



Control Number: 42866



Item Number: 9

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
Legislature, Regular Session, transferred the functions
relating to the economic regulation of water and sewer
utilities from the TCEQ to the PUC effective
September 1, 2014.

RECEIVED
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PUBLIC UTILITY COMMISSION
FILING CLERK

June 18, 2014

Ms. Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
12100 Park 35 Circle
Bldg. F - 1st Floor
Austin, Texas 78711-3087

VIA ELECTRONIC FILING

Re: West Travis County Public Utility Agency's Response to Travis County
Municipal Utility District No. 12's Original Petition;
TCEQ Docket No. 2014-0439-UCR; SOAH Docket No. 582-14-3382

Dear Ms. Bohac:

In follow-up to the June 11, 2014 SOAH preliminary hearing in the above-referenced matter, enclosed please find West Travis County Public Utility Agency's Response (the "Response") to Travis County Municipal Utility District No. 12's Original Petition. This Response was previously filed with the Texas Commission on Environmental Quality on April 11, 2014.

If you have any questions or otherwise, do not hesitate to contact me at the above listed number.

Sincerely,



David J. Klein

DJK/lmr
Enclosure

cc: Service List

SERVICE LIST

SOAH DOCKET NO. 582-14-3382
TCEQ DOCKET NO. 2014-0439-UCR

FOR TRAVIS COUNTY MUD NO. 12:

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FOR HAYS COUNTY:

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FOR WEST TRAVIS COUNTY MUD NO 5:

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FOR CITY OF BEE CAVE:

Jim Haley
The Akers Law Firm
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jhaley@txcityattorney.com

FOR THE EXECUTIVE DIRECTOR:

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FOR THE PUBLIC INTEREST COUNSEL:

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rudy.calderon@tceq.texas.gov

FOR THE CHIEF CLERK:

Bridget C. Bohac, Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC-105
Austin, Texas 78711-3087
(512) 239-3300 (phone)
(512) 239-3311 (fax)

FOR SOAH:

Honorable William G. Newchurch
Administrative Law Judge
State Office of Administrative Hearings
William P. Clements Office Building
300 West 15th Street, Suite 502
Austin, Texas 78701
(512) 475-4993 (phone)
(512) 322-2061 (fax)

TCEQ DOCKET NO. 2014-0439-UCR

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

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BEFORE THE

TEXAS COMMISSION

ON

ENVIRONMENTAL QUALITY

WEST TRAVIS COUNTY PUBLIC UTILITY AGENCY'S RESPONSE TO TRAVIS
COUNTY MUNICIPAL UTILITY DISTRICT NO. 12'S ORIGINAL PETITION

TO: *THE EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY:*

COMES NOW, Respondent West Travis County Public Utility Agency ("WTCPUA"), by and through its undersigned attorneys of record, and files this Response (the "*Response*") to the Petition filed by Travis County Municipal Utility District No. 12 (the "*Petitioner*")¹ appealing WTCPUA's wholesale water rates charged pursuant to a wholesale water services contract (the "*Petition*"). The Executive Director should deny the Petition because (1) Texas Water Code §§ 11.036, 11.041, 12.013, statutes cited by Petitioner in its Petition, do not apply to services provided by WTCPUA to the Petitioner under their written agreement, and (2) the Petition does not allege specific facts as to how WTCPUA's water treatment service rates adversely affect the public interest, which is required under Texas Water Code § 13.043(f)² and 30 Texas Administrative Code ("TAC") §§ 291.130(b) and 291.133(a). Alternatively, if the Executive Director decides that the Petition should be referred to the State Office of

¹ Petitioner has brought the Petition on behalf of itself and Travis County Municipal Utility District Nos. 11 and 13.

² This statute is evaluated in conjunction with Texas Local Government Code § 572.061(d).

Administrative Hearings (“*SOAH*”) for a contested case hearing, then such hearing should be limited to Texas Water Code § 13.043(f) and the TCEQ’s corresponding rules, and conducted under a bifurcated process because the WTCPUA does not agree to hold a consolidated hearing under 30 TAC § 291.132(d).³ In support of its Response and for cause, WTCPUA would respectfully show the following:

I. BACKGROUND

On October 22, 2009, the Lower Colorado River Authority (“*LCRA*”), entered into a certain “Wholesale Water Services Agreement” (“*Wholesale Agreement*”) with Petitioner, providing in part that for a specified rate, the LCRA will divert, treat and deliver Petitioner’s raw water supply that it obtains from LCRA under a separate raw water agreement.⁴ Such services are defined in the Wholesale Agreement as “Wholesale Water Services.”⁵ Additionally, the Wholesale Agreement affords LCRA with the ability to modify the rates charged for the provision of Wholesale Water Services.⁶

WTCPUA is a public utility agency and political subdivision of the state governed by Chapter 572 of the Texas Local Government Code, and on March 19, 2012, LCRA subsequently assigned the Wholesale Agreement to WTCPUA (with the express written consent of Petitioner). However, WTCPUA is not a successor in interest to LCRA for the raw water agreement. In other words, WTCPUA only treats Petitioner’s raw water supply, a supply that Petitioner obtains from LCRA, to a potable water quality.

³ The bifurcated contested case hearing process is as follows: SOAH must first conduct a contested case hearing on whether the protested rate is adverse to the public interest, and then, at the direction of the TCEQ, conduct a second contested case hearing on the wholesale provider’s cost of service.

⁴ Wholesale Agreement, Sections 3.01(a) and 4.01. A copy of the Agreement Regarding Transfer of Operations of the West Travis County Water System from the Lower Colorado River Authority to the West Travis County Public Utility Agency, which assigns the Wholesale Agreement from LCRA to the WTCPUA, which includes the Wholesale Agreement as an Exhibit, is attached hereto as Exhibit A.

⁵ Wholesale Agreement, Section 1.01.

⁶ Wholesale Agreement, Section 4.01(f).

On November 21, 2013, the Board of Directors of WTCPUA adopted an order amending (reducing) the rates charged by WTCPUA to Petitioner under the Contract to treat the Petitioner's water supply. WTCPUA provided written notice to Petitioner of the WTCPUA's revised rate changes on December 17, 2013. Then, on March 6, 2014, Petitioner filed its appeal of the wholesale rates charged to Petitioner by WTCPUA pursuant to the Wholesale Agreement with the TCEQ under Texas Water Code §§ 11.036, 11.041, 12.013, and 13.043(f) and the Texas Local Government Code § 572.061(d). As discussed in more detail in this Response, Petitioner's claims should be denied and the Petition should be dismissed.

II. PETITION DOES NOT TRIGGER TCEQ JURISDICTION UNDER TEXAS WATER CODE §§ 11.036, 11.041, 12.013

Petitioner incorrectly asserts that the TCEQ has jurisdiction to consider this appeal under Texas Water Code §§ 11.041 (*Denial of Water: Complaint*), 11.036 (*Conserved or Stored Water: Supply Contract*), and 12.013 (*Rate Fixing Power*), and these portions of the Petition should be denied. In short, these statutory provisions do not apply to the services provided and rates charged by WTCPUA to Petitioner under the Wholesale Agreement.

A. Jurisdiction Is Not Available under Texas Water Code § 11.041

The jurisdiction granted by the Legislature to the TCEQ under Texas Water Code § 11.041⁷ does not apply to the Wholesale Water Services provided by WTCPUA to Petitioner. Accordingly, Petitioner may not appeal the Agency's wholesale water rates under this statutory provision. Section 11.041(a) states that a person, "entitled to receive or use water from...any conserved or stored supply" may file a complaint in the form of a petition showing:

- (1) that he is entitled to receive or use the water;

⁷ Petition, Section III, at page 3.

- (2) that he is willing and able to pay a just and reasonable price for the water;
- (3) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and
- (4) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not reasonable and just or is discriminatory.⁸

Here, the Wholesale Agreement does not contemplate WTCPUA selling any of its water supply to Petitioner. The Wholesale Agreement specifically provides that WTCPUA "agrees to provide Wholesale Water Services to [Petitioner]...for raw water purchased from LCRA" pursuant to the raw water contract between Petitioner and LCRA.⁹ As defined under the Wholesale Agreement:

"Wholesale Water Services" means the diversion of raw water from the Colorado River, the transmission of the raw water to a place or places of treatment, the treatment of the water into potable form and the transmission of the potable water to the Delivery Point.¹⁰

Thus, it is impossible for WTCPUA to deny providing a water supply to Petitioner, because WTCPUA is merely a vehicle treating and delivering Petitioner's raw water supply, which Petitioner has secured through a separate raw water contract with the LCRA. Rather, Texas Water Code § 11.041 is the appropriate statute if LCRA denied providing a water supply to Petitioner. Consequently, jurisdiction for Petitioner's appeal of the Agency's wholesale rates is not available under Texas Water Code § 11.041, and the Executive Director should deny this portion of the Petition.

⁸ Tex. Water Code § 11.041(a)(West 2014).

⁹ Wholesale Agreement, Section 3.01.a. at page 6.

¹⁰ Wholesale Agreement, Section 1.01 at page 5.

B. Jurisdiction Is Not Available Under Texas Water Code § 11.036

Additionally, Texas Water Code § 11.036 does not provide a basis for TCEQ jurisdiction in this matter because this law does not apply to the Wholesale Water Services provided by WTCPUA to Petitioner. Section 11.036 addresses the price and terms of a contract to provide water supply from an entity that has in its “possession and control any storm water, floodwater, or rainwater that is conserved or stored” pursuant to Chapter 11 of the Texas Water Code.¹¹ As stated in detail in Section A of this Response, above, WTCPUA does not provide or charge rates for a water supply under the Wholesale Agreement; rather, the Wholesale Agreement contemplates the diversion, treatment and delivery of a raw water supply secured by Petitioner through a separate contract with the LCRA. Thus, since WTCPUA is not providing a water supply to Petitioner under the Wholesale Agreement, Petitioner’s appeal of WTCPUA’s wholesale rates for such services is not available under Texas Water Code § 11.036 and the Executive Director should dismiss this portion of the Petition.

C. Jurisdiction Is Not Available under Texas Water Code § 12.013

Next, Texas Water Code § 12.013, another law cited by Petitioner as a basis to appeal WTCPUA’s Wholesale Water Service rates,¹² does not apply to the services provided under the Wholesale Agreement, and the Executive Director should deny this portion of the Petition as well. Section 12.013(a) states that the “utility commission shall fix reasonable rates for the furnishing of raw or treated water for any purpose mentioned in Chapter 11 or 12” of the Texas Water Code.¹³ As discussed in Subsections II.A. and B., above, Petitioner’s claims of jurisdiction under Texas Water Code § 11.036 and 11.041 are not applicable to the rates charged by WTCPUA to Petitioner because the WTCPUA’s rates are for Wholesale Water Services, not

¹¹ Tex. Water Code § 11.036 (a), (b).

¹² Petition, Section III, at page 3.

¹³ Tex. Water Code § 12.013(a)(West 2014).

for providing a water supply- regardless of whether that water supply is raw or treated. Therefore, Texas Water Code § 12.013 is not applicable in this appeal and jurisdiction is not available under this provision.

III. PETITION FAILS TO ALLEGE FACTS REGARDING THE RATES AS REQUIRED UNDER 30 TAC § 291.130(B)

The Executive Director should deny the Petition because the Petitioner has failed to allege specific facts explaining how WTCPUA's reduced¹⁴ water treatment service rates charged to Petitioner adversely affect the public interest, as required under 30 TAC § 291.130(b). TCEQ Rule 291.130(b) provides that "The petition must clearly state the statutory authority which the petitioner invokes, *specific factual allegations*, and the relief which the petitioner seeks" (emphasis added). Here, Petitioner argues that the TCEQ has jurisdiction to consider this Petition under several statutes and regulations, including Texas Local Government Code § 572.061(d), Texas Water Code § 13.043(f), and 30 TAC §§ 291.130 and 291.131. However, while Petitioner devotes much of its Petition to detailing its opinion of the chronology between Petitioner, LCRA, and WTCPUA, it fails to allege specific facts of how the new, reduced rates identified in the December 17, 2013 letter from WTCPUA to Petitioner adversely affect the public interest.

IV. WTCPUA'S REQUEST FOR BIFURCATED CONTESTED CASE HEARING PROCESS

Procedurally, if the Executive Director decides that the Petition should be referred to SOAH for a contested case hearing, then such referral must be for a bifurcated hearing process under 30 TAC §§ 291.132(a) and 291.134(b). Under these TCEQ rules, the Executive Director

¹⁴ The WTCPUA's wholesale water rates effective January 1, 2014, charged on Petitioner were less than the WTCPUA's wholesale rates charge to Petitioner in 2013.

is required to first refer the Petition to SOAH for a contested case hearing on whether the protested rates adversely affect the public interest; and then, in the event that the Commissioners of the TCEQ determine that the protested rates adversely affect the public interest, the Commissioners must refer the matter back to SOAH for a second contested case hearing on the determination of the cost of service for such protested rates.

As noted by Petitioner, 30 TAC § 291.132(d) only authorizes the Executive Director to hold a consolidated contested case hearing on the public interest and cost of service "if the seller and buyer so agree..." Here, however, while Petitioner is willing to hold a consolidated contested case hearing, WTCPUA is not willing to agree to a consolidated evidentiary hearing. WTCPUA asserts that its protested water treatment service rates pursuant to the Wholesale Agreement do not adversely affect the public interest under 30 Texas Administrative Code §291.131(a). Accordingly, there is no cost-efficient or time-efficient reason for WTCPUA, its other ratepayers, TCEQ, or SOAH to conduct an unnecessary contested case hearing concerning WTCPUA's cost of service.

V. REQUESTED RELIEF

WHEREFORE PREMISES CONSIDERED, WTCPUA, as Respondent in this matter, respectfully requests that the Executive Director deny the Petition because Texas Water Code §§ 11.036, 11.041, 12.013 and Texas Local Government Code § 572.061(d) do not apply to written contracts to treat a separately owned raw water supply and the Petition does not allege how the WTCPUA's rates violate the public interest, which is required under Texas Water Code § 13.043(f) and 30 TAC § 291.130(b). Alternatively, if the Executive Director decides that the Petition should be referred to SOAH for a contested case hearing, then such hearing should be limited to Texas Water Code § 13.043(f) and must be separated to first consider whether the WTCPUA's contested rates adversely affect the public interest and second to determine whether

the WTCPUA's rates correspond to its cost of service, because WTCPUA does not agree to hold a consolidated hearing under Title 30 TAC § 291.132(d).

WTCPUA FURTHER REQUESTS that the Executive Director grant WTCPUA such other and further relief to which it may be entitled.

Respectfully submitted,

**LLOYD, GOSSELINK, ROCHELLE &
TOWNSEND, P.C.**

816 Congress Avenue, Suite 1900

Austin, Texas 78701

Telephone: (512) 322-5800

Facsimile: (512) 472-0532

A handwritten signature in black ink, appearing to read 'David J. Klein', is written over a horizontal line.

David J. Klein
State Bar No. 24041257

Stefanie P. Albright
State Bar No. 24064801

ATTORNEYS FOR THE WEST TRAVIS COUNTY
PUBLIC UTILITY AGENCY

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the *West Travis County Public Utility Agency's Response to Travis County Municipal Utility District No. 12's Original Petition* was served on the following by U.S. Regular Mail, Certified Mail (return receipt requested), electronic mail, hand delivery and/or facsimile at the address listed below on this 11th day of April, 2014.

FOR THE APPLICANT:

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Smith Trostle & Huerta LLP
4401 Westgate Blvd., Ste. 330
Austin, Texas 78745

INTERESTED PARTIES:

Mike Murfee
Bill Goodwin
City of Bee Cave
4000 Galleria Parkway
Bee Cave, Texas 78738

FOR THE WATER SUPPLY DIVISION:

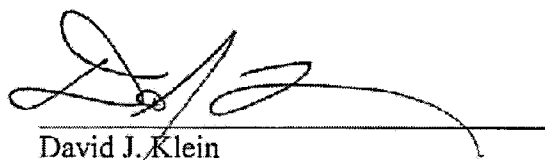
Lisa Fuentes, Team Leader
Water Supply Division, 3rd Floor, Bldg. F
Texas Commission on Environmental Quality
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FOR THE PUBLIC INTEREST COUNSEL:

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Ray Whisenant
Hays County Commissioners Court
111 E. San Antonio St., Ste. 300
San Marcos, Texas 78666



David J. Klein

EXHIBIT A

**Agreement Regarding Transfer of Operations of the West Travis County Water System/
Wholesale Agreement**

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

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

RECITALS

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

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

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

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

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

The purchase price under the Sale and Transfer Agreement is to be paid in installments and the conveyance of the System from the LCRA to the PUA will not be complete until the date of the "Final 2019 Equity Payment" under and as such terms are defined in the Sale and Transfer Agreement (the "Closing"); however, the LCRA wishes to transfer, and the PUA wishes to assume, operations and maintenance responsibilities for the System prior to the Closing. The LCRA and the PUA have requested that the District consent to the LCRA's transfer and the

PUA's assumption of such operations and maintenance responsibilities under the Water Services Contract during the term of the Sale and Transfer Agreement in advance of the Closing. The District is willing to do so, on the terms and conditions of this Agreement.

AGREEMENT

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

1. The LCRA hereby assigns to the PUA, and the PUA hereby assumes and agrees to perform, all responsibilities, obligations and duties of the LCRA under the Water Services Contract related to operation and maintenance of the System and the delivery of wholesale water service as provided therein effective as of March 19, 2012. Subject to the terms of this Agreement, the District consents to such assignment and assumption; provided, however, that if (a) the LCRA does not finally convey and transfer all legal title and capacity interests in the System to the PUA on the date of the Closing (the "Closing Date"), or (b) if (i) the Closing Date does not occur on or before June 1, 2019 or (ii) the Sale and Transfer Agreement terminates, for any reason (either, the "Termination Date"), then all of the District's consents under this Agreement and such assignment of responsibilities, duties and obligations under the Water Services Contract will immediately terminate as of the earlier to occur of the Closing Date or the Termination Date and all responsibilities, obligations and duties of the LCRA under the Water Services Contract will revert to and be and remain binding upon the LCRA as of that date. Nothing contained in this Agreement will be deemed or construed to amend, diminish or affect the District's rights, the obligations of the LCRA or the obligations of the PUA, as the LCRA's assignee, under the Water Services Contract.
2. The LCRA acknowledges and confirms that the Connection Fees (which term will mean the connection fees paid or to be paid by the District under Section 4.01.a. of the Water Services Contract) listed on Exhibit A, attached hereto and incorporated herein by reference, have been paid by or on behalf of the District under the terms of the Water Services Contract and have been received by the LCRA (the "Paid Connection Fees"). The LCRA and the PUA have requested that, in connection with the assignment and assumption described in Paragraph 1, the District consent to the transfer of the Paid Connection Fees to the PUA. The LCRA and the PUA each confirm and agree that the District is entitled to and will received full credit for the Paid Connection Fees under the terms of the Water Services Contract, and that neither the Sale and Transfer Agreement, the assignment and assumption described in Paragraph 1, the provisions of this Agreement or the transfer of the Paid Connection Fees to the PUA will affect or

diminish such credit or the District's rights under the Water Services Contract. Subject to the foregoing, the District consents to the LCRA's transfer of the Paid Connection Fees to the PUA.

3. The LCRA and the PUA have advised the District that, in connection with the assignment and assumption described in Paragraph 1, the LCRA desires, until the earlier to occur of the Closing Date or the Termination Date, to delegate to the PUA the authority to collect the Connection Fees payable under the Water Services Contract and the authority to set and collect the Monthly Charges and Volume Rates (which terms will mean the monthly charges payable by the District under Section 4.01.d. of the Water Services Contract and the volume rate payable by the District under Section 4.01.e. of the Water Services Contract, respectively and will be referred to in this Agreement collectively the "Water Services Contract Fees"). The LCRA and the PUA agree that the District is entitled to and will receive full credit for all Connection Fees and/or Water Services Contract Fees paid to the PUA under the terms of this Agreement, as if the District had paid such Connection Fees and/or Water Service Contract Fees to the LCRA, and that neither the Sale and Transfer Agreement, the assignment and assumption described in Paragraph 1, the provisions of this Agreement or the payment of the Connection Fees and/or Water Services Contract Fees to the PUA will affect or diminish such credit or the District's rights under the Water Services Contract. Subject to the foregoing, and provided that all Connection Fees are collected and credited and all Water Services Contract Fees are set, collected, and credited in strict accordance with the terms of the Water Services Contract, the District agrees that the LCRA may delegate to the PUA authority to collect the Connection Fees and to set and collect the Water Services Contract Fees under the Water Services Contract until the earlier to occur of the Closing Date or the Termination Date. The PUA shall bill and collect payment from the District in strict accordance with the terms and conditions of the Water Services Contract.
4. The LCRA, the PUA and the District agree that the monthly and annual reports from the District for Connection Fees described in Section 4.01b. and Section 4.04b. and 4.04c. of the Water Services Contract and any Connection Fees or Deficiency Amounts (as defined in Section 4.01.a. of the Water Services Contract) shall be submitted to the PUA at the following address:

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

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

West Travis County Public Utility Agency
Attn: George Murfee
1101 South Capital of Texas Highway Suite #d110
West Lake Hills, Texas 78746-6482

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

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

To the PUA: West Travis County Public Utility Agency
Attn: General Manager
12117 Bee Cave Road
Building 3, Suite 120
Bee Cave, Texas 78738

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

To the LCRA: Lower Colorado River Authority
Attn: General Manager
Cc: Madison Jechow, Associate General Counsel
3700 Lake Austin Blvd.
Austin, Texas 78703

8. This Agreement shall be binding upon and inure to the benefit of the LCRA, the District, and the PUA and their successors and permitted assigns. Nothing in this Agreement constitutes or will be deemed to be a consent by the District to any assignment of the Water Services Contract to any party other than the PUA.
9. This Agreement will be governed by and construed in accordance with the laws of the State of Texas without giving effect to the provisions thereof relating to conflicts of laws.
10. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by all of the parties hereto. The provisions of this Agreement are severable and, if any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, the remainder of this Agreement will not be affected and, in lieu of the term, covenant or provision that has been deemed to be illegal, invalid or unenforceable, a provision that is as similar as possible, but is legal, valid and enforceable, will be deemed to be added to this Agreement in order to effect, to the maximum extent possible, the intent of the parties as expressed in this Agreement. This Agreement may be executed in any number of counterpart originals and each counterpart shall be deemed to be an original.
11. This Agreement shall be in effective from the Effective Date until the first to occur of the Closing Date or the Termination Date.

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

LOWER COLORADO RIVER AUTHORITY

By: Jimmy C. Adams, PE.
Jimmy Don Hayins
Chief Operations Officer

Date: 6/4/12

ATTEST:

By: [Signature]
Name: M. Lisa Jackson
Title: Asst. Supv. Gen'l. Counsel

WEST TRAVIS COUNTY PUBLIC UTILITY
AGENCY

By: Larry Fox
Name: Larry Fox
Title: President

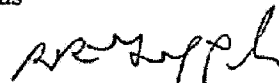
Date: 12 July 2012

ATTEST:

By: Ray Whisenant
Name: Ray Whisenant
Title: Secretary/Treasurer

THE DISTRICT:

**TRAVIS COUNTY MUNICIPAL UTILITY
DISTRICT NO. 12**, a political subdivision of the
State of Texas

By: 
Robert B. Griffith
Its: Vice President

Date: 6-19-12

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

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

RECITALS

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

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

AGREEMENTS

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

ARTICLE I DEFINITIONS

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

"Agreement" means this agreement.

"AWWA" means the American Water Works Association.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"LCRA" means Lower Colorado River Authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

METERING; ESTIMATING WATER DELIVERIES

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

Section 2.02. Master Meter Accuracy; Calibration.

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

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

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

ARTICLE III CONDITIONS REGARDING PROVISION OF WHOLESALE WATER SERVICES

Section 3.01. Diversion of Water, Primary Source.

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

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

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

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

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

Section 3.03. Quantity and Pressure.

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

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

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

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

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

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

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

ARTICLE IV CHARGES, BILLING AND FINANCIAL MATTERS

Section 4.01. Connection Fees and Minimum Payments; Rates.

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE V OTHER COMMITMENTS AND FUTURE SERVICE AREA

Section 5.01. Rates and Charges.

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

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

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

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

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

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

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

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

Section 6.04. Default.

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

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

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

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

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

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

ARTICLE VII MISCELLANEOUS PROVISIONS

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

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

Section 7.03. State Approval; Compliance with TCEQ Rules. Each party represents and warrants that the plans and specifications for its respective system have been or will be approved by the TCEQ or its successors. Anything herein to the contrary notwithstanding, it is the intention of the parties that this Agreement fully comply with the requirements of the TCEQ applicable to public drinking water systems which receive water through a sole-source water supply contract, including the requirements of 30 Texas Administrative Code, Section 290.45(f). The parties each agree to provide any information which may be requested by the other in order to respond to any inquiries or reports required by the TCEQ. If, at any time, it is determined that this Agreement does not comply with all applicable TCEQ requirements, the parties agree to cooperate to modify this Agreement in order to effect such compliance.

Section 7.04. Force Majeure. If any party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, other than an obligation to pay or provide money, then such obligations of that party to the extent affected by such Force Majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with all reasonable diligence. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the affected party, and that the above requirements that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when such settlement is unfavorable to it in the judgment of the affected party.

Section 7.05. Severability. The provisions of this Agreement are severable and, if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any agency or court of competent jurisdiction to be unenforceable, invalid or unlawful for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected thereby; provided, however, that in such event the parties mutually covenant and agree to attempt to modify this Agreement by substituting a provision which is as similar as possible to the unenforceable, invalid or unlawful provision but which is enforceable, valid and lawful.

Section 7.06. No Oral Agreements; Modification. There are no oral agreements between the parties hereto with respect to the subject matter hereof. This Agreement shall be subject to change or modification only with the mutual written consent of LCRA and District No. 12.

Section 7.07. Addresses and Notices. Unless otherwise notified in writing by the other, the addresses of LCRA and District No. 12 are and shall remain as follows:

LCRA:
Lower Colorado River Authority
Attn: Executive Manager, Water Services
3700 Lake Austin Boulevard
Austin, Texas 78703

District No. 12:

Travis County Municipal Utility District No. 12
c/o Armbrust & Brown, LLP
100 Congress Avenue, Suite 1300
Austin, Texas 78701
Fax : (512) 435-2360

Section 7.08. Assignability. This Agreement shall be assignable by LCRA to any operating affiliate of LCRA without the necessity of obtaining the consent of District No. 12 if written notice is provided to District No. 12 and the assignee agrees in writing to be liable for all obligations of LCRA and is capable of carrying out LCRA's obligation under this Agreement in all respects. LCRA acknowledges, and expressly consents to, the transfer of certain rights and obligations under this Agreement to District No. 11 and District No. 13 through the District Shared Facility Agreement. District No. 12 further is authorized to expressly assign this Agreement to District No. 11 and/or District No. 13 without the necessity of obtaining the consent of LCRA, provided that District No. 12 provides at least 30 days' prior written notice to LCRA and there is no default of District No. 12's obligations under this Agreement on the date of such notice or during the period leading up to the date of the assignment, and no such assignment shall be effective until the assignee agrees in writing to assume District No. 12's duties and responsibilities under the Agreement and to be bound by the Agreement. Upon such an assignment, District No. 12 shall be released from any further obligations under this Agreement. Except as otherwise provided, this Agreement may not be assigned by either party to any other entity without the express written consent of either party, which consent shall not be unreasonably withheld or delayed.

Section 7.09. Good Faith. Each party agrees that, notwithstanding any provision herein to the contrary (i) it will not unreasonably withhold or condition or unduly delay any consent, approval, decision, determination or other action which is required or permitted under the terms of this Agreement, and (ii) it will act in good faith and shall at all times deal fairly with the other party. The agreements of the parties under this Section to act in good faith will extend to and expressly include all matters pertaining to rates and charges established by LCRA under this Agreement.

Section 7.10. Counterparts. This Agreement may be executed in as many counterparts as may be convenient or required. All counterparts shall collectively constitute a single instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart.

Section 7.11. Governing Law. The terms and provisions hereof shall be governed by and construed in accordance with the laws of the State of Texas and the United States of America from time to time in effect. Travis County, Texas shall be a proper place of venue for suit hereon, and the parties hereby agree that any and all legal proceedings in respect of this Agreement shall be brought in district courts of Travis County, Texas, or the United States District Court for the Western District of Texas, Austin Division.

Section 7.12. Authority of Parties Executing Agreement. Validity. By their execution, each of the individuals executing this Agreement on behalf of a party represents and warrants to the other party that he or she has the authority to execute the document in the capacity shown on this

document. Each of the parties further represent and warrant that this Agreement constitutes a valid and binding contract, enforceable against it in accordance with its terms.

Section 7.13. Term and Termination. Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall be the same as the term for the Raw Water Contract. This Agreement shall terminate automatically in the event of the termination of the Raw Water Contract; provided, however, that no termination of this Agreement will affect or impair District No. 12's rights to its contractual capacity in the LCRA System described in Section 4.01 of this Agreement and such contractual capacity rights will survive any termination of this Agreement. Time is of the essence in the performance of this Agreement.

Section 7.14. Other Agreements. Nothing in this Agreement shall be construed as amending, modifying or limiting the rights and obligations of the parties under the Raw Water Contract.

Section 7.15. Guaranty by Developer. Rough Hollow Development, Ltd., a Texas limited partnership and the developer within the District Service Area, is executing this Agreement for the limited purpose of guaranteeing the Minimum Payments to be made by District No. 12 under Section 4.01 of this Agreement. If District No. 12 fails to make any Minimum Payment as and when due, LCRA may give written notice to Rough Hollow Development, Ltd. and, in such event, Rough Hollow Development, Ltd. will be required to make the payment in question within 15 days after delivery of such notice. If Rough Hollow Development, Ltd. fails to make any required payment within the specified 15-day period, LCRA may pursue all legal remedies to recover the guaranteed amounts from Rough Hollow Development, Ltd. Whether to provide notice to, or whether to institute legal proceedings to recover guaranteed amounts from, Rough Hollow Development, Ltd., shall be at LCRA's sole option, and LCRA may exercise other remedies under this Agreement instead. If, however, LCRA elects to pursue recovery from Rough Hollow Development, Ltd., then, anything herein to the contrary notwithstanding, LCRA will not seek to enforce any remedies under this Agreement against District No. 12 during the pendency of that action. Rough Hollow Development, Ltd. may assign its obligations under this Section to a subsequent owner of a majority of the land within the District Service Area; however, any such assignment must be in writing, include the name and mailing address of the assignee, and be assigned by Rough Hollow Development, Ltd. and assumed by the assignee.

Section 7.16. Exhibits. The following exhibits are attached to and incorporated into this Agreement for all purposes:

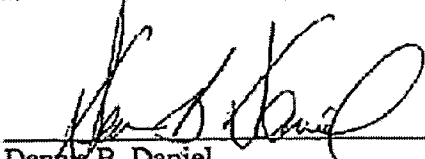
- Exhibit A - Delivery Point and District Service Area
- Exhibit B - LCRA Service Area
- Exhibit C - Payment Schedule
- Exhibit D - Form for Reports on Service Connections

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of which shall be deemed to be an original and of equal force and effect, on the date or dates indicated below and to be effective as of the Effective Date.

(The remainder of this page has been intentionally left blank, and the signature page or pages follow.)

LOWER COLORADO RIVER AUTHORITY

By:



Dennis B. Daniel

Manager, Customer and Business Strategy

Date: 10-19-2009



TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 12


By: 
Daniel Robertson
President, Board of Directors

Date: 10/20/09

Rough Hollow Development, Ltd, is executing this Agreement for the sole purpose of confirming its guarantee of certain payments to be made by District No. 12 under this Agreement, as set forth in Section 7.15 of this Agreement.

ROUGH HOLLOW DEVELOPMENT, LTD.,
a Texas limited partnership

By, JHVL, L.P., a Texas corporation, its General Partner

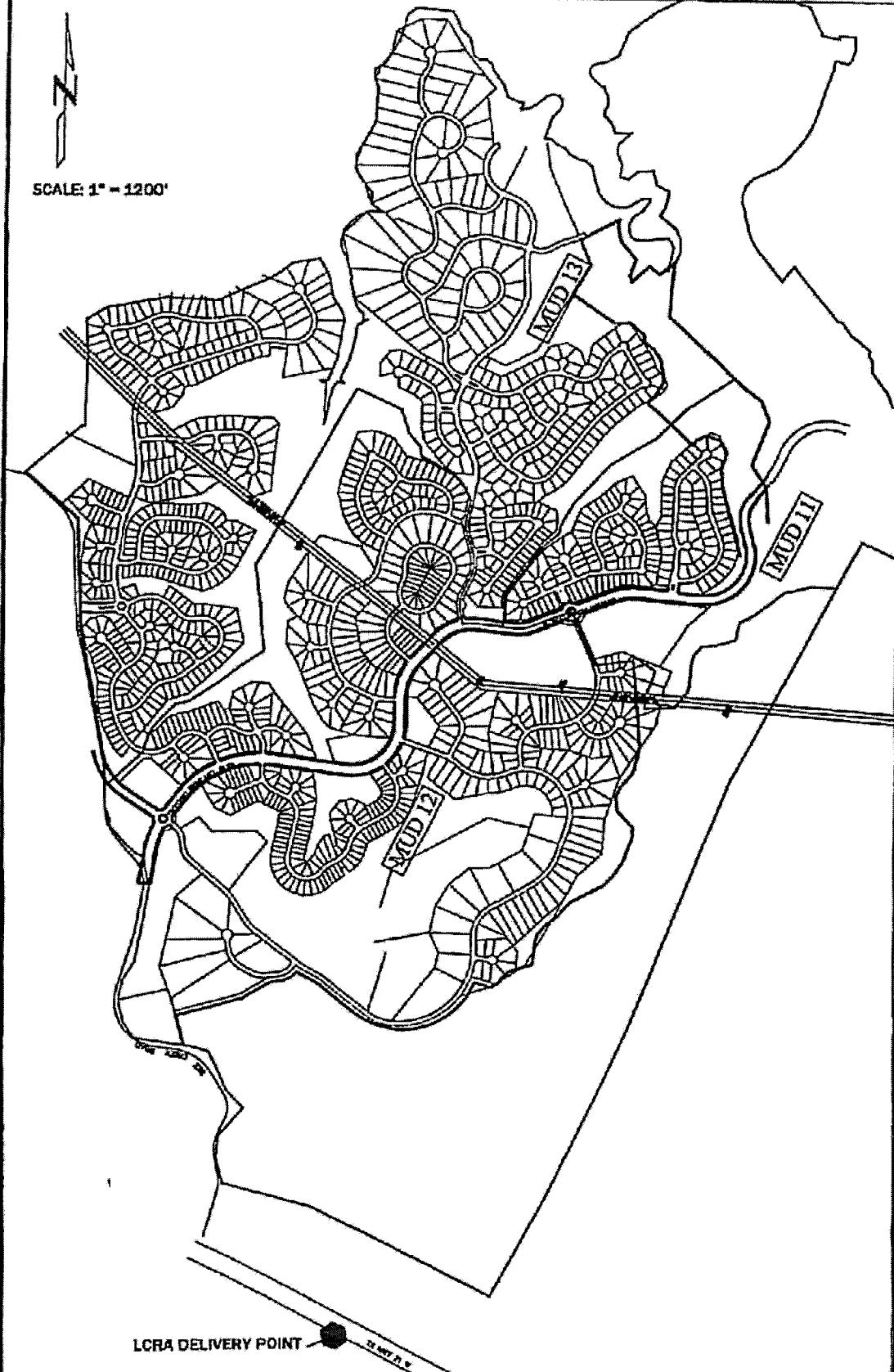
By: 
Haythem Dawlett
Vice President

Date: 10/22/09

EXHIBIT "A"



SCALE: 1" = 1200'

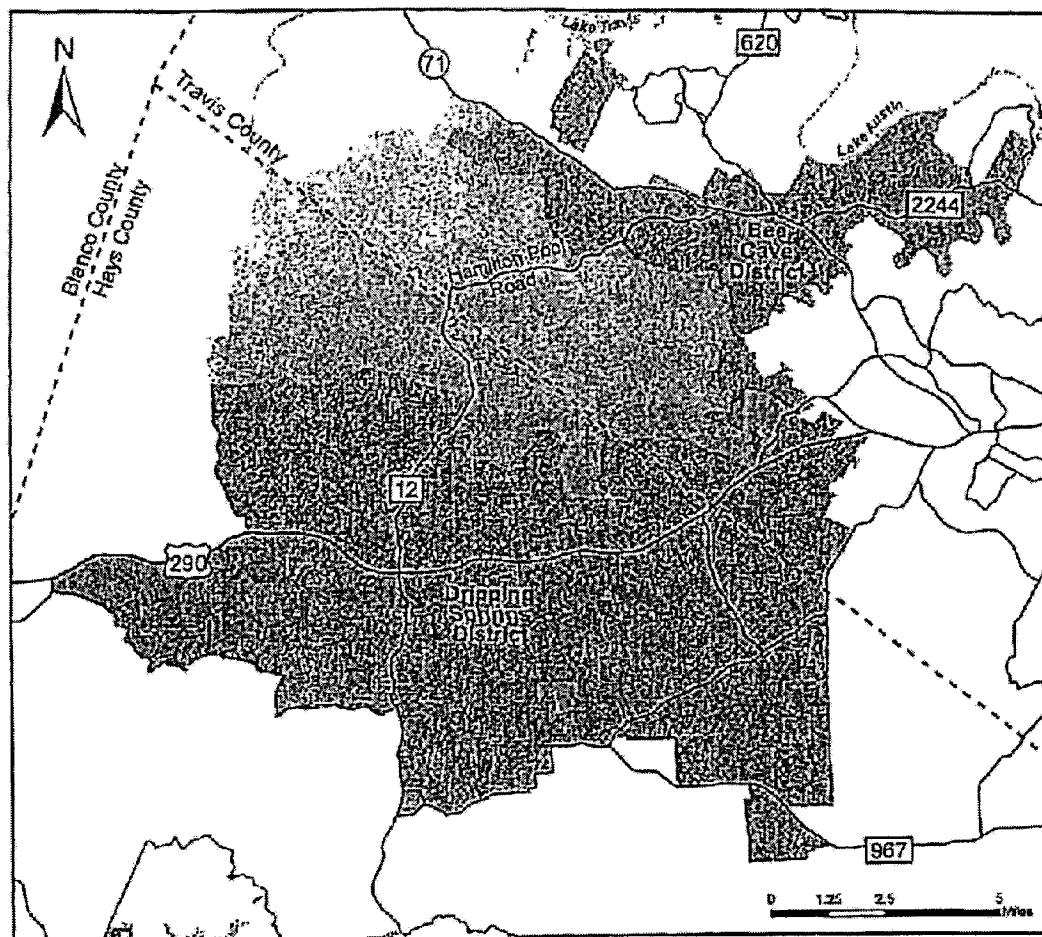


SERVICE AREA MAP AND DELIVERY POINT EXHIBIT
FOR TRAVIS COUNTY MUNICIPAL UTILITY DISTRICTS 11, 12, & 13



Carlson, Brigrance & Doering, Inc.

Civil Engineering ♦ Surveying
5501 West William Cannon ♦ Austin, Texas 78749
Phone No. (512) 220-5160 ♦ Fax No. (512) 220-5165



General Location Map

**West Travis County
Regional Water System**

Water Impact Fee
Study Area

 Previous Area

 Area Approved
in June 2005

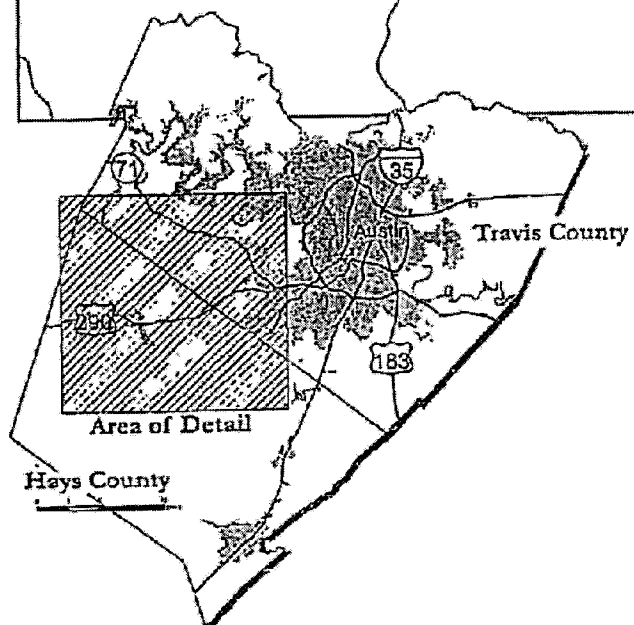


EXHIBIT C
PAYMENT SCHEDULE

APPLICABLE PERIOD:	MINIMUM PAYMENT:
On Effective Date*	\$350,200
Effective Date through April 1, 2010**	\$350,200
2011***	\$199,900
2012***	\$199,900
2013***	\$199,900
2014***	\$199,900

* Due and payable within 15 days of the Effective Date of this Agreement.

**Due on or before April 1, 2010, and any shortfall due and payable on or before May 15, 2010, per Section 4.01.a. of this Agreement.

***Due on or before May 15 of the year in question, and any shortfall due and payable on or before June 30 of the same year, per Section 4.01.a of this Agreement.

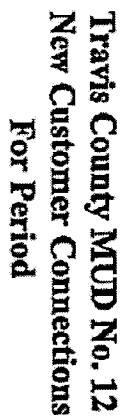


EXHIBIT D
FORM FOR REPORTS ON SERVICE CONNECTIONS

(fill in period covered by report)

[illegible]

Submit form and applicable payment due monthly to:
Mary Blincoe, Business and Financial Service
ICRA
P.O. Box 220, Mailstop H305
Austin, TX 78767-0220
(512) 473-3338 • mary.blincoe@icra.org

IF NO CONNECTIONS WERE MADE AND/OR IF NO CONNECTION FEE PAYMENT IS DUE TO LCRA FOR THE REPORTING PERIOD, THIS FORM MUST STILL BE FILLED OUT (WITH PERIOD IDENTIFIED AT TOP) AND SUBMITTED TO LCRA.