

RFI 6-47: Please produce documentation with dates and cost information to support your contention that (1) the WTCPUA installs 16-inch water pipelines and (2) the cost to purchase and install a 16-inch water pipeline is \$80 per linear foot, as stated in Mr. Rauschuber's Direct Testimony on page 30, lines 15-19.

RESPONSE:

The WTCPUA maintains a book of maps that show many instances in which 16" lines have been installed. The book of maps is voluminous; a copy has not been made but will be made available for review by TCMUD 12 upon request. References to 16" lines are also included in Appendix E to Attachment V to the Direct Testimony of Donald Rauschuber, at page 269, where a 16" project for FM 1826 is referenced. A bid tabulation for the project is attached as Attachment I.

Prepared by: Donald G. Rauschuber
Sponsored by: Donald G. Rauschuber

RFI 6-48: Is the \$80 per linear foot for a 16-inch water line referenced on page 30, lines 15-19 of Mr. Rauschuber's testimony for a new route or to parallel an existing water line?

RESPONSE:

Mr. Rauschuber was referring to a new route.

Prepared by: Donald G. Rauschuber
Sponsored by: Donald G. Rauschuber

RFI 6-49: Does the \$80 per linear foot for a 16-inch water line referenced on page 30, lines 15-19 of Mr. Rauschuber's testimony include the cost of acquiring the land or any easements? If so, please explain what property right has been acquired by PUA for installation of the 16-inch water pipelines, and the cost per linear foot for same. If the \$80 per linear foot does not include the cost of right of way easement or property acquisition, please produce documentation of the cost the PUA paid for a property right to install 16-inch water pipelines, the date acquired, the date installed, and the length of each.

RESPONSE:

Yes. WTCPUA acquires easements for installation of 16" lines. The cost per linear foot will vary. However, approximately 20% of a project's costs are "soft costs," which include engineering, surveying, and right-of-way (easement) acquisition.

Prepared by: Donald G. Rauschuber
Sponsored by: Donald G. Rauschuber

RFI 6-50: Please refer to page 29, line 15 through page 30, line 19, of Mr. Rauschuber's Direct Testimony. Produce all documents relating to the referenced cost of constructing treatment, diversion, and transmission facilities discussed in that section of Mr. Rauschuber's Direct Testimony.

RESPONSE:

See Attachment V to Mr. Rauschuber's Direct Testimony.

Prepared by: Donald G. Rauschuber
Sponsored by: Donald G. Rauschuber

RFI 6-51: Provide the calculation showing that "Mr. DiQuinzio's projected cost is nearly double the WTCPUA price, on a cost per 1,000,000 gallon basis" as stated by Mr. Rauschuber on page 31, lines 9-10 of his testimony.

RESPONSE:

Mr. Rauschuber reviewed Mr. DiQuinzio's estimate of \$25 million and divided that number by his estimate of \$13.5 million, which is approximately two.

Prepared by: Donald G. Rauschuber
Sponsored by: Donald G. Rauschuber

RFI 6-52: Identify the date on which WTCPUA provided to TC MUD 12 the proposed Monthly Charge referenced on page 33, lines 17-18 of Mr. Rauschuber's testimony. Produce any documents related to the communication referenced in response to the previous question.

RESPONSE:

Correspondence provided on March 26, 2013 and March 29, 2013 to the wholesale customers and documents provided as WTCPUA00008969-WTCPUA00008986 and WTCPUA00009005-WTCPUA00009014.

Prepared by: Donald G. Rauschuber
Sponsored by: Donald G. Rauschuber

RFI 6-53: Please produce the following publication or presentation as listed in Attachment A of Mr. Stowe's prefiled testimony: Allocating the Costs of Population Growth in Wholesale Water Contracts, Texas Rural Water Association and Texas Water Conservation Association Water Law Seminar, January 2007.

RESPONSE:

Mr. Stowe does not have the requested document.

Prepared by: Jack E. Stowe
Sponsored by: Jack E. Stowe

RFI 6-54: Please produce copies of the following testimony referenced on page 6, lines 9 and 10 of Mr. Jack Stowe's Direct Testimony. If any of the following testimony is readily available online, detailed information on how the specific testimony may be obtained (e.g. providing the Uniform Resource Locator (URL) for the appropriate webpage or File Transfer Protocol (FTP) site) may be provided in lieu of providing a copy of the testimony.

TCEQ Docket No. 582-10-1977, SOAH Docket No. 2009-1925-
UCR, *Navarro County Wholesale Ratepayers v. City of Corsicana,*
Texas.

RESPONSE:

After a diligent search, Mr. Stowe was unable to locate a copy of this testimony.

Prepared by: Jack E. Stowe
Sponsored by: Jack E. Stowe

RFI 6-55: Please produce copies of the SOAH Proposals for Decision ("PFDs") and the TCEQ Final Orders in the cases referenced on page 5, line 15 through page 6, line 10 of Mr. Jack Stowe's Direct Testimony. If any of the PFDs or Final Orders are readily available online, detailed information on how the specific documents may be obtained (e.g. providing the Uniform Resource Locator (URL) for the appropriate webpage or File Transfer Protocol (FTP) site) may be provided in lieu of providing a copy of the documents.

TCEQ Docket Nos. 8748-A and 9261-A, *City of Arlington, Texas v. City of Fort Worth, Texas*.

TCEQ Docket No. 582-02-2470, SOAH Docket No. 2001-1583-UCR, *City of McAllen v. Hidalgo County WCID #3*

TCEQ Docket No. 582-03-1991, SOAH Docket No. 2002-1400-UCR, *Canyon Regional River Authority v. Guadalupe Blanco River Authority*

TCEQ Docket No. 582-07-2049, SOAH Docket No. 2007-0238-UCR, *BHP Water Supply Corp. v. Royse City, Texas*

TCEQ Docket No. 582-10-1977, SOAH Docket No. 2099-1925-UCR, *Navarro County Wholesale Ratepayers v. City of Corsicana, Texas*.

RESPONSE:

A copy of the PFD for TCEQ Docket No. 582-10-1977 can be found at the following:
http://www.tceq.texas.gov/assets/public/comm_exec/agendas/comm/backup/Proposal-for-Decision/2009-1925-UCR-pfd.pdf

Copies of the requested SOAH PFDs and the TCEQ Final Orders are labeled as Attachment J, except for TCEQ Docket Nos. 8748-A and 9261-A or TCEQ Docket No. 582-03-1991, which could not be located by Mr. Stowe after a diligent search or online. TCEQ Docket No. 582-07-2049 settled, no Proposal for Decision was issued.

Prepared by: Jack E. Stowe
Sponsored by: Jack E. Stowe

RFI 6-56: Does WTCPUA contend that the WTCPUA may change the amount of the Connection Fees charged to TCMUD 12? If yes, please explain the basis of your contention and produce all documents that support your contention.

RESPONSE:

Yes. The WTCPUA's connection fees are established on a regular basis by the Board of Directors of the WTCPUA, in accordance with the Wholesale Services Agreement (Attachment G to the Direct Testimony of Donald Rauschuber), as amended, and in accordance with Chapter 395, Texas Local Government Code.

Prepared by: David J. Klein and Georgia Crump
Sponsored by: Donald Rauschuber

RFI 6-57: Please identify the document which Mr. Stowe refers to as the "2012 Amendment" on page 8, lines 3 through 13 of his Direct Testimony. Please have Mr. Stowe identify, by page numbers and references to specific provisions, where in that document it states that the Wholesale Water Services Agreement is thereby "amended."

RESPONSE:

Mr. Stowe is referring to the document identified in the cited pages of his testimony. This document is attached to Mr. Rauschuber's testimony as Attachment J. The reference to this agreement as the "2012 Amendment" is for short-hand purposes. Mr. Stowe's reference to amendments was intended to refer to the stepping of the WTCPUA into the shoes of the LCRA under the 2009 agreement.

Prepared by: Jack E. Stowe
Sponsored by: Jack E. Stowe

RFI 6-58: Please produce a copy of the testimony of Donald G. Rauschuber in *Appeal of the Retail Water and Wastewater Rates of the Lower Colorado River Authority*, TCEQ Docket No. 2008-0093-UCR; SOAH Docket No. 582-08-2863. If the testimony is readily available online, detailed information on how the specific testimony may be obtained (e.g. providing the Uniform Resource Locator (URL) for the appropriate webpage or File Transfer Protocol (FTP) site) may be provided in lieu of providing a copy of the testimony.

RESPONSE:

A copy of this testimony was previously provided as Bates page numbers WTCPUA00014730-WTCPUA00014828.

Prepared by: Donald G. Rauschuber
Sponsored by: Donald G. Rauschuber

RFI 6-59: Please produce a copy of the testimony of Donald G. Rauschuber in the *Deer Creek* case, SOAH Docket No. 582-09-5328, TCEQ Docket No. 2009-0929-UCR. If the testimony is readily available online, detailed information on how the specific testimony may be obtained (e.g. providing the Uniform Resource Locator (URL) for the appropriate webpage or File Transfer Protocol (FTP) site) may be provided in lieu of providing a copy of the testimony.

RESPONSE:

Copies of the requested testimonies were previously provided as Bates page numbers WTCPUA00014719-WTCPUA00014729 and WTCPUA00014917-WTCPUA00014952.

Prepared by: Donald G. Rauschuber
Sponsored by: Donald G. Rauschuber

RFI 6-60: Please produce a copy of the testimony of Nelisa Heddin, and any errata thereto, filed in the *Appeal of the Retail Water and Wastewater Rates of the Lower Colorado River Authority*, TCEQ Docket No. 2008-0093-UCR; SOAH Docket No. 582-08-2863. If the testimony is readily available online, detailed information on how the specific testimony may be obtained (e.g. providing the Uniform Resource Locator (URL) for the appropriate webpage or File Transfer Protocol (FTP) site) may be provided in lieu of providing a copy of the testimony.

RESPONSE:

Copies of Nelisa Heddin's testimony, and errata thereto, are available on the TCEQ's Commissioners' Integrated Database at: <http://www14.tceq.texas.gov/epic/eCID/>.

Prepared by: David J. Klein and Georgia Crump
Sponsored by: Donald G. Rauscher

RFI 6-61: Is it Mr. Baudino's contention that WTCPUA is an oligopoly, rather than a monopoly?

RESPONSE:

No. As Mr. Baudino stated in his Direct Testimony, the WTCPUA is a sole source provider of wholesale water treatment services pursuant to a water services agreement it acquired from the LCRA.

Prepared by: Richard A. Baudino
Sponsored by: Richard A. Baudino

RFI 6-62: Is it Mr. Baudino's position that the market for wholesale water services (i.e. the services provided to TCMUD12 by the WTCPUA) in the area served by TCMUD 12 is perfectly competitive?

RESPONSE:

No.

Prepared by: Richard A. Baudino
Sponsored by: Richard A. Baudino

RFI 6-63: Please identify the market structure (e.g., pure competition, oligopoly, monopoly, monopolistic competition, etc.) that Mr. Baudino contends to be present in the geographical area served by TCMUD 12 and explain in detail why he contends this to be an appropriate characterization of the market structure.

RESPONSE:

As Mr. Baudino explained in his Direct Testimony (summarized on page 4, lines 20 through 23), TCMUD 12 chose the LCRA (now WTCPUA) as a sole source provider of wholesale water treatment services after weighing other options. Beginning on page 16, line 5, Mr. Baudino also explained that there may have been alternative providers but it is not clear that TCMUD 12 prudently evaluated other alternatives. On page 17, lines 1 through 12 Mr. Baudino explained that without full knowledge of available wholesale water treatment services at the time TCMUD 12 entered into the wholesale water treatment services with the LCRA, one cannot reasonably conclude that the LCRA or the WTCPUA is a monopoly provider of wholesale water treatment services to TCMUD 12.

Prepared by: Richard A. Baudino
Sponsored by: Richard A. Baudino

RFI 6-64: For each of the public hearings attended by Mr. Stowe referenced on page 5, line 11 of his testimony, please identify or produce the following:

- a. The date of the hearing;
- b. The location of the hearing;
- c. Any notes taken by Mr. Stowe at the hearing;
- d. Transcript of any oral comments made by Mr. Stowe at the hearing;
- e. Any written comments by Mr. Stowe submitted for the hearing; and
- f. A summary of the hearing and any conclusions and recommendations from the hearing.

RESPONSE:

- a. Mr. Stowe believes that the hearing was conducted in 1993.
- b. Based upon Mr. Stowe's memory of the event some 22 years ago, he believes that the hearing he attended was in Irving, Texas, and was conducted at a municipal building, which he believes was the Public Library. Mr. Stowe also remembers attending a hearing held in Austin, again in the 1993 time-frame, that he believes was conducted at the TCEQ facilities.
- c. Mr. Stowe does not have the requested documentation in his possession.
- d. Mr. Stowe has never had any transcripts of the hearing in his possession.
- e. Mr. Stowe does not have the requested documentation in his possession.
- f. Other than the Public Interest Rule, which was ultimately adopted by the TCEQ and is available now on the PUC website, Mr. Stowe does not have the requested documentation in his possession.

Prepared by: Jack E. Stowe
Sponsored by: Jack E. Stowe

RFI 6-65: Please produce a copy of the comments provided by Mr. Stowe on the proposed draft rule referenced on page 5, lines 13-14 of his testimony.

RESPONSE:

Mr. Stowe does not have the requested documentation in his possession.

Prepared by: Jack E. Stowe
Sponsored by: Jack E. Stowe

RFI 6-66: Please identify the other revenue requirements methodologies besides the two most prominent methodologies referenced on page 9, lines 15-17 of Mr. Stowe's testimony? Please describe what distinguishes those methodologies from the two most prominent methodologies?

RESPONSE:

During Mr. Stowe's forty-plus-year rate consulting career, within the wholesale utility contracting area, Mr. Stowe has on occasion been exposed to revenue requirement determination methodologies, other than the Cash Needs Approach or the Utility Basis Approach, including but not limited to:

- a) Hybrid such as used by the PUC in Municipal Transmission Cost of Service filings and employed by some municipal water and wastewater utilities - employs components of both Cash Needs and Utility Basis;
- b) Surrogate Revenue Requirements - sets revenue requirements based upon comparable facilities and service;
- c) Indexed Revenue Requirements - adjusts revenue requirements based upon a mutually agreed-upon index such as Consumer Price Index, regardless of what actual costs may be;
- d) Avoided Cost Revenue Requirements – establishes revenue requirements based upon the cost avoided by supplied party;
- e) Market-Based Revenue Requirements – does not develop a revenue requirement but establishes rate based upon prevailing markets.

Prepared by: Jack E. Stowe
Sponsored by: Jack E. Stowe

RFI 6-67: Please describe Mr. Stowe's participation in the Dallas Water Utilities proceedings referenced on page 21, line 23 through page 22, line 1 of his testimony.

RESPONSE:

While a member of the Touche Ross Consulting Team engaged by the DWU Wholesale Customer Cities, Mr. Stowe's primary responsibility was the determination of the DWU investor-supplied Rate Base. Through the course of the engagement Mr. Stowe assisted in the development of revenue requirements for various components. As the parties moved toward settlement negotiations, Mr. Stowe assisted in performing impact analysis on numerous settlement scenarios. After resigning from Touche Ross and then International Advisors and having founded Reed-Stowe & Co., Mr. Stowe assisted a firm member, Mr. Barrada Sarma, in the development of testimony on behalf of the City of Farmers Branch. Farmers Branch had not agreed to what had become known as the "bury the hatchet" settlement between DWU and all other Customer Cities. I also assisted in settlement negotiations between the parties. Ultimately, Farmers Branch and DWU settled the dispute.

Prepared by: Jack E. Stowe
Sponsored by: Jack E. Stowe

RFI 6-68: On page 11, lines 21-24 of Mr. Rauschuber's testimony, he states that the WTCPUA has approximately 6,500 retail water customers as of the filing date of his testimony. Approximately how many of those retail water customers are located within:

- a. The City of Bee Cave's corporate limits
- b. The City of Bee Cave's extraterritorial jurisdiction (excluding West Travis County MUD #5's boundaries)
- c. West Travis County MUD #5's boundaries
- d. Hays County

RESPONSE:

The WTCPUA does not maintain records that would easily identify the location of its retail customers vis-à-vis city limits, city extraterritorial jurisdictions, boundaries of municipal utility districts, and counties. Customer location records are kept on the basis of routes, which overlap jurisdictional boundaries. Documents showing the routes are attached as Attachment K.

Prepared by: Donald G. Rauschuber
Sponsored by: Donald G. Rauschuber

ITEM H

AGREEMENT REGARDING TRANSFER OF OPERATIONS OF THE WEST TRAVIS COUNTY WATER SYSTEM FROM THE LOWER COLORADO RIVER AUTHORITY, TO THE WEST TRAVIS COUNTY PUBLIC UTILITY AGENCY

This Agreement Regarding Transfer of Operations of the West Travis County Water System from the Lower Colorado River Authority to the West Travis County Public Utility Agency (this "Agreement") is made by and between the Lower Colorado River Authority (the "LCRA"), Travis County Municipal Utility District No. 12 (the "District"), and the West Travis County Public Utility Agency (the "PUA"), to be effective as of March 19, 2012 ("Effective Date").

RECITALS

The LCRA is a conservation and reclamation district operating under Article XIV, Section 59 of the Texas Constitution.

The PUA is a public utility agency formed by the City of Bee Cave, Hays County, and West Travis County Municipal Utility District No. 5 for, among other purposes, the purpose of acquiring the West Travis County Water System (the "System") from the LCRA in order to maintain public ownership.

The District is a conservation and reclamation district created and operating pursuant to Chapters 49 and 54 of the Texas Water Code.

The District and the LCRA previously entered into that certain Wholesale Water Services Agreement Between Lower Colorado River Authority and Travis County Municipal Utility District No. 12 dated October 22, 2009 (the "Water Services Contract") governing the LCRA's provision of wholesale water services from the System to the District on behalf of the District, Travis County Municipal Utility District No. 11 ("District No. 11") and Travis County Municipal Utility District No. 13 ("District No. 13").

The LCRA and the PUA have entered into that certain Utilities Installment Purchase Agreement dated January 17, 2012 (the "Sale and Transfer Agreement") pursuant to which the LCRA has agreed to convey all of its rights, title and interests in the System to the PUA for ownership, operation and maintenance, subject to any outstanding obligations and responsibilities applicable to the LCRA with respect to the System, including the LCRA's obligations under the Water Services Contract.

The purchase price under the Sale and Transfer Agreement is to be paid in installments and the conveyance of the System from the LCRA to the PUA (the "Closing") will not occur until the date of the "Final 2019 Equity Payment" under and as such terms are defined in the Sale

and Transfer Agreement; however, the LCRA wishes to transfer, and the PUA wishes to assume, operations and maintenance responsibilities for the System prior to the Closing. The LCRA and the PUA have requested that the District consent to the LCRA's transfer and the PUA's assumption of such operations and maintenance responsibilities under the Water Services Contract during the term of the Sale and Transfer Agreement in advance of the Closing. The District is willing to do so, on the terms and conditions of this Agreement.

AGREEMENT

For good and valuable consideration, the parties agree as follows:

1. The LCRA hereby assigns to the PUA, and the PUA hereby assumes and agrees to perform, all responsibilities, obligations and duties of the LCRA under the Water Services Contract related to operation and maintenance of the System and the delivery of wholesale water service as provided therein effective as of March 19, 2012. Subject to the terms of this Agreement, the District consents to such assignment and assumption; provided, however, that if (a) the LCRA does not finally convey and transfer all legal title and capacity interests in the System to the PUA on the date of closing on the PUA's Final Equity Payment in May, 2019 (as such term is defined in the Sale and Transfer Agreement (the "Closing Date"), or (b) if (i) the Closing Date does not occur on or before June 1, 2019 or (ii) the Sale and Transfer Agreement terminates, for any reason (either, the "Termination Date"), then all of the District's consents under this Agreement and such assignment of responsibilities, duties and obligations under the Water Services Contract will immediately terminate as of the earlier to occur of the Closing Date or the Termination Date and all responsibilities, obligations and duties of the LCRA under the Water Services Contract will revert to and be and remain binding upon the LCRA as of that date. Nothing contained in this Agreement will be deemed or construed to amend, diminish or affect the District's rights, the obligations of the LCRA or the obligations of the PUA, as the LCRA's assignee, under the Water Services Contract.
2. The LCRA acknowledges and confirms that the Connection Fees (which term will mean the connection fees paid or to be paid by the District under Section 4.01.a. of the Water Services Contract) listed on Exhibit A, attached hereto and incorporated herein by reference, have been paid by or on behalf of the District under the terms of the Water Services Contract and have been received by the LCRA (the "Paid Connection Fees"). The LCRA and the PUA have requested that, in connection with the assignment and assumption described in Paragraph 1,

the District consent to the transfer of the Paid Connection Fees to the PUA. The LCRA and the PUA each confirm and agree that the District is entitled to and will received full credit for the Paid Connection Fees under the terms of the Water Services Contract, and that neither the Sale and Transfer Agreement, the assignment and assumption described in Paragraph 1, the provisions of this Agreement or the transfer of the Paid Connection Fees to the PUA will affect or diminish such credit or the District's rights under the Water Services Contract. Subject to the foregoing, the District consents to the LCRA's transfer of the Paid Connection Fees to the PUA.

3. The LCRA and the PUA have advised the District that, in connection with the assignment and assumption described in Paragraph 1, the LCRA desires, until the earlier to occur of the Closing Date or the Termination Date, to delegate to the PUA the authority to collect the Connection Fees payable under the Water Services Contract and the authority to set and collect the Monthly Charges and Volume Rates (which terms will mean the monthly charges payable by the District under Section 4.01.d. of the Water Services Contract and the volume rate payable by the District under Section 4.01.e. of the Water Services Contract, respectively and will be referred to in this Agreement collectively the "Water Services Contract Fees"). The LCRA and the PUA agree that the District is entitled to and will received full credit for all Connection Fees and/or Water Services Contract Fees paid to the PUA under the terms of this Agreement, as if the District had paid such Connection Fees and/or Water Service Contract Fees to the LCRA, and that neither the Sale and Transfer Agreement, the assignment and assumption described in Paragraph 1, the provisions of this Agreement or the payment of the Connection Fees and/or Water Services Contract Fees to the PUA will affect or diminish such credit or the District's rights under the Water Services Contract. Subject to the foregoing, and provided that all Connection Fees are collected and credited and all Water Services Contract Fees are set, collected, and credited in strict accordance with the terms of the Water Services Contract, the District agrees that the LCRA may delegate to the PUA authority to collect the Connection Fees and to set and collect the Water Services Contract Fees under the Water Services Contract until the earlier to occur of the Closing Date or the Termination Date. The PUA shall bill and collect payment from the District in strict accordance with the terms and conditions of the Water Services Contract.
4. The LCRA, the PUA and the District agree that the monthly and annual reports from the District for Connection Fees described in Section 4.01b. and Section

4.04b. and 4.04c. of the Water Services Contract and any Connection Fees or Deficiency Amounts (as defined in Section 4.01.a. of the Water Services Contract) shall be submitted to the PUA at the following address:

West Travis County Public Utility Agency
Attn: Autumn Phillips
Municipal Accounts & Consulting
8834 North Capital of Texas Highway
Suite 150
Austin, Texas 78759

5. The LCRA, the PUA and the District agree that the copies of final subdivision plats required to be provided to the LCRA under Section 4.04a. of the Water Services Contract shall be submitted to the PUA at the following address:

West Travis County Public Utility Agency
Attn: George Murfee
1101 South Capital of Texas Highway
Suite #D110
West Lake Hills, Texas 78746-6482

6. By execution of this Agreement, the District expressly consents to the LCRA's assignment of all of its rights, title, interest, obligations and responsibilities under the Water Services Contract to the PUA (the "Assigned Rights and Obligations") on the Closing Date subject to and conditioned upon the PUA's assumption and agreement to perform the Assigned Rights and Obligations and, effective as of and contingent upon the full performance of the obligations of both the LCRA and the PUA under the Sale and Transfer Agreement on the Closing Date, the District releases the LCRA from all Assigned Rights and Obligations arising on or after the Closing Date; provided, however, that such consent and release shall not be effective in the event the District has previously issued a written notice of default under the Water Services Contract to the PUA and/or the LCRA that has not been resolved as of the Closing Date.
7. All notices, requests and demands to be made hereunder to the parties hereto shall be in writing (at the addresses set forth below) and may be given by any of the following means: personal delivery, reputable overnight courier service, or certified, first class mail, return receipt requested. Any communication sent pursuant to this Agreement shall be deemed received upon the earlier of actual receipt or three (3) days after deposit to courier or the mail service. The addresses

ATTACHMENT A

are as follows and may be changed by notice to the other parties in the manner provided in this Agreement:

To the District: Travis County Municipal Utility District No. 12
c/o Armbrust & Brown, PLLC
100 Congress Avenue
Suite 1300
Austin, Texas 78701

To the PUA: West Travis County Public Utility Agency
Attn: General Manager
12215 Bee Cave Road
Bee Cave, Texas 78738

Copy to: Lauren Kalisek
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue
Suite 1900
Austin, Texas 78701

To the LCRA: Lower Colorado River Authority
Attn: General Manager
3700 Lake Austin Boulevard
Austin, Texas 78703

Copy to: Madison Jechow, Associate General Counsel
Lower Colorado River Authority
3700 Lake Austin Boulevard
Austin, Texas 78703

8. This Agreement shall be binding upon and inure to the benefit of the LCRA, the District, and the PUA and their successors and permitted assigns. Nothing in this Agreement constitutes or will be deemed to be a consent by the District to any assignment of the Water Services Contract to any party other than the PUA.
9. This Agreement will be governed by and construed in accordance with the laws of the State of Texas without giving effect to the provisions thereof relating to conflicts of laws.

ATTACHMENT A

10. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by all of the parties hereto. The provisions of this Agreement are severable and, if any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, the remainder of this Agreement will not be affected and, in lieu of the term, covenant or provision that has been deemed to be illegal, invalid or unenforceable, a provision that is as similar as possible, but is legal, valid and enforceable, will be deemed to be added to this Agreement in order to effect, to the maximum extent possible, the intent of the parties as expressed in this Agreement. This Agreement may be executed in any number of counterpart originals and each counterpart shall be deemed to be an original.
11. This Agreement shall be in effective from the Effective Date until the first to occur of the Closing Date or the Termination Date.

IN WITNESS WHEREOF, the LCRA, the District and the PUA have duly executed this Agreement on the date or dates indicated below, to be effective as of the Effective Date.

{signature blocks to follow}

ATTACHMENT A

LOWER COLORADO RIVER AUTHORITY

By: _____
Jimmy Don Havins
Chief Operating Officer

ATTEST:

By: _____

Name: _____

Title: _____

ATTACHMENT A

TRAVIS COUNTY MUNICIPAL UTILITY
DISTRICT NO. 12

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Name: _____

Title: _____

ATTACHMENT A

WEST TRAVIS COUNTY PUBLIC UTILITY
AGENCY

By: _____
Larry Fox, President
Board of Directors

ATTEST:

Ray Whisenant, Secretary
Board of Directors

From: Lauren Kalisek
Sent: Tuesday, February 28, 2012 9:46 AM
To: Sue Littlefield (SLittlefield@abaustin.com)
Cc: Judy Bentley; Stefanie Albright
Subject: MUD 12 consent for PUA assignment
Attachments: Wholesale Water Services Agreement Travis County MUD 12.PDF; 2012.02.28 draft resolution for TCMUD 12 on Assignment of Wholesale Agreement.DOC

Sue

Attached for your convenience is a copy of the Wholesale Agreement and a draft resolution for your Board's consideration. Judy in my office will email you a copy of the PUA's Purchase Agreement with LCRA. As I mentioned, PUA folks would be happy to meet with representatives from the District to answer any questions or go over any issues you guys may have right now regarding the contract or the provision of service. But we would like to get the consent to assignment before March 19 which is the date operations are to transfer over from LCRA to the PUA

Thanks!
Lauren



October 19, 2009

Travis County Municipal Utility District No. 12
c/o Sue Brooks Littlefield
Armbrust & Brown
100 Congress Avenue, Suite 1300
Austin, Texas 78701

Via Hand Delivery

RE: Wholesale Water Services Agreement between Lower Colorado River Authority
(LCRA) and Travis County Municipal Utility District No. 12

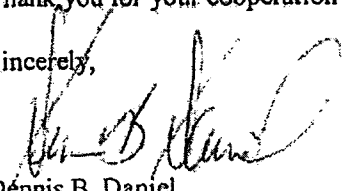
Dear Ms. Littlefield:

Enclosed please find: (1) a letter accepting Lakeway Highlands Meter Vault improvements for operation; and, (2) the proposed Wholesale Water Services Agreement between Travis County Municipal Utility District No. 12 and LCRA.


This letter presents an offer from LCRA, and we ask you to sign this letter in the space provided below as a condition to delivery of this offer. Upon your execution, this letter will constitute a letter agreement. This letter agreement will confirm that, notwithstanding anything to the contrary contained in the proposed Wholesale Water Services Agreement executed by Lower Colorado River Authority ("LCRA") on October 19, 2009 (the "Contract"), and enclosed with this letter agreement, if Travis County Municipal Utility District No. 12 ("District") fails to timely deliver the \$350,200 Minimum Payment required to be paid to LCRA within 15 days of the District's signing of the Contract, then (i) this offer and the Contract will immediately terminate and be of no further force or effect and (ii) any water service then being provided by LCRA through the Highlands master meter and/or the LCRA's Highway 71 water line will immediately be terminated. In addition, if the District fails to sign the Contract within 30 days of the District's receipt of this letter and the enclosures, the offer presented in this letter and the proposed Contract shall expire.

Thank you for your cooperation in the development of the proposed Contract.

Sincerely,


Dennis B. Daniel
Manager, Customer & Business Strategy

Agreed and Accepted:

By: 
Daniel Robertson
President, Board of Directors

WHOLESALE WATER SERVICES AGREEMENT
BETWEEN
LOWER COLORADO RIVER AUTHORITY
AND
TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 12

This WHOLESALE WATER SERVICES AGREEMENT (this "Agreement") is made and entered into by and between LOWER COLORADO RIVER AUTHORITY, a conservation and reclamation district created and functioning under Article 16, Section 59 of the Texas Constitution and a political subdivision of the State of Texas ("LCRA") and TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 12, a conservation and reclamation district created and functioning under Article 16, Section 59 of the Texas Constitution and Chapters 49 and 54, Texas Water Code ("District No. 12").

RECITALS

1. LCRA owns and operates the West Travis County Regional Water System consisting of a raw water intake and pumping system, a water treatment plant near Bee Cave, Texas, treated water storage facilities and treated water transmission and distribution facilities which have been designed to serve the needs of its customers in western Travis County (collectively, the "LCRA System").
2. LCRA and District No. 12 entered into a Water Sale Contract on or about September 25, 2008 (the "Raw Water Contract"), under which LCRA will provide District No. 12 with raw water from the Colorado River for use by District No. 12, Travis County Municipal Utility District No. 11 ("District No. 11") and Travis County Municipal Utility District No. 13 ("District No. 13") for municipal purposes. In this Agreement, District No. 11, District No. 12 and District No. 13 are sometimes individually referred to as a "District" and collectively referred to as the "Districts".
3. The Districts are currently negotiating an agreement between themselves (the "District Shared Facility Agreement") under which District No. 12 will manage certain water and wastewater facilities and services that will be shared by the Districts, including the wholesale water services to be provided by LCRA under this Agreement.
4. District No. 12 desires to obtain wholesale services for the treatment of raw water and delivery of potable water to District No. 12, on behalf of the Districts, from the LCRA System, and LCRA desires to provide such services to District No. 12, on behalf of the Districts.
5. The Districts will be responsible for construction of all improvements necessary to deliver the potable water provided by LCRA under this Agreement from the Delivery Point, as defined below, to the Districts' utility systems and to supply potable water service to the Districts' respective customers within the District Service Area, as defined below.

6. Subject to District No. 12's compliance with the provisions of this Agreement, and to the extent indicated, LCRA represents that the LCRA System will be capable of providing Wholesale Water Services, as defined below, to District No. 12 on behalf of the Districts, and LCRA agrees to expand and improve the LCRA System as necessary in order to provide adequate Wholesale Water Services to District No. 12, on behalf of the Districts, under this Agreement and to the other customers of the LCRA System under other agreements, with all costs of the LCRA System (the "Costs of the LCRA System"), as more fully defined below, to be recovered in a fair and equitable manner through the rates and charges of LCRA to the customers of the LCRA System.
7. LCRA and District No. 12 now wish to execute this Agreement to evidence the agreement of LCRA to provide Wholesale Water Services to District No. 12 on behalf of the Districts under the conditions described in this Agreement.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LCRA and District No. 12 agree as follows:

ARTICLE I DEFINITIONS

Section 1.01. Definitions of Terms. As used in this Agreement, except as otherwise provided, the following terms have the meanings ascribed in this section.

"Agreement" means this agreement.

"AWWA" means the American Water Works Association.

"Connection Fee" means the charge described in Section 4.01.a. of this Agreement.

"Costs of the LCRA System" means all of LCRA's reasonable and necessary costs of acquiring, constructing, developing, permitting, implementing, expanding, improving, enlarging, bettering, extending, replacing, repairing, maintaining and operating the LCRA System, including, without limiting the generality of the foregoing, the costs of reasonable water losses within the LCRA System as well as the costs of property, interests in property, capitalized interest, land, easements and rights-of-way, damages to land and property, leases, facilities, equipment, machinery, pumps, pipes, tanks, valves, fittings, mechanical devices, office equipment, assets, contract rights, wages and salaries, employee benefits, chemicals, stores, material, supplies, power, supervision, engineering, testing, auditing, franchises, charges, assessments, claims, insurance, engineering, financing, consultants, administrative expenses, auditing expenses, legal expenses and other similar or dissimilar expenses and costs required for the LCRA System. The Costs of the LCRA System shall include reasonable amounts for an operation and maintenance reserve fund, debt service reserve fund, required coverage of debt service, working capital and appropriate general and administrative costs. The foregoing notwithstanding, because LCRA is providing Wholesale Water Services to District No. 12 under this Agreement and retail potable water service to other customers from the LCRA System, the term "Costs of the LCRA System"

shall not include any costs properly attributable to the provision of retail potable water service by LCRA from the LCRA System, such as costs of retail distribution lines and related valves, pressure reducing devices, pressure boosting facilities, and improvements; retail meters and taps; individual retail customer service lines; water losses within LCRA's retail service area, costs associated with retail customer service, retail billing and collection costs or any other costs, whether similar or not, that are reasonably related to the distribution of water and provision of water service to LCRA's retail customers. The Costs of the LCRA System will be reduced by any credits, including, but not limited to, proceeds from insurance or recovery of any claims, properly allocable to the LCRA System. Further, LCRA will use diligent efforts to assure that the Costs of the LCRA System to be paid by the customers of the LCRA System, including District No. 12, are at all times reasonable and justified.

"Delivery Point" means the point at which LCRA will deliver treated water to District No. 12 under this Agreement, as depicted on Exhibit A.

"District Service Area" means the Districts' retail service areas as depicted on Exhibit A.

"District Shared Facility Agreement" means the agreement, to be entered into between the Districts, relating to the sharing of certain facilities and services, including the services to be provided by LCRA to District No. 12 under this Agreement.

"District Systems" means the Districts' water distribution and delivery systems that provide service through the Wholesale Water Services provided under this Agreement, including any facilities required to extend service to the District Service Area from District No. 12's side of the Delivery Point. The District Systems do not include the Master Meter or any facilities on LCRA's side of the Delivery Point.

"Districts" means Travis County Municipal Utility District No. 11, District No. 12 and District No. 13.

"Effective Date" means the date (i) this Agreement has been executed by both District No. 12 and LCRA, (ii) LCRA has accepted the Highlands master meter and the 16-inch water line between LCRA's Highway 71 water line and the Highlands master meter and (iii) LCRA has provided a copy of its acceptance letter for the Highlands master meter and the 16-inch water line to District No. 12.

"Elevated Water Storage Tank" means the elevated water storage tank that will be constructed by or on behalf of LCRA outside of the District Service Area in a location along LCRA's Highway 71 water line, which tank will include a minimum capacity of one million gallons, will be owned by LCRA and become part of the LCRA System.

"Emergency" means a sudden unexpected happening; an unforeseen occurrence or condition; exigency; pressing necessity; or a relatively permanent condition or insufficiency of service or of facilities resulting from causes outside of the reasonable control of LCRA. The term includes Force Majeure and acts of third parties that cause the LCRA System to be unable to provide the Wholesale Water Services agreed to be provided herein.

"Force Majeure" means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of any governmental entity other than LCRA or any civil or

military authority, acts, orders or delays of any regulatory authorities with jurisdiction over the parties, insurrections, riots, acts of terrorism, epidemics, landslides, lightning, earthquakes, fires, hurricanes, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or any other conditions which are not within the control of a party.

"Improvements" means the installation of the tap and Master Meter at the Delivery Point, and any valves and pressure reducing devices required for District No. 12 to connect to and receive service from the LCRA System, but does not include any facilities on LCRA's side of the Delivery Point and does not include any facilities comprising the District Systems.

"LCRA" means Lower Colorado River Authority.

"LCRA Rate Schedule" means the West Travis County Regional System Schedule for Rates, Fees, Charges and Terms and Conditions of Retail Treated Water and Wastewater Service, as amended by the LCRA Board of Directors from time to time, as applicable to District No. 12 under the express provisions of this Agreement.

"LCRA Service Area" means the service area for the LCRA System, as depicted in Exhibit B, together with such other service areas contiguous thereto as may be added by LCRA in the future.

"LCRA System" means the facilities owned and operated by LCRA, as described in Recital No. 1 above, together with all extensions, expansions, improvements, enlargements, betterments and replacements to provide water or Wholesale Water Services to LCRA's customers in the LCRA Service Area. The LCRA System does not include any improvements on District No. 12's side of the Delivery Point or any facilities on any other wholesale customer's side of its delivery point and, for purposes of this Agreement, does not include any facilities used by LCRA solely to provide retail potable water service, such as costs of retail distribution lines and related valves, pressure reducing devices, pressure boosting facilities and improvements; retail meters and taps and individual retail customer service lines.

"LCRA Water Conservation and Drought Plan" means, collectively, the LCRA Water Conservation Plan and the LCRA Water Utilities Drought Contingency Plan as both were adopted in 2009 and as may be amended.

"LUE" means an amount of Wholesale Water Services sufficient for one living unit equivalent based on meter size, as defined from time to time in the LCRA Rate Schedule.

"Master Meter" means the master meter that shall be installed by District No. 12 at the Delivery Point as described in Section 2.01.

"Monthly Charge" means the charge described in Section 4.01.d. of this Agreement.

"Raw Water Contract" means the Water Sale Contract entered on or about September 25, 2008, between LCRA and District No. 12, as it may be amended, superseded or supplemented.

"TCEQ" means the Texas Commission on Environmental Quality or its successor agency.

"Volume Rate" means the charge described in Section 4.01.e. of this Agreement.

"Wholesale Water Services" means the diversion of raw water from the Colorado River, the transmission of the raw water to a place or places of treatment, the treatment of the water into potable form and the transmission of the potable water to the Delivery Point.

Section 1.02. Captions. The captions appearing at the first of each numbered section or paragraph in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement.

Section 1.03. Wholesale Water Services. LCRA agrees to provide Wholesale Water Services to District No. 12 for up to 2,125 LUEs in accordance with the flow limitations and other provisions of this Agreement all as hereafter specified. District No. 12 will be responsible for providing service to the Districts, and the Districts will be responsible for providing retail service within the District Service Area.

ARTICLE II METERING; ESTIMATING WATER DELIVERIES

Section 2.01. Master Meter. District No. 12 shall install the Master Meter at or near the Delivery Point. The design, location and installation of the Master Meter is subject to prior review and approval by LCRA, which approval shall not be unreasonably withheld or delayed. LCRA acknowledges that timely review and approval of the plans for the Master Meter are necessary in order for District No. 12 to begin providing service as contemplated by this Agreement. Accordingly, LCRA agrees to review the plans and either approve them or provide written comments specifically identifying any required changes within ten working days of receipt of the plans. If LCRA fails to either approve the submitted plans or provide the required written comments within this ten-day period, the plans will be deemed approved. After completion of installation of the Master Meter, District No. 12 shall dedicate and convey the Master Meter (together with associated easements, rights-of-way, permits, licenses or appurtenances) to LCRA free and clear of any liens, claims and encumbrances and execute an appropriate document in form and substance reasonably acceptable to LCRA evidencing the dedication and conveyance. Thereafter, the Master Meter will be part of the LCRA System and LCRA will repair, maintain and replace the Master Meter.

Section 2.02. Master Meter Accuracy; Calibration.

- a. The Master Meter may be calibrated at any reasonable time by either party to this Agreement, provided that the party making the calibration notifies the other party in writing at least five days in advance and allows the other party to witness the calibration. Further, the Master Meter shall be tested for accuracy by, and at the expense of, LCRA, at least once each calendar year, at intervals of approximately 12 months, and a report of such test shall be furnished to District No. 12. In the event any question arises at any time as to the accuracy of the Master Meter, then the Master Meter shall be tested by LCRA promptly upon demand of District No. 12. The expense of such test shall be borne by District No. 12 if the Master Meter is found to be within AWWA standards of accuracy for the type and size of meter and by LCRA if the Master Meter is found to not be within AWWA standards for the type and size of meter.

- b. If, as a result of any test, the Master Meter is found to be registering inaccurately (in excess AWWA standards for the type and size of meter), the readings of the Master Meter shall be corrected at the rate of their inaccuracy for any period which is definitely known or agreed upon and LCRA shall pay for the testing or, if no such period is known or agreed upon, the shorter of:
- (1) a period extending back either 60 days from the date of demand for the test or, if no demand for the test was made, 60 days from the date of the test; or
 - (2) a period extending back one-half of the time elapsed since the last previous test;

and the records of the readings, and all payments which have been made on the basis of such readings, shall be adjusted accordingly.

ARTICLE III CONDITIONS REGARDING PROVISION OF WHOLESALE WATER SERVICES

Section 3.01. Diversion of Water; Primary Source.

- a. LCRA agrees to provide Wholesale Water Services to District No. 12 on behalf of the Districts for raw water purchased from LCRA pursuant to the Raw Water Contract in accordance with the terms provided in this Agreement.
- b. The Raw Water Contract currently provides for the reservation and/or purchase of 1,680 acre-feet per year of raw water. It shall be District No. 12's sole responsibility to secure any amendments to the Raw Water Contract necessary in order for District No. 12 to purchase any additional raw water required for full development of the District Service Area. Water made available under the Raw Water Contract and provided through the Wholesale Water Services provided by LCRA pursuant to this Agreement will be used by the Districts in order to provide potable water service within the District Service Area prior to the use of potable water obtained from any other source.
- c. District No. 12 acknowledges that it is solely responsible for securing, maintaining and increasing its right to divert and use water under the Raw Water Contract and for complying with all the terms and conditions of the Raw Water Contract. District No. 12 shall make all payments under the Raw Water Contract directly to LCRA. LCRA shall never be liable for any amount payable by District No. 12 under the Raw Water Contract, and all such payment obligations shall remain exclusively with District No. 12 unless assigned by District No. 12 pursuant to the provisions of the Raw Water Contract. It is specifically agreed, however, that LCRA shall divert, treat and transport the water made available under the Raw Water Contract to District No. 12 in accordance with the terms and conditions of this Agreement.
- d. LCRA, by entering into this Agreement with District No. 12, does not confer upon District No. 12, and District No. 12, as a result of this Agreement, shall never have or claim, any interest in raw water owned or controlled by LCRA except to the extent of

District No. 12's rights under the Raw Water Contract. In no event will LCRA be obligated pursuant to this Agreement to divert or supply (1) any water in excess of the specific amount stated in, or in violation of any of the provisions of, the Raw Water Contract, or (2) any water LCRA is otherwise entitled to divert or use.

- e. This Agreement in no way modifies or amends the Raw Water Contract, nor the obligations and rights contained therein except with regard to LCRA's ownership, maintenance, repair and replacement, as necessary, of the Master Meter.

Section 3.02. Title to and Responsibility for Water; Delivery Point(s).

- a. Title to the water diverted, treated and transported to District No. 12 by LCRA under this Agreement shall remain with District No. 12 at all times, even when that water is commingled with water belonging to other customers of the LCRA System, but District No. 12 shall have no right of control or dominion over its water until it reaches the Delivery Point.
- b. Water delivered by LCRA shall be delivered at the Delivery Point and at no other points. District No. 12 shall be solely responsible for conveying water from the Delivery Point to the Districts' intended places of use. At its cost and expense, District No. 12 may change the Delivery Point from time to time following prior written notice to and approval by LCRA. The parties may agree to additional Delivery Points in the future.

Section 3.03. Quantity and Pressure.

- a. Subject to the terms of this Agreement, upon completion of construction of the Improvements in a manner approved in advance by LCRA, which approval shall not unreasonably be withheld, conditioned or delayed, LCRA agrees to divert, transport and treat for District No. 12 all water needed and requested by District No. 12 for the District Service Area, up to, but not in excess of (i) a peak hourly flow rate of 414,000 gallons per hour and a maximum daily flow rate of 3,980,000 gallons per day (which is presumed for this Agreement to be sufficient for up to 2,125 LUEs), or (ii) such lesser amount as LCRA may be able to supply in the event of an Emergency. LCRA reserves the right to require District No. 12, at its expense, to install flow restriction devices at such locations as LCRA may reasonably specify if necessary in order to restrict the flow of water to District No. 12 to the specified levels. LCRA acknowledges that timely review and approval of the plans for the Improvements are necessary in order for District No. 12 to begin receiving Wholesale Water Services as contemplated by this Agreement. Accordingly, LCRA agrees to review the plans for the Improvements and either approve them or provide written comments specifically identifying any required changes within ten working days of receipt of the plans. If LCRA fails to either approve the submitted plans or provide the required written comments within this ten-day period, the plans will be deemed approved.
- b. LCRA shall provide water at the Delivery Point from the pressure plane maintained by LCRA at 1280 feet above mean sea level under non-Emergency operating conditions. In addition, LCRA agrees that following construction of the Elevated Storage Tank, LCRA

shall maintain water levels in the Elevated Storage Tank at a minimum of 1250 feet above mean sea level under non-Emergency operating conditions.

- c. If the demands of District No. 12 for Wholesale Water Services ever exceed the amount specified in this Agreement, then District No. 12 shall notify LCRA of such shortage and the amount of additional potable water needed. If LCRA is unable to provide the additional water required by District No. 12, District No. 12, at its option, may acquire water from other sources. Further, if at any time LCRA is unable to provide the amount of Wholesale Water Services required by this Agreement, then LCRA will be in default and District No. 12, at its option, may acquire water from other sources, subject to the default provisions of this Agreement, provided that District No. 12 has adopted and is enforcing the conservation plan and drought contingency plan required by Section 6.02.
- d. Provided that District No. 12 is not in default under this Agreement, District No. 12 may purchase additional Wholesale Water Services from LCRA from the LCRA System on the same terms and conditions as any other similarly situated customer of LCRA to the extent that: (i) District No. 12 obtains any additional raw water required from LCRA through an amendment or supplement to the Raw Water Contract; and (ii) LCRA has additional Wholesale Water Services available within the LCRA System.
- e. LCRA acknowledges that District No. 12 has provided LCRA with a water model for the District Service Area dated October 8, 2007 prepared by Carlson, Brigrance & Doerring based on data provided by LCRA. LCRA confirms its review and approval of District No. 12's water model and that, based on the water model, no water storage other than the Elevated Water Storage Tank and no pressurization will be necessary for the Wholesale Water Services.
- f. District No. 12 acknowledges that the provision of Wholesale Water Services is subject to the availability of raw water in accordance with the Raw Water Contract and the capability of the LCRA System to divert, treat and transport such water to the Delivery Point, provided, however, LCRA shall use diligent, good faith efforts to ensure that the LCRA System is capable at all times of carrying out LCRA's obligations under this Agreement, it being acknowledged that District No. 12 is relying on LCRA's expertise and ability to provide raw water under the Raw Water Contract and Wholesale Water Services in entering into this Agreement and agreeing to pay the sums specified in this Agreement. Furthermore, District No. 12 acknowledges that the Wholesale Water Services provided under this Agreement are subject to the LCRA Water Conservation and Drought Plan and the quantity of water delivered may be curtailed pursuant to the LCRA Water Conservation and Drought Plan, as provided in Section 6.02 of this Agreement.

Section 3.04. Quality of Water Delivered to District No. 12. The water delivered by LCRA at the Delivery Point shall be potable water of a quality conforming to the requirements of any applicable federal or state laws, rules, regulations or orders, including requirements of the TCEQ applicable to water provided for human consumption and other domestic use. Each party agrees to provide to the other party, in a timely manner, any information or data regarding this Agreement or the quality of treated water provided through this Agreement as required for reporting to the TCEQ or other state and federal regulatory agencies.

Section 3.05. Maintenance and Operation; Future Construction. LCRA shall be responsible for operating, maintaining, repairing, replacing, extending, improving and enlarging the LCRA System, including the Master Meter, in good working condition and shall promptly repair any leaks or breaks in the LCRA System. District No. 12 shall be responsible for operating, maintaining, repairing, replacing, extending, improving and enlarging the District Systems in good working condition and shall promptly repair any leaks or breaks in the District Systems.

Section 3.06. Rights and Responsibilities in Event of Leaks or Breaks.

- a. District No. 12 shall be responsible for paying for all water delivered to it under this Agreement at the Delivery Point even if such water passed through the Delivery Point as a result of leaks or breaks in the District Systems. In the event a leak, break, rupture or other defect occurs within the District Systems that could either endanger or contaminate the LCRA System or prejudice LCRA's ability to provide water service to its other customers, LCRA, after providing reasonable notice to District No. 12 and an opportunity for consultation, shall have the right to take reasonable, appropriate action to protect the public health or welfare of the LCRA System or the water systems of LCRA's customers including, without limitation, the right to restrict, valve off or discontinue service to District No. 12 until such leak, break, rupture or other defect has been repaired.
- b. District No. 12 further understands that LCRA delivers water at other points to other customers and has rights under its contracts with those customers that are similar to its rights under Section 3.06.a. of this Agreement. Nothing in this Agreement shall be construed as impairing any of LCRA's rights under its contracts with other customers. LCRA may exercise any of said rights, including those rights similar to its rights under Section 3.06.a. of this Agreement.

ARTICLE IV

CHARGES, BILLING AND FINANCIAL MATTERS

Section 4.01. Connection Fees and Minimum Payments; Rates.

- a. District No. 12 shall be obligated to pay LCRA a connection fee per LUE (the "Connection Fee") for each new retail water customer that connects to the District Systems and receives water provided under this Agreement. The Connection Fee is currently \$4,120 per LUE. For the term of this Agreement, the Connection Fee will be the amount established from time to time in the LCRA Rate Schedule for the rate district in which the District Service Area is located, provided that (i) no increase in the Connection Fee will become effective until the LCRA has given at least 60 days' prior written notice of the change to District No. 12, in order to allow the Districts adequate time to make corresponding changes to their rate orders, and (ii) any increase in the Connection Fee shall not apply to subdivisions within the District Service Area for which a final subdivision plat has been approved by the City of Lakeway City Council prior to effective date of the Connection Fee amendment. All approved final plats will be filed with LCRA as provided in Section 4.04. The Connection Fee paid for each new retail water connection to the District Systems shall be due and payable to LCRA within 45 days after the end of the calendar month in which the new retail water connection is made. The foregoing notwithstanding, (i) within 15 days of the Effective Date of this

Agreement, District No. 12 agrees to pay LCRA total Connection Fees of \$350,200; (ii) for the period ending April 1, 2010, District No. 12 agrees to pay LCRA total Connection Fees of \$350,200 and, (3) thereafter, for the calendar year 2011 and each subsequent calendar year through 2014, District No. 12 agrees to pay to LCRA total Connection Fees which, at a minimum, equal the required payment amount for that calendar year (the "Minimum Payment") indicated on the payment schedule attached as Exhibit C (the "Payment Schedule"). If, for any period indicated on the Payment Schedule, the total Connection Fees paid by District No. 12 for new retail connections to the District Systems are less than the Minimum Payment due for that period, District No. 12 will pay the difference (the "Deficiency Amount") to LCRA within 45 days of the last day of applicable period, and the Deficiency Amount will be credited against the Connection Fees payable by District No. 12 at the time the next new retail connections to the District Systems are made. If, for any period indicated on the Payment Schedule, the total Connection Fees paid by District No. 12 to LCRA for new retail connections exceed the Minimum Payment for that period as indicated on the Payment Schedule, then District No. 12 will receive a credit for the excess that will be applied against the Minimum Payment due for the subsequent annual period or periods.

- b. Within 45 days after the end of each calendar month, District No. 12 shall submit a monthly report to LCRA, reflecting the new customer(s), service address(es), meter size(s) and number of LUE(s) for which payment of a Connection Fee is being made and/or a credit being applied for the calendar month in question. If no new connections have been made, the monthly report will still be required, but will reflect that there have been no changes from the prior reporting period. If District No. 12 fails to submit any report within the time period required by this Agreement, LCRA may assess District No. 12 a \$50 late charge. Unless changed by written notice in accordance with Section 7.07, the Connection Fees and monthly reports required by subsection 4.01.a. and this subsection will be submitted to the following address:

c/o Mary Blincoe, Business and Financial Service
P.O. Box 220, H-305
Austin, Texas 78767-0220

- c. The Connection Fee has been designed to fund or recover all or a part of the Costs of the LCRA System for capital improvements or facility expansions intended to serve "new development" (as that term is defined in the Texas Impact Fee Law, Chapter 395 of the Texas Local Government Code) in the LCRA Service Area and, upon payment, District No. 12 will have a guaranteed reservation of capacity in the LCRA System for the number of LUEs for which a Connection Fee has been paid. The Connection Fee will be reasonable and just and established as required by law and in accordance with the provisions of this Agreement.
- d. District No. 12 also shall pay LCRA a monthly charge (the "Monthly Charge") for each full calendar month after the Effective Date. The Monthly Charge initially shall be \$9,430 per month; provided, however, that the Monthly Charge shall not go into effect until the Effective Date. The Monthly Charge has been designed primarily to recover District No. 12's allocable share of the capital-related Costs of the LCRA System not recovered in the Connection Fee. The Monthly Charge shall be just and reasonable and

established in accordance with the provisions of this Agreement and applicable legal requirements.

- e. District No. 12 also shall pay LCRA a volumetric rate (the "Volume Rate") for diversion, transportation, treatment and delivery of the actual amount of water delivered to District No. 12, as measured by the Master Meter at the Delivery Point, including all water used, or lost due to leakage or for any other reason within the District Service Area. The Volume Rate initially will be \$2.40 per 1,000 gallons. The Volume Rate shall be designed primarily to recover the operation and maintenance related Costs of the LCRA System, together with any other Costs of the LCRA System not recovered through the Connection Fee or the Monthly Charge. The Volume Rate does not include, however, any charges for raw water and District No. 12 shall remain liable for such costs under the Raw Water Contract. The Volume Rate will be just and reasonable and established in accordance with the provisions of this Agreement and applicable legal requirements.
- f. At any time while this Agreement is in effect, LCRA, subject to applicable law, may modify the Connection Fee, the Monthly Charge and the Volume Rate consistently with the terms of this Agreement as appropriate to recover the Costs of the LCRA System in a just, reasonable and nondiscriminatory manner from District No. 12 and the other customers of the LCRA System. Anything herein to the contrary notwithstanding, it is the intent of the parties that no portion of the Costs of the LCRA System be recovered by LCRA more than one time and, therefore, if any amount is included in the Connection Fee, the Monthly Charge, the Volume Rate, that amount may not also be included in or recovered through any other rate or charge of LCRA to District No. 12 hereunder, it being the intent and agreement of the parties that all charges to District No. 12 under this Agreement will be fair and equitable, and will allow LCRA to recover, but not over-recover, District No. 12's proportionate share of the Costs of the LCRA System.

Section 4.02. Billing and Payment. LCRA shall bill District No. 12 one time each month for the amount owed for the Monthly Charge and the Volume Rate. The Volume Rate shall be multiplied by the actual amount of water delivered by LCRA to District No. 12 during the previous billing cycle as determined by LCRA's readings of the Master Meter. Each bill submitted to District No. 12 will be delivered within five days of the date of the invoice and shall be paid to LCRA by check or bank wire on or before 30 days from the date of the invoice. Payments by check shall be mailed to the address indicated on the invoice, or hand-delivered to LCRA's headquarters in Austin, Travis County, Texas, upon prior arrangement. If payments will be made by bank wire, District No. 12 shall verify wiring instructions with LCRA's Finance Department. Payment must be received at LCRA's headquarters or bank by the due date in order not to be considered past due or late. In the event District No. 12 fails to make payment of a bill within said 30-day period, District No. 12 shall pay in addition LCRA's then-current, Board-approved wholesale water contract late payment charges (which charges currently are a one-time late payment charge of five percent) on the unpaid balance of the invoice. If the bill has not been paid by the due date, District No. 12 further agrees to pay all costs of collection and related reasonable attorneys' fees incurred by LCRA, regardless of whether suit is filed, in accordance with Section 271.159, Texas Local Government Code.

Section 4.03. LCRA System to be Self-Sufficient. The LCRA System shall be comprised of the facilities described in Recital No. 1, together with such improvements, extensions, enlargements,

betterments, additions, and replacements thereto as are reasonable and necessary to provide water to the LCRA Service Area and Wholesale Water Services to District No. 12 on behalf of the Districts. The parties agree that the Costs of the LCRA System shall be allocated to and borne by all of the customers of the LCRA System, including District No. 12, in a fair and equitable manner and so that the LCRA System is self-sufficient. Without limiting the foregoing, the parties further agree that LCRA is authorized to issue such indebtedness as it may deem appropriate to pay for any Costs of the LCRA System or, in lieu of issuing indebtedness, to provide for the borrowing of internal LCRA funds from LCRA resources other than the LCRA System and, in such events, the Costs of the LCRA System borne by the customers, including District No. 12, shall include debt service, paying agent/registrars fees and reasonable coverage on any indebtedness issued by LCRA or the recovery (amortized over a reasonable period) of any internal LCRA funds utilized together with reasonable interest and coverage thereon to be established in accordance with LCRA policy as now or hereafter implemented.

Section 4.04. Additional Required Notices. In addition to the monthly reports required by Section 4.01.b. above, District No. 12 shall:

- a. Require that the Districts provide to LCRA, within 60 days of the date of approval, a copy of each final subdivision plat of property within the District Service Area approved by the City of Lakeway.
- b. Provide to LCRA by June 1 of every year during the term of this Agreement a report setting forth: (i) the total number of retail water service connections within the District Service Area as of April 1 of the same year; and, (ii) the total number of new retail water service connections to the District Systems during the prior annual period ending April 1 of the same year, which connections shall be set forth in LUES as determined by LCRA's Rate Schedule.
- c. Reports provided pursuant to this Section shall be provided substantially in the form attached as Exhibit D.

ARTICLE V OTHER COMMITMENTS AND FUTURE SERVICE AREA

Section 5.01. Rates and Charges.

- a. District No. 12 shall be solely responsible for establishing, billing and collecting water or other rates, charges and fees from customers within the District Service Area in accordance with applicable law. Failure to collect from its customers will not affect District No. 12's obligation to make all payments due to LCRA.
- b. District No. 12 further agrees to include a provision in the District Shared Facility Agreement that states that all moneys required to be paid by District No. 12 under this Agreement shall constitute an operating expense of the District Systems, as authorized by the Constitution and laws of the State of Texas, including Chapters 49 and 54, Texas Water Code, as amended.

- c. District No. 12 covenants and agrees to compute, ascertain, fix, levy and collect rates and charges under the District Shared Facility Agreement that will be adequate to permit District No. 12 to make prompt and complete payments under this Agreement.

Section 5.02. Governmental Approvals. District No. 12 represents that the Districts have acquired or will acquire all necessary governmental approvals required to provide potable water service in the District Service Area.

Section 5.03. Easements. LCRA shall cooperate with District No. 12 in District No. 12's efforts to acquire any necessary easements provided, however, LCRA shall not be required to spend money or initiate eminent domain proceedings therefore absent approval from LCRA's Board of Directors.

ARTICLE VI

EMERGENCY OR SHORTAGE OF WATER SERVICE CAPABILITY; TERM; DEFAULT; REMEDIES

Section 6.01. Curtailment of Service. Notwithstanding any other provision herein to the contrary, the obligation of LCRA to provide Wholesale Water Services to District No. 12 during the term of this Agreement is neither superior nor inferior to the obligation of LCRA to provide similarly situated customers with water or Wholesale Water Services within the LCRA Service Area and to provide service to its other presently committed customers or any future customers of the LCRA System. Accordingly, the parties agree that if, during the term of this Agreement, LCRA is unable to reasonably provide water or Wholesale Water Services to the LCRA Service Area or its existing committed customers because of an Emergency or shortage of water supply, production, treatment, storage or transportation capability in the LCRA System, or if LCRA needs to cause repairs to be made to the LCRA System to repair, replace or improve the level of Water Service to its customers, then LCRA shall have the right, after reasonable notice to District No. 12 and opportunity for consultation, to temporarily curtail or limit service to District No. 12 and all other customers of LCRA on a equitable, reasonable, and non-discriminatory basis so that all similarly situated customers are treated equally, fairly and uniformly. LCRA shall, however, at all times use diligent efforts to provide continuous and adequate Wholesale Water Services under this Agreement. Each of LCRA and District No. 12 further agrees, in times of Emergency or shortage or the need for repair, replacement or improvement of the LCRA System, to take appropriate action to curtail or limit all usage in its respective service area so that all users of water in both entities' service areas will be equally and uniformly restricted and protected. Any measures taken by District No. 12 will be at least as stringent as those adopted by LCRA for retail customers in the LCRA Service Area. The parties agree that domestic uses of water shall have priority in times of Emergency or shortage over uses of water for construction or commercial uses and that construction or commercial uses shall have priority over irrigation uses from the LCRA System. Further, both parties agree that use of water for irrigation of lawns shall have the lowest priority in times of Emergency or shortage. If it is ever determined by any governmental or regulatory authority other than LCRA that provision of Wholesale Water Services by LCRA under this Agreement or curtailment or limitation of water or Wholesale Water Services by LCRA to any of its customers is in violation of applicable law, regulation or order, then LCRA, after reasonable notice to District No. 12 and opportunity for consultation, may take such action as will best effectuate this Agreement and comply with applicable law.

Section 6.02. Conservation and Drought Planning. District No. 12, by signing below, certifies that each of the Districts has adopted a water conservation plan and a drought contingency plan in compliance with TCEQ rules, 30 Texas Administrative Code, Chapter 288, and the terms of the Raw Water Contract and that the provisions of such plans are consistent with the provisions of the LCRA Water Conservation and Drought Plan. District No. 12 further agrees that the Shared Facility Agreement requires or will require that each of the Districts incorporate a modified version of the LCRA's Conservation Landscape Best Management Practices as suggested guidelines for landscaping and irrigation system installations within the Districts, and that the Districts comply with all applicable LCRA rules related to landscape conservation measures and irrigation systems.

Section 6.03. Plumbing Regulations. To the extent LCRA and District No. 12 have the authority, both covenant and agree to adopt and enforce and District No. 12 agrees to require, in the District Shared Facility Agreement, that the Districts adopt and enforce, adequate plumbing regulations with provisions for the proper enforcement thereof, to ensure that neither cross-connection nor other undesirable plumbing practices are permitted, including an agreement with each of their respective water customers that allows it to inspect individual water facilities prior to providing service to ensure that no substandard materials are used and to prevent cross-connection and other undesirable plumbing practices.

Section 6.04. Default.

- a. In the event District No. 12 shall default in the payment of any amounts due to LCRA under this Agreement, or in the performance of any material obligation to be performed by District No. 12 under this Agreement, then LCRA shall give District No. 12 at least 30 days' written notice of such default and the opportunity to cure same. Thereafter, LCRA shall have the right to temporarily limit Wholesale Water Services to District No. 12 under this Agreement pending cure of such default by District No. 12 and also to pursue any remedy available at law or in equity, pending cure of such default by District No. 12. In the event such default remains uncured for a period of: (i) an additional 30 days in the event of a monetary default; or, (ii) an additional 180 days in the event of a non-monetary default, then LCRA shall have the right to permanently restrict service to District No. 12 under this Agreement or to require District No. 12 to stop making, or providing Wholesale Water Services to the Districts for, new retail connections to the District Systems upon giving District No. 12 written notice of its intent to do so. Subject to the written notices required by this Section, (a) if District No. 12 fails to pay the Minimum Payments required under this Agreement, and the total amount due is not paid following opportunity to cure as provided in this section or under the guarantee set forth in Section 7.15 of this Agreement after LCRA's delivery of notice in accordance with that Section, LCRA will have the right to provide 30 days' further written notice to District No. 12 that LCRA will limit service under this Agreement to the number of LUEs for which District No. 12 has paid Connection Fees previously to LCRA. Upon delivery of such written notice from LCRA to District No. 12, this Agreement shall be modified automatically so that the Wholesale Water Services are limited to the number of LUEs for which District No. 12 has paid Connection Fees previously to LCRA and further limited to portions of the District Service Area for which final plats have been approved by the City of Lakeway. Thereafter, Wholesale Water Services to any portions of the District Service Area for which a final plat has not been approved by the City of Lakeway as of the

effective date of LCRA's written notice shall require separate written approval from LCRA. LCRA also may pursue any remedy available at law or in equity, pending cure of such default by District No. 12. Anything herein to the contrary notwithstanding, any Connection Fees paid to LCRA under this Agreement after the effective date of LCRA's written notice which are accepted by LCRA or which are awarded as a remedy to LCRA shall increase the number of LUEs for which LCRA will provide Wholesale Water Services in accordance with this Agreement.

- b. In the event LCRA shall default in the performance of any material obligation to be performed by LCRA under this Agreement, then District No. 12 shall give LCRA at least 30 days' written notice of such default and the opportunity to cure same. Thereafter, in the event such default remains uncured, the District No. 12 shall have the right to pursue any remedy available at law or in equity, pending cure of such default by LCRA. In the event such default remains uncured for an additional 180 days, then District No. 12 shall, in addition to and not in lieu of any other remedies available to District No. 12, have the right to notify LCRA that District No. 12 intends to take a more limited amount of Wholesale Water Services from LCRA (which shall be at least the amount LCRA is then able to provide to District No. 12) and District No. 12 may then obtain other water or Wholesale Water Services from another provider or may take appropriate action to supply itself with additional water or Wholesale Water Services upon giving LCRA written notice of its intent to do so. Any obligation of District No. 12 to pay Connection Fees under Section 4.01.a will be suspended during any time within which LCRA is in default, and, if District No. 12 reduces the amount of Wholesale Water Services as provided in this subsection, its obligation to pay Connection Fees will also be reduced, prorata, based on the reduced amount of Wholesale Water Services to be provided. If District No. 12 has prepaid Connection Fees in excess of the Connection Fees payable for such reduced Wholesale Services, then LCRA will refund the excess amount, together with interest on the amount to be refunded from the date of payment by District No. 12 to the date of refund by LCRA at the rate of 10% per annum, within 30 days after the date District No. 12 notifies LCRA of its election to make the reduction. LCRA acknowledges that the replacement of the Wholesale Water Services which LCRA has agreed to provide under this Agreement would be difficult and expensive for District No. 12, and agrees to use diligent good faith efforts to perform its obligations under this Agreement.

Section 6.05. Additional Remedies Upon Default. It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies existing at law or in equity may be availed of by any party and shall be cumulative of the remedies provided. Recognizing however, that LCRA's undertaking to provide and maintain the services of the LCRA System is an obligation, failure in the performance of which cannot be adequately compensated in money damages alone, LCRA agrees, in the event of any default on its part, that District No. 12 shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination of this Agreement) that may also be available. The parties acknowledge that LCRA may not have the remedy of terminating this Agreement in the event of District No. 12's default, whether a monetary default or otherwise, because the Districts may have an obligation to provide continuous and adequate potable water service to their retail customers existing at the time of the default and may lack alternative sources for potable water supply. In recognition of this, and that failure in the performance of District No. 12's obligations could not be adequately

compensated in money damages alone, District No. 12 agrees in the event of any default on its part that LCRA shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies that may also be available to LCRA including the right to obtain a writ of mandamus or an injunction against District No. 12 (i) requiring the Board of Directors of District No. 12 to levy and collect rates and charges sufficient to pay the amounts owed to LCRA by District No. 12 under this Agreement and (ii) enjoining District No. 12 from making additional retail water connections to the District Systems or providing Wholesale Water Services to the Districts beyond the levels specified in Section 6.04.a. If either party institutes legal proceedings to seek adjudication of an alleged default under this Agreement, the prevailing party in the adjudication shall be entitled to its reasonable and necessary attorneys' fees in accordance with Section 271.159, Texas Local Government Code. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT IS SUBJECT TO SUBCHAPTER I, CHAPTER 271, TEXAS LOCAL GOVERNMENT CODE, IN EFFECT AS OF SEPTEMBER 1, 2007.

Section 6.06. Protests, Disputes or Appeals. Nothing in this Agreement is intended to limit, impair or prevent any right of District No. 12 to protest, dispute or appeal with respect to rate making, the establishment of fees and charges or any other related legal or administrative proceedings affecting services or charges to District No. 12 under this Agreement. If District No. 12 should dispute District No. 12's obligation to pay all or any part of the amount stated in any invoice or notice, District No. 12 may, in addition to all other rights that it may have under law, pay such amount under protest in which case such amount shall be deposited by LCRA in an interest bearing account mutually acceptable to both LCRA and District No. 12 pending final resolution of such dispute. If District No. 12 provides payment under protest, District No. 12 will have the right to continue to receive service, including the right to make new connections, during the pendency of any good faith dispute regarding any alleged default or payment alleged to be due under this Agreement.

ARTICLE VII MISCELLANEOUS PROVISIONS

Section 7.01. Contracts. LCRA shall have the right to enter into other water supply or Wholesale Water Services contracts so long as LCRA's performance of its obligations under such contracts does not materially adversely affect or prevent LCRA's ability to perform its obligations hereunder. This section shall not be construed as limiting LCRA's rights to temporarily curtail service in times of shortage or Emergency as otherwise provided. District No. 12 agrees that it will not provide or sell water to any entity, private or public, other than the Districts and retail customers of the Districts within the District Service Area unless it obtains the prior written consent of LCRA, which consent shall be solely within LCRA's discretion and not subject to the provisions of section 7.09 of this Agreement.

Section 7.02. Records. LCRA and District No. 12 each agree to preserve, for a period of at least two years from their respective dates of origin, all books, records, test data, charts and other records pertaining to this Agreement. LCRA and District No. 12 shall each, respectively, have the right during reasonable business hours to inspect such records to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to any provisions of this Agreement.