

ORDINANCE NO. 20211104-023

AN ORDINANCE ADOPTING THE THIRD AMENDMENT TO THE CONSENT AGREEMENT AND SECOND AMENDMENT TO THE STRATEGIC PARTNERSHIP AGREEMENT ("SPA") BETWEEN THE CITY OF AUSTIN AND THE SOUTHEAST TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 2.

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

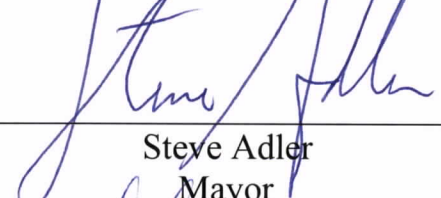
PART 1. FINDINGS.

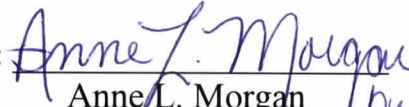
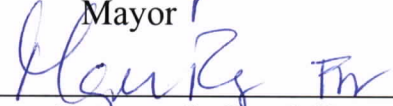
- (A) In Ordinance No. 20120322-037, the City consented to the creation of the Southeast Travis County MUD No. 2 that incorporated terms and conditions regarding future development within the MUDs. The consent agreement was amended in 2017 and 2020.
- (B) In Ordinance No. 20120524-032, the Council authorized a strategic partnership agreement (SPA) that sets the terms for annexation and post-annexation conversion. The SPA was amended in 2014.
- (C) The third amendment to the Consent Agreement, attached marked as **Exhibit "A"**, is proposed to align the date that determines when 90% of facilities in the MUD must be constructed with the date that governs when the last bond must be issued.
- (D) The second amendment to the SPA, attached and marked as **Exhibit "B"**, will align the full-purpose annexation date, contained in the SPA, with the last bond issuance date by which 90% of facilities must be complete within the MUD.

PART 2. Exhibits A and B are incorporated into this ordinance.

PART 3. This ordinance takes effect on November 15, 2021.

PASSED AND APPROVED

_____, November 4, 2021 §
 §
 § 
Steve Adler
Mayor

APPROVED:  **ATTEST:** 
Anne L. Morgan Jannette S. Goodall
City Attorney City Clerk

**THIRD AMENDMENT TO CONSENT AGREEMENT
OF SOUTHEAST TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 2**

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

KNOWN BY ALL THESE PRESENTS:

THIS THIRD AMENDMENT TO CONSENT AGREEMENT (“Amendment”) is entered into between the City of Austin, Texas, a home rule municipality (the “**City**”), acting by and through its City Manager; Southeast Travis County Municipal Utility District No. 2 (the “**District**”), a political subdivision of the State of Texas created under Chapter 8382, Subtitle F, Title 6, Texas Special District Local Laws Code and Chapters 49 and 54 of the Texas Water Code, acting by and through its Board of Directors; and QUALICO CR, LP, a Texas limited partnership (the “**Developer**”). The City, the District, and the Developer are sometimes referred to in this Amendment collectively as the “**Parties**.”

RECITALS

By adoption of Ordinance No. 20120322-037, the City Council consented to the creation of the District subject to certain conditions as more particularly stated therein and authorized the execution of that certain Consent Agreement (the “**Original Agreement**”) by and among the Parties. The Original Agreement was executed by the City on or about April 14, 2012. The Original Agreement was amended by (i) that certain First Amendment to Consent Agreement (the “**First Amendment**”) by and among the Parties, which was executed by the City on or about June 30, 2017; and (ii) that certain Second Amendment to Consent Agreement (the “**Second Amendment**”) by and among the Parties, which was executed by the City on or about April 2, 2020. The Original Agreement, as amended by the First Amendment and the Second Amendment, is referred to in this Amendment as the “**Consent Agreement**.”

The Parties desire to amend the Consent Agreement to set forth in writing the agreed amendment to the Consent Agreement.

NOW, THEREFORE, for and in consideration of the mutual agreement of the Parties contained in the Consent Agreement and this Amendment, and other good and valuable consideration, the Parties agree as follows, and all other terms and conditions remain as stated in the Consent Agreement:

AMENDMENT TO CONSENT AGREEMENT

1. **Amendment to Section 4.03 (Post-Annexation Surcharge)**. The second sentence of Section 4.03 of the Consent Agreement is amended to read as follows:

“The District agrees that at least 90% of the facilities for which District Bonds are authorized will be installed on or before December 30, 2037.”

2. **Effect of Amendment**. Except as specifically provided in this Amendment, the terms of the Consent Agreement continue to govern the rights and obligations of the Parties, and all terms of the Consent Agreement remain in full force and effect. If there is any conflict or inconsistency between this Amendment and the Consent Agreement, this Amendment will control and modify the Consent Agreement.

3. **Execution**. This Amendment may be executed in multiple counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument. An electronic signature, a facsimile or other electronic copy of an original signature, and a counterpart transmitted electronically (*e.g.*, by fax, email, text, or similar means), will be deemed to be, and will have the same force and effect as, an original signature for all purposes.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the authorized representative of each party has signed this Amendment as of the date(s) indicated below.

CITY OF AUSTIN, TEXAS

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Name: _____

Title: Assistant City Attorney

Date: _____

SOUTHEAST TRAVIS COUNTY MUNICIPAL UTILITY
DISTRICT NO. 2

By: _____

Name: J. Robert Long

Title: President, Board of Directors

Date: _____



ATTEST:

By: _____

Name: Frank H. Del Castillo

Title: Secretary, Board of Directors

Date: _____

QUALICO CR, LP, a Texas limited partnership

By: Qualico CR Management, LLC a Texas limited liability company, its general partner

By: _____

Name: LaNelle Deardorf

Title: Vice President

By: _____

Name: Vera Massaro

Title: Assistant Secretary

**AMENDMENT NO. 2 TO
STRATEGIC PARTNERSHIP AGREEMENT BETWEEN THE CITY OF AUSTIN AND
SOUTHEAST TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 2**

THE STATE OF TEXAS §
 § KNOWN ALL BY THESE PRESENTS:
COUNTY OF TRAVIS §

This Amendment No. 2 to Strategic Partnership Agreement (this “Amendment”) is entered into by the **City of Austin, Texas**, a home-rule municipality located in Travis, Hays and Williamson Counties, Texas (the “City”), and **Southeast Travis County Municipal Utility District No. 2**, a political subdivision of the State of Texas created under Chapter 8383, Subtitle F, Title 6, Texas Special District Local Laws Code and Chapters 49 and 54 of the Texas Water Code (the “District”), and is as follows:

RECITALS:

The City and the District previously negotiated and entered into a Strategic Partnership Agreement dated as of June 4, 2012, as amended by an Amendment No. 1 to Strategic Partnership Agreement dated as of April 21, 2014 (as amended, the “SPA”), as authorized by Section 43.0751, Texas Local Government Code. The City and the District have agreed to amend the SPA as set forth in this Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and the District agree that the SPA is amended as follows:

1. Amendment to Section 3.08. Section 3.08 of the SPA, “Conversion of Remaining Land to Full Purpose Annexation”, is amended to read as follows:

**“Section 3.08 Conversion of Remaining Land to Full Purpose
Annexation Status.**

The City may convert all of the remaining land within the District to full purpose annexation status at such time as it determines such conversion to be appropriate, subject to the terms of the Consent Agreement and this SPA, but, except as otherwise provided in the Consent Agreement, in no event sooner than December 31, 2037. In accordance with Sections 43.0751(f)(5) and 43.0751(h), Texas Local Government Code, the District and the City agree that any land within the District which has not been previously annexed by the City for full purposes may be converted to full purpose annexation status on or after December 31, 2037, at the City’s sole discretion. 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. Except as set out in this SPA, no additional procedural or substantive requirements of State or local annexation law will apply to such annexation or to the annexation ordinance.”

2. Effect of Amendment. Except as specifically provided in this Amendment, the terms of the SPA continue to govern the rights and obligations of the parties, and all terms of the SPA remain in full force and effect. If there is any conflict or inconsistency between this Amendment and the SPA, this Amendment will control and modify the SPA.

3. Execution. This Amendment may be executed in multiple counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument. An electronic signature, a facsimile or other electronic copy of an original signature, and a counterpart transmitted electronically (*e.g.*, by fax, email, text, or similar means), will be deemed to be, and will have the same force and effect as, an original signature for all purposes.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the undersigned parties have executed this Amendment on the dates indicated below.

DISTRICT:

**SOUTHEAST TRAVIS COUNTY
MUNICIPAL UTILITY DISTRICT NO. 2**

By: _____
J. Robert Long, President
Board of Directors

Date: _____



ATTEST:

By: _____
Frank H. Del Castillo, Secretary
Board of Directors

Date: _____

CITY:

CITY OF AUSTIN, TEXAS

By: _____

Name: _____

Title: City Manager

Date: _____

APPROVED AS TO FORM:

By: _____

Name: _____

Title: Assistant City Attorney

Date: _____