a Daily Average Flow of 270 GPD of wastewater.

**“LUE Fee”** has the meaning set out in Section 3.02(a).

**“Metering Facilities”** means the meter, meter vault, meter loop, housing or pit, and all metering equipment and appurtenances required to measure Wastewater delivered to the Delivery Point.

**“Party”** means either the City or the Customer, or their respective successors and permitted assigns, as the case may be and as the context may require.

**“Permit”** means TPDES Permit No. WQ0014642001 or any companion permit thereto on the same Wastewater Treatment Plant Site which may be applied for by the City.

**“Permit Expansion”** means proposed amendments to the Permit to increase the amount of treatment and discharge beyond 0.95 MGD to enable the City to provide wholesale wastewater service to Customer under this Agreement.

**“Phase I of the Transmission Facilities”** means the Transmission Facilities labeled as Phase I on Exhibit A.

**“Phase II of the Transmission Facilities”** means the Transmission Facilities labeled as Phase II on Exhibit A.



**“Prime Rate”** means the prime rate of interest payable quoted in the Wall Street Journal or a similar financial periodical of national circulation as the base rate on corporate loans at large U.S. Money Center Commercial Banks on the due date per annum.

**“TCEQ”** means the Texas Commission on Environmental Quality.

**“Transmission Facilities”** means the wastewater lines and lift station described on **Exhibit A**.

**“Wastewater”** includes (1) waterborne human waste and waste from domestic activities, such as washing, bathing and food preparation, (2) water, including inflow and infiltration, and (3) equivalent substances from non-domestic activities, including commercial and industrial waste that may be inherently equivalent or that is pre-treated to make it equivalent to Domestic Activity Waste.

**“Wastewater Treatment Plant”** means a wastewater treatment plant constructed and operated in accordance with the terms and conditions set forth in any Permit Expansion.

**“Wastewater Treatment Plant Site”** means the property shown on **Exhibit A**.

**“Wholesale Wastewater Service Area”** means the area described on **Exhibit B** to which the City has agreed to provide wastewater service to Customer on a wholesale basis under this Agreement.

**“Winter Average Usage”** means the average water usage for the months of December, January and February of all retail wastewater customers within the Wholesale Wastewater Service Area, which may be used to measure Wastewater delivered to the Delivery Point for the following 12- month period. If no such history exists for a new retail water customer, the Parties shall use for such retail customer the average of all Winter Average Usage for all of the customers with such historical usage records until the new retail customer has its own historical usage records.

**Section 1.02. Other Defined Terms.** Other defined terms used in this Agreement are described below and will have the meaning given to them as set out herein.

## **ARTICLE II. DELIVERY OF WHOLESALE WASTEWATER SERVICE**

### **Section 2.01. Construction of Wastewater Treatment Plant.**

(a) The Parties recognize that the Initial Phase of the Wastewater Treatment Plant will not be constructed until the Permit Expansion has been issued and the

construction plans for the Initial Phase of the Wastewater Treatment Plant have been approved by the TCEQ.

(b) The City shall be responsible for the construction of the Wastewater Treatment Plant. The City shall determine the size of the phases and the timing of construction of the phases of the Wastewater Treatment Plant adequate to serve the Customer at the time required by the Customer; provided, however, that:

(i) If the amount of wastewater delivered to a phase of the Wastewater Treatment Plant by the Customer and any other parties served by the Wastewater Treatment Plant is equal to seventy-five percent (75%) of the capacity of that phase of the Wastewater Treatment Plant over any consecutive 90-day period, then the City shall commence planning and designing the next phase of the Wastewater Treatment Plant at that time, unless the City customers' anticipated growth does not warrant making the expansion.

(ii) If the amount of wastewater delivered to a phase of the Wastewater Treatment Plant by the Customer and any other parties served by the Wastewater Treatment Plant is equal to ninety percent (90%) of the capacity of that phase of the Wastewater Treatment Plant over any consecutive 90-day period, then the City shall commence construction of the next phase of the Wastewater Treatment Plant at that time and complete the construction within three hundred and sixty five (365) days, unless the City customers' anticipated growth does not warrant making the expansion.

## **Section 2.02. Customer Construction.**

If the City is unable or unwilling to construct the Initial Phase of the Wastewater Treatment Plant or any expansions of the Wastewater Treatment Plant as required by Section 2.01, then Customer may give the City written notice specifying the default (the "Notice"). If, as a result of the default, the Customer is unable to provide wastewater service to any new retail connections, then, if the City fails to fully cure such default within ninety (90) days after receipt of the Notice, the Customer may, at its election, construct the phase of the Wastewater Treatment Plant that the City is unable or unwilling to construct. If, in spite of the default, the Customer is able to provide wastewater service to any new retail connections, then, if the City fails to commence the cure of such default within thirty (30) days after receipt of the Notice and to fully cure such default within three hundred and sixty-five (365) days, the Customer may, at its election, construct the phase of the Wastewater Treatment Plant that the City is unwilling or unable to construct. If the Customer elects to construct a phase of the Wastewater Treatment Plant under this Section, then: (i) the City shall fully cooperate with the Customer in efforts to obtain necessary governmental and regulatory approvals and permits and will use its best efforts to provide assistance in this regard; (ii) the facilities

constructed by the Customer may be located on the Wastewater Treatment Plant Site at no cost to the Customer; (iii) all Capital Costs related to the construction of the facilities shall be paid for solely by the Customer; (iv) all facilities constructed by the Customer shall be owned by the Customer; and (v) all facilities constructed by the Customer shall be operated by the City unless otherwise permitted by this Agreement. In the event the Customer pays the Capital Costs for any phase of the Wastewater Treatment Plant under to this Section, the Customer shall receive a credit for any Capital Costs paid by the Customer to construct any phase of the Wastewater Treatment Plant under this Agreement.

**Section 2.03. Maximum Volume and Rate of Flow.** Beginning on the date after substantial completion of the construction of the Initial Phase of the Wastewater Treatment Plant, the City will accept, treat, and dispose of and the Customer may deliver, at the Delivery Point, Wastewater collected from the Wholesale Wastewater Service Area in the amounts up to a total Daily Average Flow of 216,000 gallons per day.

### **ARTICLE III. PAYMENT**

#### **Section 3.01. Monthly Charge.**

(a) The Customer will pay the City a monthly charge (the "Monthly Charge") equal to the applicable rate under Section 3.01(b) times each 1000 gallons of Wastewater received at the Delivery Point.

(b) The initial rate for Wastewater received at the Delivery Point is \$4.00 per 1000 gallons. Beginning on January 1, 2007, and annually thereafter, the initial rate will be increased by an amount calculated by multiplying the initial rate times the percentage difference between the Base CPI and the CPI computed by the Bureau for the month of September for the year preceding the Year in Question. For purposes of this subsection: (i) "Bureau" means the United States Department of Labor, Bureau of Labor Statistics, or any other agency succeeding to the Bureau's function of computing the CPI; (ii) "CPI" means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average as computed by the Bureau for a given month; (iii) "Base CPI" means the CPI computed by the Bureau for the month of September 2005; and (iv) "Year in Question" means the 12-month period commencing on January 1 of each year for which the price of Wastewater treatment is to be determined as provided in this subsection.

(c) A billing period for the Monthly Charge is an approximate 30-day period as established by applicable City wastewater service ordinances. The City will bill the Customer once each month for the amount owed for the Monthly Charge. Each bill will be accompanied by a statement of the amount of Wastewater received during the billing

period, a statement of the applicable rate under Section 3.01(b), and a statement of the total amount due.

(d) The Customer will pay the amounts owed for the Monthly Charge to the City on or before the 15<sup>th</sup> day following the invoice date on the bill or as otherwise provided by applicable City wastewater service ordinance..

### **Section 3.02. LUE Fees.**

The Customer will pay the City's lawfully-adopted wastewater impact fee for each retail connection the Customer serves within the Wholesale Service Area (the "LUE Fee"), with such impact fees being paid for each final platted area at the time of, and as a condition to recordation of any final plat.

**Section 3.03. Payment.** All amounts due to the City under this Article will be deemed paid when the Customer delivers the full payment to the City at the address set out in Section 7.03. For each day after the due date that the amounts due remain unpaid, the Customer will pay interest or penalties as required by applicable City wastewater service ordinances.

## **ARTICLE IV. METERING FACILITIES**

**Section 4.01. Installation of Metering Facilities.** The City may, at the City's election, use any of the following methods for measuring the amount of Wastewater delivered to the Delivery Point: (a) Metering Facilities; or (b) Winter Average Usage. If the City elects to use Metering Facilities, then the Customer, at Customer's sole expense, will provide and install the Metering Facilities at the Delivery Point. The plans and specifications for the Metering Equipment will be submitted to the City for review and approval. After obtaining approval of the plans and specifications from the City, the Customer shall provide written notice to the City of the date on which construction of the Metering Facilities is scheduled to begin, and the construction and installation of the Metering Equipment will be subject to inspection by the City. Following the installation of the Metering Facilities in accordance with the approved plans and specifications, the Metering Facilities will be the property of the City for all purposes. Within 180 days following completion and final acceptance of the Metering Facilities, the Customer will provide the City with as-built drawings for the completed Metering Facilities.

**Section 4.02. Operation of Metering Facilities.** If the City elects to use Metering Facilities, then the City, at the City's sole expense, will operate and maintain the Metering Facilities. The City shall calibrate the metering equipment at least annually. If requested in writing by the Customer, but not more than once in each calendar year, the City will calibrate one or more Meters in the presence of a Customer representative. The City will

give the Customer at least five (5) days notice of the time that the requested calibration will take place.

**Section 4.03. Estimated Amounts.** If the City elects to use Metering Facilities and the Metering Facilities are out of service or out of repair so that the amount of Wastewater delivered to the Delivery Point cannot be ascertained or computed from reading the Meter, the Wastewater delivered during the period the Metering Facilities are out of service or out of repair will be estimated and agreed upon by the City and the Customer based upon Winter Average Usage.

## **ARTICLE V. OPERATION AND MAINTENANCE OF FACILITIES**

**Section 5.01. Wastewater Treatment Plant.** The City will be solely responsible for the design, engineering, financing, construction, installation, inspection, operation, maintenance, and repair of the Wastewater Treatment Plant as follows:

(a) The Wastewater Treatment Plant will be maintained and operated in accordance with the Permit, all other applicable regulatory requirements, and accepted good City operating practices.

(b) The City will use reasonable diligence and care to continually hold itself ready, willing and able to supply wholesale wastewater service to the Customer as provided in this Agreement.

(c) The City will promptly repair any defects in the Wastewater Treatment Plant and take all steps reasonably necessary to remedy immediately any interruptions of wholesale wastewater service to the Customer as provided in this Agreement.

(d) The City will maintain and carry in full force and effect from the date of the commencement of operation of the Wastewater Treatment Plant fire, property and casualty insurance in an amount of the full replacement cost of the Wastewater Treatment Plant.

**Section 5.02. Collection and Transportation Facilities.**

(a) The Customer shall be solely responsible for the design, engineering, financing, construction, installation, inspection, operation, maintenance, repair and replacement of all facilities for the collection and transportation of Wastewater to the Delivery Point. All Wastewater collection and transportation facilities within the Wholesale Wastewater Service Area will be built to the City of Pflugerville Engineering Design Guidelines and Construction Standards Manual and the City's Site Development Code Standards as currently set forth in Chapter 155 of the City Code except that the

Utility and the Developer shall not be required to backfill utility trenches with compacted base materials, but will backfill utility trenches as provided for by the City's 1993 Construction Standards Manual Specification Item 0533. Particular care and attention shall be given by the Customer to the construction of the Customer's facilities so as to minimize to the greatest extent reasonably practicable the potential for inflow and infiltration into the Customer's facilities.

(b) The Customer shall provide written notice to the City of the date on which construction of any Wastewater collection and transportation facilities within the Wholesale Wastewater Service Area is scheduled to begin, and the construction and installation of those facilities will be subject to inspection by the City to ensure compliance with Section 5.02(a).

(c) The requirements of this Section 5.02 shall be contained, and enforced, in all other agreements by the City for wastewater service from the Wastewater Treatment Plant.

## **ARTICLE VI. TERM, ASSIGNMENT AND REMEDIES**

### **Section 6.01. Term.**

The term of this Agreement will commence on the Effective Date and continue for forty (40) years thereafter.

### **Section 6.02. Assignment.**

This Agreement is not assignable, in whole or in part, by either Party except without the prior written consent of the other Party, which consent will not be unreasonably withheld, delayed, or conditioned. Any assignment of rights or delegation of duties under this Agreement is void without the written consent described above.

### **Section 6.03. Remedies.**

In addition to any remedy provided in section 2.02 hereof, in the event of default by any Party, a non-defaulting Party may give the defaulting Party written notice specifying the default (the "Notice"). If the defaulting Party fails to fully cure any default that can be cured by the payment of money ("Monetary Default") within sixty (60) days after receipt of the Notice, or fails to commence the cure of any default specified in the Notice that is not a Monetary Default within thirty (30) days after receipt of the Notice and thereafter to diligently pursue such cure to completion, then the other Party will be entitled: (i) to a proper writ issued by a court of competent jurisdiction compelling and requiring the defaulting Party to observe and perform the covenants, obligations and

conditions described in this Agreement; and (ii) to pursue all other legal or equitable remedies. The prevailing Party in any litigation will be entitled to recover all of the expenses it has incurred, including reasonable attorneys' fees. Notwithstanding the foregoing, the City shall not be entitled to any remedy which would prevent the Customer from obtaining and utilizing the LUEs of service capacity reserved by the Customer's payment of LUE Fees under this Agreement so long as the Customer pays the Monthly Charge associated with service from such LUEs of capacity, it being the intent of the parties that the Customer shall be entitled to the amount of capacity paid for by it for the term of this Agreement so long as it pays the associated Monthly Charge.

## **ARTICLE VII. MISCELLANEOUS PROVISIONS**

**Section 7.01. Title to and Responsibility for Wastewater.** Title to, possession and control of Wastewater will remain with the Customer until it passes the Delivery Point, where title, possession and control shall pass to the City.

**Section 7.02. Regulatory Action.** The obligations of City to provide wholesale wastewater service are subject to all present and future regulatory requirements, and the Parties agree to cooperate to make such applications and to take such action as may be desirable to obtain compliance therewith. If action by the Customer results in the City incurring costs and expenses in any regulatory proceeding, the Customer shall reimburse the City for the reasonable and necessary costs of such regulatory proceeding within sixty (60) days of notice of the amounts of the reasonable and necessary costs.

**Section 7.03. Notice.** Any notice given under this Agreement must be in writing and may be given: (i) by depositing it in the United States mail, certified, with return receipt requested, addressed to the party to be notified and with all charges prepaid; or (ii) by depositing it with Federal Express or another service guaranteeing "next day delivery", addressed to the party to be notified and with all charges prepaid; (iii) by personally delivering it to the party, or any agent of the party listed in this Agreement, or (iv) by facsimile with confirming copy sent by one of the other described methods of notice set forth. Notice by United States mail will be effective on the earlier of the date of receipt or three (3) days after the date of mailing. Notice given in any other manner will be effective only when received. For purposed of notice, the addresses of the parties will, until changed as provided below, be as follows:

Customer: New Sweden MUD 3  
C/O Freeman & Corbett, LLP  
8500 Bluffstone Cove, Ste. B-104  
Austin, TS 78759  
Fax: 512-453-0865

City: City of Pflugerville  
Attn: City Manager

Pflugerville, TX \_\_\_\_  
Fax: 512-\_\_\_\_-\_\_\_\_

The parties may change their respective addresses to any other address within the United States of America by giving at least five (5) days' written notice to the other party. The Customer and the City may, by giving at least five (5) days' written notice to the Party, designate additional persons to receive copies of notices under this Agreement.

**Section 7.04. Force Majeure.** If either Party hereto is rendered unable by Force Majeure to carry out one or more of its obligations under this Agreement, then such obligations shall be suspended during the continuance of the inability caused by Force Majeure; provided that the Party claiming such inability uses reasonable diligence resume performance at the earliest practical time. The term "Force Majeure," as used herein, shall include, without limitation of the generality thereof, (i) acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, arrests, restraint of government and people, civil disturbances, explosions, and (ii) breakage or accidents to machinery, pipelines or facilities, so long as such breakage or accidents could not have been avoided by the exercise of due diligence and care, (iii) any other incapacities, whether similar to those enumerated or otherwise, which are not within the control of the Party claiming such inability and which such party could not have avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty. It is specifically provided, however, that the provisions of this Section shall not excuse the City from a material breach of this Agreement related to the failure of the City to provide service at the times and levels provided in this Agreement caused by to the City's failure to obtain or comply with, or the City's negligence in obtaining or complying with, the Permit or any similar governmental requirements.

**Section 7.05. Records.** Each Party agrees to keep accurate records and documentation of all of its business activities reasonably relating to the activities of such Party pursuant to this Agreement. Each Party shall have the right to review such books and records of the other Party at all times after first providing the other Party with at least five (5) days



prior written notice, and, at its sole expense, to obtain copies of such records and documentation.

**Section 7.06. Severability; Waiver.**

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

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

**Section 7.07. Applicable Law and Venue.** The interpretation, performance, enforcement and validity of this Agreement is governed by the laws of the State of Texas. Venue will be in a court of appropriate jurisdiction in Travis County, Texas.

**Section 7.08. Entire Agreement.** This Agreement contains the entire agreement of the parties. There are no other agreements or promises, oral or written, between the parties regarding the subject matter of this Agreement. This Agreement can be amended only by written agreement signed by the parties. This Agreement supersedes all other agreements between the parties concerning the subject matter.

**Section 7.09. Exhibits, Headings, Construction and Counterparts.** All schedules and exhibits referred to in or attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice-versa. The parties acknowledge that each of them have been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting party will not be employed in interpreting this Agreement or any exhibits hereto. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument.

**Section 7.10. Time.** Time is of the essence of this Agreement. In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays and legal holidays; however, if the final day of any time period falls

on a Saturday, Sunday or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday or legal holiday.

**Section 7.11. Authority for Execution.** The City and the Customer hereby certify, represent, and warrant that the execution of this Agreement is duly authorized and adopted in conformity with the articles of incorporation and bylaws or partnership agreement of each entity executing on behalf of the Customer and the City.

**Section 7.12. Exhibits.** The following exhibits are attached to this Agreement, and made a part hereof for all purposes:

Exhibit A Delivery Point, Transmission Facilities and Wastewater Treatment Plant Site

Exhibit B Wholesale Wastewater Service Area

IN WITNESS WHEREOF, this instrument is executed as of the Effective Date.

**CITY OF PFLUGERVILLE, TEXAS**

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

City Manager

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

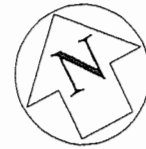
**NEW SWEDEN MUD 3**

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

\_\_\_\_\_, President

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

BRITA OLSON ROAD



SCALE: 1" = 800'

225,720 GPM  
(836 LUE)

(A)

FM973

AXELL LANE

21-INCH GRAVITY LINE

LIFT STATION  
0 GPM

FORCE MAINS

PHASE II

24-INCH  
GRAVITY LINE

(C)

DELIVERY  
POINT

(1) 4-INCH  
(1) 8-INCH  
(2) 16-INCH  
1,763,370 GPM  
(6,531 LUE)

(B)

27-INCH  
GRAVITY LINE

(D)

WWTP  
SITE

STEGER LN

NEW SWEDEN CHURCH ROAD

PATE & ENGINEERS  
3400 North Capital of Texas Highway, Suite 220  
Austin, Texas 78731  
Aug 01, 2008 - 11:18am Kenneth Layport, Layout  
SHEET 1 OF 1

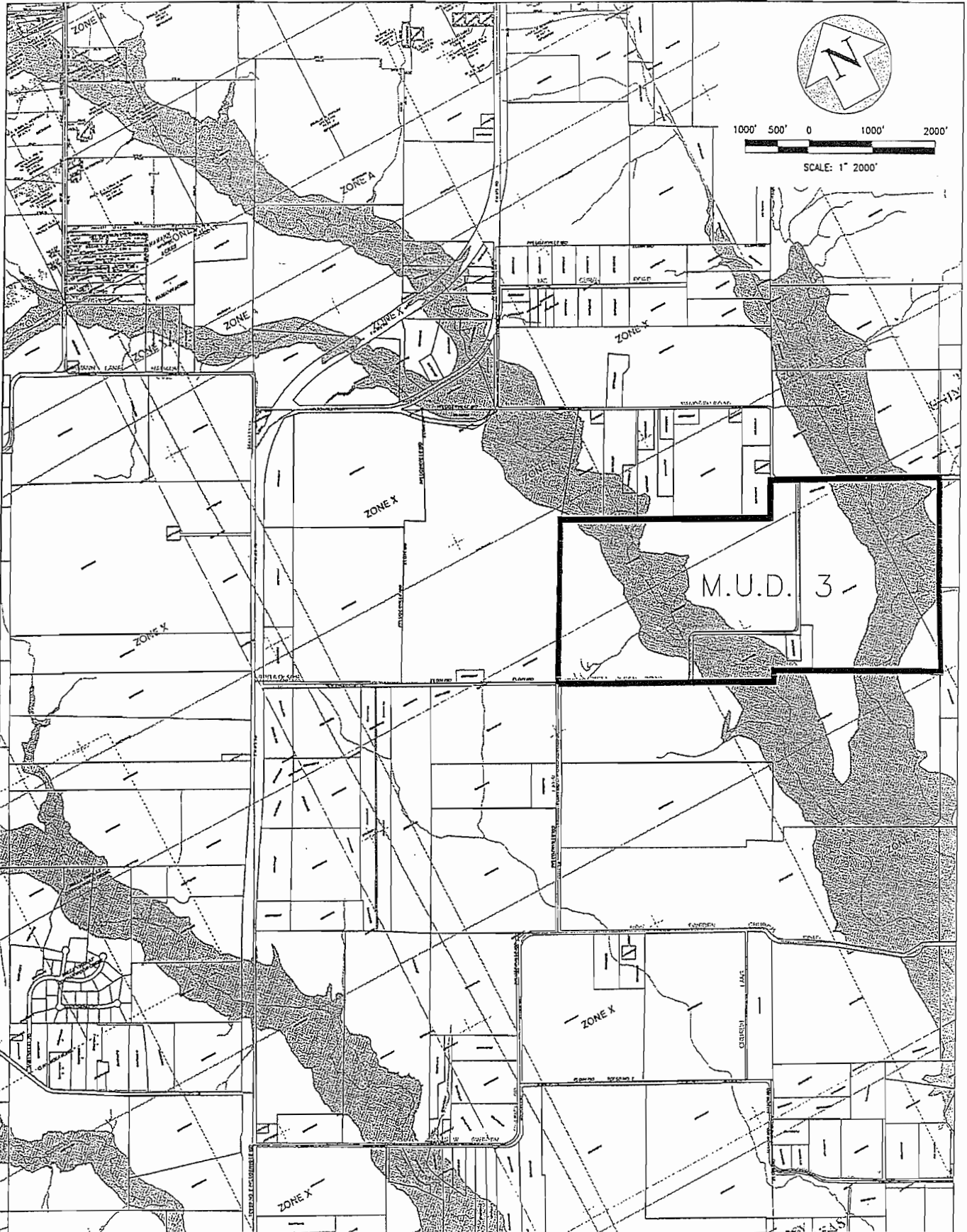
NO.	DATE	REVISIONS	BY
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			

PROJECT:

# EXHIBIT A 973 WASTEWATER COMPANY TRANSMISSION SYSTEM

**PATE & ENGINEERS**

HOUSTON • DALLAS • AUSTIN • FORT WORTH  
ARLINGTON • SAN ANTONIO  
7801 NORTH CAPITAL OF TEXAS HIGHWAY, SUITE 220  
AUSTIN, TEXAS 78731  
PH: (512) 340-0600  
FAX: (512) 340-0604  
WWW.PATEENG.COM



PATE & ENGINEERS  
 7801 NORTH CAPITAL OF TEXAS HIGHWAY, SUITE 220  
 AUSTIN, TEXAS 78731  
 TEL: (512) 340-0600  
 FAX: (512) 340-0604  
 WWW.PATEENG.COM

NO.	DATE	REVISIONS	BY
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			

**EXHIBIT B**  
**WHOLESALE WASTEWATER**  
**SERVICE AREA**

**PATE & ENGINEERS**  
 HOUSTON • DALLAS • AUSTIN • FORT WORTH  
 ARLINGTON • SAN ANTONIO  
 7801 NORTH CAPITAL OF TEXAS HIGHWAY, SUITE 220  
 AUSTIN, TEXAS 78731  
 PH: (512) 340-0600  
 FAX: (512) 340-0604  
 WWW.PATEENG.COM

**EXHIBIT E**

**FORM OF STRATEGIC PARTNERSHIP AGREEMENT**

**STRATEGIC PARTNERSHIP AGREEMENT BETWEEN**  
**THE CITY OF PFLUGERVILLE AND**  
**THE NEW SWEDEN MUNICIPAL UTILITY DISTRICT NO.**

THE STATE OF TEXAS                   §

COUNTY OF TRAVIS                   §       KNOW ALL MEN BY THESE PRESENTS

This Strategic Partnership Agreement Between the City of Pflugerville, Texas and the New Sweden Municipal Utility District No. \_\_, Travis County, Texas ("Agreement") is made and entered into by and among the City of Pflugerville, a municipal corporation, acting by and through its duly authorized City Manager ("City"); the New Sweden Municipal Utility District No.1 ("District"), 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").

**RECITALS**

1.     The District is a municipal utility district created pursuant to Chapter 54, Texas Water Code (the "Act") and operating under Chapters 49 and 54 of the Texas Water Code. All of the territory within the District is currently located within the extraterritorial jurisdiction of the City. The District encompasses approximately \_\_\_\_\_ acres, more or less. Its boundaries are described in **Exhibit "A"** and depicted on **Exhibit "B"** attached to this Agreement.
2.     The City is a home rule municipal corporation.
3.     The City desires to enter into an agreement with the District which would provide for eventual annexation and dissolution of the District by the City, and address issues related to administration of the district, provision of services, and other regulatory and financial matters.
4.     The District and its residents and property owners desire to postpone the City's annexation of the District in accordance with the terms of this Agreement and to provide for the construction and financing of certain wastewater facilities, which benefit residents of the District and the City.
5.     The intent of this Agreement is to enter into a strategic partnership agreement between the City and the District regarding the terms and conditions of annexation of the District by the City in accordance with Section 43.0751 of the Local Government Code.
6.     Section 43.0751 of the Local Government Code allows a municipal utility district and a city to provide for limited purpose annexation in a Strategic Partnership Agreement and provide for city collection of sales and use tax in the limited purpose area.

7. The District provided notice of two public hearings concerning the adoption of this Agreement in accordance with the procedural requirements of Section 43.0751 of the Local Government Code.
8. The District conducted two public hearings regarding this Agreement in accordance with procedural requirements of Section 43.0751 of the Local Government Code on \_\_\_\_\_, 200\_, at \_\_\_\_\_ o'clock p.m., at \_\_\_\_\_ and on \_\_\_\_\_, 200\_ at \_\_\_\_\_ o'clock p.m. at \_\_\_\_\_.
9. The City provided notice of two public hearings concerning the adoption of this Agreement in accordance with the procedural requirements of Section 43.0751 of the Local Government Code.
10. The City conducted two public hearings regarding this Agreement in accordance with procedural requirements of Section 43.0751 of the Local Government Code on \_\_\_\_\_, 200\_ at \_\_\_\_\_ o'clock p.m., at the City Council Chambers and on \_\_\_\_\_, 200\_ at \_\_\_\_\_ o'clock p.m., at the City Council Chambers.
11. The District has, by formal action, after public hearings, approved this Agreement on \_\_\_\_\_, 200\_ in open session at a meeting held in accordance with the Open Meetings Act.
12. The City has, by formal action, after public hearings, approved this Agreement on \_\_\_\_\_ in open session at a meeting held in accordance with the Open Meetings Act.
13. All procedural requirements imposed by state law for the adoption of this Agreement 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:

## **ARTICLE I**

### **DEFINITIONS, PURPOSE, AND LEGAL AUTHORITY**

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

In this Agreement, each of the following terms shall have the meaning indicated:

- a. "Agreement" means this Strategic Partnership Agreement Between the City of Pflugerville and the New Sweden Municipal Utility District No. \_\_.
- b. "City" means the City of Pflugerville, Texas.

- c. "Consent Agreement" means the agreement between the City and the Developers of the District, entitled "New Sweden Development Agreement" executed \_\_\_\_\_, a copy of which Consent Agreement is attached hereto as **Exhibit "C"**, and includes any amendments thereto.
- d. "Developers" shall have the same meaning as that term is used in the Consent Agreement.
- e. "District" means the New Sweden Municipal Utility District No. \_.
- f. "District Boundaries" means the boundaries of the District as they now exist, including property that may hereafter be annexed by the City for full or limited purposes, as such boundaries are more particularly described in **Exhibit "A"** and depicted on **Exhibit "B"** attached to this Agreement.
- g. "District Facilities" means the water, wastewater, drainage and park property, facilities, services or contract rights and other property or rights to serve the District, listed on **Exhibit "D"**.
- h. ["City-Annexed District Area" means the area described in Exhibit "E" hereto, which area is to be possibly annexed by the City prior to full annexation and dissolution of the entire District area by the City as described in Section 2.08 of this Agreement. **This definition is for the MUD 1 and MUD 2 agreements only.**]
- i. "Limited Purpose Annexation Property" means the property area in the District to be annexed for limited purposes pursuant to this Agreement.
- j. "Notice" means any formal notice or communication required or authorized to be given by one Party to another by this Agreement.
- k. "Parties" means the City and the District.
- l. "Party" means the City, or the District, as the case may be.
- m. "Period of Limited Purpose Annexation" means that period commencing on the effective date of the limited purpose annexation of the District, and ending upon the effective date of the conversion to full purpose jurisdiction of the City.

#### **Section 1.02 Purpose of the Agreement.**

The purpose of this Agreement is to define and clarify, through contractual agreement, the terms and conditions of annexation of property in the District by the City and the relationship between the City and the District, including matters related to the issuance of debt by the District, and collection of sales and use taxes by the City.

#### **Section 1.03 General Location and Description of the District.**



The District is a municipal utility district created under the Act and operating under the Act and Chapters 49 and 54 of the Texas Water Code. All of the territory within the District is located within the extraterritorial jurisdiction of the City. The District encompasses approximately \_\_\_\_\_ acres, more or less. Its boundaries are described in Exhibit "A" and depicted in Exhibit "B" attached to this Agreement.

## **ARTICLE II**

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

#### **Section 2.01 Conduct of Public Hearings.**

The District and the City acknowledge and agree that prior to the execution of this Agreement, the District and the City have conducted public hearings for the purpose of considering the adoption of this Agreement and the annexation of the District in accordance with the terms of this Agreement, and applicable law.

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

Under the provisions of Section 43.0751(c) of the Local Government Code, this Agreement shall become effective on \_\_\_\_\_.

#### **Section 2.03 Annexation of District for Limited Purposes**

- a. The District and the City agree that all or any portion of the District (the "Limited Purpose Annexation Property") shall be annexed by the City for limited purposes under Section 43.0751 of the Local Government Code; provided that such limited purposes shall not including zoning. The Parties agree that all of the Limited Purpose Annexation Property upon limited purpose annexation of the same by the City shall continue to be a part of the District following such annexation and shall continue to receive the same services from the District that it now receives. The District may levy an ad valorem tax in all of the areas within the District Boundaries as long as the District continues to exist.
- b. 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 property within the District for limited purposes as provided in this Agreement, and the imposition of sales and use tax by the City in the Limited Purpose Annexation Property within the District; and consents to the conversion of the property within the District to full purpose jurisdiction in accordance with 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.
- c. The District and the City agree that the sales and use taxes imposed in the Limited Purpose Annexation Property may be utilized by the City for any lawful purpose.

#### **Section 2.04 Taxation Authority of the City in the District During Limited Purpose Annexation.**

The City may impose and collect sales and use tax in the Limited Purpose Property 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.

#### **Section 2.05 Full Purpose Annexation of District**

In accordance with Sections 43.0751 (f)(5) and 43.0751(h) of the Local Government Code, the District and the City agree that the annexation status of the District under this Agreement may be converted to full purpose annexation no sooner than 15 years after the effective date of this Agreement as set forth in Section 2.02 hereof provided that the District has not accepted for maintenance and operation the water and wastewater facilities serving at least 70% of the lots within the District. If the City is unable to annex the land in the District 15 years after the effective date of this Agreement pursuant to the prior sentence because the District has accepted for maintenance and operation the water and wastewater facilities serving at least 70% of the lots within the District, then the City may not thereafter annex the land in the District until the earlier of (i) the date of the completion of construction and acceptance for maintenance and operation by the District of 100% of the District Facilities identified in **Exhibit D** hereto or (ii) 25 years after the effective date of this Agreement. The parties realize that the District Facilities may change from the specific facilities described in **Exhibit D** hereto due to changed circumstances after the effective date of this Agreement. Therefore, in determining whether 100% of the District Facilities have been completed and accepted by the District for operation and maintenance, the parties agree that such determination shall not necessarily be based on the identical facilities described in **Exhibit D**, but the District's consulting engineer and the City's City Manager, each acting in good faith, will make a mutual determination of whether the District has accepted 100% of the facilities required to fully develop the land in the District. If they cannot agree on such determination and the City desires to annex the District for full purposes, the parties agree to submit such determination to binding arbitration within 60 days after the District receives written notice from the City of the City's desire to annex the District for full purposes and the City's belief that 100% of the District Facilities have been completed and accepted by the District. The arbitration shall be conducted in accordance with Section 7.01 of this Agreement. This full purpose annexation conversion may be effected by City Council adoption of an ordinance including the area of the District within the full purpose City limits, and dissolving the District. Except as set out in this Agreement, no additional procedural or substantive requirements of state or local annexation law shall apply to such annexation, or to the annexation and dissolution ordinance. The District agrees not to unreasonably delay its acceptance of completed District Facilities.

**Section 2.06 District Residents as Citizens of the City Upon Conversion to Full Purpose Jurisdiction of the District.**

A resident of an area of the District that is converted to full purpose jurisdiction becomes a citizen of the City for all purposes and shall have all the rights, privileges, and responsibilities accorded to the citizens residing in all other areas that the City has annexed for full purposes.

**Section 2.07 Notice to Landowners of Full Purpose and Limited Purpose Annexation of Land Within the District.**

The District agrees to file the following notice concerning this Agreement in the Official Records of Travis County for the property within the District:

A portion of the property within the boundaries of New Sweden Municipal Utility District No. \_ of Travis County, Texas (the "District"), as depicted on the map attached hereto, is subject to the terms and conditions of a Strategic Partnership Agreement ("Agreement") between the District and the City of Pflugerville ("City"), dated \_\_\_\_\_ 200\_. The Agreement establishes a timetable for the annexation by the City of Pflugerville of the property in the District, which will be annexed initially for limited purposes and subsequently for full purposes. The annexation for full purposes may occur automatically at any time after the earlier of (i) thirty years after the effective date of the Agreement as set forth in Section 2.02 of the Agreement, or (ii) upon the completion and issuance of District bonds for 100% of utility infrastructure by the District, in accordance with a Consent Agreement between the City and District, and the Strategic Partnership Agreement. A copy of the Strategic Partnership 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 Pflugerville.

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 Official Records of Travis County, Texas, pursuant to Section 49.455 of the Texas Water Code.

**Section 2.08 Regulatory and Taxation Authority of the City and the District Upon Full Purpose Annexation of an Area of the District.**

Upon full purpose annexation of an area of the District not heretofore annexed by the City for full purposes, the City shall have all the authority and power, including taxation authority, within the full-purpose annexed area that the City enjoys in all other areas that the City has annexed or does annex for full purposes. [Notwithstanding the foregoing, however, the parties agree that the City will attempt to pass special purpose legislation applicable only to the District that would permit the City to full-purpose annex the tract described in Exhibit "E" hereto (the "City-Annexed District Area") before the City full-purpose annexes the entire District and dissolves the

District. Such special purpose legislation shall provide that in the event the City full-purpose annexes a portion of the District before the City annexes the entire District, that (i) the District shall continue to exist and include the portion of the District full-purpose annexed by the City, (ii) both the City and the District may levy and collect ad valorem taxes on the City-Annexed District Area provided that the combined total tax rate of the City and the District on the City-Annexed District Area shall not exceed a rate higher than the District's ad valorem tax rate and (iii) the total ad valorem taxes collected on the City-Annexed District Area by the City and the District shall be apportioned between the City and the District with 100% of the ad valorem taxes being paid to the District so long as the District has bonds outstanding payable, in whole or in part, from ad valorem taxes in the District and, after such ad valorem bonds of the District are fully paid off, such ad valorem taxes from the City-Annexed District Area shall be shared on the basis of 50% to the District and 50% to the City. During the Period of Limited Purpose Annexation, the District shall have all of the authority and power, including taxation authority, of a municipal utility district, except only as modified by the preceding sentence, so long as the District exists. Such legislation shall also clarify that the City need not provide any City services to the area dually annexed by the City for full purposes so long as the District continues to also exist and include such area. **The bracketed portions of this Section related to the City-Annexed District Area are for the MUD 1 and MUD 2 agreements only.**

**Section 2.09 Agreement not to Seek Annexation by Another Entity.** In furtherance of the purposes of this Agreement, the District agrees, to the extent allowed by law, that it will not seek or support any effort to incorporate the District or any part thereof, or to include the District within the boundaries of any incorporated entity other than City without the prior written consent of the City.

### **ARTICLE III** **SERVICES TO THE DISTRICT**

#### **Section 3.01 Municipal Services During the Period of Limited Purpose Annexation**

- a. The parties understand and agree that no City services will be provided in any area within the District Boundaries prior to the conversion of the District to full purpose jurisdiction, unless otherwise agreed in writing between the City and the District at a later time.
- b. City services not now being provided within the District Boundaries shall commence upon conversion of the District to full purpose jurisdiction, and dissolution of the District.
- c. The District shall be the retail water and wastewater service provider to all customers in the District so that the City will become the retail provider in the District upon the date of full purpose annexation conversion. Further, upon the date of full purpose annexation, the City shall own the District Facilities, as defined in the Consent Agreement.

## ARTICLE IV

### DISTRICT ASSETS, LIABILITIES, OBLIGATIONS, DEBT AND DEBT SERVICE AND THE CONSENT AGREEMENT

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

- a. The Consent Agreement shall remain in full force and effect until, and shall expire upon, full purpose annexation of the District. The District shall be dissolved and abolished on or about the date of full purpose conversion, except to the extent that the parties agree that it may remain in existence for the purposes of winding down the District's business.
- b. If there is a conflict between the Consent Agreement and this Agreement, the Consent Agreement shall control.
- c. The District's contracts, assets, liabilities, indebtedness, and obligations will all remain the responsibility of the District until full purpose annexation.

#### **Section 4.02 Assumption of the District's Outstanding Obligations, Assets, Debts, and Liabilities by the City.**

- a. The City shall assume none of the District's obligations or assets during the period preceding conversion to full purpose annexation jurisdiction.
- b. Upon conversion to full purpose annexation jurisdiction of the District, and dissolution of the District, all of the obligations, liabilities, indebtedness, and assets of the District, including but not limited to the District's Bonds, shall be assumed by the City as provided by law.

#### **Section 4.03 Capital Improvements During the Period of Limited Purpose Annexation.**

During the Period of Limited Purpose Annexation the District shall be responsible for making all capital improvements to District Facilities, under the terms and conditions in effect under the Consent Agreement.

#### **Section 4.04 District Bonds and Tax.**

The District will levy a debt service tax to pay debt service on the District's Bonds in accordance with the terms thereof and to pay operation and maintenance expenses of the District, as appropriate, and will continue to do so pending full purpose annexation of the District. Upon full purpose annexation of the District by the City, the City will assume the District's outstanding bonds. Any funds in the District's debt service account which have not been applied toward the District's bonds will be transferred to the City in full to be applied toward debt service of the

District's bonds being assumed by the City upon conversion to full purpose annexation jurisdiction of the District.

## **ARTICLE V**

### **AUDIT**

#### **Section 5.01 District Audit.**

Once it is financially active, the District shall conduct an annual audit each year, at its sole expense, to be performed by an independent certified public accountant. The District shall file a copy of the completed audit with the City's Finance Director. The District shall make its financial records available to the City for inspection during normal business hours.

## **ARTICLE VI**

### **MISCELLANEOUS PROVISIONS**

#### **Section 6.01 Effective Date and Duplicate Counterparts.**

This Agreement may be executed in duplicate counterparts and shall be effective on the date specified in Section 2.02 hereof.

#### **Section 6.02 Entire Agreement.**

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

#### **Section 6.03 Notice.**

- a. It is contemplated that the Parties will contact each other concerning the subject matter of this Agreement. However, any Notice shall be given at the addresses below for each of the Parties.
- b. Notice may be given by:
  - i. delivering the Notice to the Party to be notified;

- ii. by depositing the Notice in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified; or
  - iii. by sending the Notice by telefax with confirming copy sent by mail to the Party to be notified.
- c. Notice deposited in the United States mail in the manner hereinabove described shall be deemed effective from and after the earlier of the date of actual receipt or three days after the date of such deposit. Notice given in any other manner shall be effective only if and when received by the Party to be notified.
- d. For purposes of Notice, the addresses of the Parties shall, until changed as provided in this Section, be as follows:
- City of Pflugerville:  
City Manager  
100 E. Main St., Ste. 300  
Pflugerville, Texas 78660  
Fax: (512) 990-4364

New Sweden Municipal Utility District No. 1:  
C/O Freeman & Corbett, L.L.P.  
8500 Bluffstone Cove., Suite B-104  
Austin, Texas 787059  
Fax (512) 453-0865
- e. The Parties may change their addresses for Notice purposes by providing five days written notice of the changed address to the other Party.
- f. If any date or period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating Notice is extended to the first business day following the Saturday, Sunday, or legal holiday.

#### **Section 6.04 Time.**

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

#### **Section 6.05 Severability or Modification of Agreement as a Result of Modification of the State Code and Statutory Authority for the Agreement.**

- a. If any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement, or the application of the word, phrase, clause, sentence, paragraph, section or other part of

this Agreement to any person or circumstance is held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the Parties agree that they will amend or revise this Agreement to accomplish to the greatest degree practical the same purpose and objective of the part determined to be invalid or unconstitutional, including without limitation amendments or revisions to the terms and conditions of this Agreement pertaining to or affecting the rights and authority of the Parties in areas of the District annexed by the City pursuant to this Agreement, whether for limited or full purposes.

- 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 amendments 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. 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.

#### **Section 6.06 Waiver.**

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

#### **Section 6.07 Applicable Law and Venue; Consent to Jurisdiction and Forum Selection.**

The construction and validity of the Agreement shall be governed by the laws of the State of Texas (without regard to conflict of laws principles). Venue shall be in Travis County, Texas. The Parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the Municipal Court of Pflugerville and the County and State Courts located in the County of Travis, State of Texas. The aforementioned choice of venue is intended by the Parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the Parties with respect to or arising out of this Agreement in any jurisdiction other than that specified in this paragraph. Each Party hereby waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulates that the Municipal Court of the City of Pflugerville and the County and State Courts located in the County of Travis, State of Texas shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Agreement. Each Party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this paragraph by registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this Agreement. Any final judgment rendered against a Party in any action or



proceeding shall be conclusive as to the subject of such final judgment and may be enforced in other jurisdictions in any manner provided by law.

#### **Section 6.08 Reservation of Rights.**

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

#### **Section 6.09 Further Agreement and Documents.**

Both Parties agree that at any time after execution of this Agreement, they will, upon request of the other Party, exchange any other documents necessary to effectuate the terms of this Agreement. Both Parties also agree that they will do any further acts or things as the other Party may reasonably request to effectuate the terms of this Agreement.

#### **Section 6.10 Incorporation of Exhibits and Other Documents by Reference.**

All Exhibits and other Documents attached to or referred to in this Agreement are incorporated into this Agreement by reference for the purposes set forth in this Agreement.

#### **Section 6.11 Assignability, Successors, and Assigns.**

This Agreement shall not be assignable by the either party without the prior written consent of the other party, which consent shall not be unreasonably withheld, delayed or conditioned.

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective representatives, successors and assigns.

Notwithstanding the foregoing, it is understood and agreed that if the District is divided into two or more districts as permitted by law, this Agreement shall inure to the benefit or, and be binding upon, each of the succeeding districts.

#### **Section 6.12 Amendment.**

This Agreement may only be amended in writing upon the approval of the governing bodies of the City and the District.

### **ARTICLE VII** **DEFAULT AND REMEDIES FOR DEFAULT**

#### **Section 7.01 Default.**

- a. Upon the occurrence, or alleged occurrence, of an event of default under or violation of this Agreement, the non-defaulting Party shall send the defaulting Party Notice of its default or violation or alleged default or violation. Except as otherwise specifically

provided in this Agreement, the defaulting Party must cure its default or violation within seventy-five days following receipt of the Notice of default or violation.

- b. If the default or violation is not cured within the seventy-five day period, the non-defaulting Party may sue for enforcement of this Agreement. However, prior to bringing any proceeding in a court of law or before a court of competent jurisdiction, the Parties may resolve the issue through mediation. If the Parties agree to seek mediation or arbitration, they must participate in good faith. However, none of the Parties shall be obligated to pursue mediation or arbitration that does not resolve the issue in dispute within seven days after the mediation is initiated or within fourteen days after the mediation is requested. Further the parties are not obligated to pursue arbitration that does not resolve the issue within twenty-eight days after the arbitration is requested. The Parties shall share the costs of the mediation or arbitration equally. The Parties further agree that the City is not obligated to resolve any dispute based on an arbitration decision under this Agreement if the arbitration decision compromises the City's sovereign immunity as a home rule city.
- c. If the Parties are unable to resolve their dispute through mediation or arbitration, the non-defaulting Party shall have the right to enforce the terms and provisions of this Agreement by specific performance or by such other legal or equitable relief to which the non-defaulting Party maybe entitled. Any remedy or relief described in this Agreement shall be cumulative of, and in addition to, any other remedies and relief available at law or in equity.
- d. If the defaulting Party fails to abide by these deadlines, the non-defaulting Party shall have all rights and remedies available in law and equity and all rights and remedies provided in this Agreement. The Parties acknowledge that the City's remedies shall include the right, in the City's sole discretion, to proceed with full purpose annexation of the District, or any portion thereof.
- e. All of these rights and remedies shall be cumulative.

#### **Section 7.02 Dissolution of the District.**

- a. If the District is dissolved without the prior written approval of the City, this Agreement shall automatically terminate and the City shall have the right to annex all of the territory within the District for full purposes in accordance with applicable laws.
- b. If the District is dissolved, the Board of Directors for the District shall continue to exist after the dissolution for the sole purpose of doing any and all acts or things necessary to transfer the assets, obligations, indebtedness, and liabilities to the City. Upon completion of the transfer of all assets, obligations, indebtedness, and liabilities to the City, the District shall cease to exist.

IN WITNESS WHEREOF, this Agreement consisting of \_\_\_\_ pages and Exhibits A-E is executed in duplicate counterparts.

**CITY OF PFLUGERVILLE, TEXAS**

Attest: \_\_\_\_\_  
\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
\_\_\_\_\_  
City Manager

**NEW SWEDEN MUNICIPAL UTILITY  
DISTRICT NO. \_**

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

\_\_\_\_\_  
President

THE STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, City Manager for the City of Pflugerville, Texas, for and on behalf of the City of Pflugerville, Texas.

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

THE STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, President of New Sweden Municipal Utility District No. \_\_, for and on behalf of the New Sweden Municipal Utility District No. \_\_.

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

STRATEGIC PARTNERSHIP AGREEMENT  
BETWEEN THE CITY OF PFLUGERVILLE AND THE  
NEW SWEDEN MUNICIPAL UTILITY DISTRICT NO. \_

LIST OF EXHIBITS

The following are the exhibits for this Agreement:

Exhibit A	District Boundaries – Legal Description
Exhibit B	Map of District
Exhibit C	Consent Agreement
Exhibit D	District Facilities
Exhibit E	Description of City-Annexed District Area [for MUD 1 and MUD 2 Agreements only]

**EXHIBIT A**

**NEW SWEDEN MUD \_ BOUNDARIES**

**PATE ENGINEERS**

HOUSTON ♦ DALLAS ♦ AUSTIN ♦ FORT WORTH  
ARLINGTON ♦ SAN ANTONIO

7601 NORTH CAPITAL OF  
TEXAS HIGHWAY, SUITE 220  
AUSTIN, TEXAS 78731

PH: (512) 340-0800  
FX: (512) 340-0504  
PWW@PATEENG.COM

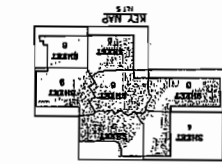
**EXHIBIT C**

**CONSENT AGREEMENT**

**EXHIBIT D**

**DISTRICT FACILITIES**





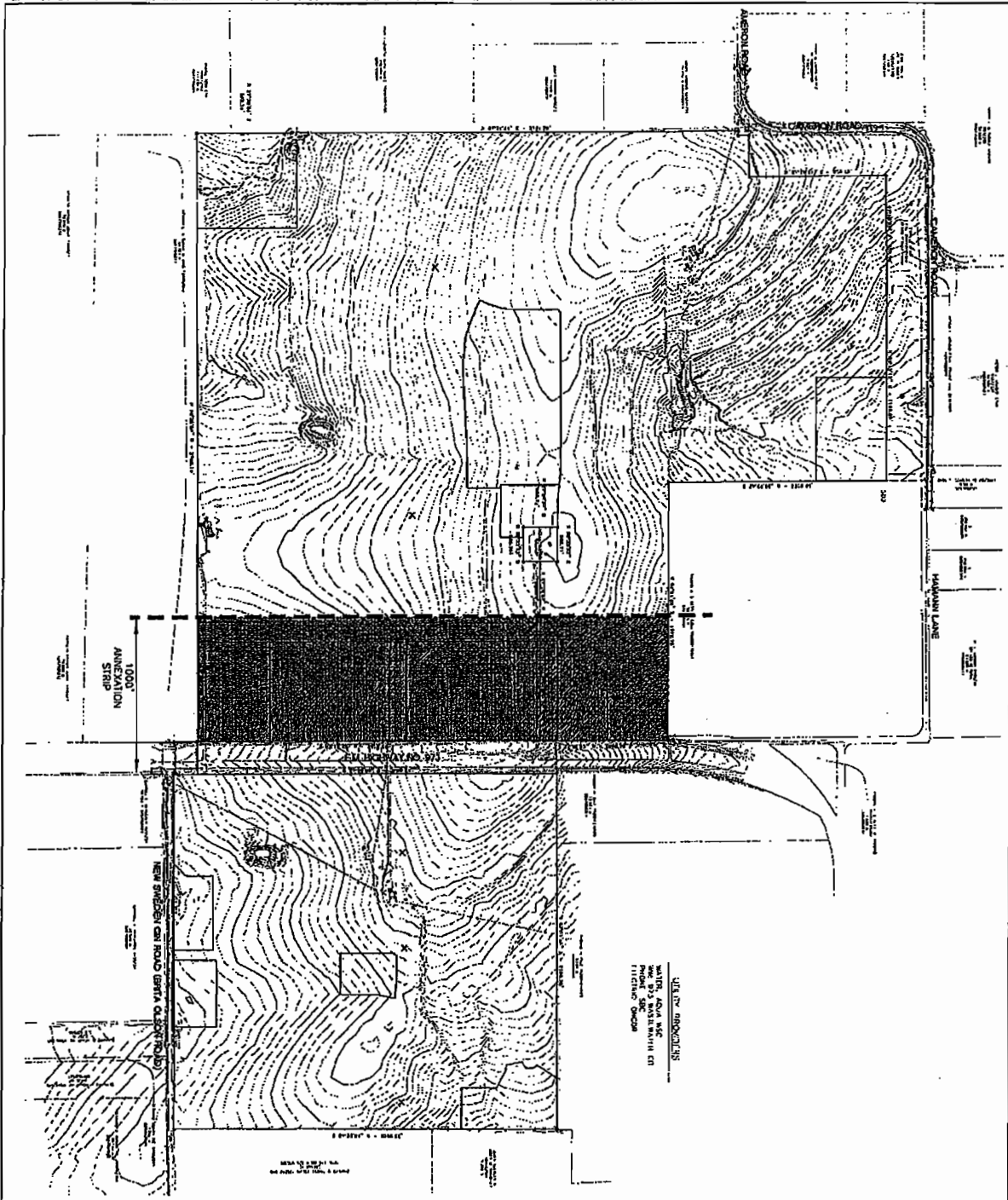
PARKLAND TABLE	
PROPOSED PRIVATE PARKLAND	12.46
PROPOSED PARKLAND BETWEEN 100TH AND 23RD FLOODPLAIN	12.16
UTILITY PROVIDERS	
WATER: AQUA WSC	
SEWER: WSC	
PHONE: SBC	
ELECTRIC: DMECR	

**PATE ENGINEERS**

INCORPORATED • DALLAS • AUSTIN • FORT WORTH  
ADELPHI • SAN ANTONIO

7001 WEST M. CANTREY • F.W. 150404  
SUITE 250  
ADELPHI, TEXAS 79208

AN (512) 346-0000  
FAX (512) 346-0000  
TELE (512) 346-0000



ALL TO BE REMOVED  
WITHIN 30 DAYS  
OF THE DATE OF  
THE SURVEY



SCALE  
1" = 200'

1. THE BOHLS TRACT, BEING 1000' WIDE, 1000' DEEP, AND 1000' LONG, IS SHOWN ON THE MAP.
2. THE BOHLS TRACT IS BOUNDARY BY THE BOHLS TRACT, BEING 1000' WIDE, 1000' DEEP, AND 1000' LONG.
3. THE BOHLS TRACT IS BOUNDARY BY THE BOHLS TRACT, BEING 1000' WIDE, 1000' DEEP, AND 1000' LONG.
4. THE BOHLS TRACT IS BOUNDARY BY THE BOHLS TRACT, BEING 1000' WIDE, 1000' DEEP, AND 1000' LONG.
5. THE BOHLS TRACT IS BOUNDARY BY THE BOHLS TRACT, BEING 1000' WIDE, 1000' DEEP, AND 1000' LONG.
6. THE BOHLS TRACT IS BOUNDARY BY THE BOHLS TRACT, BEING 1000' WIDE, 1000' DEEP, AND 1000' LONG.
7. THE BOHLS TRACT IS BOUNDARY BY THE BOHLS TRACT, BEING 1000' WIDE, 1000' DEEP, AND 1000' LONG.
8. THE BOHLS TRACT IS BOUNDARY BY THE BOHLS TRACT, BEING 1000' WIDE, 1000' DEEP, AND 1000' LONG.
9. THE BOHLS TRACT IS BOUNDARY BY THE BOHLS TRACT, BEING 1000' WIDE, 1000' DEEP, AND 1000' LONG.
10. THE BOHLS TRACT IS BOUNDARY BY THE BOHLS TRACT, BEING 1000' WIDE, 1000' DEEP, AND 1000' LONG.
11. THE BOHLS TRACT IS BOUNDARY BY THE BOHLS TRACT, BEING 1000' WIDE, 1000' DEEP, AND 1000' LONG.
12. THE BOHLS TRACT IS BOUNDARY BY THE BOHLS TRACT, BEING 1000' WIDE, 1000' DEEP, AND 1000' LONG.
13. THE BOHLS TRACT IS BOUNDARY BY THE BOHLS TRACT, BEING 1000' WIDE, 1000' DEEP, AND 1000' LONG.
14. THE BOHLS TRACT IS BOUNDARY BY THE BOHLS TRACT, BEING 1000' WIDE, 1000' DEEP, AND 1000' LONG.
15. THE BOHLS TRACT IS BOUNDARY BY THE BOHLS TRACT, BEING 1000' WIDE, 1000' DEEP, AND 1000' LONG.
16. THE BOHLS TRACT IS BOUNDARY BY THE BOHLS TRACT, BEING 1000' WIDE, 1000' DEEP, AND 1000' LONG.
17. THE BOHLS TRACT IS BOUNDARY BY THE BOHLS TRACT, BEING 1000' WIDE, 1000' DEEP, AND 1000' LONG.
18. THE BOHLS TRACT IS BOUNDARY BY THE BOHLS TRACT, BEING 1000' WIDE, 1000' DEEP, AND 1000' LONG.
19. THE BOHLS TRACT IS BOUNDARY BY THE BOHLS TRACT, BEING 1000' WIDE, 1000' DEEP, AND 1000' LONG.
20. THE BOHLS TRACT IS BOUNDARY BY THE BOHLS TRACT, BEING 1000' WIDE, 1000' DEEP, AND 1000' LONG.

**EXHIBIT F**

**AREA TO BE EXCLUDED FROM THE MUD 1**



**EXHIBIT G**

**FORM OF MEMORANDUM OF AGREEMENT**

MEMORANDUM OF AGREEMENT

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

Notice is hereby given that the City of Pflugerville (the "City") and RMD Holdings, L.P. ("RMD") have entered into that certain "New Sweden Development Agreement," dated \_\_\_\_\_, 200\_ (the "Land Development Agreement"), relating to the development of land described in **Exhibit A** hereto. Reference is hereby made to the provisions of the Land Development Agreement, copies of which may be obtained by contacting the following people:

City Manager  
City of Pflugerville  
P.O. Box 589  
Pflugerville, Texas 78600

or

Rhett Dawson  
RMD Holdings, L.P.  
1717 West Sixth Street  
Suite 260  
Austin, Texas 78703

THE CITY OF PFLUGERVILLE, TEXAS

By: \_\_\_\_\_  
Name: David Buesing  
Title: City Manager

ATTEST:

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

RMD Holdings, L.P., a Texas limited partnership  
By: RMD & Co., Inc., a Texas corporation,  
general partner

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

STATE OF TEXAS           §  
                                     §  
COUNTY OF TEXAS       §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_, by David Buesing, City Manager, City of Pflugerville, Texas, a Texas home-rule city, on behalf of the city.

\_\_\_\_\_  
Notary Public, State of Texas  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF TEXAS           §  
                                     §  
COUNTY OF TEXAS       §

This instrument was acknowledged before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_, by Rhett Dawson, President of RMD & Co., Inc. A Texas corporation, General Partner of RMD Holdings, L.P., a Texas limited partnership on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public, State of Texas  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT "B"**

**NEW SWEDEN MUD NO. 2 DESCRIPTION**



# **NEW SWEDEN MUNICIPAL UTILITY DISTRICT NO. 2**

**426.0 ACRES**

IN THE

JAMES P. KEMPE SURVEY, A-463  
BENJAMIN ALLEN SURVEY, A-37  
MCHENRY WINDBURN SURVEY, A-825  
THOMAS SHARP SURVEY, A-745

CONTENTS:

TRACT 1: NET 308.5 ACRES

TRACT 2: 117.5 ACRES

NEW SWEDEN MUNICIPAL UTILITY DISTRICT NO. 2  
426.0 ACRES  
IN THE  
JAMES P. KEMPE SURVEY, A-463  
BEJAMIN ALLEN SURVEY, A-37  
McHENRY WINDBURN SURVEY, A-825  
THOMAS SHARP SURVEY, A-745  
TRAVIS COUNTY, TEXAS

**TWO TRACTS OF LAND TOTALING 426.0 ACRES DESCRIBED AS FOLLOWS:**

**TRACT 1**

All that certain 309.5 acres of land, out of the 200 acres of land listed in the deeds from Alvin H. Bohls, et ux to the Bohls children recorded under Volume 5332, Pages 1966, 1968, 1970, 5676, Volume 5362, Pages 177, 179, 181, and 183, and also listed in the deeds from Fred O. Bohls, et ux to the Bohls children recorded under Volume 5676, Pages 1563 and 1566, out of the 49.62 acre tract described in the deed from Paul A. Moebus to Laura Moebus recorded under Document No. 2002105845, in the Official Public Records of Travis County, Texas, out of the 78.112 acre tract described in the deed from Estelle Henze, et al to KB3, LC recorded under Document No. 2005123655, in the Official Public Records of Travis County, Texas, and out of Lots 3, 4, 5, and 6 of the Subdivision of the Jas P. Kemp 1280 Acre Survey according to the plat thereof recorded under Volume 1, Page 16, in the Plat Records of Travis County, Texas, in the James P. Kempe Survey, A-463, Travis County, Texas, and more particularly described by metes and bounds as follows: (All bearings are based on the Texas State Plane Coordinate System, Central Zone)

**COMMENCING** at a ½" iron rod found for the northwest corner of the 58.825 acre tract described in the deed from Thomas Gola, et ux to David L. Everetts and Giao Ly recorded under Document No. 2006001403, in the Official Public Records of Travis County, Texas, in the south right-of-way line of Hamann Lane (40' R.O.W.), from which a ½" iron rod found for the most northerly northeast corner of said 58.825 acre tract bears South 62°19'12" East - 1527.23'; **THENCE** South 27°04'16" West - 252.44' along the west line of said 58.825 acre tract, common to the east line of aforesaid 78.112 acre tract to a ¾" iron rod set for the most northerly northeast corner and **POINT OF BEGINNING** of the herein described tract;

**THENCE** South 27°04'16" West - 1356.40', continuing along said common line, to a ¾" iron rod set for an angle corner of the herein described tract, common to the southwest corner of said 58.825 acre tract and the southeast corner of said 78.112 acre tract, in the north line of aforesaid Lot 5;

**THENCE** South 62°24'20" East - 1572.75', along said north line, common to the south line of said 58.825 acre tract, to the most easterly northeast corner of the herein described tract, common to the southeast corner of said 58.825 acre tract, in the west right-of-way line of F.M. Highway No. 973 (R.O.W. Varies);

**THENCE** South 27°28'53" West - 1000.70', along said west right-of-way line, to a Texas Department of Transportation Type II concrete monument found for an angle corner;

**THENCE** South 27°18'48" West - 1918.11', continuing along said west right-of-way line, to a ¾" iron rod set for the southeast corner of the herein described tract, common to the southeast corner of aforesaid 49.62 acre tract, common to the northeast corner of the 49.723 acre tract described in the deed from Barry G. Wanslow and Kimberly S. Wanslow to Susan M. King and Richard L. King recorded under Volume 12568, Page 602, in the Real Property Records of Travis County, Texas, from which a Texas Department of Transportation Type II concrete monument bears South 27°18'48" West - 544.78';

**THENCE** North 62°35'56" West - 3706.19', along the south line of said 49.62 acre tract, common to the north line of said 49.723 acre tract, to a 2" iron rod found for the southwest corner of said 49.62 acre tract, common to the northwest corner of said 49.723 acre tract and the southwest corner of the herein described tract, in the west line of aforesaid Lot 3;

**THENCE** North 27°30'01" East - 583.34', along said west line, common to the west line of said 49.62 acre tract, to a metal t-post found for the northwest corner of said 49.62 acre tract, common to the northwest corner of said Lot 3 and the southwest corner of aforesaid Lot 4

**THENCE** North 27°24'04" East - 2781.39', along the west line of said Lot 4, the west line of aforesaid Lot 5, and the west line of aforesaid Lot 6, common to the west line of aforesaid 200 acre tract and the west line of aforesaid 78.112 acre tract, to a ¾" iron rod set for the most westerly northwest corner of the herein described tract, in the south right-of-way line of Cameron Road (60' R.O.W.);

**THENCE** South 62°59'08" East - 28.22', along said south right-of-way line, to a ¾" iron rod set for an angle corner of the herein described tract, at the intersection of said south right-of-way line and the east right-of-way line of said Cameron Road (60' R.O.W.);

**THENCE** North 27°15'21" East - 64.00', along said east right-of-way line, to a ¾" iron rod set for an angle corner of the herein described tract;

**THENCE** South 62°59'08" East - 250.00' to a ¾" iron rod set for an angle corner of the herein described tract;

**THENCE** North 27°15'21" East - 853.89' to a ¾" iron rod set for the northwest corner of the herein described tract;

**THENCE** South 62°56'05" East - 658.59' to a ¾" iron rod set for an angle corner of the herein described tract;

**THENCE** South 62°13'12" East - 1188.65' to the **POINT OF BEGINNING** of the herein described tract and containing 309.5 acres of land; **SAVE AND EXCEPT** all that certain 1.000 acre of land, which is the 0.083 acre tract described in the deed from Stephen Frederick Bohls, et al to Aqua Water Supply Corporation recorded under Volume 6038, Page 876, in the Deed Records of Travis County, Texas, and the 0.917 acre tract described in the deed from Stephen Frederick Bohls, et al to Aqua Water Supply Corporation recorded under Document Nos. 1999052513, 1999052514, 1999052515, and 1999052516, in the Official Public Records of Travis County, Texas, in the James P. Kempe Survey, A-463, Travis County, Texas, and more particularly described by metes and bounds as follows: (All bearings are based on the Texas State Plane Coordinate System, Central Zone)

**COMMENCING** at a ¾" iron rod found at the northeast corner of the 1.006 acre tract (40' permanent easement and right-of-way) from Stephen Frederick Bohls, et al to Aqua Water Supply Corporation recorded under Document Nos. 1999052513, 1999052514, 1999052515, and 1999052516, in the Official Public Records of Travis County, Texas, in the west right-of-way line of F.M. Highway No. 973 (R.O.W. Varies ), from which a Texas Department of Transportation Type II concrete monument bears North 27°28'53" East – 286.08'; **THENCE** North 62°33'23" West – 1095.33', along the north line of said 1.006 acre tract, to a ¾" iron rod found for the northwest corner of said 1.006 acre tract, in the east line of aforesaid 0.917 acre tract; **THENCE** North 27°26'37" East – 104.30', along said east line to a ¾" iron rod found for the northeast corner of said 0.917 acre tract, common to the the northeast corner and **POINT OF BEGINNING** herein described tract;

**THENCE** South 27°26'37" West - 208.71' to a ¾" iron rod found for the southeast corner of said 0.917 acre tract, common to the southeast corner of the herein described tract;

**THENCE** North 62°33'23" West - 208.71' to a ¾" iron rod found for the southwest corner of said 0.917 acre tract, common to the southwest corner of the herein described tract;

**THENCE** North 27°26'37" East - 208.71' to a ¾" iron rod found for the northwest corner of said 0.917 acre tract, common to the northwest corner of the herein described tract;

**THENCE** South 62°33'23" East - 208.71' to the **POINT OF BEGINNING** of the herein described tract and containing 1.000 acres of land.

**FOR A NET AREA OF 308.5 ACRES OF LAND**

**TRACT 2**

All that certain 117.5 acres of land, out of the 126.2 acre tract described in the deed from F.O. Bohls, et ux to Stephen Bohls and Brian Bohls recorded under Volume 7876, Page 998, Volume 8388, Page 345, Volume 8444, Page 921, Volume 9189, Page 776, and Volume 10551, Page 226, in the Deed Records of Travis County, Texas, in the Benjamin Allen Survey, A – 37, the McHenry Windburn Survey, A-825, and the Thomas Sharp Survey, A- 745, Travis County, Texas and more particularly described by metes and bounds as follows: (All bearings are based on the Texas State Plane Coordinate System, Central Zone)

**COMMENCING** at a ¾ iron rod found for the southeast corner of the 217.52 acre tract described in the deed from James Vandehey to Charles Colvin, et al recorded under Volume 12524, Page 1846, in the Official Public Records of Travis County, Texas, in the north right-of-way line of New Sweden Gin Road (Britta Olson Road) (R.O.W. Varies); **THENCE** North 62°38'33" West – 2448.00', along said north right-of-way line, at 1618.00' passing a 1/2" iron rod found for an angle corner of said 217.52 acre tract, common to the southwest corner of the 2.00 acre tract described in the deed to New Sweden Co-Op Gin recorded under Volume 1466, Page 225, in the Deed Records of Travis County, Texas, continuing to a ½" iron rod set for the southeast corner and **POINT OF BEGINNING** of the herein described tract, common to the southwest corner of said 217.52 acre tract and the southeast corner of aforesaid 126.2 acre tract;

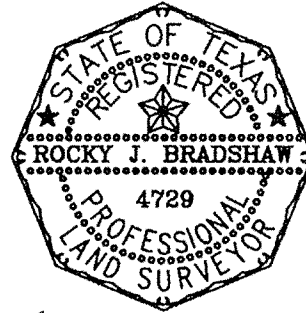
**THENCE** North 62°31'51" West - 2157.22', continuing along said north right-of-way line, to a 3/4" iron rod set for the southwest corner of the herein described tract, at the intersection of said north right-of-way line and the east right-of-way line of F.M. Highway No. 973;


**THENCE** North 27°20'08" East - 2368.21', along said east right-of-way line, to a ¾" iron rod set for the northwest corner of the herein described tract, in the north line of aforesaid 126.2 acre tract, common to the south line of the 102.41 acre tract described in the deed from Irene Ollie to Thomas H. Ollie recorded under Document No. 2001214920, in the Official Public Records of Travis County, Texas;

**THENCE** South 62°31'45" East - 2166.38', along said common line, to a ¾" iron rod set for the northeast corner of the herein described tract, common to the northeast corner of said 126.2 acre tract, in a west line of aforesaid 217.52 acre tract;

**THENCE** South 27°33'27" West - 2368.14', along said west line, common to the east line of said 126.2 acre tract, to the **POINT OF BEGINNING** of the herein described tract and containing 117.5 acres of land.

**TWO TRACTS TOGETHER COMPRISING AN AGGREGATE OF 426.0 ACRES OF LAND**



  
Certification Date  
March 13, 2006

THIS LEGAL DESCRIPTION IS ISSUED IN CONJUNCTION WITH THE DISTRICT BOUNDARY MAP OF NEW SWEDEN MUNICIPAL UTILITY DISTRICT NO. 2. THIS DOCUMENT WAS PREPARED BASED ON THE SURVEY CONDUCTED BY PATE SURVEYORS DATED MARCH 13, 2006.

**EXHIBIT "C"**

**DESCRIPTION OF THE PROPERTY**

## **TRACT 1**

All that certain 309.5 acres of land, out of the 200 acres of land listed in the deeds from Alvin H. Bohls, et ux to the Bohls children recorded under Volume 5332, Pages 1966, 1968, 1970, 5676, Volume 5362, Pages 177, 179, 181, and 183, and also listed in the deeds from Fred O. Bohls, et ux to the Bohls children recorded under Volume 5676, Pages 1563 and 1566, out of the 49.62 acre tract described in the deed from Paul A. Moebus to Laura Moebus recorded under Document No. 2002105845, in the Official Public Records of Travis County, Texas, out of the 78.112 acre tract described in the deed from Estelle Henze, et al to KB3, LC recorded under Document No. 2005123655, in the Official Public Records of Travis County, Texas, and out of Lots 3, 4, 5, and 6 of the Subdivision of the Jas P. Kemp 1280 Acre Survey according to the plat thereof recorded under Volume 1, Page 16, in the Plat Records of Travis County, Texas, in the James P. Kempe Survey, A-463, Travis County, Texas, and more particularly described by metes and bounds as follows: (All bearings are based on the Texas State Plane Coordinate System, Central Zone)

**COMMENCING** at a ½" iron rod found for the northwest corner of the 58.825 acre tract described in the deed from Thomas Gola, et ux to David L. Everetts and Giao Ly recorded under Document No. 2006001403, in the Official Public Records of Travis County, Texas, in the south right-of-way line of Hamann Lane (40' R.O.W.), from which a ½" iron rod found for the most northerly northeast corner of said 58.825 acre tract bears South 62°19'12" East - 1527.23'; **THENCE** South 27°04'16" West - 252.44' along the west line of said 58.825 acre tract, common to the east line of aforesaid 78.112 acre tract to a ¾" iron rod set for the most northerly northeast corner and **POINT OF BEGINNING** of the herein described tract;

**THENCE** South 27°04'16" West - 1356.40', continuing along said common line, to a ¾" iron rod set for an angle corner of the herein described tract, common to the southwest corner of said 58.825 acre tract and the southeast corner of said 78.112 acre tract, in the north line of aforesaid Lot 5;

**THENCE** South 62°24'20" East - 1572.75', along said north line, common to the south line of said 58.825 acre tract, to the most easterly northeast corner of the herein described tract, common to the southeast corner of said 58.825 acre tract, in the west right-of-way line of F.M. Highway No. 973 (R.O.W. Varies);

**THENCE** South 27°28'53" West - 1000.70', along said west right-of-way line, to a Texas Department of Transportation Type II concrete monument found for an angle corner;

**THENCE** South 27°18'48" West - 1918.11', continuing along said west right-of-way line, to a ¾" iron rod set for the southeast corner of the herein described tract, common to the southeast corner of aforesaid 49.62 acre tract, common to the northeast corner of the 49.723 acre tract described in the deed from Barry G. Wanslow and Kimberly S. Wanslow to Susan M. King and Richard L. King recorded under Volume 12568, Page 602, in the Real Property Records of Travis County, Texas, from which a Texas Department of Transportation Type II concrete monument bears South 27°18'48" West - 544.78';

**THENCE** North 62°35'56" West - 3706.19', along the south line of said 49.62 acre tract, common to the north line of said 49.723 acre tract, to a 2" iron rod found for the southwest corner of said 49.62 acre tract, common to the northwest corner of said 49.723 acre tract and the southwest corner of the herein described tract, in the west line of aforesaid Lot 3;

**THENCE** North 27°30'01" East - 583.34', along said west line, common to the west line of said 49.62 acre tract, to a metal t-post found for the northwest corner of said 49.62 acre tract, common to the northwest corner of said Lot 3 and the southwest corner of aforesaid Lot 4

**THENCE** North 27°24'04" East - 2781.39', along the west line of said Lot 4, the west line of aforesaid Lot 5, and the west line of aforesaid Lot 6, common to the west line of aforesaid 200 acre tract and the west line of aforesaid 78.112 acre tract, to a ¾" iron rod set for the most westerly northwest corner of the herein described tract, in the south right-of-way line of Cameron Road (60' R.O.W.);

**THENCE** South 62°59'08" East - 28.22', along said south right-of-way line, to a ¾" iron rod set for an angle corner of the herein described tract, at the intersection of said south right-of-way line and the east right-of-way line of said Cameron Road (60' R.O.W.);

**THENCE** North 27°15'21" East - 64.00', along said east right-of-way line, to a ¾" iron rod set for an angle corner of the herein described tract;

**THENCE** South 62°59'08" East - 250.00' to a ¾" iron rod set for an angle corner of the herein described tract;

**THENCE** North 27°15'21" East - 853.89' to a ¾" iron rod set for the northwest corner of the herein described tract;

**THENCE** South 62°56'05" East - 658.59' to a ¾" iron rod set for an angle corner of the herein described tract;

**THENCE** South 62°13'12" East - 1188.65' to the **POINT OF BEGINNING** of the herein described tract and containing 309.5 acres of land; **SAVE AND EXCEPT** all that certain 1.000 acre of land, which is the 0.083 acre tract described in the deed from Stephen Frederick Bohls, et al to Aqua Water Supply Corporation recorded under Volume 6038, Page 876, in the Deed Records of Travis County, Texas, and the 0.917 acre tract described in the deed from Stephen Frederick Bohls, et al to Aqua Water Supply Corporation recorded under Document Nos. 1999052513, 1999052514, 1999052515, and 1999052516, in the Official Public Records of Travis County, Texas, in the James P. Kempe Survey, A-463, Travis County, Texas, and more particularly described by metes and bounds as follows: (All bearings are based on the Texas State Plane Coordinate System, Central Zone)

**COMMENCING** at a ¾" iron rod found at the northeast corner of the 1.006 acre tract (40' permanent easement and right-of-way) from Stephen Frederick Bohls, et al to Aqua Water Supply Corporation recorded under Document Nos. 1999052513, 1999052514, 1999052515, and 1999052516, in the Official Public Records of Travis County, Texas, in the west right-of-way line of F.M. Highway No. 973 (R.O.W. Varies ), from which a Texas Department of Transportation Type II concrete monument bears North 27°28'53" East – 286.08'; **THENCE** North 62°33'23" West – 1095.33', along the north line of said 1.006 acre tract, to a ¾" iron rod found for the northwest corner of said 1.006 acre tract, in the east line of aforesaid 0.917 acre tract; **THENCE** North 27°26'37" East – 104.30', along said east line to a ¾" iron rod found for the northeast corner of said 0.917 acre tract, common to the the northeast corner and **POINT OF BEGINNING** herein described tract;



**THENCE** South 27°26'37" West - 208.71' to a ¾" iron rod found for the southeast corner of said 0.917 acre tract, common to the southeast corner of the herein described tract;

**THENCE** North 62°33'23" West - 208.71' to a ¾" iron rod found for the southwest corner of said 0.917 acre tract, common to the southwest corner of the herein described tract;

**THENCE** North 27°26'37" East - 208.71' to a ¾" iron rod found for the northwest corner of said 0.917 acre tract, common to the northwest corner of the herein described tract;

**THENCE** South 62°33'23" East - 208.71' to the **POINT OF BEGINNING** of the herein described tract and containing 1.000 acres of land.

**FOR A NET AREA OF 308.5 ACRES OF LAND**