

ARTICLE I DEFINITIONS

The following terms shall have the meanings set out below:

1.01. Austin Water Facilities, Austin System or Austin's Water System: means all water treatment, transmission and distribution facilities, lines, mains, reservoirs, pump stations, residential, commercial, and industrial connections and any other parts or components that comprise the public water system of Austin.

1.02. Austin Water Capital Recovery Fee: means a charge imposed on each service unit of new development pursuant to Chapter 25-9 of the 1999 Austin City Code to generate revenue for funding or recouping the costs of capital improvements or facility expansions of Austin's Water System.

1.03. Commission: means the Texas Natural Resource Conservation Commission or its successor agency.

1.04. Connection: means a single family residential unit or each commercial or industrial establishment to which drinking water is supplied from Rollingwood's system.

1.05. Default: means the omission or failure of a party to perform their contractual duty under this agreement.

1.06. Director: means the Director of Austin's Water and Wastewater Utility or the Director's authorized designee.

1.07. Metering Facility: means the meter, meter vault, and all metering equipment required to measure wholesale water service to Rollingwood at the agreed points of delivery. The term also includes any other facilities constructed by Rollingwood that are associated with the metering facilities.

1.08. New Development: means the subdivision of land, the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure, or any use or extension of the use of land, that increases the number of service units for water service. The term includes the sale of water taps resulting from the conversion of an individual well to Rollingwood's System.

1.09. Point of Delivery: means the points designated and approved under this Agreement at which Rollingwood shall receive water from the Austin Water System for distribution within Rollingwood's Water System as more particularly described below.

1.10. Rollingwood Water Facilities, Rollingwood Water System or Rollingwood's System: means the lines, reservoirs, pump stations, mains, residential, commercial, and industrial connections and any other parts or components that comprise the public water system of Rollingwood.

1.11. **Water:** means potable water meeting the requirements of the Texas Natural Resource Conservation Commission for human consumption and other domestic uses.

1.12. **Wholesale Water Service Area:** means Rollingwood's corporate city limits and extraterritorial jurisdiction as amended from time to time by Rollingwood. This term does not include any area outside of Rollingwood's corporate city limits, as of the effective date of this agreement, that is served by Austin's water system prior to annexation by Rollingwood.

1.13. **Wholesale Water Service:** means Austin's provision of a potable water supply to Rollingwood for its distribution system that serves retail connections in its wholesale water service area.

ARTICLE II. DELIVERY OF WATER

2.01. **Maximum Volume and Rate of Flow.** Subject to all the terms and conditions set forth in this Agreement, Austin agrees to sell and Rollingwood agrees to buy potable water for the operation of Rollingwood's Water System for domestic, commercial and industrial uses on an as-needed basis in an amount not to exceed a monthly average of 1.0 million gallons per day (MGD) and at a rate not exceeding 694.4 gallons per minute (GPM) and at a minimum pressure of 35 (psi) pounds per square inch under normal operating conditions at the master meter(s) located at the agreed point(s) of delivery in **Exhibit A**. The parties agree that a monthly average of 1.0 (MGD) is the maximum level of service to which Rollingwood is entitled under this Agreement.

The parties agree that when use by Rollingwood reaches or exceeds seventy five per cent (75%) of the maximum level of 1.0 million gallons per day (MGD) established hereunder based on a monthly average for any monthly billing period during the term of this Agreement, the parties shall negotiate with regard to an appropriate adjustment of the maximum service level described under this agreement. **The parties agree that the maximum service level provided under this agreement will not be increased unless Rollingwood secures a raw water supply and assigns that supply to Austin to provide any proposed increased service level under this agreement. The parties shall negotiate a wholesale water rate adjustment for the raw water supply assigned to Austin by Rollingwood over the agreed 1.0 MGD monthly average limit that is used by Austin to provide water service under this agreement.** Any increase in the maximum service level provided under this agreement must be made by written amendment of this Agreement and shall be subject to review and approval by the Austin City Council and the Rollingwood City Council and the ability of Austin to provide such additional water service.

In the event that Austin is unable or unwilling to provide the increased level of water service requested by Rollingwood, Rollingwood may endeavor to secure supplemental water service from another provider.

If Rollingwood secures another source of water supply without having first negotiated in good faith with Austin as described above or without having first secured a written final decision from the Director that Austin is unwilling or unable to provide the requested increase in the maximum level of water service to be provided under this agreement, Austin may reduce the maximum level of

service to be provided hereunder commensurate with the maximum contracted level of potable water service acquired by Rollingwood from such other source and Austin shall be released from any obligation to provide the same under this agreement. If Rollingwood desires to secure an additional source of water supply it must first provide Austin with written notice of its need for additional water service. The notice must include the quantity of water needed by Rollingwood and all other information requested by the Director and must be provided to the Director. Austin shall respond to Rollingwood's notice within 180 days.

2.02. Sole Supply Intended. Rollingwood and Austin agree that Austin shall provide the sole source of water for the operation of the Rollingwood System during the term of this agreement and the parties do not construe this agreement to provide for supplemental, backup, peak-load or as-available service.

2.03. Manner of Delivery. During the term of this agreement, Rollingwood shall provide retail water service to connections within the wholesale water service area in this agreement.

2.04. Nondiscrimination. Water service to Rollingwood by Austin shall be nondiscriminatory and consistent with Austin's policies, ordinances and regulations applicable to wholesale water services as established by the Austin City Council and amended from time to time.

2.05. Water Capital Recovery Fees. The parties agree that the assessment and collection of Austin's Water Capital Recovery Fee within Rollingwoods' wholesale water service area is authorized by Texas Local Government Code, '395.011(c). Rollingwood shall collect, on behalf of Austin, Austin's Water Capital Recovery Fee from its customers for each service unit of new development connected to Rollingwood's System in the agreed wholesale water service area at the time Rollingwood's connection is made.

The amount of the Water Capital Recovery Fee shall be calculated per service unit in accordance with the provisions of Chapter 25-9 of the 1999 Austin City Code, as adopted by Austin. The amount collected by Rollingwood, on behalf of Austin, shall be the amount of Austin's Water Capital Recovery Fee in effect at the time each connection of a new service unit is made, following notice to Rollingwood of any change as provided in this subsection. The number of service units for which the fee is charged shall be calculated in accordance with Chapter 25-9 of the 1999 Austin City Code, as adopted by Austin.

Austin agrees to provide Rollingwood with written notice of any change in the amount of the Water Capital Recovery Fee to be collected by Rollingwood under this Agreement, and such change will be effective on the date the notice is received by Rollingwood or the effective date of Austin's ordinance, whichever is later.

Rollingwood agrees to remit all Water Capital Recovery Fees collected to Austin monthly together with a report of all new water connections made within each calendar month. The report shall also contain the service address, meter size, date of connection, and amount remitted for each new connection within each monthly period to the Director. Rollingwood shall not retain any portion of the Austin Water Capital Recovery Fees collected. If no new connections are made during the month, Rollingwood shall not be required to prepare a monthly report of new connections to Austin.

For each calendar year, Rollingwood shall provide to the Director an annual report that states the total number of connections and the type of connections by use (residential, multi-family, commercial, industrial) by February 28th of the following year.

2.06. Points of Delivery. The points of delivery are shown on **Exhibit "A"**. Exhibit A is attached to this agreement and incorporated by reference for all purposes. The points of delivery may be changed at any time by agreement in writing between the Director and Rollingwood. In the event that Rollingwood requests a change in the points of delivery, Rollingwood shall bear the expense of changing such points of delivery. In the event that Austin requests an addition or change in the points of delivery, Austin shall bear the expense of changing such points of delivery.

2.07. Approval of Changes or Additional Points of Delivery. Prior to adding or changing any point of delivery to Austin's Water System, Rollingwood shall submit a written request to the Director for approval of the additional or new point of delivery accompanied by an engineering report and plans, prepared by a registered professional engineer and approved by the Rollingwood City Council, which detail the proposed changed or new point of delivery, the area to be served, the design, size, location and configuration of meters to be installed, and other pertinent information requested by Austin. The parties agree that the undeveloped tracts, constituting approximately 32 acres collectively, zoned commercial in Rollingwood will require Rollingwood to request an additional point of delivery to Austin's Water System or some other mutually agreed upon methodology for the provision of fire protection.

2.08. Backflow Prevention. Rollingwood, at its own expense, shall install a backflow prevention assembly (Reduced Pressure Zone Valve) on all points of delivery from Austin's Water System within 90 days after the effective date of this contract. All approved additional points of delivery in the future will be required to have a backflow prevention assembly installed at the time of construction at Rollingwood's own expense.

ARTICLE III.

COMPLIANCE WITH STATE LAWS AND CITY REGULATIONS

3.01. Legal Lots Required. Rollingwood shall not sell taps or otherwise permit the connection of water service to any customer within the agreed wholesale water service area unless the property is exempt from or in compliance with the provisions of Chapter 212, Texas Local Government Code, as amended.

3.02. Service Outside Rollingwood; Enlargement of Rollingwood Boundaries or Service Area. This Agreement provides for the purchase of wholesale water by Rollingwood from Austin for delivery to retail customers within the agreed wholesale water service area. Rollingwood agrees that it shall not sell, resell, or deliver water to areas outside the agreed wholesale water service area as of the effective date of this Agreement unless it first obtains either the prior written consent of Austin or is ordered to provide such service by the Commission in involuntary proceedings that are not initiated by Rollingwood. In the latter event, Rollingwood shall provide written notice to Austin of the proceedings at the Commission relating to the expansion of Rollingwood's service to areas

now outside of Rollingwood's corporate limits. Rollingwood further agrees that it will not initiate any proceedings to enlarge its service area through any other agency or court of competent jurisdiction without the prior written notification to Austin of such expansion.

3.03. Curtailment and Conservation Restrictions. Delivery, volume, and pressure of potable water to Rollingwood under this Agreement is subject to and limited by Austin's available water supply and water system treatment and transportation capabilities. Austin shall have the right to curtail or ration wholesale service to Rollingwood in times of high system demand in the same manner and to the same extent that Austin imposes such curtailment or water rationing on other wholesale customers of Austin. Austin will give written notice to Rollingwood of the implementation and termination of any conservation and user restrictions it imposes on its customers, and Rollingwood agrees to impose on its customers and enforce the same voluntary and mandatory conservation and use restrictions Austin imposes on its own customers within three business days of receipt of notice from Austin.

3.04. Temporary Curtailment of Service for Maintenance, Capital Replacement or Emergency Operations. Austin shall have the right at all times to curtail water service hereunder in the event of a required maintenance operation, replacement of capital facilities or emergency for a reasonable period necessary to complete such maintenance operations or capital replacement, effect emergency repairs or otherwise respond to emergency conditions necessitating the temporary suspension of water service or decreased volume or pressure. For any curtailment other than one caused by an emergency, Austin, if possible, will give at least 72 hours telephonic notice to Rollingwood. In the event of an emergency curtailment, Austin will give telephonic notice as soon as possible.

3.05. Cooperation During Maintenance or Emergency. Rollingwood shall cooperate with Austin during periods of emergency or required maintenance or replacement of equipment and, if necessary, Rollingwood shall, at its sole expense, discontinue, cycle, test, inspect, or otherwise operate and maintain its pumps or other Rollingwood Water Facilities in a manner determined by the Director to be necessary to the safe and efficient completion of such operations.

3.06. Water Conservation Program. Rollingwood will adopt and enforce a water conservation program sufficient to meet the requirements of the Texas Natural Resource Conservation Commission ("TNRCC") water conservation rules, as amended. Rollingwood shall also adopt and enforce water conservation measures that meet or exceed the following standards:

- (1) promote the participation of its citizens in the water conservation programs offered by Austin with bill stuffers (4 times/year minimum) and advertising;
- (2) adopt an incentive plan for low-flush toilet retrofits that will include Austin rebates plus matching Rollingwood rebates (would currently add \$60 per toilet, for a total rebate of \$120);
- (3) send letters to high volume water users offering irrigation audits;
- (4) review its landscaping ordinances to promote water conservation, with the consideration of recommendations by the Austin Water Conservation Office;

(5) adopt an ordinance requiring separate water meters for commercial irrigation where feasible;

(6) in consultation with the Austin Water Conservation Office, adopt a conservation water rate ordinance that is effective in promoting water conservation; and

(7) provide a rebate for purchasing horizontal axis washing machines (now set at \$50).

3.07. Water Conservation Ordinance . Separate from the requirements of Section 3.06, Rollingwood agrees to adopt and enforce an ordinance with similar provisions to Austin's emergency and peak day water management provisions, Chapter 4-2, Article II, 1999 City Code, as in effect on the date of this Agreement, within the wholesale water service area in this agreement. In the event that ordinance is amended, Austin will give written notice to Rollingwood of those amendments and will request that Rollingwood amend its ordinance to include similar provisions.

3.08. Timely Adoption of Conservation Plan . All ordinances and programs to be adopted by Rollingwood relating to toilet retrofits, emergency and peak day water management, conservation water rate, horizontal axis washing machines, and separate water meters for commercial irrigation, must be adopted before October 1, 2000.

3.09. Penalty Provision . If Rollingwood fails to comply with all the terms of this Agreement with respect to adopting and enforcing water conservation measures, Austin may impose on Rollingwood a monthly water surcharge equal to 25% of the rate determined by cost of service methodology, for as long as Rollingwood remains out of compliance. Before imposing such a surcharge, Austin will give Rollingwood written notice of any such failure, specifying in detail the alleged non-compliance. Rollingwood will have 90 days for the date of the notice to cure the failure. In the event Austin or Rollingwood do not agree on the satisfaction of any of the terms of this Section, either party may request mandatory mediation to resolve the conflict.

ARTICLE IV. WATER RATES, CHARGES AND BILLING

4.01. Wholesale Water Rates. Rollingwood agrees to make payments to Austin for all water delivered to Rollingwood under this agreement in accordance with the wholesale water rate established and amended from time to time by the Austin City Council for Rollingwood's customer class. The parties agreed billing and payments procedures are below in Section 4.05 and 4.06.

4.02. Rollingwood Water Rates and Charges. During the term of this agreement, Rollingwood shall fix and collect rates and charges for retail water service to its customers that are, in the opinion of the Rollingwood City Council, sufficient, together with any other revenues available to Rollingwood, to produce the amount necessary to operate, repair, and maintain the Rollingwood System, and to pay the cost of wholesale water service from Austin under this agreement.

Rollingwood shall be solely responsible for ensuring that its retail rates and charges are determined and collected in accordance with applicable law.

4.03. Customer Connection Fees. Rollingwood shall be solely responsible for the proper exercise of its governmental power to assess and collect fees, rates, taxes or other charges and for ensuring that the assessment and collection of the same is in compliance with applicable law.

4.04. Utility Service Regulations Applicable. Austin shall deliver wholesale water and charge Rollingwood in accordance with the terms of this Agreement. Rollingwood shall make payments to Austin for wholesale water delivered hereunder in accordance with Austin's Utility Service Regulations, as amended from time to time by Austin Council and the terms of this Agreement.

4.05. Billing and Payment. Austin shall send a bill to Rollingwood once per month setting forth the quantity of water delivered to Rollingwood as determined by Austin's periodic readings of the master meter(s) installed at the agreed points of delivery. Each bill shall include a due date and the total amount owed to Austin based on the metered quantity of wholesale water delivered multiplied by Austin's wholesale water rate for Rollingwood's customer class as amended from time to time by the Austin City Council. Rollingwood shall pay the total amount owed to Austin by the due date on each bill for wholesale water service. If Rollingwood in good faith questions the amount of the bill, Rollingwood shall follow the procedures therefore established in the City of Austin Utility Customer Service Regulations in Chapter 18-4 of the 1999 Austin City Code, as adopted by Austin. In the event of a conflict between this Agreement and the terms of Austin's Utility Service Regulations, the provisions of this Agreement shall prevail.

Rollingwood agrees to make timely payments to Austin for wholesale water service. Payments shall be considered past due 30 days after the due date of each bill for wholesale water service. Austin may apply a late charge on past due payments in accordance with its policies and ordinances applicable to other customers of Austin.

4.06. Effect of Default for Non-Payment. With respect to monthly billings, if Austin has not received payment from Rollingwood by the due date, the bill shall be considered delinquent, unless contested in good faith. In such event, Austin shall notify Rollingwood of such delinquency in writing, if Rollingwood fails to make payment of the delinquent billing within 30 calendar days from the due date, then Austin may, at its discretion, temporarily terminate service to Rollingwood until payment is made, subject to Rollingwood's right of continuity of service during a good faith appeal or a disputed bill as provided by applicable state laws and regulations and Austin's Utility Service Regulations, Chapter 18-4 of the 1999 Austin City Code, as adopted by Austin.

4.07. Penalty for Exceeding Flow Limits. In the event Rollingwood's monthly average of 1.0 million gallons per day (MGD) is ever exceeded, without the assignment of sufficient raw water supply to Austin, Rollingwood agrees to pay a penalty of \$5,000 per month for each month of exceedance of the monthly average under this agreement. Within 30 days of an exceedance of the monthly average, without the assignment of a sufficient raw supply to Austin, Rollingwood must escrow the sum of \$5,000 with Austin, and retain an engineer to prepare a report explaining the reasons for the exceedance of the monthly average, and within 60 days of the exceedance of the monthly average under this agreement, without the assignment of a sufficient raw water supply to

Austin, present the engineer's report and proposed solution to Austin. Within 120 days of the exceedance of the monthly average, without the assignment of a sufficient raw water supply to Austin, Rollingwood must take appropriate action, as detailed in the engineer's report. If Rollingwood either completes the curative action within 120 days or, if the parties agree that the curative action cannot be completed within 120 days, commences the curative action within 120 days and thereafter diligently pursue the curative action to completion, Austin will return the \$5,000 escrow deposited with Austin. If Rollingwood fails to act within 120 days as required by this section, then the \$5,000 escrow will be retained by Austin as an additional penalty for Rollingwood's violation of the monthly average limit contained in this Agreement. Based on the engineer's report and following a written request by Austin, Rollingwood will take immediate corrective action to reduce the exceedance of the monthly average under this agreement. The return or forfeiture of the \$5,000 escrow amount shall not exempt Rollingwood from the requirement of escrowing another \$5,000 with Austin should any subsequent exceedances of the monthly average occur.

4.08. Obligation of Rollingwood. The parties agree that Rollingwood's obligation under this agreement to make payments to Austin for water service in any fiscal year are a current expense for that fiscal year payable solely from the revenues of Rollingwood's Water System for that fiscal year. The obligation of Rollingwood to make payments to Austin does not constitute a general obligation or indebtedness of Rollingwood for which Rollingwood is obligated to levy or pledge any form of taxation.

ARTICLE V. MASTER METERS

5.01. Master Meters Required. Water consumed by Rollingwood shall be measured by master water meters of a design, size, location and configuration approved by the Director and Rollingwood. The parties agree that the existing master water meters located at the points of delivery in **Exhibit A** shall be deemed approved under this Section upon the effective date of this agreement.

5.02. Master Meter Installations. A master meter (s) and related facilities, including a meter loop, a meter house or pit and appurtenances required for properly measuring the quantity of water delivered to Rollingwood shall be installed at each agreed new point of delivery of wholesale water to Rollingwood. Rollingwood, at its own expense, shall install and provide the meter loop, and the meter house or pit and appurtenances unless such expense is related to Austin's desire to change the point of delivery in which event Austin shall bear such expense. Austin shall provide and install the master meter(s) and the meter(s) shall be the property of Austin for all purposes hereunder. In the event that Rollingwood requests a change in the agreed points of delivery, Rollingwood shall bear the expense of providing and installing the meter. In the event Austin requests an addition or change in the points of delivery, Austin shall bear the expense of providing and installing the meter. Austin shall operate and maintain the master meter(s) and related equipment and appurtenances and shall calibrate the metering equipment annually and more frequently upon request by Rollingwood provided, however, that the additional cost of calibrating the metering equipment shall be directly borne by Rollingwood if requested more frequently than once every twelve (12) months. Any meter registering within AWWA (American Water Works Association) standards for that type and size of meter shall be deemed to be accurate. Unless otherwise agreed in writing, if any meter fails to

register accurately for any period, City's charge for the amount of water furnished during such period shall be determined in accordance with Austin's Utility Service Regulations as in effect on the effective date of this Agreement. Austin shall read the metering equipment at least once for each monthly billing cycle.

ARTICLE VI. CONSTRUCTION OF FACILITIES

6.01. Construction by Rollingwood. Unless otherwise agreed in writing, Rollingwood shall be solely responsible for design, engineering, financing, construction, installation, inspection, operation, maintenance, repair and replacement of all Rollingwood capital facilities for the transmission and delivery of water within the wholesale water service area in this agreement.

6.02. Reselling of Water. Rollingwood shall not permit the resale of potable water provided by Austin under this agreement.

6.03. Approval of Plans and Specifications. All Metering Facilities shall be constructed or installed to City of Austin Standard Specifications and in accordance with plans and specifications approved by Austin, the Commission, the Texas Department of Health and any other agency having jurisdiction thereof.

All plans and specifications for Metering Facilities to be constructed by Rollingwood shall be subject to review and approval of the Director prior to commencement of construction which approval will not be unreasonably withheld or delayed. The Director will review and approve or disapprove any plans submitted under this subsection within 30 days of submittal. Upon request by the Director, Rollingwood shall timely submit all documents that are needed for the review and approval of plans and specifications. If any plans are not approved, the Director will provide written comments to Rollingwood specifying in detail the changes that will be required for approval of the plans and specifications. Rollingwood agrees not to advertise for bids until approval from the Director has been secured with respect to the plans and specifications.

If after approval of the plans and specifications for particular Metering Facilities by Austin, Rollingwood fails to enter a construction contract for those facilities within two years, Rollingwood must resubmit the plans and specifications for review and approval by the Director to assure their conformity with Austin's then current specifications, current laws, ordinances, and regulations. If such plans and specifications do not conform to the then existing standards, then, upon the request of the Director, Rollingwood agrees to revise the plans and specifications to meet Austin's standards before commencement of construction.

6.04. Construction Responsibilities. Unless otherwise agreed in writing, it is understood and acknowledged that Rollingwood is responsible for the design, engineering, financing, construction, inspection and ownership of all Rollingwood Water Facilities.

6.05. Inspection by City. Austin may, but is not obligated to, inspect all phases of the construction and installation of Metering Facility and may charge City inspection fees for the

inspections of the Metering Facility. Inspection fees for the Metering Facility shall be determined in accordance with applicable City ordinances as such ordinances may be amended from time to time. Any Metering Facility constructed by Rollingwood will be dedicated to Austin for ownership, operation, and maintenance.

6.06. Notification of Commencement of Construction. After all required approvals for construction of the Metering Facility are obtained but prior to commencement of construction, Rollingwood shall provide written notice to the Director of the date on which construction of the facilities is scheduled to commence to allow Austin to assign an inspector.

6.07. As-Built or Record Drawings Upon Completion of Construction. Following completion of construction of Rollingwood Water Facilities and the Metering Facility or any portion thereof, Rollingwood shall provide, at Rollingwood's expense, to the Director as-built drawings or record drawings of each such completed project within 30 days of Rollingwood receiving them. Rollingwood will not be required to create new as-built or record drawings for water and metering facilities that were constructed prior to the effective date of this Agreement but may be required to provide other existing records or information concerning the construction of those facilities.

6.08. Required Rights-of-Way. Rollingwood shall be responsible for obtaining any easements or rights-of-way necessary for the construction of the Metering Facility or for construction of Austin Water Facilities within the wholesale water service area in this agreement. Austin shall be responsible for obtaining any easements or rights-of-way necessary for the construction of Austin Water Facilities outside of the wholesale water service area in this agreement. The form and content of easements for any Metering Facility to be dedicated to Austin under this Agreement shall be subject to review and approval by the Director and the City Attorney of Austin or his designee before final acceptance of such facilities by Austin, which approval will not be unreasonably withheld or delayed.

6.09. Right of Entry. During the term of this Agreement, Austin shall have the right of entry and access at all times to facilities comprising or connected to Rollingwood's Water System for any purpose related to providing wholesale water service hereunder or activities preparatory or incident hereto, to inspect Rollingwood Water System and the Metering Facility, to investigate the source of operational or maintenance problems or for preventative purposes intended to detect, minimize or avert operational or maintenance problems.

6.10. Operation and Maintenance. Austin shall be responsible for operation and maintenance of all Austin Water System and the Metering Facility constructed for the purpose of transporting water to Rollingwood or its customers. Unless otherwise agreed in writing, Rollingwood shall be responsible and totally liable for operation, maintenance, and leakage of water of all Rollingwood Water Facilities constructed for transportation and delivery of water to its retail customers whether within or outside Rollingwood from the City's master meters.

6.11. Option to Participate in Oversizing. Notwithstanding the foregoing, Rollingwood shall provide Austin with at least three (3) months notice of Rollingwood's intent to construct or expand its Rollingwood Water Facilities and, within such period, Austin shall have the option to request the oversizing of same for the benefit of other customers of Austin's regional water system.

6.12. Oversizing Costs. In the event that Austin elects to request and Rollingwood agrees to proceed with the requested oversizing of Rollingwood Water Facilities, Austin and Rollingwood shall, by separate written agreement approved by the respective governing bodies of each party and executed prior to the expenditure of funds therefore, provide for the design, construction, inspection, operation and maintenance, ownership and use of such oversized capital facilities in addition to such other and further matters appertaining thereto as may be of mutual interest. In no event shall Austin's right to ownership and use of the oversized facilities be less than the oversized capacity for which Austin is providing funding as determined by the Director.

**ARTICLE VII.
SERVICE AREA AND LIMITATIONS ON SERVICE**

7.01. Limitation of Service Area. Rollingwood acknowledges that, as the provider of water service to other properties in this region, Austin must retain the ability to plan, fund and operate Austin Water Facilities needed to serve not only Rollingwood but all other customers of Austin's water system and that the expansion of customer service areas by any customer without the consent of Austin detrimentally affects the capability of Austin to plan, fund and operate its Water System for the benefit of all Austin water customers. Accordingly, the parties agree to the following:

(a) This agreement is for a specific level of wholesale water service for the wholesale service area. Rollingwood may not provide service outside the wholesale water service area without the prior approval of the Austin City Council .

(b) Austin's City Council reserves the right to deny for any reason any or all requests by Rollingwood to expand the level of the wholesale water service under this Agreement or to serve outside the wholesale water service area .

(c) If Rollingwood authorizes and provides water service outside the wholesale water service area, without the approval of Austin, as reflected by an amendment to the 2000 Agreement duly approved by the governing bodies of Austin and Rollingwood, Austin may terminate this agreement, or require Rollingwood to terminate service to the land outside the wholesale water service area.

(d) Rollingwood may not connect any customer that Rollingwood knows provides water service directly or indirectly to another person or entity outside the wholesale water service area. Rollingwood will immediately terminate the service of any such customer once it discovers any such connection.

7.02. Consideration for Wholesale Water Service. Rollingwood acknowledges that Austin has entered into this agreement based in part on Rollingwood's agreement to limit it's water service to the wholesale water service area in this agreement, limit it's monthly average volume of water usage to 1.0 MGD, and adopt and enforce ordinances and a water conservation program that meet or exceed the requirements of Austin and the TNRCC.

7.03. No Delegation of Governmental Authority. The limitations stated herein shall not be construed as a delegation by Rollingwood to Austin of any governmental authority or power but rather shall be construed as a contractual requirement for consent by Austin to the enlargement of Austin's required performance hereunder and a condition precedent to further performance by Austin hereunder.

7.04. Requests for Service Outside Rollingwood. With respect to all land for which service outside Rollingwood and its extraterritorial jurisdiction is formally requested, Rollingwood shall require the petitioner to submit a land use plan covering the land for which service outside Rollingwood and its extraterritorial jurisdiction is requested together with a statement of the engineering requirements for such property at the time of such petition for approval. Rollingwood covenants and agrees to forward to the Director of Austin's Water and Wastewater Utility a true copy of any written or other formal request for service outside of Rollingwood and its extraterritorial jurisdiction within ten (10) business days of receipt thereof by Rollingwood. Upon the receipt thereof, Austin will promptly initiate all reviews thereof required by applicable Austin ordinances, as amended from time to time. Requests for approval of service outside of Rollingwood shall be subject to review and approval by the Austin City Council, Director of Planning and Development, and the Director of Austin's Water and Wastewater Utility.

7.05 Reciprocal Service Covenant. Austin and Rollingwood agree that, upon the request of the other, temporary water service will be provided to retail customers along or adjacent to the corporate limits of the requesting entity until the requesting entity is able to construct its lines and mains necessary to service such customers provided that:

- (a) the non-requesting entity has lines and mains within a reasonable distance and is capable of providing such retail service;
- (b) the non-requesting entity agrees to provide such retail service on a temporary basis;
- (c) provision of such retail service will not result in a need for substantial construction or diminution in retail service to its own customers; and
- (d) the non-requesting entity providing temporary retail service may place such limitations on the level and geographic scope of such temporary retail service as is deemed in the best interest of such non-requesting entity;
- (e) the customer receiving such retail service agrees to accept the same from the non-requesting entity and pay applicable fees, costs and charges necessary to extend such temporary retail service;
- (f) provision of such temporary retail service does not violate applicable law, the provisions of any agreement respecting the provision of utility service to the area or the provisions of any certificate of convenience and public necessity (CCN) respecting utility service area boundaries.

**ARTICLE VIII.
TERM AND RENEWALS**

8.01. Term of Agreement. This Agreement shall be effective from the date of due execution by the authorized representatives of Austin and Rollingwood and shall continue in effect for a period of thirty (30) years unless earlier terminated in accordance with the provisions hereof.

8.02. Termination. Without prejudice to any provision hereof setting forth terms for automatic expiration, this Agreement may be terminated by Austin in the event of default of any of the provisions in this agreement by Rollingwood by giving thirty six (36) months written notice to Rollingwood. In the event that Austin elects to terminate this Agreement by giving thirty six (36) months written notice, Rollingwood shall exercise reasonable diligence to timely secure an alternative supply of potable water prior to the effective date of such termination. In the event of termination hereunder for any reason, Austin shall not be responsible for any costs and expenses of Rollingwood related, directly or indirectly, to securing alternative water service to Rollingwood.

8.03. Default. In the event that one party believes that the other party is in default of any of the provisions in this agreement, the non-defaulting party will make written demand to cure to the defaulting party and give the defaulting party up to 90 days to cure the default or, if the curative action cannot reasonably be completed within 90 days, the defaulting party will commence the curative action within 90 days and thereafter diligently pursue the curative action to completion. This period must pass before the non-defaulting party may initiate any remedies available to the non-defaulting party due to such default. The non-defaulting party shall mitigate direct or consequential damages arising from any default to the extent reasonably possible under the circumstances. The parties agree that they will use their best efforts to resolve any disputes and may engage in non-binding arbitration or other alternative dispute resolution methods as recommended by the laws of the State of Texas before initiating any lawsuit to enforce their rights under this agreement. Nothing in this agreement shall be construed to limit either parties' right to recover damages or to seek other appropriate curative remedies if a breach of contract action is filed by a non-defaulting party to this agreement.

8.04. Changes in Law Affecting the Rights of Other Party. Austin may terminate this Agreement on thirty (30) days written notice to Rollingwood if, during the tenure of this Agreement, Rollingwood directly sponsors, requests, lobbies for, or secures the adoption of state or federal legislation that is primarily designed to impair, undermine, restrict, eliminate, or otherwise adversely affect the rights of Austin under this Agreement. Rollingwood may terminate this Agreement on thirty (30) days written notice to Austin if, during the tenure of this Agreement, Austin directly sponsors, requests, lobbies for, or secures the adoption of state or federal legislation that is primarily designed to impair, undermine, restrict, eliminate, or otherwise adversely affect the rights of Rollingwood under this Agreement.

Notwithstanding the above, the tender of comments or analyses with regard to proposed legislation or rules of a government agency affecting this Agreement shall not give rise to an ability to terminate this Agreement pursuant to this Section.

In the event that Rollingwood secures adoption of legislation modifying or declaring this Section unlawful for any reason, this Agreement will terminate and expire automatically on the day prior to the effective date of such legislation.

8.05. Renewal. This Agreement may be renewed or extended by mutual agreement of the parties in writing for such additional periods as may be approved by the governing bodies of Rollingwood and Austin. No continuation of water service obligation is expressed or implied by Austin to Rollingwood beyond the term of this agreement.

ARTICLE IX. PERFORMANCE AND FORCE MAJEURE

9.01. Effect of Force Majeure. In the event that either party is rendered unable by force majeure to carry out any of its obligations under this Agreement, whether in whole or in part, then the obligations of that party, to the extent affected by the force majeure, shall be suspended during the continuance of the inability provided, however, that due diligence is exercised to resume performance at the earliest practicable time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the party whose contractual obligations are affected thereby shall give notice and full particulars of the force majeure to the other party. The cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure" includes acts of God, strikes, lockouts or other industrial disturbances, criminal conduct or sabotage, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and civil disturbances, explosions, breakage, or accidents to equipment, pipelines, or canals, partial or complete failure of water supply, and any other inability of either party, whether similar to those enumerated or otherwise, that are not within the control of the party claiming their ability and that could not have been avoided by the exercise of due diligence. It is understood and agreed that the settlement of strikes, lockouts and other industrial or labor disturbances shall be entirely within the discretion of the party having the difficulty and that the requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes, lockouts or other industrial or labor disturbances by acceding to the demands of the opposing party if the settlement is unfavorable to it in the judgment of the party having the difficulty. Force majeure shall relieve Austin from liability to Rollingwood or any water customer of Rollingwood for failure to provide water service due to an inability covered by this Article. Force majeure shall not relieve Rollingwood of its obligation to make payment to Austin for water service rendered as provided in this Agreement.

ARTICLE X. GENERAL PROVISIONS

10.01. Notices. Any notice required or permitted to be delivered under this Agreement shall be forwarded via hand-delivery or the United States Postal Service, postage prepaid, to the addresses shown below:

City of Austin
P.O. Box 1088
Austin, Texas 78767-8828
Attn: Director
Water and Wastewater Utility

City of Rollingwood
403 Nixon Drive
Rollingwood, Texas 78746
Attn: Mayor

Each party shall forward to the other within twenty four (24) hours of the filing thereof in the Commission or other court or agency of competent jurisdiction a true copy of any petition, application or other instrument affecting this Agreement, whether directly or indirectly.

10.02. Address Change Procedure. The addresses of the parties shall, until changed as hereinafter provided, be as shown above. The parties shall have the right at any time to change their respective addresses by giving written notice of same to the other party.

10.03. Interlocal Cooperation. Austin and Rollingwood shall cooperate with each other at all times so as to promote the efficient performance of the utility services provided to Rollingwood hereunder. Austin and Rollingwood agree to use a third-party mediation service for any unresolved disputes prior to seeking legal remedies through lawsuits or court actions. This requirement does not preclude the actions available to both parties specifically identified in this contract.

10.04. Provision of Data, Documents. Rollingwood agrees to timely provide to Austin at Rollingwood's expense all requested data, records, plans and specifications, computer tapes, or other documents or information necessary or incidental to the provision of potable water service to Rollingwood under this agreement. Austin agrees to timely provide to Rollingwood at Austin's expense all requested data, records, plans and specifications, computer tapes, or other documents or information necessary or incidental to the provision of potable water service to Rollingwood.

10.05. Provision of Further Documents. Rollingwood and Austin shall execute and deliver such other and further requested legal documents or instruments and perform such other and further acts as are reasonably necessary to effectuate the purposes and intent of this Agreement.

10.06. Severability. The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any person or circumstances shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances shall not be affected thereby and this Agreement shall be construed as if such invalid or unconstitutional portion had never been contained herein.

10.07. Entire Agreement. This Agreement, including any exhibits attached hereto and made a part hereof by reference for all purposes, constitutes the entire agreement between the parties relative to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements, representations, covenants or warranties, whether oral or in writing, respecting the subject matter hereof.

10.08. Previous Contract. This agreement by the parties supercedes that certain agreement entitled Water Contract, "1968 Water Contract", pursuant to which Austin provided a potable water supply to Rollingwood for its distribution system. Upon the execution of this agreement, the 1968 Water Contract and any and all other previous water service contracts between Austin and Rollingwood, shall be null, void and of no further legal force and effect.

10.09. Compliance with Rules. Rollingwood agrees to file a copy of this agreement with the Executive Director of the Texas Natural Resource Conservation Commission, P.O. Box 13087, Capitol Station, Austin, Texas 78711, it being fully recognized by the parties hereunder that the effectiveness of this contract is dependent upon and subject to compliance with all valid rules, regulations, and applicable laws of the United States of America, the State of Texas, Austin, Rollingwood, or any other governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

10.10. Water Line Breaks. Rollingwood shall notify Austin of any water line breaks inside the wholesale water service area in this agreement. Rollingwood is responsible for timely providing any required notice to Federal, State, and / or local government officials regarding water line breaks.

10.11. Liability. Rollingwood agrees to hold Austin harmless from any and all liability or claims or demands whatsoever for personal injury, property damage, damages to Rollingwood's Water System, or other loss, penalty, or expense arising directly or indirectly from the provision of water service under this agreement, to which Austin may be subjected to by reason of any injury to any person or damage to any property resulting or in any way connected with any and all actions and activities (or failure to act) of Rollingwood under this Agreement. Austin agrees to hold Rollingwood harmless from any and all liability or claims or demands whatsoever for personal injury, property damage, damages to Austin's Water System, or other loss, penalty, or expense arising directly or indirectly from the provision of water service under this agreement, to which Rollingwood may be subjected to by reason of any injury to any person or damage to any property resulting or in any way connected with any and all actions and activities (or failure to act) of Austin under this Agreement. Nothing in this section shall be construed to limit either parties' right to recover damages or to seek other appropriate curative remedies if a breach of contract action is filed by a non-defaulting party to this agreement.

10.12. Amendment. No amendment of this Agreement shall be effective unless and until it is duly approved by the governing bodies of each party and reduced to a writing signed by the authorized representatives of Austin and Rollingwood.

10.13. Independent Contractor. Austin shall have the status of an independent contractor hereunder and shall be solely responsible for the proper direction of its employees hereunder and Austin's employees shall not be considered employees or borrowed servants of Rollingwood for any reason.

10.14. No Third Party Beneficiary. This Agreement shall be construed as an interlocal contract respecting the performance of governmental services and nothing herein shall be construed to confer any right, privilege or benefit on any person or entity not a party hereto or otherwise creates any vested right or third party beneficiary relationship.

10.15. **Governing Law.** This Agreement shall be construed under the laws of the State of Texas and all obligations of the parties are deemed performable in Travis County, Texas.

10.16. **Venue.** Venue for any suit arising under this Agreement shall be in Travis County.

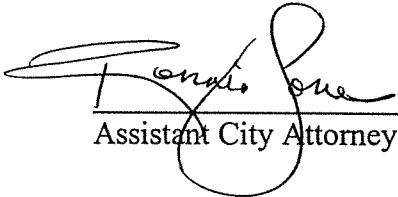
10.17. **Assignment.** Neither party may assign its rights and obligations hereunder without the prior written consent of the other.

10.18. **Duplicate Originals.** This Agreement may be executed in duplicate originals each of equal dignity.


10.19. **Effective Date.** This Agreement shall become effective on the date of execution by the authorized representatives of Austin and Rollingwood.

IN WITNESS WHEREOF, the authorized representatives of Austin and Rollingwood have executed this Agreement as of the date(s) set forth below.

APPROVED AS TO FORM:

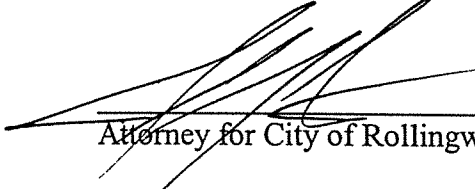

Assistant City Attorney

CITY OF AUSTIN:

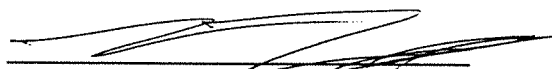
By: 
Toby Harshett Futrell
Assistant City Manager

Date: 2/3/00

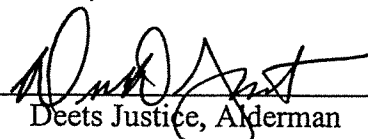
APPROVED AS TO FORM:


Attorney for City of Rollingwood

CITY OF ROLLINGWOOD:

By: 
Thom Farrell, Mayor
City of Rollingwood

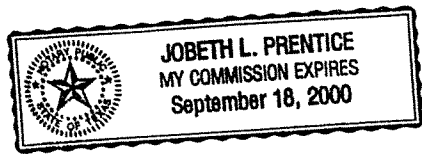
Date: 1/31/2000

By: 
Deets Justice, Alderman
City of Rollingwood

Date: 1/31/2000

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

THIS INSTRUMENT is acknowledged before me on this 3rd day of February, 2000, by Toby Hammett Futrell, Assistant City Manager of Austin, Texas, a municipal corporation, on behalf of said municipal corporation.



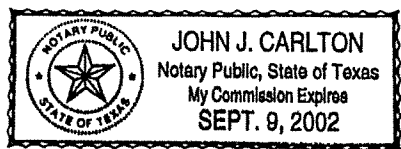
Jobeth L. Prentice
Notary Public, State of Texas

Printed/Typed Name of Notary

My Commission Expires: _____

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

THIS INSTRUMENT was acknowledged before me on this 31st day of January, 2000 by Thom Farrell, Mayor of the City of Rollingwood, a municipal corporation, on behalf of said municipal corporation.



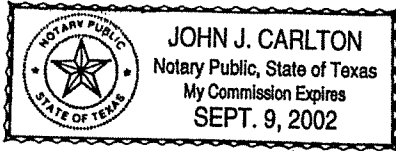
[Signature]
Notary Public, State of Texas

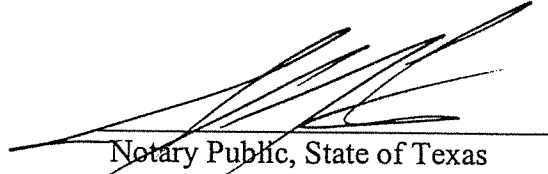
Printed/Typed Name of Notary

My Commission Expires: _____

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

THIS INSTRUMENT was acknowledged before me on this 31st day of January, 2000 by Deets Justice, Alderman of the City of Rollingwood, a municipal corporation, on behalf of said municipal corporation.





Notary Public, State of Texas

Printed/Typed Name of Notary

My Commission Expires: _____

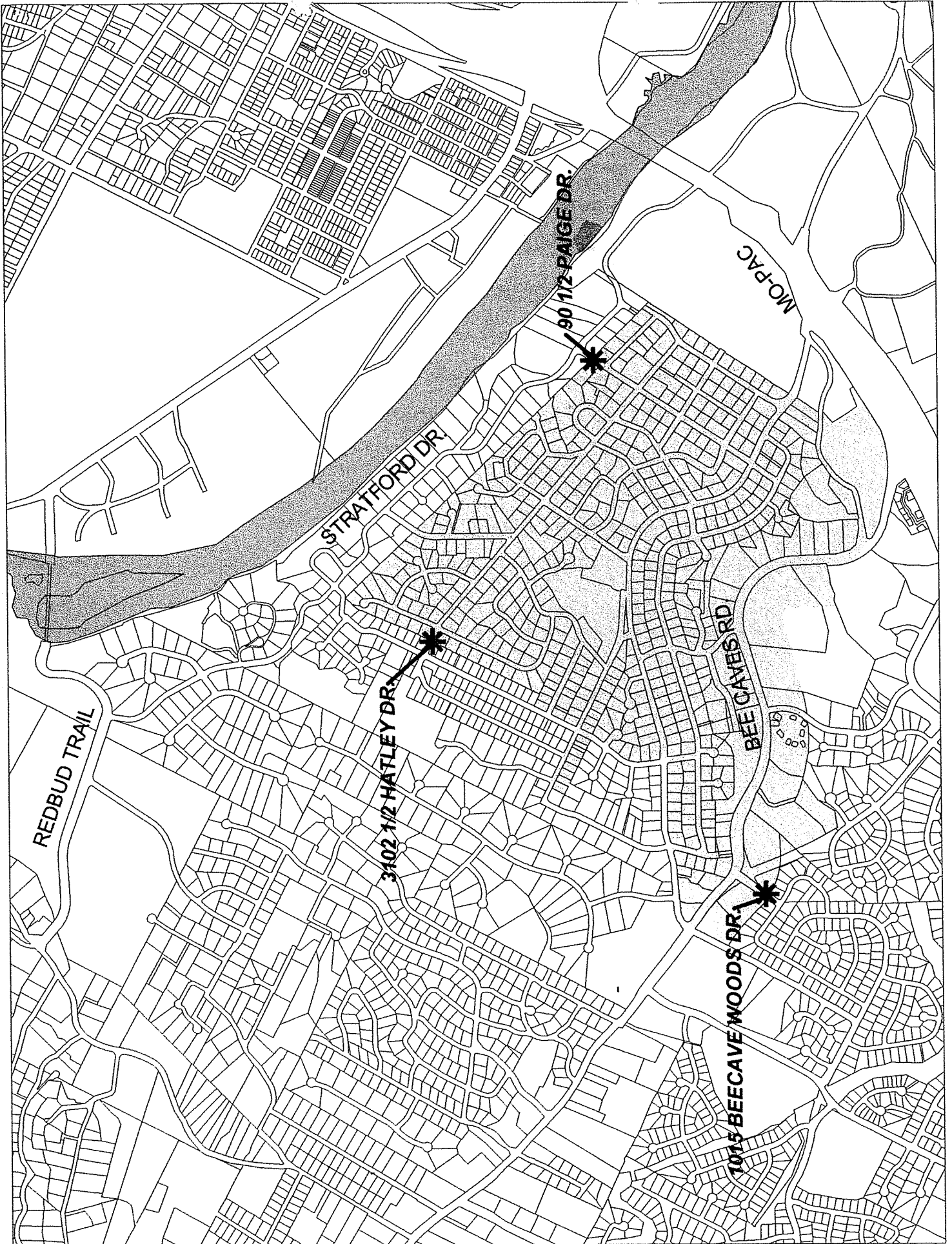


EXHIBIT A