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PETITION OF TRAVIS COUNTY  
MUNICIPAL UTILITY DISTRICT NO.  
12 APPEALING CHANGE OF  
WHOLESALE WATER RATES  
IMPLEMENTED BY WEST  
TRAVIS COUNTY PUBLIC UTILIT  
AGENCY, CITY OF BEE CAVE, T  
HAYS COUNTY, TEXAS AND W  
TRAVIS COUNTY MUNICIPAL  
UTILITY DISTRICT NO. 5

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BEFORE THE STATE OFFICE

OF

TRATIVE HEARINGS

SCAN

DIRECT TESTIMONY OF

JOSEPH A. DIQUINZIO, JR.

ON BEHALF OF TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 12

OCTOBER 31, 2014

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## **DIRECT TESTIMONY OF JOSEPH A. DIQUINZIO, JR.**

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#### **Exhibits:**

JAD Exhibit 1	MOU Regarding TCMUD 11, 12, & 13 Regarding Shared Raw Water Supply and Water and Wastewater Capacity, as Amended and Restated
JAD Exhibit 2	LCRA Firm Water Contract (9/25/08)
JAD Exhibit 3	TCEQ Letter Accepting Filing of Contract (1/12/09)
JAD Exhibit 4	Wholesale Water Service Agreement
JAD Exhibit 5	Agreement Regarding Transfer
JAD Exhibit 6	Map
JAD Exhibit 7	LMUD and TCMUD 11 Agreement
JAD Exhibit 8	LCRA – WTCPUA Utilities Installment Purchase Agreement (1-17-12)
JAD Exhibit 9	2-28-12 Email from L. Kalisek to S. Brooks Littlefield regarding Consent to Transfer
JAD Exhibit 10	WTCPUA 5-3-12 Board of Directors Meeting
JAD Exhibit 11	WTCPUA Order Adopting Water Impact Fees (11-1-12)
JAD Exhibit 12	WTCPUA Order Regarding Proposed Increases to Rates for Wholesale Wastewater, Wholesale Water and Effluent Raw Water Irrigation Customers (11-15-12)
JAD Exhibit 13	WTCPUA 12-17-13 Notice of Wholesale Rate Change

1   **Q.   PLEASE STATE YOUR NAME AND ADDRESS.**

2   A.   I am Joseph A. DiQuinzio, Jr. appearing in this proceeding as the President of JadCo  
3       Management, Inc., the General Manager of TCMUD 12, and my business address is 602 W. 9<sup>th</sup>  
4       Street, Austin, TX 78701.

5   **Q.   WHAT IS TCMUD 12's ROLE IN THIS PROCEEDING?**

6   A.   TCMUD 12 filed a Petition, on its own behalf and on behalf of TCMUDs 11 and 12  
7       (collectively, the "Districts"), complaining about the decision made by the West Travis County  
8       Public Utility Agency, or PUA, to change the wholesale water services rates the PUA charges  
9       to TCMUD 12, effective January 1, 2014. Pursuant to a Memorandum of Understanding,<sup>1</sup>  
10      TCMUDs 11, 12 and 13 share the raw water which is sold to the Districts by LCRA under a  
11      2008 Raw Water Contract,<sup>2</sup> and the three Districts also share the wholesale water services  
12      provided under a 2009 LCRA Contract<sup>3</sup> that was conditionally transferred to the PUA in 2012.<sup>4</sup>

13  **Q.   PLEASE EXPLAIN HOW YOUR TESTIMONY IS ORGANIZED, AND WHO THE**  
14  **WITNESSES ARE FOR TCMUD 12?**

15  A.   I will describe the three Districts and the history of our water contracts and the rate changes  
16      imposed by PUA that ultimately led us to file this appeal. I will also discuss the lack of  
17      reasonable, alternative providers of potable water and PUA's disparately greater bargaining  
18      power. In addition to my testimony, Dr. Jay Zarnikau and Mr. Jay Joyce are testifying on  
19      behalf of TCMUD 12. Dr. Zarnikau is an Economist and testifies regarding monopoly, market  
20      power, and the exercise of market power, also referred to as abuse of monopoly power. Mr.  
21      Joyce's testimony addresses the actions taken by PUA that demonstrate abuse of monopoly  
22      power.

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<sup>1</sup> JAD Exhibit 1 - MOU Regarding Shared Water Supply and Water and Wastewater Capacity, including Amended and Restated MOU, First Amendment to Amended and Restated MOU, and Second Amendment to Amended and Restated MOU (TCMUD 12 produced these documents in Response to WTCPUA's RFP 1-2).

<sup>2</sup> JAD Exhibit 2 - LCRA Firm Water Contract with TCMUD 12 (Sept. 25, 2008) and JAD Exhibit 3, TCEQ letter accepting filing of contract (01/12/09)(This contract replaced a Water Contract between LCRA and TCMUD 11 dated December 10, 2004.)

<sup>3</sup> JAD Exhibit 4 - Wholesale Water Services Agreement Between LCRA and TCMUD 12.

<sup>4</sup> JAD Exhibit 5 - Agreement Regarding Transfer of Operations of the West Travis County Water System from the LCRA to the West Travis County Public Utility Agency (TCMUD 12 is the third party to this Agreement, which was effective March 19, 2012). (Exhibit A to the Agreement Regarding Transfer is the Wholesale Water Services Agreement, included as JAD Exhibit 4, and is not reproduced as part of JAD Exhibit 5.)

1                   **I. HISTORY OF TCMUD 12'S WATER AND WATER SERVICES**

2   **Q. PLEASE DESCRIBE THE DISTRICTS?**

3   A. Each of the three Districts is a conservation and reclamation district created and functioning  
4       under Article 16, Section 59 of the Texas Constitution and Chapters 49 and 54 of the Texas  
5       Water Code. Each District has its own Board of Directors and my company, JadCo  
6       Management, Inc., serves as the General Manager for all three Districts.

7               The three Districts were created after Lakeway MUD ("LMUD") agreed to exclude the  
8       area of land now known as Lakeway Rough Hollow and The Highlands subdivisions from  
9       LMUD's boundaries. The Districts were created to construct and finance water, wastewater,  
10      and drainage infrastructure to provide service to the land within their respective boundaries.  
11      The Districts are geographically identifiable on the attached Map.<sup>5</sup> As is shown on the Map, the  
12      eastern portion of TCMUD 11(shown in pink) is identified as Rough Hollow (encircled by a  
13      white line). Raw water for Rough Hollow is purchased from LCRA and wholesale water  
14      service is provided to TCMUD 11 for Rough Hollow by LMUD.<sup>6</sup> The Map also shows the  
15      remainder of TCMUD 11, along with all of TCMUDs 12 (shown in yellow) and 13 (shown in  
16      green) are called The Highlands (encircled by a red line). Raw water for The Highlands is also  
17      purchased from LCRA, and then diverted from Lake Travis, transported to the West Travis  
18      County Regional Water Treatment Plant on Highway 71 to be treated to potable water  
19      standards, and then delivered to TCMUD 12's Delivery Point (labeled on the Map) and then to  
20      each of the Districts for service to The Highlands.

21   **Q. YOU TESTIFY THAT TCMUD 12 BUYS RAW WATER FROM LCRA. CAN YOU**  
22   **PLEASE DESCRIBE THE KEY TERMS OF TCMUD 12'S FIRM WATER**  
23   **CONTRACT WITH LCRA?**

24   A. On September 25, 2008, TCMUD 12 and LCRA entered into a Water Sale Contract ("Raw  
25       Water Contract") under which LCRA provides TCMUD 12 with raw water from the Colorado  
26       River for use by TCMUDs 11, 12 and 13.<sup>7</sup> TCMUD 12 has the right to a maximum of 1,680  
27       acre-feet or 547,429,680 gallons of raw, untreated water per year (the "MAQ") which may be

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<sup>5</sup> JAD Exhibit 6 – Map of TCMUD Nos. 11, 12 & 13, identifying Rough Hollow and The Highlands.

<sup>6</sup> JAD Exhibit 7 – Agreement for Wholesale Water and Wastewater Service Between Lakeway Municipal Utility District and Travis County Municipal Utility District No. 11

<sup>7</sup> JAD Exhibit 2.

1 used by the Districts for municipal uses only. The water may be used only within the 1,797.139  
2 acres Service Area<sup>8</sup> that includes (1) 383.694 acres of land contained within TCMUD 11; (2)  
3 527.351 acres of land contained within TCMUD 12; and (3) 886.094 acres of land contained  
4 within TCMUD 13. TCMUD 12 pays LCRA's *Water Rate* multiplied by the amount of water  
5 diverted each month. If TCMUD 12's consumption in any year ever exceeds the MAQ, it must  
6 pay an *Inverted Block Rate* for any water in excess of the MAQ, but that has never happened.  
7 Under the Raw Water Contract, LCRA could limit TCMUD 12's MAQ in a curtailment  
8 situation, and impose a punitive volumetric rate if TCMUD 12 exceeded the curtailment MAQ,  
9 but that also has never happened. TCMUD 12 also pays a *Reserved Water Charge* to LCRA.  
10 At the time TCMUD 12 entered into the LCRA Raw Water Contract, the Water Rate was \$126  
11 per acre-foot or \$0.39 per 1,000 gallons of water. The LCRA Water Rate is currently \$151 per  
12 acre foot, and will increase to \$175 per acre foot in 2015 due to the LCRA's Drought Rate.  
13 Under the Raw Water Contract, TCMUD 12 paid for and installed the meter at the Point of  
14 Delivery on Highway 71, which is the location approved by LCRA. TCMUD 11 also paid for  
15 and installed three master meters for the LCRA raw water that is diverted and treated by LMUD  
16 exclusively for Rough Hollow. The Districts constructed and operate all the water facilities and  
17 and provide all services on our side of the master meters. The Raw Water Contract has a term  
18 of forty (40) years, ending in 2048.

19 **Q. PLEASE DESCRIBE THE DISTRICTS' EFFORTS TO OBTAIN WHOLESALE**  
20 **WATER SERVICES, INCLUDING DIVERSION, TREATMENT AND**  
21 **TRANSMISSION OF THE RAW WATER YOU CONTRACTED TO PURCHASE**  
22 **FROM LCRA.**

23 A. The contract with LMUD provides for wholesale water service to Rough Hollow, but that  
24 service is strictly limited by the terms of that contract, and based upon my routine dealings with  
25 LMUD, there is no possibility of obtaining additional water service capacity from LMUD for  
26 water service to The Highlands.

27 Constructing our own Water Treatment Plant ("WTP") for The Highlands was considered but  
28 determined to be impractical for several reasons. First, we would need to construct diversion,  
29 transmission and storage facilities as well as a WTP, and the cost of that undertaking would  
30 have been approximately \$25,520,000. Second, the Districts would need to construct an intake

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<sup>8</sup> The use is restricted to this area unless LCRA gives prior approval to serve outside this area. LCRA gave approval to allow TCMUD 12 to provide service to Lake Travis ISD.

1 facility in Lake Travis, and the location of that facility would have been critical due to falling  
2 lake levels during drought. Third, in order to serve the first customer in The Highlands, a  
3 significant portion of the facilities for the entire service area would have had to be in place from  
4 the start, which would be cost-prohibitive for a new development (due to the gradual rate of  
5 construction of new homes).

6 At some point, before LCRA changed its policy and decided to get out of the water services  
7 business, LCRA discussed with us the possibility of constructing an additional WTP within the  
8 Districts' service area, but LCRA ultimately abandoned that idea due to the cost, in favor of  
9 using the Lazy 9 MUD line. The Lazy 9 MUD line was constructed by Lazy 9 MUD and is on  
10 the south side of Highway 71, across from the Districts. Our Point of Delivery is on the Lazy 9  
11 MUD line.

12 So, because LCRA's West Travis County Regional WTP had capacity to treat the water needed  
13 to serve The Highlands; the Lazy 9 MUD line had transmission capacity that would provide a  
14 means to get the treated water to a point of delivery near the Districts; and The Highlands  
15 service area is located within the LCRA Service Area,<sup>9</sup> we entered into negotiations with LCRA  
16 for wholesale water services. After an extended period of negotiations, in October 2009,  
17 TCMUD 12, on behalf of the three Districts that include The Highlands, entered into a  
18 Wholesale Water Services Agreement with LCRA in order to obtain wholesale water services<sup>10</sup>  
19 for the treatment of raw water and delivery of potable water to TCMUD 12 on behalf of the  
20 Districts to serve The Highlands. The terms of the Wholesale Water Services Agreement  
21 include, in relevant part:

- 22 • LCRA provides Wholesale Water Services to TCMUD 12 for up to 2,125 LUEs,<sup>11</sup> and  
23 TCMUD 12 is responsible for providing wholesale water service to the three Districts  
24 for service to The Highlands. Each of the Districts provide retail service within their  
25 respective boundaries.

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<sup>9</sup> See, JAD Exhibit 4, Water Services Agreement, Exhibit B and definitions of LCRA Service Area and LCRA System at page 4.

<sup>10</sup> 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. Wholesale Water Services Agreement, JAD Exhibit 4 at p. 5.

<sup>11</sup> JAD Exhibit 4, Section 1.03.

- 1 • LCRA diverts, transports and treats for TCMUD 12 all water not to exceed 3,980,000  
2 gallons per day (the maximum daily flow rate) (presumed to be sufficient for up to 2,125  
3 LUEs).<sup>12</sup>
- 4 • LCRA delivers potable water at the Delivery Point (on Tx. Hwy 71 W., located south of  
5 the Districts).
- 6 • Title to the water diverted, treated and transported to TCMUD 12 by LCRA remains  
7 with TCMUD 12 at all times, even when that water is commingled with water belonging  
8 to other customers of the LCRA System.<sup>13</sup>
- 9 • Charges by LCRA for wholesale water services consist of the following three rates, as  
10 explained in Article IV of the Wholesale Water Services Agreement:
  - 11 ○ Connection Fee - \$4,120 per LUE
  - 12 ○ Monthly Charge - \$9,430
  - 13 ○ Volume Rate<sup>14</sup> - \$2.40 per 1,000 gallons
- 14 • Changes to the *Connection Fee* require 60 days' written notice prior to the change, and  
15 no change to the Connection Fee is allowed for subdivisions within the three Districts'  
16 service areas for which a final subdivision plat has been approved by the City of  
17 Lakeway City Council prior to the effective date of the change to the Connection Fee.<sup>15</sup>
- 18 • The *Connection Fee* is designed to fund or recover all or a part of the Costs of the  
19 LCRA System for capital improvements or facility expansions intended to serve "new  
20 development" (as defined in the Texas Impact Fee Law, Chapter 395 of the Texas Local  
21 Government Code) in the LCRA Service Area. Upon payment of the Connection Fees,  
22 TCMUD 12 has a guaranteed reservation of capacity in the LCRA System for the  
23 number of LUEs for which a Connection Fee has been paid, up to the contractual  
24 capacity of 2,125 LUEs. The Connection Fee must be reasonable and just and  
25 established as required by law and in accordance with the Wholesale Water Services  
26 Agreement.<sup>16</sup>

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<sup>12</sup> JAD Exhibit 4, Section 3.03.

<sup>13</sup> JAD Exhibit 4, Section 3.02.

<sup>14</sup> Excludes charges for raw water, which are covered by the separate Raw Water Contract.

<sup>15</sup> JAD Exhibit 4, Section 4.01.a.

<sup>16</sup> JAD Exhibit 4, Section 4.01.c.



- 1       • Under the Water Services Agreement, TCMUD 12 made *initial* payments of \$1,500,000  
2       in Connection Fees pursuant to an agreed schedule of payments. The Connection Fee  
3       payment schedule is subject to a true-up mechanism depending on the number of new  
4       retail connections.<sup>17</sup> TCMUD 12 has timely paid all of the Connection Fees due under  
5       the payment schedule and will continue to pay additional Connection Fees up to and  
6       including the guaranteed contractual capacity (2,125 LUEs) under the Wholesale Water  
7       Agreement.
- 8       • The *Monthly Charge* is designed primarily to recover TCMUD 12's allocable share of  
9       the capital-related Costs of the LCRA System not recovered through the Connection  
10      Fee, and it must be just and reasonable.<sup>18</sup>
- 11     • The *Volumetric Charge* is for diversion, transportation, treatment and delivery of the  
12     actual amount of water delivered to TCMUD 12 as measured by the Master Meter at the  
13     Delivery Point, including all water used or lost due to leakage or for another reason  
14     within the Districts' Service Areas (i.e., The Highlands). The Volume Rate is designed  
15     to recover the operation and maintenance related Costs of the LCRA System, together  
16     with any other Costs of the LCRA System not recovered through the Connection Fee or  
17     the Monthly Charge. The Volume Rate does not include any charges for raw water, and  
18     TCMUD 12 is liable for raw water charges under the Raw Water Contract. The  
19     volumetric rate must be just and reasonable and established in accordance with the  
20     provisions of the Wholesale Water Services Agreement and applicable legal  
21     requirements.<sup>19</sup>
- 22     • No portion of the Costs of the LCRA System may be recovered by LCRA more than one  
23     time and therefore if any amount is included in the Connection Fee, the Monthly  
24     Charge, and/or the Volume Rate, that amount may not also be included in or recovered  
25     through any other rate or charge. The intent of the parties, as reflected in the Wholesale  
26     Water Services Agreement, is that all charges will be fair and equitable and will allow

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<sup>17</sup> JAD Exhibit 4, Section 4.01.a.

<sup>18</sup> JAD Exhibit 4, Section 4.01.d.

<sup>19</sup> JAD Exhibit 4, Section 4.01.e.

1 LCRA to recover, but not over-recover, TCMUD 12's proportionate share of the Costs  
2 of the LCRA System.<sup>20</sup>

- 3 • The term of the Wholesale Water Services Agreement is the same as the term for the  
4 Raw Water Contract (ending September 25, 2048). No termination of the Wholesale  
5 Water Services Agreement affects or impairs TCMUD 12's rights to its contractual  
6 capacity in the LCRA System.<sup>21</sup>

7 **Q. WHAT WERE THE CIRCUMSTANCES THAT RESULTED IN TCMUD 12**  
8 **ENTERING INTO THE AGREEMENT REGARDING TRANSFER OF OPERATIONS**  
9 **OF THE WEST TRAVIS COUNTY WATER SYSTEM FROM THE LCRA TO THE**  
10 **PUA?**

11 A. LCRA's Board decided that ownership of the West Travis County Water and Wastewater  
12 utilities located within Travis and Hays counties was no longer necessary, convenient, or of  
13 beneficial use to the business of LCRA, and put the system up for sale through a bid process.<sup>22</sup>  
14 PUA was the buyer selected by LCRA to purchase the Assets. Under the terms and conditions  
15 reflected in the LCRA – PUA Utilities Installment Purchase Agreement, TCMUD 12's  
16 Wholesale Water Services Agreement with LCRA was one of the intangible assets that LCRA  
17 intended to transfer to PUA. The transfer of our Wholesale Water Services Agreement required  
18 our consent<sup>23</sup> but, under the assignability provisions of the Wholesale Water Services  
19 Agreement, TCMUD 12 could not unreasonably withhold or delay its consent.<sup>24</sup>

20 On February 28, 2012, TCMUD 12 received an email from Lauren Kalisek, PUA's attorney,  
21 that included a draft resolution seeking TCMUD 12's Board's consent to the assignment.<sup>25</sup>  
22 That email urged TCMUD 12 to agree to the consent to assignment before March 19, 2012,  
23 which was the anticipated operations transfer date for the West Travis County System.  
24 However, TCMUD 12 did not agree to the transfer of the Wholesale Water Services Agreement  
25 in advance of the anticipated 2019 Closing Date of the LCRA sale to PUA due to concerns that

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<sup>20</sup> JAD Exhibit 4, Section 4.01.f.

<sup>21</sup> JAD Exhibit 4, Section 7.13.

<sup>22</sup> JAD Exhibit 8 – LCRA-WTCP UA Utilities Installment Purchase Agreement (Jan 17, 2012), Recital. C. (Authenticated by WTCP UA in RFA 1-7).

<sup>23</sup> JAD Exhibit 8, Art. III., Section 3.1.

<sup>24</sup> JAD Exhibit 4, Section 7.08.

<sup>25</sup> JAD Exhibit 9, L. Kalisek 2/28/12 email to TCMUD 12 with Draft Resolution.

1 an unconditional assignment would release LCRA and could place TCMUD 12's Wholesale  
2 Water Services Agreement at risk if the transfer of ownership from LCRA to PUA ultimately  
3 did not occur. TCMUD 12 entered into the Agreement Regarding Transfer of Operations of the  
4 West Travis County Water System from the LCRA to the PUA on June 19, 2012, which Ms.  
5 Kalisek acknowledged in comments to the PUA Board "did not provide a full release of LCRA  
6 by MUD 12."<sup>26</sup> For TCMUD 12, the critical provisions that induced it to enter into the  
7 Agreement Regarding Transfer, include:

8 (1) conditioning TCMUD 12's agreement to the transfer which allows PUA to assume  
9 the operations and maintenance responsibilities and the delivery of wholesale water service, on  
10 the condition that the PUA comply with all the terms of the Water Services Agreement;

11 (2) termination of TCMUD 12's consent under the Transfer Agreement if the Sale from  
12 LCRA to PUA did not close;

13 (3) reversion of LCRA's responsibilities, obligations and duties under the Water  
14 Services Agreement to LCRA, if the Sale did not close;

15 (4) the explicit provisions concerning the Connection Fees in paragraph 2 of the  
16 Agreement, including the transfer of the paid Connection Fees from LCRA to PUA, ensuring  
17 TCMUD 12 received full credit for the paid connection fees, and guaranteeing that TCMUD  
18 12's credits and rights under the Water Services Agreement would not be diminished; and

19 (5) the provisions in paragraph 3 of the Transfer Agreement delegating to the PUA the  
20 authority to *collect* the Connection Fee under the Water Services Agreement, and authorizing  
21 the PUA to *set* and *collect* the Monthly Charges and Volume Rates<sup>27</sup> in strict accordance with  
22 the terms and conditions of the Water Services Agreement, and affirming that nothing affects or  
23 diminishes TCMUD 12's rights under the Water Services Agreement.

24 **Q. UNDER THE TRANSFER AGREEMENT, DID TCMUD 12 AGREE THAT THE PUA**  
25 **COULD CHANGE THE "CONNECTION FEE"?**

26 A. No, as I just indicated, under paragraph 3 of the Transfer Agreement, TCMUD 12 agreed that  
27 LCRA could delegate to the PUA authority to *collect* the Connection Fees, which is different  
28 from TCMUD 12's agreement that LCRA could delegate to the PUA authority to *set and*  
29 *collect* the monthly charges under Section 4.01.d of the Water Services Contract and the volume  
30 rate under Section 4.01.e of the Water Services Contract.

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<sup>26</sup> JAD Exhibit 10, WTCPUA BOD Minutes (May 3, 2012) at WTCPUA00000136.

<sup>27</sup> JAD Exhibit 5 (the distinction between allowing the PUA to "collect the Connection Fees" versus "set and collect the Monthly Charges and Volume Rates" is repeated three times in paragraph 3).

1 **Q. HAS THE PUA CHANGED THE CONNECTION FEE CHARGED TO TCMUD 12**  
2 **SINCE IT TOOK OVER OPERATION AND MAINTENANCE OF, AND DELIVERY**  
3 **OF WHOLESALE WATER SERVICE FROM, THE WEST TRAVIS COUNTY**  
4 **SYSTEM?**

5 A. Yes, effective November 1, 2012, the PUA changed the Highway 71 Service Area Connection  
6 Fee (or "Water Impact Fee") charged to TCMUD 12 by increasing it from \$4,120 per LUE to  
7 \$5,992 per LUE.<sup>28</sup>

8 **Q. DID TCMUD 12 PROTEST THE PUA'S INCREASE TO THE CONNECTION FEE?**

9  
10 A. No, we did not protest the PUA's decision in November 2012 to increase the Connection Fee  
11 even though the PUA did not have authority under the Transfer Agreement to change that Fee.

12 **Q. HAS THE PUA CHANGED THE MONTHLY CHARGE AND VOLUMETRIC RATES**  
13 **CHARGED TO TCMUD 12 SINCE IT TOOK OVER OPERATION AND**  
14 **MAINTENANCE OF, AND DELIVERY OF WHOLESALE WATER SERVICE FROM,**  
15 **THE WEST TRAVIS COUNTY SYSTEM?**

16 A. Yes, the PUA changed TCMUD 12's wholesale water Monthly Charge from \$9,430 to  
17 \$10,891.65 and the Volumetric Rate from \$2.40 to \$2.77 per thousand gallons effective January  
18 1, 2013.<sup>29</sup> Both of those changes represented an across-the-board increase of 15.5%.

19 **Q. DID TCMUD 12 PROTEST THE PUA'S 15.5% INCREASE TO THE MONTHLY**  
20 **CHARGE AND VOLUMETRIC RATES THAT WENT INTO EFFECT JANUARY 1,**  
21 **2013?**

22 A. No.

23 **Q. DID THE PUA CHANGE THE MONTHLY CHARGE AND VOLUMETRIC RATES**  
24 **CHARGED TO TCMUD 12 AFTER THE 2013 RATE CHANGE?**

25 A. Yes, on December 17, 2013, TCMUD 12 received a letter from Donald G. Rauschuber, General  
26 Manager of PUA, notifying us that, on November 21, 2013, the PUA's Board changed the  
27 wholesale Monthly Charge to \$8,140.89, and the Volumetric Rate to \$2.11/1,000 gallons,  
28 effective January 1, 2014.<sup>30</sup> That letter further stated that if TCMUD 12 would agree to amend  
29 our Water Services Agreement by reducing the "maximum reserved capacity," our Monthly

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<sup>28</sup> JAD Exhibit 11, WTCPUA Order Adopting Water Impact Fees (Nov. 1, 2012)

<sup>29</sup> JAD Exhibit 12, WTCPUA Order Regarding Proposed Increases to Rates for Wholesale Wastewater, Wholesale Water and Effluent Raw Water Irrigation Customers (Nov. 15, 2012).

1 Charge would be reduced, but in order to “take advantage of a possible lower FY 2013  
2 wholesale water . . . rate” we had to execute a contract amendment within ten days, or on or  
3 before December 27, 2013.

4 **Q. HOW DID TCMUD 12 RESPOND TO PUA’S SUGGESTION THAT IT AMEND ITS**  
5 **WATER SERVICES AGREEMENT?**

6 A. TCMUD 12 did not agree to amend the maximum daily flow rate, which is 3,980,000 gallons  
7 per day under the Water Services Agreement,<sup>31</sup> because under the terms of the Transfer  
8 Agreement PUA had no authority to demand TCMUD 12 amend its Water Services Agreement  
9 and because the quantity of water TCMUD 12 is entitled to under its Raw Water Contract with  
10 LCRA determined the amount of water PUA is obligated to divert, treat and transmit under the  
11 Water Services Agreement. The Transfer Agreement states unequivocally: “Nothing contained  
12 in this Agreement will be deemed or construed to amend, diminish or affect the District’s rights,  
13 the obligations of the LCRA or the obligations of the PUA, as the LCRA’s assignee, under the  
14 Water Services Contract.” TCMUD 12 essentially has a “take or pay” Raw Water Contract and  
15 has been paying to reserve that water for a number of years. The Water Services Agreement is  
16 tied directly to the quantity of water reserved in the Raw Water Contract. It would be  
17 imprudent to decrease TCMUD 12’s reserved water and water service supply, since water is a  
18 valuable and limited resource. TCMUD 12 would have no assurance that it could obtain an  
19 additional potable water supply in the future if it reduced its currently contracted for supply, the  
20 amount of which was projected to be needed at full build-out. Finally, it was not apparent to  
21 TCMUD 12 that PUA was offering to forego its methodology change in exchange for TCMUD  
22 12 reducing its capacity.

23 **Q. IS THE PUA RATE CHANGE EFFECTIVE JANUARY 1, 2014 THE DECISION**  
24 **AFFECTING RATES THAT TCMUD 12 IS APPEALING IN THIS CASE?**

25 A. Yes.

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<sup>30</sup> JAD Exhibit 13, WTCPUA December 17, 2013 Notice of Wholesale Water Rate Change.

<sup>31</sup> JAD Exhibit 4, Section 3.03.a.

1                   **II.     ALTERNATIVES TO PUA AS WATER SERVICES PROVIDER**

2     **Q.     DID TCMUD 12 OR THE OTHER DISTRICTS PARTICIPATE IN THE EFFORTS TO**  
3     **PURCHASE THE WEST TRAVIS COUNTY WATER SYSTEM FROM LCRA?**

4     A.     No, although we were aware of LCRA's stated intention to sell the West Travis County System  
5             and in the early days of that process, we had limited participation in some of the activities with  
6             other LCRA customers who were concerned about the proposed sale. TCMUD 12 was not  
7             interested in owning any part of the West Travis County System, primarily because the  
8             anticipated cost was entirely too high. TCMUD 12's interest was in ensuring that its  
9             contractual rights under the Wholesale Water Services Agreement were protected.

10    **Q.     YOU HAVE TESTIFIED THAT ROUGH HOLLOW RECEIVES WHOLESALE**  
11    **WATER SERVICES FROM LMUD. IS LMUD A POSSIBLE ALTERNATIVE**  
12    **WHOLESALE WATER SERVICE PROVIDER FOR TCMUD 12 ON ITS OWN**  
13    **BEHALF AND ON BEHALF OF THE OTHER TWO DISTRICTS SERVING THE**  
14    **HIGHLANDS? PLEASE EXPLAIN THE BASIS FOR YOUR ANSWER.**

15    A.     No, the agreement between TCMUD 11 and LMUD<sup>32</sup> limits water services to the Rough  
16             Hollow portion of TCMUD 11 and a maximum peak day volume of 362,500 gallons. The  
17             Rough Hollow development is now complete and the water services received from LMUD is  
18             sufficient to serve Rough Hollow. However, based on our business dealings with LMUD, there  
19             is no possibility that LMUD would or could provide additional wholesale water service to The  
20             Highlands.

21    **Q.     UNDER THE MOU TO WHICH THE THREE DISTRICTS AND ROUGH HOLLOW**  
22    **DEVELOPMENT ARE PARTIES, REFERENCED AT THE START OF YOUR**  
23    **TESTIMONY, HAVE YOU PLANNED FOR AN ALTERNATE SOURCE OF WATER**  
24    **TO SERVE ROUGH HOLLOW AND THE HIGHLANDS?**

25    A.     No, we do not have any plans for an alternate source of treated water that could serve The  
26             Highlands and Rough Hollow. As reflected in the Second Amendment to the Amended and  
27             Restated MOU Regarding Shared Raw Water Supply and Water and Wastewater Capacity and  
28             Services, the Districts planned, designed and constructed an "emergency interconnect." We  
29             moved forward with these facilities, at our own expense, after we experienced, during a 60-day

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<sup>32</sup> JAD Exhibit 7, Agreement for Wholesale Water and Wastewater Service Between Lakeway MUD and TCMUD 11 (Apr. 6, 2006); the three amendments to the Lakeway MUD/TCMUD 11 Agreement concern Wastewater Service only, and as reflected in the 3<sup>rd</sup> Amendment, para. 4, changes to the service area for wastewater service provided by LMUD to TCMUD 11, does not change or affect the Service Area for Water service as described in the Original Agreement.

1 period, two outages on the LMUD system attributable to problems at the intake barge, and one  
2 outage from the PUA System, due to operator error. After issuing three boil water alerts in 60  
3 days, we decided that it was a worthwhile investment to provide an emergency back up between  
4 the Rough Hollow/LMUD system and The Highlands/PUA system.

5 **Q. ARE THERE ANY IMPEDIMENTS TO UTILIZING THE “EMERGENCY**  
6 **INTERCONNECTION” AS AN ALTERNATIVE TO THE WATER SERVICES YOU**  
7 **RECEIVE FROM PUA?**

8 A. Yes, there are several impediments to using the “emergency interconnection” as an alternative  
9 to the water services which we buy from PUA. First, the “emergency interconnect” is not  
10 actually connected. Second, TCMUD 12 cannot unilaterally connect the systems, but must  
11 obtain permission from both LMUD and PUA. Third, and more importantly, if the PUA and  
12 LMUD ever agreed to the physical connection, it would not have the capacity to, nor was it  
13 intended to provide, a permanent alternative to the wholesale water services provided by PUA.  
14 The “emergency interconnection” was intended to provide temporary water in the event of an  
15 actual emergency. So the “emergency interconnect” is not a viable alternative to the Wholesale  
16 Water Services we pay for pursuant to the Wholesale Water Services Agreement.

17 **Q. AFTER ENTERING INTO THE WHOLESALE WATER SERVICES AGREEMENT**  
18 **WITH LCRA, HAS TCMUD 12 EVER CONSIDERED CONSTRUCTING ITS OWN**  
19 **WATER TREATMENT PLANT TO SERVE THE HIGHLANDS? WHY OR WHY**  
20 **NOT?**

21 A. No. Under the Wholesale Water Services Agreement, the Districts made a \$1,500,000 *initial*  
22 investment in LCRA’s facilities to obtain capacity in facilities including the Water Treatment  
23 Plant (WTP), a water storage tank and water mains that serve The Highlands. That capital cost  
24 was paid under the Water Services Agreement as Connection Fees, and the Water Services  
25 Agreement guarantees TCMUD 12 treatment, storage and transmission capacity to serve The  
26 Highlands. Due to the amount of the Districts’ investment in the LCRA facilities, it would not  
27 be financially feasible to also construct our own WTP and water storage tanks. In addition, we  
28 could not simply build a WTP, but we would also have to build an intake facility in Lake  
29 Travis, and transmission facilities into and out of the WTP. Depending on where a new WTP  
30 would be constructed, the entire infrastructure of The Highlands would likely have to be re-  
31 constructed for the new delivery point. The cost of that undertaking would be prohibitive on its

own, and completely unreasonable if it included abandoning the investment we've already made in the West Travis County System.

**Q. DOES THE WATER STORAGE TANK INCLUDED IN THE \$1.5 MILLION INVESTMENT ALREADY PAID TO LCRA PROVIDE SUFFICIENT PRESSURE FOR THE HIGHLANDS SYSTEM?**

A. Yes. The contract with LCRA provided assurance of a static pressure at the POD, so the Districts do not have to incur additional cost to provide appropriate pressurization.

**Q. DOES THE PUA HAVE DISPARATELY GREATER BARGAINING POWER THAN TCMUD 12 RELATED TO THE SUPPLY OF WHOLESALE WATER SERVICES IN THE HIGHLANDS AREA?**

A. Yes. The PUA is providing wholesale water services to TCMUD 12 that permits the Districts to provide retail water service to The Highlands, pursuant to the Wholesale Water Services Agreement entered into by LCRA and TCMUD 12 in October 2009. That Wholesale Water Services Agreement was transferred pursuant to the Agreement Regarding Transfer of Operations of the West Travis County Water System from the LCRA to PUA effective March 19, 2012. The PUA's greater bargaining power originates with the fact that LCRA is the sole provider of state surface water in the Colorado watershed in which The Highlands are located, and there is no viable alternative water source, such as ground (i.e., non-state) water, available to TCMUD 12. LCRA was also the sole provider of wholesale water services in proximity to and with the ability to divert, treat and transmit water to serve The Highlands and TCMUD 12 has made a significant investment in the water services capacity of the West Travis County Water System. When the LCRA sold the West Travis County Water System to the PUA, and sought TCMUD 12's agreement to the transfer of the Wholesale Water Services Agreement to the PUA, TCMUD 12 was obligated to not unreasonably withhold or delay its consent to the assignment under Section 7.08 of that Water Services Agreement. So, the PUA stepped into LCRA's shoes as the sole provider of wholesale water services and, under these circumstances, PUA has all the power regarding the provision of wholesale water services to TCMUD 12.

**Q. DO THE DISTRICTS HAVE ANY PRACTICAL ALTERNATIVES TO THE PUA SYSTEM FOR ACQUIRING WHOLESALE WATER SERVICES?**

A. No. There are no other existing suppliers of wholesale water services in the proximity of The Highlands with the capacity and infrastructure necessary to provide an alternative to the water services TCMUD 12 purchases from PUA.. Building new water diversion, treatment, storage



1 and transmission infrastructure, as a substitute for the services provided by PUA's system [the  
2 West Travis County Water System controlled by the PUA] would be prohibitively expensive.  
3 Another critical factor for TCMUD 12 in considering a possible alternative to the Water  
4 Services Agreement that is now in the hands of the PUA, is our significant investment in  
5 capacity of the West Travis County Water System. It would be foolhardy to abandon this  
6 investment made by the Districts and their customers and taxpayers by building an alternate  
7 system to divert, treat and transmit the water to TCMUD 12 for use by The Highlands.

8 **III TCMUD 12'S INVOLVEMENT IN PUA'S CHANGE OF RATES EFFECTIVE 2014**

9 **Q. DID TCMUD 12 PARTICIPATE IN ANY PART OF PUA'S ACTIVITIES**  
10 **ASSOCIATED WITH THE ULTIMATE DECISION BY THE PUA BOARD TO**  
11 **CHANGE THE RATES FOR WHOLESALE WATER SERVICES EFFECTIVE**  
12 **JANUARY 1, 2014?**

13 A. Representatives of TCMUD 12 attended some, but not all, of the meetings at PUA at which  
14 presentations were made by Nelisa Heddin concerning the PUA's proposal to change the  
15 wholesale rates for water service provided to TCMUD 12 and PUA's other wholesale  
16 customers.

17 **Q. WHEN PUA DECIDED TO CHANGE ITS WHOLESALE WATER SERVICES RATES,**  
18 **DID IT PROVIDE AN OPPORTUNITY FOR MEANINGFUL INPUT FROM TCMUD**  
19 **12?**

20 A. Jay Joyce represented TCMUD 12 in dealing with PUA concerning changes to the wholesale  
21 water services rates, and he will testify about that experience. But, in sum, TCMUD 12 found  
22 that PUA was not willing to engage in any meaningful dialogue or exchange of ideas related to  
23 new rates in 2014 for wholesale water services.

24 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

25 A. Yes.

**MEMORANDUM OF UNDERSTANDING REGARDING SHARED RAW WATER SUPPLY  
AND WATER AND WASTEWATER CAPACITY**

This MEMORANDUM OF UNDERSTANDING REGARDING SHARED RAW WATER SUPPLY AND WATER AND WASTEWATER CAPACITY (this "MOU") is entered into between ROUGH HOLLOW DEVELOPMENT, LTD., a Texas limited partnership (the "Developer"), TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 11, a political subdivision of the State of Texas ("District No. 11"); TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 12, a political subdivision of the State of Texas ("District No. 12") and TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 13, a political subdivision of the State of Texas ("District No. 13"). In this MOU, 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", the Developer and each of the Districts are sometimes individually referred to as a "Party", and the Developer and all of the Districts are sometimes collectively referred to as the "Parties".

**RECITALS**

- A. The Districts have been created to, among other things, construct and finance water, wastewater, and drainage infrastructure to provide service to the land within their respective boundaries.
- B. A portion of District No. 11, known as "Rough Hollow" ("Rough Hollow"), has been developed and is currently receiving wholesale water and wastewater services from Lakeway Municipal Utility District ("Lakeway MUD"). The remainder of the land within District No. 11 and the land within District No. 12 and District No. 13, as depicted on the map attached as Exhibit A, known as "The Highlands" ("The Highlands"), are intended to be served with water and wastewater services through water and wastewater facilities to be constructed jointly and shared by the Districts (the "Highlands Shared Facilities").
- C. The Lower Colorado River Authority ("LCRA") provides the raw water supply ("Raw Water") for Rough Hollow as well as The Highlands. The LCRA requires that its raw water customers enter into a contract for Raw Water, and District No. 11 previously entered into a Water Sale Contract for Municipal Uses dated December 10, 2004 (the "2004 Raw Water Contract"), under which LCRA agreed to reserve Raw Water sufficient to serve The Highlands and Rough Hollow. Subsequently, District No. 12 entered into a new contract for Raw Water from the LCRA (the "2008 Raw Water Contract"), which reserves the same volume of Raw Water as the 2004 Raw Water Contract and which superseded and replaced the 2004 Raw Water Contract. The Districts have agreed to share the Raw Water which was reserved by LCRA under the 2004 Raw Water Contract and is now reserved under the 2008 Raw Water Contract (the "Raw Water Contracts").
- D. The Developer and each of the Districts have entered into an agreement (each, a "Reimbursement Agreement") to set forth the terms upon which the Developer will, among other things, advance or pay each District's prorata share of the cost of Raw Water reserved by LCRA and the cost of the Highlands Shared Facilities, and be reimbursed for certain of those advances and costs, as permitted by the rules of the Texas Commission on Environmental Quality or its successor agency.
- E. The Parties are currently working to negotiate and enter into a contract which will specifically address the sharing of costs of and capacity in the Highlands Shared Facilities and the costs of and the supply of the Raw Water (the "Shared Facility Agreement"); however, that agreement cannot be finalized until a wholesale water services agreement with LCRA is negotiated and entered into. The Parties wish to enter into this MOU to confirm their mutual agreements and understandings regarding the allocations of costs of and capacity in the Highlands Shared Facilities and the costs of and the supply of the Raw Water until the Shared Facility Agreement is finalized. Certain costs associated with the

Highlands Joint Facilities and the Raw Water have been advanced and paid by the Developer or a District in advance of the date of this MOU and, with respect to those costs, the Districts wish to confirm that the allocations specified in this MOU will apply to such previously incurred and paid costs.

Therefore, in consideration of the mutual promises, covenants, obligations, and benefits contained in this MOU, the Parties contract and agree as follows

## **ARTICLE I. ALLOCATIONS**

**Section 1.01. Allocated Raw Water Supply and Share of Raw Water Costs.** The Districts agree that the Raw Water reserved under the Raw Water Contracts, and the costs of the reservation and supply of Raw Water under the Raw Water Contracts, will be allocated and shared as follows:

<u>District</u>	<u>Allocated Water Supply</u>	<u>Cost Allocation Percentage</u>
District No. 11	125.909 million gal/year	23%
District No. 12	186.126 million gal/year	34%
District No. 13	235.395 million gal/year	43%
Total	547.43 million gallons/year	100%

**Section 1.02. Allocated Capacity and Share of Costs for the Highlands Shared Facilities.** The Districts agree that the capacity in the Highlands Shared Facilities, and the costs of the capacity, will be allocated as follows:

<u>District</u>	<u>Allocated Capacity</u>	<u>Cost Allocation Percentage</u>
District No. 11	169 LUES	8.5%
District No. 12	806 LUES	40.5%
District No. 13	1015 LUES	51%
Total	1,990 LUES	100%

**Section 1.03. Developer Advances; Reimbursement by Districts.** The Developer agrees to advance costs of the Raw Water and the Highland Shared Facilities in accordance with the terms of its Reimbursement Agreement with each District and the cost allocation percentages specified above. Each of the Districts acknowledges that the Developer has, and will continue to, advance certain costs of the Raw Water and the Highlands Shared Facilities as contemplated by that District's respective Reimbursement Agreement, and agrees to reimburse the Developer for its allocated share of such advanced costs in accordance with its respective Reimbursement Agreement.

**Section 1.04.** Each of the Districts agree to pay its prorata share of the costs of Raw Water and of the Highlands Shared Facilities based on the cost allocation percentages specified above, which will be carried forward and confirmed in the Shared Facilities Agreement.

## **ARTICLE II. MISCELLANEOUS PROVISIONS**

**Section 2.01. Future Effect.** The provisions of this MOU will be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

**Section 2.02. Entire Agreement.** This MOU contains the entire agreement of the Parties and supersedes any prior negotiations, agreements, representations, and understandings, oral or written, if any, between the Parties regarding the subject matter. All Parties have participated in the negotiation and drafting of this MOU; therefore, in the event of any ambiguity, the provisions of this MOU will not be construed for or against any Party.

**Section 2.03. Notices.** Unless changed by written notice, all notices to the Parties may be given by certified mail, postage prepaid and return receipt requested; via facsimile, with confirmed receipt; or by hand delivery, with confirmed receipt, to the address of the each of the Parties shown below:

**District No. 11:** c/o Armbrust & Brown, L.L.P.  
100 Congress Avenue, Suite 1300  
Austin, Texas 78701  
Attn: Sue Brooks Littlefield  
Phone: (512) 435-2307  
Fax: (512) 435-2360

**District No. 12:** c/o Armbrust & Brown, L.L.P.  
100 Congress Avenue, Suite 1300  
Austin, Texas 78701  
Attn: Sue Brooks Littlefield  
Phone: (512) 435-2307  
Fax: (512) 435-2360

**District No. 13:** c/o Armbrust & Brown, L.L.P.  
100 Congress Avenue, Suite 1300  
Austin, Texas 78701  
Attn: Sue Brooks Littlefield  
Phone: (512) 435-2307  
Fax: (512) 435-2360

**Developer:** Rough Hollow Development, Ltd.  
c/o Haythem Dawlett  
2101 Lakeway Blvd., Ste. 205  
Austin, Texas 78734  
Phone: (512) 306-1444  
Fax: (512) 306-1620

A Party may change its address for notice by delivering written notice, as provided in this Section to the other Parties.

**Section 2.04. Severability.** If any provision of this MOU is illegal, invalid, or unenforceable under present or future laws, it is the intention of the Parties that the remainder of this MOU not be affected, and it is also the intention of the Parties that, in lieu of each provision of this MOU that is illegal, invalid, or unenforceable, there be added as a part of this MOU a provision as similar in terms to the illegal, invalid, or unenforceable provision as is possible, and is legal, valid, and enforceable.

**Section 2.05. Applicable Law.** This MOU will be construed under the laws of the State of Texas and all obligations of the Parties hereunder are performable in Travis County, Texas. Venue for any action arising under this MOU will be in Travis County, Texas.

**Section 2.06. Third Party Beneficiaries.** Except as otherwise expressly provided, nothing in this MOU is intended to confer upon any person, other than the Parties and their successors and permitted assigns, any benefits, rights, or remedies under or by reason of this MOU.

**Section 2.07. Assignment.** A Party's rights and obligations under this MOU may not be assigned or transferred without the consent of the other Parties, which consent will not be unreasonably withheld or delayed.

**Section 2.08. Amendment.** This MOU may only be amended by written agreement executed by all of the Parties. Following reimbursement of the Developer, this MOU may be amended by the Districts, acting jointly, and no consent or joinder by the Developer will be required.

**Section 2.09. Counterparts.** This MOU may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. Signature by facsimile will be deemed to have the same effect as an original signature.

**Section 2.10. Authority.** Each Party represents and warrants that it has the full right, power, and authority to execute this MOU and all related documents. Each person executing this instrument on behalf of a Party represents that he or she is an authorized representative of and has the authority to sign this document on behalf the respective Party.


**Section 2.11. Effective Date.** This MOU will be effective upon the date of due execution by the last Party to sign this MOU, as indicated below.

**DEVELOPER:**

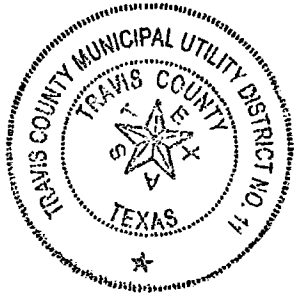
**ROUGH HOLLOW DEVELOPMENT, LTD.,** a  
Texas limited partnership

By: JHLV GP, Inc., a Texas corporation, its General  
Partner

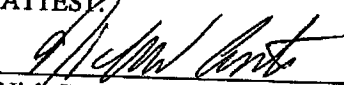
By: \_\_\_\_\_

  
Haythem S. Dawlett  
Vice President

Date: January 8, 2009

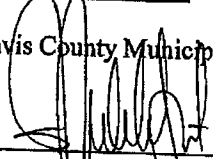


ATTEST

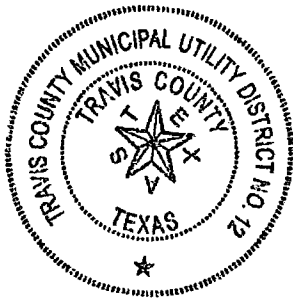
  
\_\_\_\_\_  
Nick Conti, Secretary  
Board of Directors

**DISTRICT NO. 11:**

Travis County Municipal Utility District No. 11

By:   
\_\_\_\_\_  
Michael De La Fuente, President  
Board of Directors

Date: December 4, 2008



ATTEST:

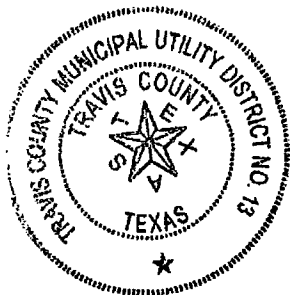
gah  
Jim A. Henry, Assistant Secretary  
Board of Directors

DISTRICT NO. 12:

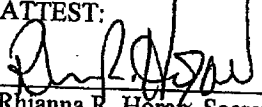
Travis County Municipal Utility District No. 12

By: D. Robertson  
Dan L. Robertson, President  
Board of Directors

Date: November 25, 2008



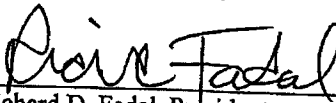
ATTEST:

  
Rhianna R. Horak, Secretary  
Board of Directors

DISTRICT NO. 13:

Travis County Municipal Utility District No. 13

By:

  
Richard D. Fadal, President  
Board of Directors

Date: November 18, 2008



LAKENAY HIGHLANDS WITH  
ADD 11, 12, 13 BOUNDARIES

RJ SURVEYING & ASSOCIATES, INC.  
100 E. BROADWAY, SUITE 2000, NEW YORK, NY 10004  
DATE: DEC. 9, 2008  
BY: [Signature]  
JOB NO. 080800000

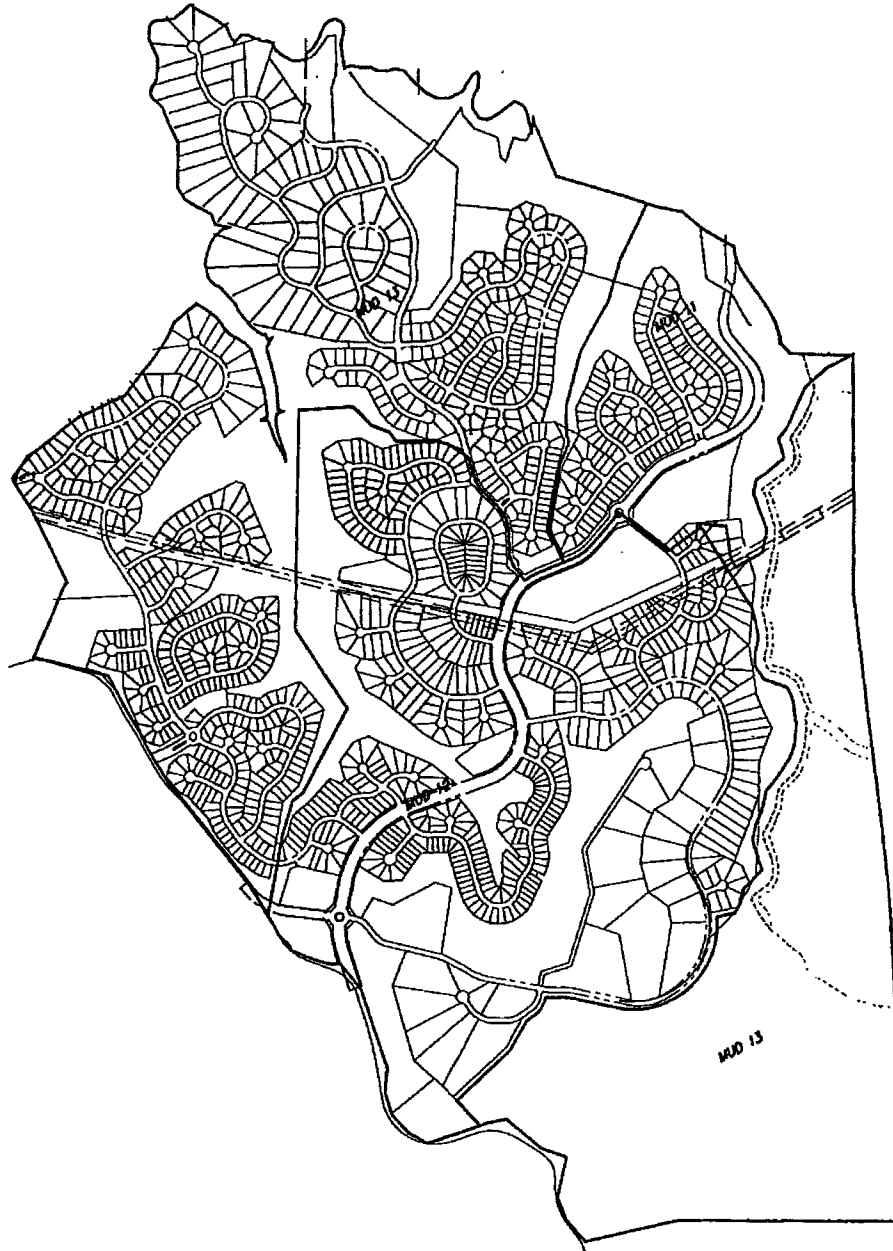


Exhibit A



**AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING REGARDING  
SHARED RAW WATER SUPPLY AND WATER AND WASTEWATER CAPACITY AND  
SERVICES**

This Amended and Restated Memorandum of Understanding Regarding Shared Raw Water Supply and Water and Wastewater Capacity and Services (this "MOU") is entered into between ROUGH HOLLOW DEVELOPMENT, LTD., a Texas limited partnership (the "Developer"); TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 11, a political subdivision of the State of Texas ("District No. 11"); TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 12, a political subdivision of the State of Texas ("District No. 12") and TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 13, a political subdivision of the State of Texas ("District No. 13"). In this MOU, 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", the Developer and each of the Districts are sometimes individually referred to as a "Party", and the Developer and all of the Districts are sometimes collectively referred to as the "Parties".

**RECITALS**

- A. The Districts have been created to, among other things, construct and finance water, wastewater, and drainage infrastructure to provide service to the land within their respective boundaries.
- B. A portion of District No. 11, known as "Rough Hollow" ("Rough Hollow"), has been developed and District No. 11 is currently receiving wholesale water treatment and wastewater collection and treatment services from Lakeway Municipal Utility District ("Lakeway MUD") to serve Rough Hollow. The remainder of the land within District No. 11 and all of the land within District No. 12 and District No. 13, as depicted on the map attached as Exhibit A, is known as "The Highlands" ("The Highlands"). The Highlands is intended to be provided with permanent wholesale water and wastewater services through water and wastewater facilities to be constructed jointly and shared by the Districts (the "Highlands Shared Facilities").
- C. The Lower Colorado River Authority ("LCRA") provides the raw water supply ("Raw Water") for Rough Hollow as well as The Highlands. District No. 11 previously entered into a Water Sale Contract for Municipal Uses dated December 10, 2004 (the "2004 Raw Water Contract") on behalf of the Districts under which LCRA agreed to reserve Raw Water sufficient to serve The Highlands and Rough Hollow. Subsequently, District No. 12, on behalf of the Districts, entered into a Firm Water Contract with the LCRA (the "2008 Raw Water Contract"), which reserved the same volume of Raw Water as the 2004 Raw Water Contract and superseded and replaced the 2004 Raw Water Contract. The Districts have agreed to share the Raw Water which was reserved by LCRA under the 2004 Raw Water Contract and is now reserved under the 2008 Raw Water Contract (collectively, the "Raw Water Contracts"), including the costs of such Raw Water, as provided in this MOU.
- D. District No. 12, on behalf of the Districts, has entered into a Wholesale Water Services Agreement with the LCRA dated effective as of October 22, 2009 (the "LCRA Wholesale Contract"), under which LCRA agreed to provide certain wholesale services for the treatment of Raw Water and delivery of up to 2,125 LUEs of potable water for The Highlands (the "Potable Water Services"). The Districts have agreed to share the Potable Water Services which will be provided by LCRA under the LCRA Wholesale Contract, including the costs of such Potable Water Services, as provided in this MOU.
- E. The Parties are negotiating and intend to enter into a contract which will specifically address the sharing of costs of and capacity in the Highlands Shared Facilities, the costs of and supply of Potable Water Services under the LCRA Wholesale Agreement and the costs of and the supply of Raw Water under the Raw Water Contracts (the "Shared Facility Agreement"). The Parties previously entered into a Memorandum of Understanding Regarding Shared Raw Water Supply and Water and Wastewater Capacity dated effective as of January 8, 2009 (the "Original MOU"), which contemplated that the Shared Facility Agreement would be finalized at the time the LCRA Wholesale Agreement was executed; however, the Parties are currently pursuing alternatives to the shared wastewater treatment plant and

related irrigation and pond facilities which were originally proposed to provide permanent wastewater service to The Highlands, and have now agreed that the Shared Facility Agreement should not be finalized until the permanent wastewater service plan is finalized, which is anticipated to occur on or about June 2010. In the interim, the Parties wish to enter into this MOU to supersede and replace the Original MOU and to confirm their mutual agreements and understandings regarding certain matters which will be covered by the Shared Facility Agreement.

F. The Developer and each of the Districts have entered into or will enter into an agreement (each, a "Reimbursement Agreement") to set forth the terms upon which the Developer will, among other things, advance or pay certain costs of Raw Water reserved by LCRA under the Raw Water Contracts; the Minimum Payments and a portion of the Monthly Charges, as defined in the LCRA Wholesale Contract, payable to LCRA for Potable Water Services; and the cost of the Highlands Shared Facilities, and be reimbursed for certain of those advances and payments as permitted by the rules of the Texas Commission on Environmental Quality or its successor agency. Certain costs associated with the Highlands Shared Facilities, the Raw Water and the Potable Water Services have been advanced and paid by the Developer or one of the Districts in advance of the date of this MOU and, with respect to those costs, the Districts wish to confirm that the cost allocation percentages specified in this MOU will apply to such previously incurred and paid costs.

Therefore, in consideration of the mutual promises, covenants, obligations, and benefits contained in this MOU, the Parties contract and agree as follows

#### **ARTICLE I. ALLOCATIONS**

**Section 1.01. Allocated Raw Water Supply and Share of Raw Water Costs.** The Raw Water reserved under the Raw Water Contracts, and the costs of the reservation and supply of Raw Water, will be allocated and shared as follows:

<u>District</u>	<u>Allocated Water Supply</u>	<u>Cost Allocation Percentage</u>
District No. 11	125.909 million gal/year	23%
District No. 12	186.126 million gal/year	34%
<u>District No. 13</u>	<u>235.395 million gal/year</u>	<u>43%</u>
Total	547.43 million gallons/year	100%

**Section 1.02. Allocated Capacity and Share of Costs of Potable Water Services under LCRA Wholesale Contract.** The Potable Water Services under the LCRA Wholesale Contract, and the costs of the reservation and supply of Potable Water Service will be allocated as follows:

<u>District</u>	<u>Allocated Capacity</u>	<u>Cost Allocation Percentage</u>
District No. 11	180 LUEs	8.5%
District No. 12	861 LUES	40.5%
<u>District No. 13</u>	<u>1084 LUES</u>	<u>51%</u>
Total	2,125 LUES	100%

**Section 1.03. Monthly Charge Under LCRA Wholesale Contract.** The "Monthly Charge" payable under the LCRA Water Contract is currently \$9,430 per calendar month (the "Monthly Charge").

Each District agrees to collect and pay to District No. 12, within 45 days after the end of each calendar month, a portion of the Monthly Charge determined by dividing the then-current Monthly Charge by 1,000 (the "Per-LUE Monthly Charge") and multiplying the Per LUE Monthly Charge by the number of active connections within that District during the preceding month (the "Monthly Charge Payment"). Each District will include the Per-LUE Monthly Charge in its rate order as part of the basic services fee payable by all customers in The Highlands, and will promptly amend its rate order to increase the Per-LUE Monthly Charge upon receipt of written notice from District No. 12 that the Monthly Charge, and thus the Per-LUE Monthly Charge, has changed.

**Section 1.04. Connection Fees under LCRA Wholesale Contract.** Each District will act as District No. 12's agent for purposes of collecting the "Connection Fee", currently \$4,120 per LUE, payable to LCRA under the LCRA Wholesale Contract for each new retail customer in The Highlands that connects to that District's water utility system and receives Potable Water Services provided under the LCRA Wholesale Contract (the "Connection Fee"). Each District will include the Connection Fee as a separate charge in its rate order and will promptly amend its rate order upon the receipt of written notice from District No. 12 that the Connection Fee has changed. Each District agrees that it will not provide water service to any customer within The Highlands until that customer has paid the applicable Connection Fee. Each District agrees to remit all collected Connection Fees to District No. 12 within 45 days after the end of the calendar month in which the Connection Fees in question were received. Unless otherwise agreed by the Districts, District No. 12 will hold all Connection Fees received from the Districts (including Connection Fees collected by District No. 12 for new connections within its boundaries) in a separate interest-bearing account until the total sum held in the account equals the remaining "Minimum Payments" payable to LCRA under the LCRA Wholesale Contract; at which time District No. 12 will make the remaining Minimum Payments as and when they are due. To the extent District No. 12 holds or receives Connection Fees which are in excess of the total remaining Minimum Payments under the LCRA Wholesale Contract, the Districts will, subject to the approval of the Texas Commission on Environmental Quality, utilize those Connection Fees to reimburse the Developer for the Minimum Payments previously advanced by the Developer under Section 1.07.

**Section 1.05. Volume Rate under LCRA Wholesale Contract.** The cost of Potable Water Services supplied by LCRA under the LCRA Wholesale Contract will be billed to District No. 12 at the "Volume Rate", as defined in the LCRA Wholesale Contract, currently \$2.40 per 1,000 gallons (the "Volume Rate"). The cost of Potable Water Services billed at the Volume Rate will be allocated to the Districts based on the actual usage by each District's water customers within The Highlands, as determined by the Districts' customers' monthly water meter readings, and any unaccounted-for water will be allocated to the Districts based on each District's percentage of the total water billed to all of the Districts' customers in The Highlands that was billed to that District's customers. Each District agrees to establish a per-1,000 gallon water rate which will be sufficient to pay its costs of Raw Water and the Volume Rate.

**Section 1.06. Allocated Capacity and Share of Costs for the Highlands Shared Facilities.** The Districts agree that the capacity in the Highlands Shared Facilities, and the costs of such capacity, will be allocated as follows:

<u>District</u>	<u>Allocated Capacity</u>	<u>Cost Allocation Percentage</u>
District No. 11	180 LUEs	8.5%
District No. 12	861 LUES	40.5%
District No. 13	1084 LUES	51%
Total	2,125 LUES	100%

**Section 1.07. Developer Advances for Raw Water and Potable Water Services; Reimbursement by Districts.**

(a) The Developer agrees to advance and pay to District No. 12, on or before February 1 of each year, all costs of the Raw Water reserved under the 2008 Raw Water Contract but not utilized to provide services to the Districts' customers until such time (i) as the Districts are utilizing all of the Raw Water allocated to the Districts or (ii) each District has sufficient utility and/or operating tax revenues available to pay all costs associated with reserving its allocated but unutilized share of Raw Water under the 2008 Raw Water Contract, in accordance with the terms of its respective Reimbursement Agreement and the Cost Allocation Percentages specified above.

(b) The Developer also agrees to advance and pay to District No. 12 the Minimum Payments payable under the LCRA Wholesale Contract, at least 15 days prior to the date each Minimum Payment is due and payable to LCRA, until such time as District No. 12 holds sufficient Connection Fees to make the remaining Minimum Payments due to LCRA under the LCRA Wholesale Contract, as contemplated by Section 1.04. Further, the Developer agrees to advance and pay to District No. 12 the Monthly Charges under the LCRA Contract, at least 15 days prior to the date each Monthly Charge is due and payable to LCRA, until such time as District No. 12 is receiving sufficient revenues from the Monthly Charge Payments to pay the Monthly Charges as they come due. The preceding sentence notwithstanding, at such time as District No. 12 has received Monthly Charge Payments from the Districts sufficient to pay one full Monthly Charge under the LCRA Wholesale Contract, District No. 12 will make pay the next Monthly Charge coming due under the LCRA Wholesale Contract utilizing the collected Monthly Charge Payments and the Developer will not be obligated to advance funds for the payment of the Monthly Charge for that month.

(c) Each of the Districts acknowledges that the Developer has, and will continue to, advance certain costs of the Raw Water and the Potable Water Services as contemplated by its respective Reimbursement Agreement, and agrees to reimburse the Developer for its allocated share of such advanced costs in accordance with its respective Reimbursement Agreement and the Cost Allocation Percentages specified above. This Agreement and the Cost Allocation Percentages set forth above will be carried forward and confirmed in the Shared Facility Agreement.

**Section 1.08. Developer Payment of Costs of Shared Facilities; Reimbursement by Districts.** The Developer agrees to advance and pay all costs of design, permitting and construction of the Highlands Shared Facilities, in a timely manner and in order to avoid any delay or interruption in service to customers within the Districts. Subject to the Developer's compliance with its obligations under this provision, each of the Districts agrees to reimburse the Developer for its prorata share of the cost of the Highlands Shared Facilities in accordance with its respective Reimbursement Agreement and the Cost Allocation Percentages set forth above. This Agreement and the Cost Allocation Percentages set forth above will be carried forward and confirmed in the Shared Facility Agreement. The Developer must execute an agreement under which the Developer agrees to assign the existing "no discharge" permit which has been obtained for the Highlands Shared Facilities as originally proposed and lease the irrigation fields, treatment plant site and effluent holding pond site for the Highlands Shared Facilities as originally proposed to District No. 12, and the Developer's lender must consent to, join in and agree to be bound by such agreement. This agreement will provide that it will terminate upon the Districts' and the Developer's mutual approval of an alternate wastewater service plan for The Highlands and execution of a substitute agreement providing for the design, construction and financing of the improvements required for service under that plan.

**Section 1.09. Payments by District No. 12.** The Districts agree that District No. 12 will serve as the managing district for purposes of the Shared Facility Agreement and has entered into the 2008 Raw Water Contract and the LCRA Wholesale Contract in such capacity on behalf of all of the Districts. District No. 12 agrees to make payments coming due under the 2008 Raw Water Contract and the LCRA Wholesale Contract out of funds received by it from the Developer and from the Districts (including

payments from District No. 12 for Raw Water and Potable Water Services utilized by its customers, and Connection Charges payable for retail connections actually made within District No. 12) under this MOU. All Parties expressly acknowledge and agree that District No. 12 has no obligation to advance any funds (other than funds required for actual Raw Water and Potable Water Services utilized by its customers, and Connection Charges payable for retail connections actually made within District No. 12) for payments required under the 2008 Raw Water Contract and/or the LCRA Wholesale Contract.

## **ARTICLE II.**

### **MISCELLANEOUS PROVISIONS**

**Section 2.01. Future Effect.** The provisions of this MOU will be binding upon and inure to the benefit of the Parties and their respective successors and assigns until full execution and delivery of the Shared Facility Agreement by all Parties, at which time the provisions of this MOU will be merged into the Shared Facility Agreement and this MOU will be of no further force or effect.

**Section 2.02. Entire Agreement.** This MOU contains the entire agreement of the Parties and supersedes any prior negotiations, agreements, representations, and understandings, oral or written, if any, between the Parties regarding the subject matter, including the Original MOU, which will be of no further force or effect. All Parties have participated in the negotiation and drafting of this MOU; therefore, in the event of any ambiguity, the provisions of this MOU will not be construed for or against any Party.

**Section 2.03. Notices.** Unless changed by written notice, all notices to the Parties may be given by certified mail, postage prepaid and return receipt requested; via facsimile, with confirmed receipt; or by hand delivery, with confirmed receipt, to the address of the each of the Parties shown below:

**District No. 11:** c/o Armbrust & Brown, L.L.P.  
100 Congress Avenue, Suite 1300  
Austin, Texas 78701  
Attn: Sue Brooks Littlefield  
Phone: (512) 435-2307  
Fax: (512) 435-2360

**District No. 12:** c/o Armbrust & Brown, L.L.P.  
100 Congress Avenue, Suite 1300  
Austin, Texas 78701  
Attn: Sue Brooks Littlefield  
Phone: (512) 435-2307  
Fax: (512) 435-2360

**District No. 13:** c/o Armbrust & Brown, L.L.P.  
100 Congress Avenue, Suite 1300  
Austin, Texas 78701  
Attn: Sue Brooks Littlefield  
Phone: (512) 435-2307  
Fax: (512) 435-2360

**Developer:** Rough Hollow Development, Ltd.  
c/o Haythem Dawlett  
2101 Lakeway Blvd., Ste. 205  
Austin, Texas 78734  
Phone: (512) 306-1444  
Fax: (512) 306-1620

A Party may change its address for notice by delivering written notice, as provided in this Section to the other Parties.

**Section 2.04. Severability.** If any provision of this MOU is illegal, invalid, or unenforceable under present or future laws, it is the intention of the Parties that the remainder of this MOU not be affected, and it is also the intention of the Parties that, in lieu of each provision of this MOU that is illegal, invalid, or unenforceable, there be added as a part of this MOU a provision as similar in terms to the illegal, invalid, or unenforceable provision as is possible, and is legal, valid, and enforceable.

**Section 2.05. Applicable Law.** This MOU will be construed under the laws of the State of Texas and all obligations of the Parties hereunder are performable in Travis County, Texas. Venue for any action arising under this MOU will be in Travis County, Texas.

**Section 2.06. Third Party Beneficiaries.** Except as otherwise expressly provided, nothing in this MOU is intended to confer upon any person, other than the Parties and their successors and permitted assigns, any benefits, rights, or remedies under or by reason of this MOU.

**Section 2.07. Assignment.** A Party's rights and obligations under this MOU may not be assigned or transferred without the consent of the other Parties, which consent will not be unreasonably withheld or delayed.

**Section 2.08. Amendment.** This MOU may only be amended by written agreement executed by all of the Parties. Following reimbursement of the Developer, this MOU may be amended by the Districts, acting jointly, and no consent or joinder by the Developer will be required.

**Section 2.09. Counterparts.** This MOU may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. Signature by facsimile will be deemed to have the same effect as an original signature.

**Section 2.10. Authority.** Each Party represents and warrants that it has the full right, power, and authority to execute this MOU and all related documents. Each person executing this instrument on behalf of a Party represents that he or she is an authorized representative of and has the authority to sign this document on behalf the respective Party.

**Section 2.11. Effective Date.** This MOU will be effective upon the date of due execution by the last Party to sign this MOU, as indicated below.

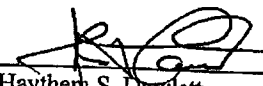


**DEVELOPER:**

**ROUGH HOLLOW DEVELOPMENT, LTD.,** a  
Texas limited partnership

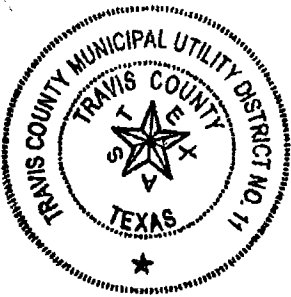
By: JHLV GP, Inc., a Texas corporation, its General  
Partner

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

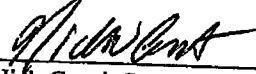
  
Haythem S. Dawlett  
Vice President

Date: \_\_\_\_\_

4-5-10



ATTEST:

  
\_\_\_\_\_  
Nick Conti, Secretary  
Board of Directors

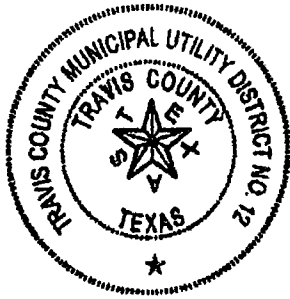
DISTRICT NO. 11:

Travis County Municipal Utility District No. 11

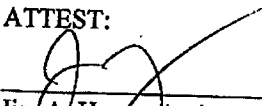
By: 

\_\_\_\_\_  
Michael De La Fuente, President  
Board of Directors

Date: April 1, 2010

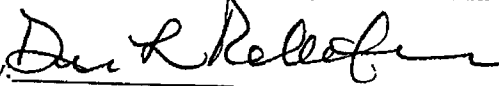


ATTEST:

  
\_\_\_\_\_  
Jim A. Henry, Assistant Secretary  
Board of Directors

**DISTRICT NO. 12:**

Travis County Municipal Utility District No. 12

By:   
\_\_\_\_\_  
Dan L. Robertson, President  
Board of Directors

Date: March 23, 2010



DISTRICT NO. 13:

Travis County Municipal Utility District No. 13

By: Richard D. Fadal  
Richard D. Fadal, President  
Board of Directors

Date: 3/30/2010

ATTEST:  
Rhianha R. Horan  
Rhianha R. Horan, Secretary  
Board of Directors

LAKEWAY HIGHLANDS WITH  
MOD 11, 12, 13 BOUNDARIES

RJ SURVEYING & ASSOCIATES, INC.	
1001 E. MAIN ST. SUITE 100	PHOENIX, AZ 85001
TEL: 602.258.1234	FAX: 602.258.1235
WWW.RJSURVEYING.COM	

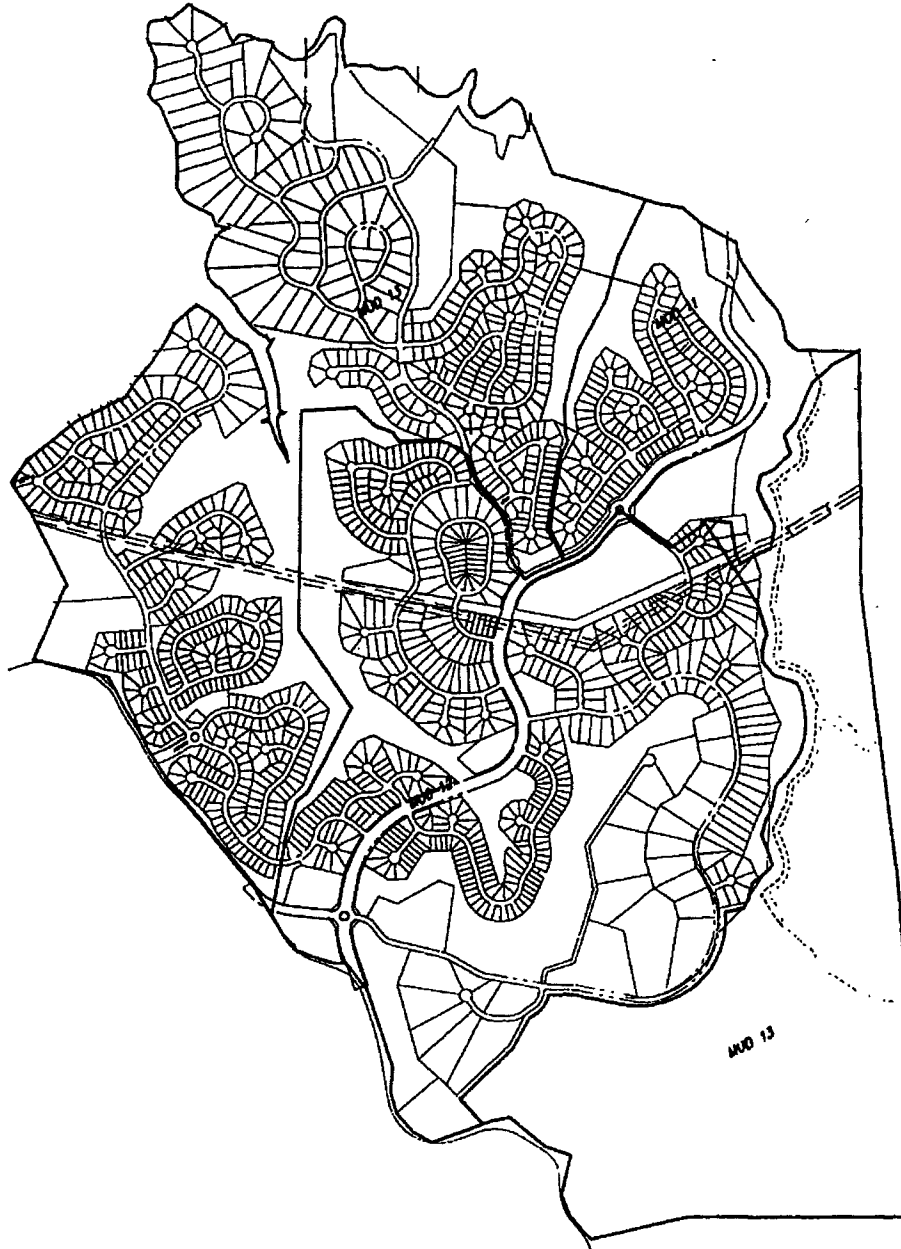


Exhibit A



**FIRST AMENDMENT TO AMENDED AND RESTATED MEMORANDUM OF  
UNDERSTANDING REGARDING SHARED RAW WATER SUPPLY AND WATER  
AND WASTEWATER CAPACITY AND SERVICES**

This First Amendment to Amended and Restated Memorandum of Understanding Regarding Shared Raw Water Supply and Water and Wastewater Capacity and Services (this "Amendment") is entered into between ROUGH HOLLOW DEVELOPMENT, LTD., a Texas limited partnership (the "Developer"); TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 11, a political subdivision of the State of Texas ("District No. 11"); TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 12, a political subdivision of the State of Texas ("District No. 12") and TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 13, a political subdivision of the State of Texas ("District No. 13"). In this MOU, 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", the Developer and each of the Districts are sometimes individually referred to as a "Party", and the Developer and all of the Districts are sometimes collectively referred to as the "Parties".

**RECITALS**

A. The Districts and the Developer previously entered into an "Amended and Restated Memorandum of Understanding Regarding Shared Raw Water Supply and Water and Wastewater Capacity and Services" dated effective as of July 1, 2010 (the "MOU") in order to set forth their agreements regarding certain water and wastewater facilities proposed to be constructed jointly and shared by the Districts (the "Highlands Shared Facilities") to serve a portion of the land in District No. 11 and all of the land within District No. 12 and District No. 13, all of which is being developed by the Developer ("The Highlands").

B. As set forth in the MOU, the Parties intend to enter into a contract which will specifically address the sharing of costs of and capacity in the Highlands Shared Facilities (the "Shared Facility Agreement"); however, that agreement cannot be finalized under a permanent wastewater service plan for The Highlands is finalized, which is now anticipated to occur on or about January 1, 2012.

C. Since the date of the MOU, District No. 11 has completed the construction of the Lakeway Highlands Lift Station No. 1 and off-site four-inch force main ("Lift Station No. 1 and the Four-Inch Force Main"), under the Lakeway Highlands Lift Station No. 1 & Offsite Wastewater Improvements construction contract dated August 13, 2010, between District No. 11 and Austin Engineering Co., Inc., and District No. 11 and District No. 13 have entered into an Interlocal Agreement for Pass-Through Wastewater Service dated July 19, 2011, pursuant to which District No. 11 is providing pass-through wastewater service to District No. 13 for a portion of the land within District No. 13 out of the capacity and service provided to District No. 11 by Lakeway Municipal Utility District ("Lakeway MUD"). Because Lift Station No. 1 and the Four Inch Force Main will serve only District No. 11 and District No. 13, the costs of and capacity in those facilities will be shared on a different basis than the other Highlands Shared Facilities.

Therefore, in consideration of the mutual promises, covenants, obligations, and benefits contained in the MOU and this Amendment, the Parties contract and agree as follows:

1. Lift Station No. 1 and the Four-Inch Force Main. The Parties agree that capacity in and the costs of Lift Station No. 1 and the Four Inch Force Main will be allocated as follows:

<u>District</u>	<u>Allocated Capacity</u>	<u>Cost Allocation Percentage</u>
District No. 11	180 LUES	71.1%
District No. 12	0 LUES	0%
District No. 13	73 LUES	28.9%
Total	253 LUES	100%

3. Defined Terms. All terms delineated with initial capital letters in this Amendment that are defined in the MOU have the same meanings in this Amendment as in the MOU. Other terms have the meanings commonly ascribed to them.
4. Effect of Amendment. Except as specifically provided in this Amendment, the terms and provisions of the MOU will continue to govern the rights and obligations of the parties, and all provisions and covenants of the MOU, as amended by this instrument, will remain in full force and effect. In the event of any inconsistency between the MOU and this Amendment, this Amendment will control and modify the terms and provisions of the MOU.
5. Execution. This Amendment may be executed in any number of counterparts, and it will not be necessary that the signatures of all parties be contained on any one counterpart. Additionally, for purposes of facilitating the execution of this Amendment: (a) the signature pages from separate, individually executed counterparts of this Amendment may be combined to form multiple fully executed counterparts; and (b) a facsimile signature will be deemed to be an original signature for all purposes. All executed counterparts of this Amendment will be deemed to be originals, but all counterparts, when taken together, will constitute one and the same instrument.

EXECUTED on the date or dates set forth below, to be effective on the date the last party signs.

**DEVELOPER:**

**ROUGH HOLLOW DEVELOPMENT, LTD., a**  
Texas limited partnership

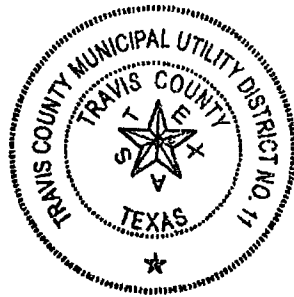
By: JHLV GP, Inc., a Texas corporation, its  
General Partner

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

Haythem S. Dawlett  
Vice President

Date: \_\_\_\_\_





**DISTRICT NO. 11:**

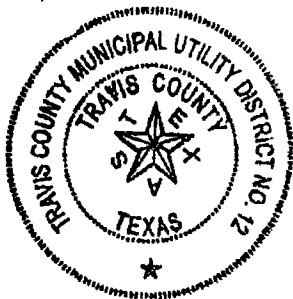
**TRAVIS COUNTY MUNICIPAL UTILITY  
DISTRICT NO. 11**

By: [Signature]  
Michael De La Fuente, President  
Board of Directors


Date: August 4, 2011

ATTEST

[Signature]  
Nick Conti, Secretary  
Board of Directors

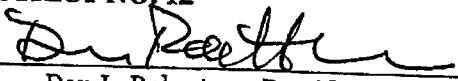


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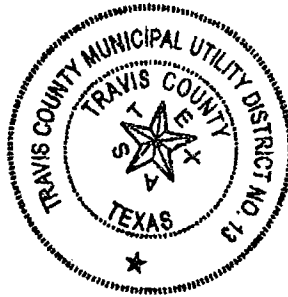
  
\_\_\_\_\_  
Melissa Miller, Secretary  
Board of Directors

**DISTRICT NO. 12:**

**TRAVIS COUNTY MUNICIPAL UTILITY  
DISTRICT NO. 12**

By:   
Dan L. Robertson, President  
Board of Directors

Date: 8/23/2011



ATTEST:

Jesse Kennis  
Jesse Kennis, Secretary  
Board of Directors

DISTRICT NO. 13:

TRAVIS COUNTY MUNICIPAL UTILITY  
DISTRICT NO. 13

By: Richard D. Fadal  
Richard D. Fadal, President  
Board of Directors

Date: August 16, 2011



**SECOND AMENDMENT TO AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING REGARDING SHARED RAW WATER SUPPLY AND WATER AND WASTEWATER CAPACITY AND SERVICES**

This Second Amendment to Amended and Restated Memorandum of Understanding Regarding Shared Raw Water Supply and Water and Wastewater Capacity and Services (this "Second Amendment") is entered into between ROUGH HOLLOW DEVELOPMENT, LTD., a Texas limited partnership (the "Developer"); TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 11, a political subdivision of the State of Texas ("District No. 11"); TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 12, a political subdivision of the State of Texas ("District No. 12"); and TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 13, a political subdivision of the State of Texas ("District No. 13"). In this Second Amendment, 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", the Developer or any individual District is sometimes referred to as a "Party", and the Developer and all of the Districts are sometimes collectively referred to as the "Parties".

**RECITALS**

A. The Districts and the Developer previously entered into an "Amended and Restated Memorandum of Understanding Regarding Shared Raw Water Supply and Water and Wastewater Capacity and Services" dated effective as of July 1, 2010 (the "Original MOU") in order to set forth their agreements regarding certain water and wastewater facilities proposed to be constructed jointly and shared by the Districts (the "Highlands Shared Facilities") to serve a portion of the land in District No. 11 and all of the land within District No. 12 and District No. 13, all of which is being developed by the Developer ("The Highlands"). The MOU was previously amended by "First Amendment to Amended and Restated Memorandum of Understanding Regarding Shared Raw Water Supply and Water and Wastewater Capacity and Services" dated August 23, 2011 (the "First Amendment"). The Original MOU, as amended by the First Amendment and this Second Amendment, is referred to in this Second Amendment as "the MOU".

B. As set forth in the Original MOU, the Parties intend to enter into a contract that will specifically address the sharing of costs of and capacity in the Highlands Shared Facilities (the "Shared Facility Agreement"); however, that contract cannot be prepared until the permanent wastewater service plan for The Highlands is finalized. The Parties currently intend that permanent wastewater service to The Highlands will be provided through the construction of the shared wastewater treatment plant, lift stations, effluent holding pond and irrigation facilities (the "Shared Wastewater Facilities") contemplated by the Wastewater Facilities Acquisition and Construction Agreement between the Parties dated May 22, 2013 (the "Wastewater Facilities Agreement"). An application for the amendment to District No. 12's TPDES Permit No. WQ0014534001 that is required for the Shared Wastewater Facilities (the "Permit Amendment") has been filed with and is being processed by the Texas Commission on Environmental Quality (the "Commission"). Upon approval of the Permit Amendment, the Parties currently intend to proceed with the construction of the Shared Wastewater Facilities and the finalization of the Shared Facility Agreement. The Parties wish to amend the MOU to provide for the sharing of costs related to the Shared Wastewater Facilities and the Shared Facility Agreement.

C. District No. 11 and Lakeway Municipal Utility District ("Lakeway MUD") previously entered into "Amendment No. 3 to Wholesale Water and Wastewater Services Agreement" (the "Third Amendment"), which amends the "Wholesale Water and Wastewater Services Agreement" between District No. 11 and Lakeway MUD dated April 6, 2006 (as

{W0529249.4}

amended, the "Lakeway MUD Contract"), which provides, among other things, that a portion of the wastewater treatment and disposal capacity made available to District No. 11 under the Lakeway MUD Contract may be used to provide wastewater service to areas within The Highlands, including areas within District No. 12 and District No. 13 ("the Temporary Highlands Wastewater Service"). The Parties wish to amend the Original MOU to provide the terms on which the Temporary Highlands Wastewater Service will be provided to District No. 12 and District No. 13.

D. The Rough Hollow area of District No. 11 receives water services from Lakeway MUD under the terms of the Lakeway MUD Contract and The Highlands area of District No. 11 and all of District No. 12 and District No. 13 receive water services through the West Travis County Public Utility Agency (the "PUA"). In order to provide an alternate source of water for both Rough Hollow and The Highlands for the benefit of all of the Parties, the Parties wish to design and construct an emergency interconnect in accordance with the attached Exhibit "A" (the "Interconnect") and to amend the MOU to provide for the allocation of costs of the Interconnect.

E. Since the date of the Original MOU, the number of lots, and therefore the living unit equivalents ("LUEs") within the District have changed and the Parties wish to update the allocated capacity in and cost allocation percentage for certain shared costs and shared facilities under the MOU.

Therefore, in consideration of the mutual promises, covenants, obligations, and benefits contained in the MOU, the Parties contract and agree as follows:

1. Shared Wastewater Facilities and Shared Facility Agreement. The Parties acknowledge that, under the Wastewater Facilities Agreement, the Developer has posted fiscal security for and is obligated to advance all costs of the Shared Wastewater Facilities, including the costs of the Permit Amendment. The Parties agree that the Shared Wastewater Facilities constitute "Highlands Shared Facilities" under the MOU and that the allocated capacity in and cost allocation percentages of the Districts in the Shared Wastewater Facilities will be as set forth in Section 1.06 of the MOU, as amended by this Second Amendment.

2. Temporary Highlands Wastewater Service. The Parties agree the Temporary Highlands Wastewater Service will be allocated and paid for as follows:

a. Priority of Service. The wastewater connections in and wastewater flows from the Districts will be monitored on a monthly basis. On the day that the flow measurements for the Lakeway MUD S-5 wastewater treatment plant (the "S-5 Plant") reach 70% of the S-5 Plant's permitted average daily or annual average flow for three consecutive months or (ii) the date that the Districts' combined wastewater flows delivered to the S-5 Plant reach a maximum annual daily average volume of 78,000 gallons per day, a maximum monthly average daily volume of 94,800 gallons per day, or a maximum two-hour peak volume of 216 gallons per minute, whichever occurs first, no additional wastewater service connections within District No. 12 or District No. 13 will be made and no new plats within District No. 12 or District No. 13 will be approved.

b. Rates. District No. 12 and District No. 13 covenant and agree to pay the following sums to District No. 11 for the Temporary Highlands Wastewater Service:

(1) The fixed monthly wastewater charge payable under the Lakeway MUD Contract will be allocated among the Districts based on a ratio of each District's assessed valuation for property tax purposes to the total of all of the Districts' assessed valuations for property tax purposes; and

(2) The wastewater volume charge payable under the Lakeway MUD Contract will be allocated among the Districts based on the active service connections within each of the Districts.

c. Payment Obligation and Priority. District No. 12 and District No. 13 acknowledge that, as District No. 11 will be responsible for all payments due under the Lakeway MUD Contract, their prompt payment of all sums due for the Temporary Highlands Wastewater Service is of the utmost importance. Accordingly, District No. 12 and District No. 13 agree to pay all sums due to District No. 11 within 30 days of receipt of an invoice and further agree that, if any sum due to District No. 11 is not paid within that 30-day time period, payment will be deemed delinquent and will incur a 10% penalty. If any sum due is not paid within 60 days, then all additional service connections to the delinquent District will be discontinued until payment in full, including any penalty, is made. District No. 12 and District No. 13 acknowledge that the Temporary Highlands Wastewater Service is essential to the present and future operation of its wastewater utility system. Accordingly, all payments to District No. 11 for such service constitute reasonable and necessary operating expenses of District No. 12's and District No. 13's respective wastewater system and District No. 12 and District No. 13 agree that the obligation to make such payments to District No. 11 from the revenues of its wastewater utility systems will have priority over any obligation to make other payments from such revenues.

d. Inflow and Infiltration. In order to avoid a premature triggering of expiration date under the Third Amendment, the Districts agree to undertake all reasonable measures necessary or appropriate to prevent inflow and infiltration into their respective wastewater utility systems. The Districts agree to monitor flows and, in the event of an increase of flows due to inflow and infiltration into their collection systems, to use their best efforts and work diligently to identify and eliminate the cause of such inflow and infiltration.

3. Emergency Interconnect. The Parties agree that the capital costs of the Interconnect, as well as legal and engineering fees associated with the construction of the Interconnect and the preparation of all related agreements and/or amendments to agreements with the Lower Colorado River Authority ("LCRA"), PUA and/or Lakeway MUD, and all costs of operating and maintaining the Interconnect will be shared on the same basis that raw water supplied under the Firm Water Contract between District No. 12 and LCRA is allocated under the MOA, as follows:

<u>District</u>	<u>Cost Allocation Percentage</u>
District No. 11	26%
District No. 12	40%
District No. 13	34%
Total	100%

4. Payment of Costs; Reimbursement.

a. Capital Costs. The current cost estimate for the construction of the Interconnect is attached as Exhibit "B". District No. 11 agrees to advance all capital costs for the initial construction of the Interconnect. District No. 12 and District No. 13 each agree to include its prorata share of the construction costs, based on its respective cost allocation

percentage, in its first bond application and, upon approval of the application and sale of such bonds, to reimburse District No. 11 for its prorata share of such costs together with interest as permitted by the rules of the Texas Commission on Environmental Quality. If District No. 11 is not reimbursed by either District No. 12 or District No. 13 for its share of the capital costs of the Interconnect within one year of the date of acceptance of the Interconnect for operation and maintenance, the Developer agrees to advance the funds necessary to reimburse District No. 11 for any non-reimbursing District's prorata share of such costs. Any sums advanced by the Developer under this subparagraph will be reimbursable under the terms of the UCA between the Developer and the District on whose behalf the Developer has advanced funds to reimburse District No. 11.

b. Other Costs. Each of the Districts each agrees to pay its prorata share of any non-construction costs of the Interconnect as and when incurred, including costs of maintenance, repair, and operation of the Interconnect.

5. Amendment to Section 1.01. Section 1.01 of the MOU is amended to read as follows:

Section 1.01. Allocated Raw Water Supply and Share of Raw Water Costs. The Raw Water reserved under the Raw Water Contracts, and the costs of the reservation and supply of Raw Water, will be allocated and shared as follows:

<u>District</u>	<u>Allocated Water Supply</u>	<u>Cost Allocation Percentage</u>
District No. 11	142.332 million gal/year	26%
District No. 12	218.972 million gal/year	40%
<u>District No. 13</u>	<u>186.126 million gal/year</u>	<u>34%</u>
Total	547.43 million gallons/year	100%

6. Amendment to Section 1.02. Section 1.02 of the MOA is amended to read as follows:

Section 1.02. Allocated Capacity and Share of Costs of Potable Water Services under LCRA Wholesale Contract. The Potable Water Services under the LCRA Wholesale Contract, and the costs of the reservation and supply of Potable Water Service will be allocated as follows:

<u>District</u>	<u>Allocated Capacity</u>	<u>Cost Allocation Percentage</u>
District No. 11	152 LUEs	10%
District No. 12	799 LUES	48%
<u>District No. 13</u>	<u>689 LUES</u>	<u>42%</u>
Total	1,640 LUES	100%

7. Amendment to Section 1.06. Section 1.06 of the MOA is amended to read as follows:



Section 1.06 Allocated Capacity and Share of Costs for the Highlands Shared Facilities. The Districts agree that the capacity in the Highlands Shared Facilities, and the costs of such capacity, will be allocated as follows:

<u>District</u>	<u>Allocated Capacity</u>	<u>Cost Allocation Percentage</u>
District No. 11	152 LUEs	10%
District No. 12	799 LUES	48%
<u>District No. 13</u>	<u>689 LUES</u>	<u>42%</u>
Total	1,640 LUES	100%

8. Defined Terms. All terms delineated with initial capital letters in this Amendment that are defined in the Original MOU have the same meanings in this Second Amendment as in the Original MOU. Other terms have the meanings commonly ascribed to them.

9. Effect of Amendment. Except as specifically provided in this Amendment, the terms and provisions of the Original MOU, as amended, will continue to govern the rights and obligations of the parties, and all provisions and covenants of the MOU, as amended by the First Amendment and this Second Amendment, will remain in full force and effect. In the event of any inconsistency between the Original MOU, as amended, and this Amendment, this Amendment will control and modify the terms and provisions of the Original MOU, as amended.

10. Execution. This Amendment may be executed in any number of counterparts, and it will not be necessary that the signatures of all parties be contained on any one counterpart. Additionally, for purposes of facilitating the execution of this Amendment: (a) the signature pages from separate, individually executed counterparts of this Amendment may be combined to form multiple fully executed counterparts; and (b) a facsimile signature will be deemed to be an original signature for all purposes. All executed counterparts of this Amendment will be deemed to be originals, but all counterparts, when taken together, will constitute one and the same instrument.

EXECUTED on the date or dates set forth below, to be effective on the date the last party signs.

**DEVELOPER:**

**ROUGH HOLLOW DEVELOPMENT, LTD.,** a Texas limited partnership

By: JHLV GP, Inc., a Texas corporation, its General Partner

By: 

Haythem S. Dawlett  
Vice President

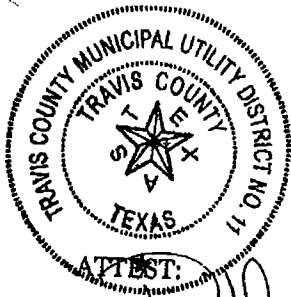
Date: 7/22/2014


**DISTRICT NO. 11:**

**TRAVIS COUNTY MUNICIPAL UTILITY  
DISTRICT NO. 11**

By:   
Michael De La Fuente, President  
Board of Directors

Date: August 12, 2014



  
David Cox, Secretary  
Board of Directors

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