

**FIRST AMENDMENT TO AGREEMENT FOR WHOLESALE  
WATER SERVICE BETWEEN THE CITY OF AUSTIN AND THE CITY OF  
ROLLINGWOOD**

THE STATE OF TEXAS     §

COUNTY OF TRAVIS       §

This First Amendment to 2000 Agreement for Wholesale Water Service Between the City of Austin and the City of Rollingwood ("First Amendment") is entered into between the City of Austin, a Texas home rule municipality ("Austin") and the City of Rollingwood, a Texas general law municipality ("Rollingwood"), collectively "Parties," to modify certain rights and responsibilities of the Parties under a previous agreement for wholesale wastewater service.

**RECITALS**

A. Austin and Rollingwood previously entered into a 2000 Agreement for Wholesale Water Service Between the City of Austin, Texas and the City of Rollingwood, Texas ("2000 Water Contract") dated effective February 3, 2000, that is currently in full force and effect, setting forth certain terms and conditions under which Austin agreed to provide water service, on a wholesale basis, to Rollingwood for its distribution system serving retail connections within Rollingwood's corporate boundaries and extraterritorial jurisdiction.

B. Rollingwood and Austin now mutually desire to modify certain rights and responsibilities of the Parties under the 2000 Water Contract as hereinafter set forth;

**AGREEMENT**

**NOW, THEREFORE**, for good and valuable consideration, including the mutual agreements, covenants and conditions set forth in this First Amendment to the 2000 Water Contract, Austin and Rollingwood agree as follows:

1. A new section 2.09 is hereby incorporated into the 2000 Water Contract to read as follows:

**2.09 Provision by Rollingwood of Source for Raw Water.** After the expiration of four (4) years following the Effective Date of this First Amendment, Austin will reexamine its raw water supply and need for additional raw water and, at the option of the Director upon at least twelve (12) months written notice to Rollingwood ("Austin Notice Period"), may require Rollingwood to provide its own source of raw water for Austin to treat and transport to Rollingwood in lieu of and substitution for using Austin's own water rights or contract supply of raw water to treat and provide Water to Rollingwood pursuant to this Agreement.

After the expiration of four (4) years following the Effective Date of this First Amendment, Rollingwood may provide at least twelve (12) months written notice ("Rollingwood Notice Period") to the Director that Rollingwood desires to provide its own source of raw water for Austin to treat and transport to

Rollingwood in lieu of and substitution for Austin using its own water rights or contract supply of water to meet its obligations under this Agreement.

The alternative source of raw water to be obtained by Rollingwood must be surface water from the lower Colorado River located in Travis County, Texas, be accessible to Austin at a point or points of diversion reasonably approved by the Director and, if necessary, the Lower Colorado River Authority, to allow Austin to employ its existing raw water intake facilities for withdrawal of Rollingwood's raw water from the Colorado River without additional expense to Austin. Since Austin will be withdrawing raw water from the Colorado River on behalf of Rollingwood, terms and conditions relating to such raw water supply will be subject to review and approval by the Director in advance of the execution of any agreement between Rollingwood and any third party providing for the extraction of raw water from the Colorado River for the benefit of Rollingwood. The approval by the Director of such request from Rollingwood will not be unreasonably delayed or withheld.

If Rollingwood has not secured an alternative source of raw water on terms reasonably acceptable to Rollingwood and the Director prior to expiration of the Austin Notice Period or Rollingwood Notice Period, as applicable, Austin may terminate this Agreement upon thirty (30) days advance written notice to Rollingwood, whereupon this Agreement will automatically terminate and expire upon the expiration of such thirty (30) day period without further notice and will thereafter be of no further force or effect. In the event of termination of this Agreement pursuant to this Section 2.09, Rollingwood will be solely responsible for all costs associated with securing an alternative source of Water for the Wholesale Water Service Area. If Rollingwood has commenced and is proceeding in reasonable good faith to complete contractual negotiations to secure an alternative source of raw water within the Austin Notice Period or Rollingwood Notice Period, as applicable, but cannot reasonably complete such contractual agreement prior to the expiration of the applicable notice period, and, prior to the expiration of such notice period, Rollingwood makes written request for an extension of the time to obtain an alternative raw water source, as applicable, the Director agrees to extend the Austin Notice Period or Rollingwood Notice Period, as applicable, for a reasonable period, not to exceed one hundred eighty (180) days.

In the event that (a) Rollingwood notifies Austin of its decision to provide its source of raw water for treatment and transportation pursuant to this Agreement and the City approves such request, or (ii) Austin requires Rollingwood to provide its own source of raw water for treatment and transportation by Austin pursuant to this Agreement, Austin will begin using the raw water supplied by or on behalf of Rollingwood in the fiscal year next succeeding the approval by the Director of Rollingwood's arrangements for such alternative raw water supply. In such an event, and prior to the commencement of such succeeding fiscal year, Austin agrees to recompute the then wholesale water rate for the provision of Water to Rollingwood in order to delete Austin's cost of raw water allocable to Rollingwood from the wholesale water rate applicable to Rollingwood.

2. **Defined Terms.** All terms delineated with initial capital letters in this First Amendment that are defined in the 2000 Water Contract have the same meanings in this First Amendment as in the 2000 Water Contract. Other terms have the meanings commonly ascribed to them.

3. **Effect of First Amendment.** Except as specifically provided in this First Amendment, the terms of the 2000 Water Contract continue to govern the rights and obligations of the parties, and all terms of the 2000 Water Contract, as modified by this First Amendment, remain in full force and effect. The 2000 Water Contract is incorporated herein by reference for all purposes. The Parties recognize that this First Amendment is a legally binding document and is enforceable under the laws of the State of Texas. In the event a dispute arises over the meaning or performance of this Agreement, the Parties agree that venue for any lawsuits shall be in Travis County, Texas. The prevailing Party in such a dispute shall be entitled to costs and attorney's fees, in addition to any damages or specific performance.

4. **Multiple Originals.** This First Amendment may be executed in multiple counterparts, each of which will constitute an original.

5. **Effective Date.** This First Amendment will be effective on the date the last party signs.

**IN WITNESS WHEREOF**, the authorized representatives of Austin and Rollingwood have executed this First Amendment, as authorized by the City Councils of Austin and Rollingwood, on the date(s) indicated below.

CITY OF AUSTIN

ok  
jmv

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

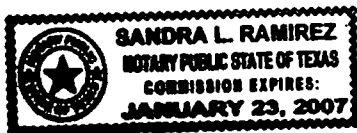
Jose E. Canales  
Deputy City Manager

Date: 11-29-04

THE STATE OF TEXAS §

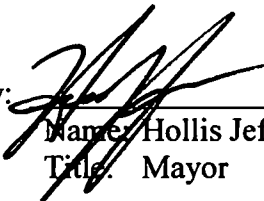
COUNTY OF TRAVIS §

THIS INSTRUMENT was acknowledged before me on this 29 day of November, 2004, by Jose E. Canales as Deputy City Manager of the City of Austin, Texas, a municipal corporation, on behalf of said municipal corporation.



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Notary Public, State of Texas

**CITY OF ROLLINGWOOD**

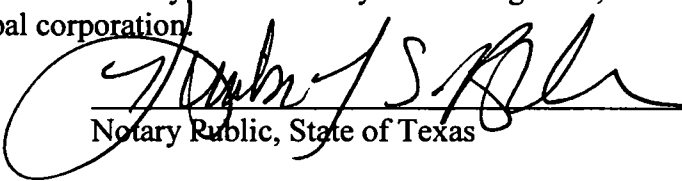
By:   
Name: Hollis Jefferies  
Title: Mayor

Date: 11/17/04

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

November **THIS INSTRUMENT** was acknowledged before me on this 17<sup>th</sup> day of November 2004, by Hollis Jefferies as Mayor of the City of Rollingwood, a municipal corporation, on behalf of said municipal corporation.

  
Notary Public, State of Texas

