

WATER AND WASTEWATER RATE SETTLEMENT AGREEMENT
BETWEEN CITY OF AUSTIN AND
RIVER PLACE RESIDENTIAL COMMUNITY ASSOCIATION, INC.

This Water and Wastewater Rate Settlement Agreement is made and entered into as of the date last executed by and between the City of Austin, Texas, a Texas Home-Rule municipal corporation and located in Travis County, Texas (hereinafter “Austin”) and the River Place Residential Community Association, Inc. (the “River Place HOA”), a Texas non-profit corporation on behalf of the customers of the former River Place Water and Wastewater Systems (the “Petitioners”), as defined below, which includes the 359 signatories, more or less, to the Original Petition.

RECITALS

WHEREAS, Austin and River Place MUD entered into that certain *Strategic Partnership Agreement between the City of Austin and the River Place Municipal Utility District* (“River Place MUD”), which includes and incorporates the *Agreement for Water and Wastewater Service and Operations Management between the City of Austin and the River Place Municipal Utility District; and Amendment to Agreement for Emergency Water Service* (“the Water and Wastewater Management Agreement”), both of which have an Effective Date of September 9, 2009;

WHEREAS, pursuant to the Water and Wastewater Management Agreement, the River Place Water Treatment Plant, reservoirs, water distribution system, and the River Place Wastewater Treatment Plant, lift stations, and wastewater collection system (collectively referred to herein as “the River Place Water and Wastewater Systems”) were conveyed to Austin as of the September 9, 2009;

WHEREAS, pursuant to the Water and Wastewater Management Agreement, Austin assumed responsibility for the operations and maintenance of the River Place Water and Wastewater Systems as of October 1, 2014, and residents of River Place MUD became customers of Austin Water Utility, subject to the rates and fees established by duly enacted ordinance of the Austin City Council also as of October 1, 2014;

WHEREAS, On December 22, 2014, the Petitioners filed the *Original Petition Appealing Retail Water and Wastewater Rates of the City of Austin* (“Original Petition”) in what is designated Public Utility Commission (“PUC”) Docket No. 44010 and State Office of Administrative Hearings (“SOAH”) Docket No. 473-15-2123, complaining of the Austin water and wastewater rates;

WHEREAS, the Original Petition and subsequent pleadings asserted that the River Place Water and Wastewater Systems were stand-alone facilities, and that they had a continuing tax liability related to the debt service costs of the River Place Water and Wastewater Systems;

WHEREAS, Austin disputes these assertions and contends that the River Place Water and Wastewater Systems are part of Austin’s regional integrated water and wastewater utility systems, and Austin further alleges that the Original Petition is not a valid petition under Texas Water Code, §13.043;

WHEREAS, the Original Petition has survived several jurisdictional challenges by Austin and the Administrative Law Judges (“ALJs”) established a schedule for the contested case hearing under Texas Water Code, §13.043, regarding whether Austin’s water and wastewater rates are just and reasonable;

WHEREAS, Austin and the River Place HOA, (“the Parties”) have reached agreement on the matters at issue in the contested case hearing, including retail residential water and wastewater rates dating from October 1, 2014 from and through the date of full purpose annexation of River Place MUD by Austin in December 2017; and

WHEREAS, this Settlement Agreement involves the settlement of disputed claims in the contested case hearing, PUC Docket No. 44010 and SOAH Docket No. 473-15-2123, to the mutual benefit of Austin and the River Place HOA, who jointly and severally enter into this Settlement Agreement voluntarily and of their own free will for mutual benefits and agreements conferred herein;

WHEREAS, the parties agreed to an abatement of the contested case hearing proceedings in order to finalize the terms and conditions of this Settlement Agreement, and the Administrative Law Judges (“ALJs”) issued SOAH Order No. 8 granting the City of Austin’s

Motion to Abate, which Order abated all hearing proceedings and requires Austin to file a status report with the ALJs on or before August 27, 2015.

NOW THEREFORE, for good and valuable consideration, including the mutual covenants, agreements and forbearances set forth in this Settlement Agreement, the receipt and sufficiency of which are hereby acknowledged by all Parties to this Settlement Agreement, the City of Austin and the River Place HOA hereby agree as set out below.

ARTICLE I.
DEFINITIONS

The Parties agreed that the following words and phrases will have the meanings indicated below throughout this Settlement Agreement:

1.1. Appeal: The appeal of City of Austin retail residential water and wastewater rates by the Petitioners in PUC Docket No. 44010 and SOAH Docket No. 473-15-2123.WS.

1.2. Contested Case Hearing: The legal proceeding before the Public Utility Commission and/or the State Office of Administrative Hearings where the justness and reasonableness of City of Austin rates are considered.

1.3. Effective Date: The effective date of this Settlement Agreement, which will be the date all parties to this Agreement fully executed this document.

1.4. October Consumption: For each retail water and/or wastewater utility service connection for any member of River Place HOA, the amount stated on the invoice for the first full month of billed consumption after October 1, 2014, as reflected in the invoices issued by the City of Austin to the residents of River Place MUD.

1.5. Original Petition: The Original Petition Appealing Retail Water and Wastewater Rates of the City of Austin and Motion for Interim Rates filed by Randall B. Wilburn, on behalf of the Ratepayers of the River Place Water and Wastewater Systems on December 22, 2014.

1.6. Party or Parties: Austin and River Place HOA.

1.7. **Petitioners:** The customers of the former River Place Water and Wastewater Systems, as identified in Order No. 6 in the Petition of the Ratepayers of the Former River Place Water and Wastewater Systems Appealing the Retail Water and Wastewater Rates of the City of Austin, SOAH Docket No. 473-15-2123.WS, PUC Docket No. 44010, issued May 6, 2015, which includes the 359 signatories, more or less, to the Original Petition.

1.8. **Rate Case Expenses:** Costs incurred by either party for participation in the contested case hearing in PUC Docket No. 44010 and SOAH Docket No. 473-15-2123, including but not limited to, legal fees, testifying and consulting expert fees, filing costs, reproduction and printing costs.

1.9. **River Place HOA:** River Place Residential Community Association, Inc., including its officers, Board members, representatives, agents and employees, collectively, including the Petitioners.

1.10. **Settlement Amount:** \$800,000 to be paid by Austin to the River Place HOA in full and final settlement of all claims known or unknown by Petitioners related to City of Austin retail residential water and wastewater rates charged to Petitioners from October 1, 2014 through the date of annexation of River Place MUD by Austin.

1.11. **Term:** The term of this Settlement Agreement, which begins on the Effective Date as defined herein above and which expires on the date Austin annexes River Place MUD, but no later than 12:01 a.m. on December 31, 2017, as specified in Section 5.1, below.

1.12. **Trustee:** That person designated by the Parties as the recipient of the Settlement Amount who assumes responsibility for administering and disbursing the funds to any person, party or entity for the benefit of all residents of River Place MUD and/or River Place HOA.

1.13. **Water and Wastewater Rates:** Rates charged by the Austin for water or wastewater utility services to any Petitioner.

ARTICLE II.
AGREEMENTS AND REPRESENTATIONS

A. In full and final settlement of any and all appeals, claims, disputes, assertions of privilege, or any other evidence of conflict regarding Water and Wastewater Rates before any forum, including the State of Texas, the Texas Legislature and State agencies, and any court of competent jurisdiction during the Term of this Settlement Agreement, Austin agrees as follows:

2.1. Following the dismissal of PUC Docket No. 44010 and SOAH Docket No. 473-15-2123, Austin will provide a credit for October Consumption as defined in this Settlement Agreement in Section 1.4. above. No later than March 2016, Austin will credit the October Consumption on Petitioners bills no later than March 2016. If any Petitioner is no longer a resident of the River Place MUD on the date that the Austin credits customers for October Consumption, Austin will make reasonable efforts to mail a check to such Petitioner in an amount equal to the credit amount that Petitioner would have received if Petitioner was a resident of the River Place MUD, provided the customer has provided Austin with a forwarding address.

2.2. Within 30 days of the dismissal of PUC Docket No. 44010 and SOAH Docket No. 473-15-2123ALJs' issuance of an order as outline in Section 2.2 above, Austin will deposit the total amount of \$800,000 (the "Settlement Amount") into an account of the River Place HOA:

River Place Residential Community Association, Inc.
c/o Patty Arnold, Attorney
Arnold and Associates, PC
406 Sterzing Street
Austin, Texas 78704

The Trustee shall accept the Settlement Amount and shall assume fiduciary responsibility for the administration and disbursement of the Settlement Amount in accordance with this Settlement Agreement;

2.3. Austin agrees that it will not recover Rate Case Expenses solely from the Petitioners, but will recover the Rate Case Expenses from the entire water and wastewater retail customer class, which includes the Petitioners.

B. In full and final settlement of any and all appeals, claims, disputes, assertions of privilege, or any other evidence of conflict before any forum regarding City of Austin water and wastewater rates, including the State of Texas, the Texas Legislature and State agencies, and any court of competent jurisdiction during the Term of this Settlement Agreement, the River Place HOA agrees as follows:

2.4. River Place HOA agrees to file a motion to withdraw its Original Petition and Appeal in PUC Docket No. 44010 and SOAH Docket No. 473-15-2123 as soon as is practicable after the full execution of this Settlement Agreement by all Parties, but in no event later than twenty (20) days after execution of this Settlement Agreement.

2.5. River Place HOA agrees that following the execution of this Settlement Agreement, River Place HOA will not organize opposition or will not assist in the filing of any future appeal to the Public Utility Commission or any other State Agency or court of competent jurisdiction in any effort to oppose, directly or indirectly, the payment of City of Austin retail residential water and wastewater rates charged to members of River Place HOA by Austin in accordance with duly enacted Ordinance of the Austin City Council at any time during the Term of this Settlement Agreement.

2.6. The Board of Directors of the River Place HOA represents and asserts that its Board of Directors is authorized to execute this Settlement Agreement on behalf of the River Place HOA and to bind it to the terms set forth herein.

2.7. The Board of Directors of the River Place HOA represents and asserts that it is capable of performing the duties, responsibilities and agreements set out in Article II of this Settlement Agreement. River Place HOA agrees that the Petitioners and all River Place MUD

Residents will continue to pay City of Austin residential retail water and wastewater rates until annexation, except as to the October 2014 rates as specified in Section I. Item 1, above.

2.8. River Place HOA represents and asserts that it employs as general counsel the attorney identified below:

Patty Arnold, Attorney
Arnold and Associates, PC
406 Sterzing Street
Austin, Texas 78704

River Place HOA represents and asserts that its general counsel identified above is authorized to act as the Trustee and is capable of disbursing and administering the entire Settlement Amount as specified herein with the use of such funds to be restricted to such purposes and costs that the Board of Directors of the River Place HOA determine, in its sole discretion, are for the benefit of the residents of the River Place MUD.

2.10. The Board of Directors of the River Place HOA shall report to Austin no later than November 1, 2016 regarding the final disbursement and administration of funds, stating how the funds were disbursed and administered for the benefit of the residents of the River Place MUD.

ARTICLE III.
BREACH

3.1. River Place HOA agrees that a default in the performance of any of their obligations under this Settlement Agreement during the Term, cannot be adequately compensated by money damages. Accordingly, Austin shall have the right to seek specific performance of the obligations under this Settlement Agreement of River Place HOA, including the right to seek an order from an appropriate regulatory authority to halt, abate, or dismiss any action or claim brought before the Public Utility Commission by or on behalf of River Place HOA or the Petitioners related to City of Austin retail residential water and wastewater rates charged to residents of River Place MUD.

3.2. Under this Settlement Agreement, should any hearing be brought by River Place HOA before any agency of the State of Texas with regulatory authority over City of Austin retail

residential water and wastewater rates, and should Austin be unable to dismiss or abate such proceedings, River Place HOA will have the burden of proving that the City of Austin retail residential water and wastewater rates, in consideration of the Settlement Amount and this Settlement Agreement, are not just and reasonable.

ARTICLE IV.
DISPUTE RESOLUTION

4.1. The Parties acknowledge that this Settlement Agreement is for resolution of a contested case hearing, PUC Docket No. 44010 and SOAH Docket No. 473-15-2123. The Parties agree that this Settlement Agreement is related to retail residential water and wastewater rates charged by the City of Austin to residents of River Place MUD and members of the River Place HOA.

4.2. If a dispute arises out of or related to the interpretation of this Settlement Agreement, the Parties performance hereunder, or the breach thereof, the parties agree to negotiate in good faith prior to pursuing any other recourse, including appeal to a State agency of competent jurisdiction, or prosecuting a suit for damages. This Section, however, does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief.

4.3. Any Party may make a written request for a meeting between representatives of each Party. Within fourteen (14) calendar days after receipt of the request or such later period as agreed by the Parties. Each Party shall include in the requested meeting, at a minimum, one (1) senior level official with the authority to make recommendations regarding the dispute to its governing body. The purpose of the requested meeting and any subsequent meeting is to attempt, in good faith, to negotiate resolution of the dispute. If, within thirty (30) calendar days after such initial meeting, the Parties have not succeeded in negotiating a resolution of the dispute, the Parties will proceed to mediation as described below. Negotiation may be waived by a written agreement signed by both Parties, in which event the parties may proceed directly to mediation as described below.

4.4. If the efforts to resolve the dispute through negotiation, as described in Section 7.1, above, fail, or the Parties waive the negotiation process, the Parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. The Parties agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this Settlement Agreement prevents the Parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the Parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Dispute Resolution Center in Austin, Texas.

4.5. The Parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The Parties agree to share the costs of the mediator selected to mediate the dispute, in three (3) equal amounts.

ARTICLE V. **GENERAL PROVISIONS**

5.1. **Term.** This Settlement Agreement shall begin on the Effective Date as defined herein above and shall expire on the date the City of Austin annexes River Place MUD for full purposes, but in any case no later than 12:01 a.m. on December 31, 2017.

5.2. **Action by the Parties.** The Parties agree to do all acts and things and to execute and deliver such further written instruments as may be from time to time reasonably required to carry out the purposes, the intent, and any of the provisions of this Agreement.

5.3. **No Third Party Beneficiaries.** The Parties are entering into this Settlement Agreement solely for the benefit of themselves and agree that nothing in this Settlement Agreement shall be construed to confer any right, privilege or benefit on any person or entity other than the Parties as the designated representatives of persons as set forth herein, above.

5.4. **Modification and Amendment.** This Settlement Agreement may not be modified or amended except by an instrument in writing signed by authorized representatives of the Parties.

5.5. Successors and Assigns. The terms of this Settlement Agreement shall be binding upon, and inure to, the benefit of the Parties and their permitted successors and assigns. However, no assignment of the rights and duties of a Party may be made unless approved in writing by the other Party, and no third party may be added to this Settlement Agreement without the written permission of both Parties.

5.6. Executed in Counterparts. This Settlement Agreement may be executed by the Parties in any number of separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts shall together constitute one and the same Settlement Agreement. If this Settlement Agreement is executed in counterparts, then it shall become fully executed only as of the execution of the last of such counterparts required to be executed by the terms of this Settlement Agreement.

5.7. Governing Law. This Settlement Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state. No presumption will apply in favor of either Party in the interpretation of this Settlement Agreement or in the resolution of any ambiguity of any provisions thereof.

5.8. Headings. The headings of the Articles of this Settlement Agreement are included for convenience only and shall not be deemed to constitute a part of this Settlement Agreement.

5.9. No Partnership. The Parties agree and acknowledge that this Settlement Agreement does not create a joint venture, partnership, customer relationship, or any joint enterprise, that each Party is not an agent of the other entity, and that each Party is responsible in accordance with the laws of the State of Texas for its own negligent or wrongful acts or omissions and for those of its officers, agents or employees in conjunction with the performance of services covered under this Settlement Agreement, without waiving any governmental immunity available to any Party hereto under Texas law and without waiving any defenses of any Party hereto under Texas law.

5.10. Venue. Venue for any cause of action for claims arising out of this Settlement Agreement brought by any Party shall be in Travis County, Texas.

5.11. Entire Agreement. The terms and provisions of this Settlement Agreement, together with all attachments incorporated herein by reference as if set forth herein in full contain the entire agreement between the Parties with respect to the matters addressed herein.

5.12. Severability. The provisions of this Settlement Agreement are not severable, and if for any reason any one or more of the provisions contained in this Settlement Agreement shall be deemed to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will render void any other provisions of this Settlement Agreement and this Settlement Agreement shall remain in effect and be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Settlement Agreement. Notwithstanding the foregoing, if any provision of this Settlement Agreement shall be deemed to be invalid, illegal, or unenforceable, and such provision served as consideration for a Party's agreement to a term, condition, or provision of this Settlement Agreement that shall remain in effect, the Parties agree to work together in good faith to provide an alternate means for providing consideration, such that their respective interests are protected and made whole.

5.13. Damages. Regarding the matters expressly addressed herein, neither of the Parties shall be liable or have any responsibility to the other for any indirect, special, consequential, punitive, or delay-related or performance-related damages including, without limitation, lost earnings or profits. Such limitation on liability shall apply to any claim or action, whether it is based, in whole or in part, on contract, negligence, strict liability, tort, statute or any other theory of liability.

5.14. Notice. Unless otherwise provided, any notice, communication, request, reply, or advice (herein severally and collectively called "Notice") herein provided or permitted to be given, made, or accepted by any Party to the other must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the business day on which it was

transmitted or hand-delivered (unless transmitted or hand-delivered after close of business, in which case it shall be deemed received at the close of the next business day). Notice by overnight mail or courier shall be deemed to have been received two (2) business days after it was sent. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective upon deposit in the United States mail. Notice given in any other manner shall be effective only in and when received by the party to be notified. For the purpose of Notice, the addresses of the Parties shall, until changed as hereinafter provided, be as follows:

If to Austin, to:

Director, Austin Water Utility
625 E. 10th Street
Austin, TX 78701
Telephone: (512) 972-0101
Fax: (512) 972-0111
greg.meszáros@austintexas.gov

If to River Place Residential Community Association, Inc., to
River Place Residential Community Association, Inc.
c/o Patty Arnold, Attorney
Arnold and Associates, PC
406 Sterzing Street
Austin, Texas 78704
pja@sbcglobal.net

The Parties shall have the right to designate any address other than the address shown above by giving at least five (5) days written notice to the other Party.

5.15. Authorization to Act. The obligations of the Parties to this Settlement Agreement hereto are subject to final approval by the respective governing bodies of each, and will each provide sufficient documentation that this Settlement Agreement has been authorized by its respective governing body.

IN WITNESS WHEREOF, the City of Austin, Texas, and River Place Residential Community Association, Inc. have caused this Settlement Agreement to be executed on their behalf by their duly authorized representatives.

APPROVED AS TO FORM:

ANNE L. MORGAN
Interim City Attorney

By: Maria Sanchez
Assistant City Attorney

APPROVED AS TO FORM:

RANDALL B. WILBURN
Gilbert Wilburn PLLC
Attorneys at Law, for River Place HOA

By: Helen S. Gilbert for
Randall B. Wilburn
Helen S. Gilbert

CITY OF AUSTIN

MARC OTT,
City Manager

By: [Signature]
City Manager
Director

Date: 10/1/15

**RIVER PLACE RESIDENTIAL
COMMUNITY ASSOCIATION, INC.**

SCOTT CROSBY,
President

By: [Signature]
President and Board Member

Date: 9/29/15