

connection with, the Utilities (collectively, the "Assets"), including without limitation following:

- A. **Facilities and Tangible Personal Property.** All of the Utilities' facilities owned by LCRA, together with all improvements, structures, electrical equipment, and other equipment, including but not limited to tangible assets listed on Schedule 1 of **Exhibit A** and any other tangible assets of LCRA, such as associated laboratory equipment, office furniture, and equipment necessary for Buyer's ownership and operation of the Utilities and Assets (collectively the "Facilities").
- B. **Intangible Assets.** All contracts, leases (including facilities leases), option rights, permits, certificates, licenses, reimbursement rights, service agreements, warranties from vendors or manufacturers or other third parties, regulatory correspondence, rights, privileges and certificates, as-built plans and specifications, engineering reports, files, records, information, data, Required Rights held by LCRA, surface water rights limited to those solely related to the water reservoir serving Lometa Water System (which will require the Upstream Raw Water Contract), with other surface water supply to be addressed through the Raw Water Contract and Upstream Raw Water Contract, and other intangible assets of LCRA that are currently used in or necessary for the on-going operation, ownership and use of the Utilities and the Facilities, including but not limited to those more particularly described on Schedule 2 of **Exhibit A** attached hereto and incorporated herein for all purposes (collectively the "Intangible Assets").
- C. **Real Property.** All land and interests therein, including without limitation, contract rights, ground water rights, easements, licenses and rights-of-way owned by LCRA for the installation, operation, use and maintenance of, or otherwise currently used in or necessary for the operation, ownership or use of the Utilities and the Facilities for their intended purposes, all of which land and interests therein are more particularly described on Schedule 3 of **Exhibit A** attached hereto and incorporated herein by reference for all purposes, together with all and singular the rights, privileges, and appurtenances, if any, pertaining to said land and interests therein, including without limitation any right, title, and interest of LCRA in and to streets, alleys, strips and gores, or rights-of-way appurtenant to any of the foregoing land, and together with any improvements, fixtures, and personal property of LCRA situated on and attached to said land and interests therein to the extent same constitute part of the Utilities and Facilities (collectively the "Property").

## **Section 2.2 Excluded Assets.**

- A. **Excluded Assets.** Notwithstanding anything herein to the contrary, the Assets shall not include the Environmental Excluded Assets, West Travis County Regional Water System, West Travis County Wastewater System, Glenlake Water System, Liberty Hill Wastewater System, Rollingwood Wastewater System, Tahitian Village Wastewater System, West Lake Hills Wastewater System, subject to Section 2.2D Whitewater Springs Water System, subject to

Section 2.2B the Lometa Water System and Lometa Wastewater System, subject to Section 2.2D Whitewater Springs Water System, or any of the other items listed in **Exhibit B** ("Excluded Assets"). It is understood the Excluded Assets may include interests to be retained by LCRA in certain of the Assets to be conveyed to Buyer, in which event, subject to Buyer's approval (acting reasonably) and such interests not being material to the value of the Utilities or having a material adverse effect on such certain Assets, the parties will identify any such interests to be retained by LCRA and draft appropriate provisions and conveyance instruments for the Assets which recognize, and retain for LCRA, such interests in said Assets to be retained by LCRA for its other corporate purposes while still conveying ownership interests in the Assets to Buyer as necessary for Buyer's ownership, use and operation of the Utilities, Assets and Facilities.

**B. Lometa ROFR.** Buyer recognizes that LCRA has heretofore granted, and LCRA's obligation to transfer the Lometa Water System and Lometa Wastewater System Assets to Buyer at Closing is in all respects subject to, a contractual right of first refusal ("Lometa ROFR") to the City of Lometa. If the City of Lometa exercises the Lometa ROFR or otherwise purchases the Lometa Water System and Lometa Wastewater System Assets, then LCRA shall be under no obligation to sell and transfer to Buyer, or Buyer to purchase, the portion of the Assets comprising the Lometa Water System and Lometa Wastewater System and such Utilities shall be Excluded Assets and the Purchase Price for the Assets will be adjusted by virtue of the Closing Price Adjustment under Section 3.1. If the Lometa Water System and Lometa Wastewater System becomes subject to an agreement to sell to the City of Lometa but it fails to close on such purchase, LCRA will provide written notice thereof to Buyer promptly after the expiration date specified in such third-party agreement and in no event later than the end of the Asset Review Period. Thereafter, subject to timely notice to Buyer as aforesaid and due diligence rights and conditions and a due diligence period until the end of with the Asset Review Period, the Lometa Water System and Lometa Wastewater System will be included among the Utilities to be purchased by Buyer at Closing and otherwise constitute a Utilities and Assets subject to this Agreement and the Purchase Price will include the amount otherwise set forth as part of the Closing Price Adjustment in Section 3.1B. In the event the Lometa Water System and Lometa Wastewater System are included among the Utilities to be purchased by Buyer at Closing pursuant to the preceding sentence, Buyer agrees to negotiate in good faith with the City of Lometa towards a lease-purchase agreement with the City of Lometa for the Lometa Water System and/or the Lometa Wastewater System.

**C. Bonanza Beach and Tow Village.** As Buyer has no interest in acquiring Bonanza Beach Water System or Tow Village Water System, LCRA will timely and formally offer to transfer and convey (at no cost) such systems and all related property and assets to, respectively, the Bonanza Beach Property Owners Association, the Tow River Water and Road Service Corporation, Burnet County, and/or Llano County. Buyer shall cooperate with LCRA in good faith in support

of this offer; provided, however, that Buyer shall not be required to incur or pay any third-party costs in support of such cooperation. Such offers will be open for acceptance for at least 90 days and LCRA shall encourage the offerees to accept such offers; provided, however, that LCRA shall not be required to incur or pay any third-party costs in support of such encouragement. If, however, either or both offers are rejected, then as to the rejected offer(s):

- (i) such system or systems, but never the Environmental Excluded Assets, will be included in the Utilities (without any change to the Purchase Price);
- (ii) LCRA shall decommission, remove or abandon in place the Environmental Excluded Assets related to such system(s) at LCRA's cost and expense; provided, however, LCRA may only abandon in place below-ground Environmental Excluded Assets and shall not abandon in place such below-ground assets if a regulatory agency then or in the future requires removal due to the presence of Hazardous Materials; and
- (iii) At the end of the Asset Review Period, Buyer and LCRA will consult the Bonanza Beach and Tow Village communities and stakeholders and with each other on an engineering, procurement and construction management plan, to commence to identify an environmentally compliant, least-cost alternative potable or raw water supply and water distribution infrastructure to serve Bonanza Beach and Tow Village. Any such plan shall be reflected in a definitive agreement, on terms consistent with this Agreement where the context permits, to be negotiated by LCRA and Buyer in good faith (such good faith negotiations to be subject to Section 12.5). The parties acknowledge that such agreement will address their respective responsibilities for preliminary designs and for obtaining all applicable permits, legal and regulatory approvals and authorizations, rights of ways, and all other consents, rights and approvals required to be able to commence construction of the identified alternative water supply and distribution. After approval of the STM Application and Closing hereunder, Buyer and/or LCRA, as their respective roles and responsibilities are determined by the definitive agreement, shall complete the acquisition of all required consents, permits, rights of ways, easements and regulatory approvals and commence the construction of an alternative water supply and distribution system, with the objective that such alternative water supply and distribution system will be substantially complete and operational within 2 years from the Closing Date. Notwithstanding the foregoing, LCRA understands and agrees that services for Bonanza Beach and Tow Village further to this Section 2.2C are conditional upon the construction of a least-cost alternative water supply, that the capital cost funded by Buyer for these environmentally compliant projects is recoverable in rate base as finally approved by TCEQ and that would provide a fair and reasonable return to Buyer (whether acquired from LCRA or constructed directly by Buyer) and that

nothing in this Agreement creates an obligation to acquire or operate the Environmental Excluded Assets.

- D. Whitewater Springs.** While Whitewater Springs Water System is subject to a purchase and sale agreement between LCRA and Whitewater Springs Water Supply Corporation dated October 25, 2011, said corporation may not meet its financial commitment requirements in a timely manner in which case said corporation will be in default and LCRA may terminate the purchase and sale agreement. If LCRA terminates the purchase and sale agreement with Whitewater Springs Water Supply Corporation, LCRA may, [REDACTED] have Whitewater Springs Water System included as a Utility, in which event Buyer and LCRA will negotiate in good faith an increase in the Purchase Price for the Whitewater Springs Water System. If such notice is not given, Whitewater Springs Water System shall be an Excluded Asset.

### **Section 2.3 Liabilities.**

- A. Assumed Liabilities.** Subject to the terms and conditions set forth herein, on the Closing Date Buyer shall assume and agree to pay, perform and discharge only the following liabilities of LCRA (collectively, the "Assumed Liabilities"), and no other liabilities:
- (i) all liabilities in respect of the Assigned Contracts but only to the extent that such liabilities thereunder are (a) required to be performed after the Closing Date, (b) were incurred in the ordinary course of business and (c) do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by LCRA under any of the Assigned Contracts on or prior to the Closing; and
  - (ii) if the Camp Swift Wastewater System is included among the Assets transferred at Closing, up to [REDACTED] in obligations owed to the Sanders Intervivos Family Trust ("Sanders Trust") under the promissory note delivered to Sanders Trust further to that certain Real Estate Contract dated as of October 31, 2011 between LCRA and Sanders Trust (the "Camp Swift Contract"); and,
  - (iii) those liabilities of LCRA expressly set forth on **Exhibit C**.
- B. Excluded Liabilities.** Without prejudice to Section 11.5, but notwithstanding the provisions of Section 2.3A or any other provision in this Agreement to the contrary, other than the Assumed Liabilities, Buyer shall not assume and shall not be responsible to pay, perform or discharge any liabilities of LCRA of any kind or nature whatsoever (collectively the "Excluded Liabilities").

## **III.**

### **PRICE AND PAYMENTS**

**Section 3.1 Purchase Price.**

**A. Purchase Price.** The purchase price (the "Purchase Price") shall be an amount equal to the sum of:

- (i) Buyer's Rate Base; plus
- (ii) Wholesale Rate Base; plus
- (iii) Closing Construction Work in Progress; plus
- (iv) Closing Working Capital; plus or minus
- (v) Closing Price Adjustment.

**B. Purchase Price Definitions.** As used in this Agreement, in relation to the Utilities the following terms have the following meanings:

"Buyer's Rate Base" means [REDACTED]

"Wholesale Rate Base" means [REDACTED]

"Closing Construction Work in Progress" means the Permitted Capital Expenditures funded by LCRA in fixed plant and equipment for the Utilities which has not been put into service as of the Closing Date and which is recorded on LCRA's books at the Closing Date;

"Closing Working Capital" means the aggregate of the amounts of:

- (i) any of LCRA's receivables purchased by Buyer at Closing; plus
- (ii) prepaid expenses for items incurred in the ordinary course of business and consistent with past practices; plus
- (iii) amounts prepaid by LCRA, consistent with past practices, to third parties pursuant to the provisions of any of the Intangible Assets included in the Assets; less
- (iv) the amount of Assumed Liabilities in Section 2.3A(ii) and (iii) (set forth on Exhibit C),

each as of the Closing Date and relating directly to the Utilities;

"Closing Price Adjustment" means the aggregate of:

- (i) a reduction of [REDACTED] if the Lometa Water System and Lometa Wastewater System remain Excluded Assets as a result of the Lometa ROFR, eminent domain or

condemnation proceedings as provided in Section 8.5, or otherwise;

- (ii) an addition of Permitted Capital Expenditures funded by LCRA between June 30, 2011 and the Closing Date comprised in the Assets at Closing, but only to the extent (a) the Permitted Capital Expenditure is not funded with contributions in aid of construction and/or deemed to be contributed property under TWC Section 13.301(j) and/or (b) such Permitted Capital Expenditures results in a fixed or non-fixed capital asset that are determined to be Used and Useful and further to the Final Determination of Buyer's rate base;;
- (iii) a reduction by the amount of depreciation related to the Assets sold at Closing as recorded by LCRA, consistent with past practices, on the fixed and non-fixed plant and equipment between June 30, 2011 and the Closing Date;
- (iv) a reduction by the amount of any non-fixed plant, property and equipment, vehicles and/or tools purchased by Corix from LCRA pursuant to the O&M Agreement;
- (v) a reduction for Assessments to the extent provided in Section 4.3; and
- (vi) adjustments required by Section 3.5.

**Section 3.2 Allocation of Purchase Price.** The Purchase Price shall be allocated among the Assets in accordance with the allocation schedule attached hereto as **Exhibit D** and as the actual Closing Construction Work in Progress, Closing Working Capital and change in fixed plant values arising from Permitted Capital Expenditures and depreciation dictate, unless otherwise agreed to by the Parties.

**Section 3.3 Earnest Money.**

**A. Buyer's Deposits.** Unless this Agreement is terminated in accordance with its terms, Buyer shall make two deposits (the "Earnest Money") towards the Purchase Price as follows:

- (i) Within ten (10) business days from the Confirmation Date, Buyer shall deposit [REDACTED] (the "Initial Earnest Money"); and
- (ii) if the Lometa ROFR expires unexercised (such that Lometa Water System and Lometa Wastewater System are included in the Utilities and Assets),

then within one hundred twenty (120) days of LCRA's notice to Buyer of such expiration Buyer shall deposit an additional [REDACTED] (the "Second Deposit").

- B. **Escrow.** The Earnest Money deposits will be paid by Buyer to the Escrow Agent and held subject to the terms of an escrow agreement (the "Escrow Agreement") substantially in the form of **Exhibit J** and the terms and conditions of this Agreement. Interest, if any, earned on the Earnest Money shall be added to the Earnest Money and be held in escrow and disbursed as provided in the Escrow Agreement.
- C. **Bargained.** The parties bargained for and agreed to Earnest Money as partial consideration for LCRA's grant to Buyer of the right to purchase the Assets pursuant to the terms hereof and for the parties' execution, delivery and performance of this Agreement and for the use of the Earnest Money as otherwise provided in this Agreement including it being a source of liquidated damages as described in Section 10.6 of this Agreement.
- D. **Letters of Credit.** Buyer may fulfill its obligations to provide Earnest Money under this Agreement through one or more irrevocable letters of credit (the "Deposit LCs") substantially in the form attached as **Exhibit K**.
- E. **Application.** If Buyer proceeds to Closing and purchases the Assets, subject to Section 9.14 the Earnest Money will be credited to the Purchase Price by virtue of being converted into a portion of the Holdback Escrow.

#### **Section 3.4 Payments.**

- A. **Time of Payments.** On the Closing Date, Buyer shall pay LCRA the Closing Payment.
- B. **Form of Payments.** All payments under this Agreement shall be by wire transfer of immediately available funds to an account designated by the recipient.
- C. **LC Issuers.** Any Deposit LC shall be issued by financial institutions with a rating of AA- or Aa3 or higher by at least one of the following credit rating agencies: Standard & Poors, Moody's or Fitch.

D. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Section 3.5 Adjustments and Prorations.** At Closing the amount of any sums, if any, prepaid by third parties to LCRA and held by LCRA pursuant to the provisions of any of the contracts included in the Assets, shall be a deduction under Closing Price Adjustment and Buyer assumes all liabilities and obligations for such amounts and will execute and deliver notices of transfer and assumption of security deposits to all such third parties. Unless otherwise agreed between LCRA and Buyer this Section 3.5 will not apply to retail customer deposits, which LCRA will return to customers. Buyer agrees that it will be responsible for obtaining deposits from retail customers after Closing.

IV.



## ASSET REVIEW PERIODS

**Section 4.1 Periods.** Unless this Agreement is terminated in accordance with its terms, the transaction shall proceed in three phases:

- (i) an asset review period from the Effective Date until 180 days thereafter (the "Asset Review Period");
- (ii) a regulatory review period from the end of the Asset Review Period until the date TCEQ approves Buyer's STM Application (the "Regulatory Review Period"); and
- (iii) a period commencing on the date TCEQ approves Buyer's STM Application until Closing.

**Section 4.2 Asset Review.** During the Asset Review Period Buyer and its representatives at Buyer's expense shall have the right, during normal business hours and upon reasonable prior notice to LCRA, to conduct any and all investigations, examinations and/or assessments of the Assets that Buyer determines appropriate in its sole and absolute discretion, including without limitation those contemplated in Sections 4.3 – 4.6; provided that if Buyer desires to perform any sampling on any of the Property or Facilities, LCRA may in good faith reasonably restrict such sampling to the extent necessary to protect the integrity and operational capability of the relevant Property or Facility. Buyer will make available to LCRA for review during regular business hours, within a reasonable period of time following request by LCRA, the results of any investigations or examinations of the Assets conducted by Buyer. In the event that Buyer substantially disturbs or substantially disrupts any of the Facilities and Property during the Asset Review Period, Buyer shall be obligated to restore the Facilities and Property or any item related thereto substantially to its prior condition to the extent Buyer's review, investigation, or examination changed the same and this obligation shall survive any termination of this Agreement. LCRA may, at LCRA's option, accompany Buyer during any such inspections.

### Section 4.3 Environmental and OSHA Assessments.

- A. During the Asset Review Period the parties will conduct Phase I environmental assessments on all of the Property and Facilities (collectively the "Phase I"). The parties shall mutually agree on the contractors and scope of work for the Phase I within fifteen (15) business days of the Effective Date, failing which Buyer may proceed with the Phase I in its reasonable discretion. The Phase I scope of work shall include a requirement that the Phase I contractors shall not provide Buyer with verbal reports of the contractors' findings or copies of any preliminary, draft, or final Phase I reports without at the same time providing such information or copies of such reports to LCRA. The Phase I shall be updated between the end of the regulatory Review Period and the Closing Date. Buyer will advance the costs of the Phase I, and the aforesaid updates, to the contractors.
- B. In addition to the Phase I, Buyer shall have the right to pursue and complete, at Buyer's expense, any further environmental assessments and a OSHA compliance

audit on any or all of the Property and Facilities in Buyer's sole and absolute discretion, subject to the requirements of Section 4.2.

- C. Buyer will share the results of all Assessments, and any updates related thereto, with LCRA and otherwise keep the Assessments and such subsequent assessments confidential. [REDACTED]  
[REDACTED]  
[REDACTED]

**Section 4.4 Document Review.** Beginning on the Effective Date, LCRA shall make available for reasonable inspection and copying by Buyer upon reasonable notice from Buyer and at Buyer's expense during normal working hours at the Facilities or at the offices of LCRA or its agents, the following documents to the extent the same are in LCRA's possession at its Facilities and offices and are not privileged (provided, however, that LCRA shall advise Buyer if it is not making available certain documents due to the need to preserve a privilege in any on-going or threatened litigation) (the "Review Documents"):

- A. Copies of all books, records, operating reports, trade account reports, accounts payable and receivable lists, utility service agreements, vendor contracts, management agreements, maintenance records, purchase or sale contracts, regulatory records and correspondence, deeds, easements, surveys, plats or descriptions, plans and specifications, licenses, permits, certificates, soil reports, inspection reports, and engineering reports (including, without limitation, endangered species, environmental, and governmental inspection reports of LCRA related to the ownership or operation of the Assets or relating to or in respect of the physical condition or operation or defaults in respect of Assets);
- B. Work papers, other accounting records and tax returns and records which reflect the revenues, expenses, cash flows, assets and liabilities of the Utilities since July 1, 2006, and LCRA's most recent budget and forecast related to the Utilities;
- C. To the extent they exist, copies of all documents, studies and materials relevant to determining, validating or in any manner or forum asserting or establishing each Utility's rate base; and,
- D. Copies of any other documents or instruments evidencing LCRA's interests in the Assets.

Until the end of the Regulatory Review Period, Buyer and its representatives shall have the right, during normal business hours and upon reasonable prior notice to LCRA, to conduct any and all reviews, investigations, or examinations of the Review Documents which Buyer determines necessary in its sole and absolute discretion.

**Section 4.5 Survey.**

- A. Buyer, at its sole cost and expense, may procure a current plat or survey of such portions of the Property as Buyer elects, prepared by a duly licensed Texas land

surveyor. The survey shall be staked on the ground, and the plat or exhibit drawing shall show the location of all improvements, highways, streets, roads, railroads, rivers, creeks, or other water courses, fences, easements, and rights-of-way on or adjacent to the Property, if any, and shall contain the surveyor's certification that there are no encroachments on the Property and shall set forth the number of total acres comprising the Property, together with a metes and bounds description thereof. Buyer will provide a copy of the survey to LCRA.

- B. Notwithstanding Section 4.5A LCRA, at its sole cost and expense, shall survey the Property on which Facilities are located serving the following Utilities: Lake Buchanan Water System (for facilities that adjoin Buchanan Dam), Matagorda Dunes Water System, Matagorda Dunes Wastewater System, McKinney Roughs Wastewater System (for Facilities located on LCRA's McKinney Roughs Park); Smithwick Mills Water (for Facilities located on LCRA fee simple property); and, Windmill Ranch Wastewater (for Facilities located on LCRA fee simple property). LCRA shall deliver to Buyer these surveys prepared by a duly licensed Texas land surveyor within thirty (30) days of the Effective Date; such surveys shall be certified to Buyer and shall substantially comply with the requirements set forth in Exhibit O. The surveys shall be staked on the ground, and the exhibit drawings shall show the location of all improvements, highways, streets, roads, railroads, rivers, creeks, or other water courses, fences, easements, and rights-of-way on or adjacent to the Property, if any, and shall set forth the number of total acres comprising the Property, together with a metes and bounds description thereof.
- C. Buyer shall within thirty (30) days after receipt of a survey further to Section 4.5A or 4.5B review the same. Within said thirty (30) day periods, Buyer shall notify LCRA in the event any portion of the survey is unacceptable to Buyer for a reason specified below in this Section 4.5 specifying the unacceptable portions of the survey. Buyer's failure to timely deliver to LCRA such written notice shall be conclusively deemed to be approval of the survey by Buyer. In the event Buyer timely notifies LCRA that, according to the survey, material portions of the Facilities (which for purposes of this Section 4.5C shall not include Small Distribution and Collection Assets), without which the Assets will not be able to be used for their intended purposes, or are located such that LCRA's representations and warranties are false or misleading, Buyer shall have the right to either: (1) terminate this Agreement upon written notice to LCRA if, but only if, LCRA at its option fails to cure the defects specified in the notice prior to the expiration of the Asset Review Period, upon which termination the Escrow Agent will disburse to Buyer the Earnest Money; or (2) waive such survey objections and proceed to Closing [REDACTED]  
[REDACTED]  
[REDACTED]
- D. LCRA shall be obligated to promptly, and in all cases within eighty (80) days of the Effective Date, notify Buyer in the event LCRA determines that material portions of the Facilities (which for purposes of this Section 4.5D shall not

include Small Distribution and Collection Assets), without which the Assets will not be able to be used for their intended purposes, or are located such that LCRA's representations and warranties are false or misleading. [REDACTED]

#### **Section 4.6 Title Commitment.**

- A. Buyer, at its sole cost and expense, may before the end of the Asset Review Period procure a commitment for title insurance on any of the Property. LCRA shall cooperate with Buyer in the review by Buyer of any title commitment applied for, or obtained by, Buyer. Buyer will have thirty (30) days after receipt of the last of the title commitment, copies of the exception documents referenced therein, and the survey, with respect to any particular portion of the Property to review such title commitment and to deliver to LCRA notice of any objections to the matters set forth in such title commitment if such matters demonstrate that LCRA has made any false or misleading representations or warranties in this Agreement or if there are any material encroachments, exceptions or Encumbrances which could materially and adversely impact the ability of Buyer to use the Assets for their intended purpose. Any items to which Buyer does not object within such 30-day period will be deemed to be "permitted exceptions." As to items to which Buyer timely makes objections in writing to LCRA, LCRA shall have a period extending until the latter of: (i) thirty (30) days prior to the expiration of the Asset Review Period; or, (ii) thirty (30) days after Buyer's objection ("Title Cure Period") during which it shall attempt to effectuate the cure of such objections at LCRA's expense such that LCRA's covenants or representations in this Agreement are not false or misleading or such that all of the objectionable encroachments, exceptions or Encumbrances have been removed; provided, however, that in all events, and notwithstanding the disclosures contained in Schedules B and I of Exhibit G, LCRA shall be required to cure any matters set forth on Schedule C to the title commitment except for easements, rights of way, zoning ordinances, licenses and other similar interest or restriction affecting the Property which are not, individually or in the aggregate, material to the relevant Utility or Assets, and which do not prohibit or interfere with the current or intended operation of any Property and which do not render title to any Property unmarketable or would not hinder or interfere with the use or operation of any Property in the future (each, a "Mandatory Cure Item"). At the end of said Title Cure Period, if the LCRA has failed to cure any of the items to which Buyer has objected, Buyer will have the right to either: (1) terminate this Agreement upon which termination the Escrow Agent will disburse to Buyer the

Earnest Money and, in the limited event the title objection matter demonstrates that LCRA made any materially false or misleading representations or warranties or any Mandatory Cure Item exists that remain uncured by the end of the Title Cure Period, LCRA shall [REDACTED], or (2) waive such title objections and proceed to Closing and remedy the defect by [REDACTED]

[REDACTED] Buyer shall notify LCRA in writing on the expiration date of the Asset Review Period if it elects to proceed under options "(1)" or "(2)" of this Section. In the event Buyer elects to proceed under option "(2)" provided in this Section, LCRA shall have the right to terminate this Agreement by written notice to Buyer [REDACTED] delivered within five (5) business days of LCRA's receipt of Buyer's written notice of its election under this Section. In the event LCRA terminates this Agreement as provided in this Section, the Escrow Agent shall return the Earnest Money to Buyer. In the event that LCRA is unable to cure any Mandatory Cure Item by the end of the Title Cure Period due to the fact that such cure cannot be effectuated before the Closing Date, the cure of such Mandatory Cure Item shall be a condition precedent to Buyer's obligation to Close (it being agreed that Buyer shall be entitled to a return of the Earnest Money [REDACTED] if such condition precedent is not satisfied at Closing).

- B. To the extent that title insurance to be issued further to Section 9.4A, or a title commitment received on or before the Closing Date, reflects any additional exceptions to title after the initial title report, Buyer shall have the right to review same and object within a period of ten (10) days after receiving notification of same from the title company (the "New Objection"). In the event that the New Objection cannot be cured on or before the Closing Date, Buyer shall have the right to either (1) terminate this Agreement upon which the Escrow Agent shall disburse to Buyer the Earnest Money and, in the event that LCRA's representations and warranties with respect to title are false or misleading or any New Objection causes a material and adverse affect on Buyer's ability to use the Assets for their intended purpose, [REDACTED] (2) waive such New Objection and proceed to Closing and remedy the defect by [REDACTED]

**Section 4.7 Refusal to Provide Access or Information.** Should LCRA refuse to provide Buyer or its representatives with access to, or information concerning, the Utilities, Facilities, Property and other Assets promptly within the Asset Review Period as provided in this Agreement, Buyer shall provide written notice of such refusal within the Asset Review Period by hand delivery or overnight delivery, receipt requested, to LCRA to the address specified in this Agreement. Such notice shall reasonably identify the relevant Assets or information. If LCRA does not cure the alleged refusal or issue within three (3) business days from the date of receipt of such notice the Asset Review Period shall be extended as necessary to accomplish such aspects of Buyer's review. If LCRA refuses or does not cure the problem within ten (10) business days from its receipt of such notice it shall be a material default by LCRA of this Agreement and Buyer may

either (i) terminate this Agreement by sending written notice of such termination to LCRA to the address specified in this Agreement, in which event Buyer will receive a full refund of any Earnest Money [REDACTED] or (ii) waive the alleged refusal and proceed as further provided in this Agreement.

**Section 4.8 Inventory.** A complete inventory of the Facilities that are owned by LCRA and currently used in or necessary for the on-going operation, ownership and use of the Utilities shall be taken prior to the expiration of the Asset Review Period by Buyer with cooperation by LCRA. All items shown on such Inventory shall constitute the Facilities to be transferred to Buyer at Closing. Such inventory will be updated at Closing to delete any items no longer owned by LCRA as a result of normal operation and maintenance of the Assets and to add items purchased by LCRA as a result of normal operation and maintenance of the Assets.

**Section 4.9 Lometa ROFR.** On the Effective Date, LCRA shall give notice to the City of Lometa to trigger the Lometa ROFR. During the Asset Review Period, Buyer and LCRA shall use commercially reasonable efforts to conclude negotiations with the City of Lometa relating to the Lometa ROFRs and alternatives thereto and to either implement the transfer of the Lometa Water System and Lometa Wastewater System Assets to the City of Lometa if Lometa ROFR is exercised or to terminate the Lometa ROFR if it is not exercised. Buyer and LCRA shall keep each other informed of the status of negotiation, implementation and/or termination of the Lometa ROFRs, including at a minimum providing a monthly status report in writing, and copies of all essential writings, to each other during the Asset Review Period.

**Section 4.10 Required Consents.** During the Asset Review Period, Buyer, with the active and direct support and cooperation of LCRA, shall use commercially reasonable efforts to obtain all consents (other than Required Approvals) necessary from third parties in order to consummate the sale of the Assets to Buyer at Closing ("Required Consents"), which consents are listed in Schedule 5 of **Exhibit A**. Each party shall keep the other party informed of the status of obtaining the Required Consents. Efforts to obtain the Required Consents may extend into the Regulatory Review Period to the extent necessary. The parties agree to use commercially reasonable efforts to cooperate with, and assist, each other in obtaining the Required Consents; provided, however, that such cooperation and assistance will not require any material third-party expenditures. Each party shall bear its own expense in such efforts. To the extent that any of the Intangible Assets are not assignable or not transferable without the consent of the other party or parties thereto, this Agreement shall not constitute an assignment or transfer of those contracts if such assignment or transfer would constitute a breach thereof or a violation of any law absent such prior written consent, but LCRA shall take such steps as it may take which are not such a violation in an effort to afford Buyer the benefits of such contracts.

**Section 4.11 Required Notices.** As soon as commercially reasonable after the Effective Date, LCRA shall use commercially reasonable efforts to deliver any notices required by or under the Intangible Assets to third parties in order to consummate the sale of the Assets to Buyer at Closing ("Required Notices"). The Required Notices are listed

in Schedule 4 of **Exhibit A**. LCRA shall keep Buyer informed of the status of giving the Required Notices, including at a minimum providing a monthly status report in writing to Buyer during the Asset Review Period.

**Section 4.12 True and Correct.** LCRA represents, warrants and covenants that all documents (including Review Documents), materials, disclosures, statements, responses, representations and other information provided to Buyer in connection with Buyer's investigation and due diligence of the Utilities and the Assets shall, in the case of documents and materials, be originals or true and correct copies of originals or, in the case of other information, be materially true, complete and correct.

**Section 4.13 Early Termination.** If during the Asset Review Period it is determined that (i) a material representation and warranty set forth in this Agreement is materially wrong or misleading, (ii) the Assessments disclose material problems or concerns, (iii) Buyer, acting reasonably, shall have determined that the estimated rate base does not materially reflect Assets which are Used and Useful or that LCRA's allowable costs are materially inconsistent with utility industry standards and applicable laws and regulations; or (iv) LCRA advises Buyer that to preserve a privilege in on-going or threatened litigation it cannot provide certain Review Documents and such Review Documents are material to Buyer's assessment of the Utilities, and in each case LCRA cannot reasonably remedy the same by the end of the Asset Review Period, then Buyer may terminate this Agreement upon notice given to LCRA not later than thirty (30) days after the end of the Asset Review Period and receive a full refund of the Earnest Money

\_\_\_\_\_ If Buyer has not terminated this Agreement as herein provided but fails to make the Second Deposit, Buyer will be deemed to be in default of this Agreement and LCRA shall have all rights under Sections 10.2 and 10.3, including a right to the Initial Earnest Money.

## V.

### REGULATORY REVIEW PERIOD

**Section 5.1 Commencement.** As provided in Section 4.1(ii), the Regulatory Review Period commences at the end of the Asset Review Period. During the Regulatory Review Period the parties covenant to perform their respective obligations in Sections 5.2 – 5.6.

**Section 5.2 Required Approvals.** During or prior to the Regulatory Review Period, Buyer shall use commercially reasonable efforts to obtain all approvals necessary from governmental or regulatory authorities in order to consummate the sale of the Assets to Buyer at Closing ("Required Approvals"), which approvals are on Schedule 6 of **Exhibit A**. Without limiting the generality of the foregoing, Buyer, at its sole cost and expense, shall deliver to the TCEQ or other regulatory agency with jurisdiction over the Utilities all required notices and applications for approval with respect to the change in ownership of any or all of the Assets and obtain any approval of same. LCRA shall have the right to review any filings made by Buyer with the TCEQ prior to the filing of same

and LCRA shall otherwise cooperate and assist Buyer to the extent commercially reasonable and necessary in applying for and obtaining such Required Approvals, provided that LCRA will not be required to pay for any of Buyer's or any third party's expenses related to same. Buyer shall keep LCRA informed of the status of obtaining the Required Approvals, including at a minimum providing a monthly status report in writing to LCRA. LCRA agrees to use commercially reasonable efforts to cooperate with, and assist, Buyer in obtaining the Required Approvals.

**Section 5.3 STM Filing.** Without limiting the generality of Section 5.2, not later than thirty (30) days after completion of the Asset Review Period, Buyer will (i) submit its STM Application to the TCEQ and (ii) apply for the transfer or issuance of all CCNs necessary for Buyer to operate Utilities as retail utility systems. In its STM Application Buyer shall concur with and assert LCRA's disclosure regarding contributed property pursuant to TWC 13.301(j). Buyer shall prepare its STM Application on the basis that it will disclose if any rate changes arising from the acquisition of the Utilities are anticipated and, subject to regulatory approval on reasonable normal terms and conditions consistent with regulatory practice in Texas, outline a rate mitigation plan indicating that utility rates will be frozen for a one year period after Closing, and if required to mitigate unusual or excessive rate change impacts arising from this transaction, a phase-in of rate changes for up to but not exceeding a three-year period thereafter; provided always, that the STM Application shall be subject to regulatory review and approval by TCEQ. LCRA shall, in good faith, cooperate and provide commercially reasonable support to Buyer in the preparation of the STM Application and in the regulatory approval process after submission of such STM Application; provided, however, that LCRA shall not be required to incur or pay any third-party costs in support of such cooperation. Upon approval by TCEQ of the sale and transfer of the Utilities and Assets to Buyer, the parties will proceed to Closing as contemplated in Article IX.

**Section 5.4 Phased Closings.** As contemplated in Section 9.14, if or to the extent a Required Approval, Required Consent, Required Right or cure of title defect is not forthcoming by the Closing Date the parties shall use all commercially reasonable efforts to modify such Required Approvals, Required Consents, Required Rights or title defects to allow Closing on the maximum number of Utilities and Assets as practicable on the Closing Date. Such efforts will include amending Required Approvals to permit wholesale utility services, other commercially reasonable remedial efforts and, as provided in Section 9.14, phased closings of Utilities where Required Approvals, Required Consents, Required Rights or title defects require Closing on such Utilities to be temporarily postponed. Each party shall bear its own expense in such efforts.

**Section 5.5 Applications.** To the extent the regulatory agency with jurisdiction over a Required Approval requires only an application prior to Closing, Buyer agrees to be responsible for filing the application prior to Closing and, after Closing, responsible for seeking the Required Approvals. This covenant will survive Closing.

**Section 5.6 Regional Provider.** During the Regulatory Review Period Buyer shall timely apply to be a regional service provider under TWC Section 15.001(13) and



Texas Tax Code Section 151.355(5) and diligently prosecute said application.

**VI.**

**REPRESENTATIONS, WARRANTIES AND COVENANTS OF BUYER**

**Section 6.1 Authorization and Validity of Agreement.** Buyer represents and warrants to LCRA that the following are true, accurate, and complete as of the Effective Date. The representations and warranties in this Article VI shall survive termination of this Agreement and Closing.

- A.** Each of the persons executing this Agreement and the Transaction Documents on behalf of Buyer are duly authorized to do so;
- B.** Buyer has full right and authority to enter into this Agreement and the Transaction Documents and to consummate the transactions contemplated therein;
- C.** This Agreement constitutes, and the Transaction Documents do or will constitute, the valid and legally binding obligations of Buyer and are enforceable against Buyer in accordance with their respective terms, subject to applicable law;
- D.** Neither the execution nor delivery of this Agreement or the Transaction Documents, nor the performance of Buyer's obligations thereunder, violates, or will violate, any contract or agreement to which Buyer is a party or by which Buyer is otherwise bound; and
- E.** There is no claim, action, suit, proceeding, investigation, inquiry, state or federal legislative action pending, or to the knowledge of Buyer, threatened, that would prevent Buyer from entering into or performing its obligations under this Agreement or the Transaction Documents.

**Section 6.2 Independent Decision.** Buyer represents and warrants that it has conducted its own independent investigation of the Assets in making its determination as to the propriety of entering into this Agreement. Buyer has relied both on the results of its own investigation and on the representations and warranties and agreements of LCRA provided in the Agreement and the Transaction Documents. Notwithstanding Buyer's investigation of the Assets or receipt of Review Documents, LCRA's representations and warranties shall be qualified only as expressly disclosed on the Exhibits and Schedules hereto.

**Section 6.3 Covenants of Buyer.** Buyer covenants as follows, which covenants shall survive Closing:

- A. Financial Ability.** Buyer will have sufficient funds to satisfy the Purchase Price and to make the Closing Payment at Closing, provided, however, that if an event of force majeure affecting capital markets substantially decreases Buyer's access to funding ("Financial Force Majeure"), Closing shall be delayed (without liability to Buyer) until such time as such Financial Force Majeure subsides such

that Buyer's sources of funding are generally extending financing of the type contemplated with Buyer for the purchase of the Utilities. Buyer will provide written notice to LCRA of said Financial Force Majeure that will delay Closing. At LCRA's option, any delay resulting from said Financial Force Majeure may not extend: (i) the Closing Date by more than one hundred eighty days, if the Closing Date has been set by Buyer in accordance with this Agreement; or, (ii) more than one hundred eighty days from Buyer's written notice of said Financial Force Majeure, if the Closing Date has not been set by Buyer (the "Financial Force Majeure Extension"). Should Buyer provide written notice to LCRA of a Financial Force Majeure: (a) LCRA may terminate this Agreement if Closing has not occurred before the period of the Financial Force Majeure Extension expires, upon which termination both LCRA and Buyer shall be relieved and released of all obligations, claims, and liabilities hereunder, and the Earnest Money shall be distributed to Buyer, and (b) Buyer may terminate this Agreement if Closing has not occurred before the period of the Financial Force Majeure Extension expires, upon which termination both LCRA and Buyer shall be relieved and released of all obligations, claims, and liabilities hereunder, and Earnest Money equal to 1% of the Purchase Price shall be distributed to LCRA with the balance of the Earnest Money distributed to Buyer. Further, after Closing, Buyer will have the financial ability to (i) pay the Purchase Price when due, (ii) fund the working capital to operate the Assets and provide adequate and reliable water and wastewater services to customers in compliance with local, state and federal regulations and (iii) fund ongoing capital expenditures for required upgrading, renewals and replacements.

- B. Operational Ability.** Buyer has, or will have at Closing, employees or contracts with an operating company with experience and licenses necessary to operate the Assets in a manner to provide continuous, adequate and reliable water and wastewater services to customers in compliance with local, state, and federal regulations and with the proposal submitted by Buyer to LCRA for purchase of the Assets.
- C. Compliance with Conditions of Grant.** Subject to Section 2.2B, after Closing on Lometa Wastewater System, Buyer will provide the Texas Department of Rural Affairs, or its successors, with access to and data on the performance of the solar facilities located at the Lometa Wastewater Treatment Plant consistent with the requirements of **Exhibit E**. Further Buyer agrees that it will maintain such solar facilities in working condition and will not remove the solar facilities from the Lometa Wastewater Treatment Plant, which agreement will survive the Closing.

## **VII.**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS OF LCRA**

#### **Section 7.1 Authority and Validity of Agreement.**

LCRA represents and warrants to Buyer that the following are true, accurate, and complete as of the Effective Date. The representations and warranties within this Article VII (including Section 7.2) shall survive the termination of this Agreement and Closing.

- A. Each of the persons executing this Agreement and the Transaction Documents on behalf of LCRA is duly authorized to do so;
- B. LCRA has full right and authority to enter this Agreement and the Transaction Documents and to consummate the transactions contemplated therein;
- C. This Agreement and the Transaction Documents constitute the valid and legally binding obligations of LCRA, and are enforceable against LCRA in accordance with their respective terms, subject to applicable law;
- D. Neither the execution nor delivery of this Agreement nor the performance of LCRA's obligations under this Agreement violates, or will violate, any contract or agreement to which LCRA is a party or by which LCRA is otherwise bound;
- E. LCRA is not a party to collective bargaining agreements, labor union organizing efforts or claims of unfair labor practices with respect to the Utilities or Assets;
- F. There is no claim, action, suit, proceeding, investigation, inquiry or state or federal legislative action pending which would prevent LCRA entering into or performing its obligations under this Agreement or the Transaction Documents except as disclosed on **Exhibit F**.

**Section 7.2 LCRA Representations, Warranties and Covenants to Buyer.**

In addition to LCRA's other agreements and undertakings hereunder, LCRA hereby represents, warrants and covenants to Buyer that the following are true, accurate, and complete as of the Effective Date, provided that Sections 7.2B and 7.2I shall be subject to the Exhibit G Update and Sections 7.2F and 7.2N shall be subject to delivery of Schedule 2 of Exhibit F and Schedule N of Exhibit G as provided further to Section 8.12:

- A. **Notices Received.** LCRA, at its sole cost and expense, will promptly deliver to Buyer copies of any of the following received by LCRA after the Effective Date: (i) written notices alleging the occurrence of any default or alleged default under any of the contracts included in the Assets; (ii) written violations or alleged violations of any law, regulation, order, or other requirement of any governmental authority having jurisdiction over the Assets, including a proposed compliance order; or, (iii) tort claims filed in court relating to LCRA's ownership or operation of the Assets.
- B. **Completeness, Title, Liens.** Except for Excluded Assets, the Assets comprise all of the property and assets of the Utilities as currently used in or necessary for the operation of the Utilities. Without limiting the generality of the foregoing, LCRA represents and warrants that:
  - (i) the Lometa Water Rights and the Raw Water Reservations constitute all of

the surface water rights previously obtained or reserved by LCRA for the operation and maintenance of the Utilities except for: (a) that certain Lease of Water Rights entered between LCRA and Mills County State Bank, which lease expires on April 2, 2012 (and relates to the Lometa Water System); and, (b) that certain Lease of Water Rights between LCRA and Richard Turner Miller entered March 28, 2007, which lease expired in 2010.

- (ii) The groundwater rights derived from the Property referenced in Section 2.1C and disclosed in Exhibit A, Schedule 3 constitute all of the groundwater rights previously obtained or reserved by LCRA for the operation and maintenance of the Utilities.
- (iii) The raw water supply consisting of the groundwater rights and the surface water rights disclosed in Exhibit A, Schedules 2 and 3, which subject to Section 2.2B include the Lometa Water Rights, the Raw Water Contract, and the Upstream Raw Water Contract, and the leases of water rights described in Section 7.2B, are the entirety of the water supplies that are being relied upon by LCRA to meet its current and reasonably foreseeable obligations under Chapter 13 of the Texas Water Code to provide continuous and adequate service to the retail customers of the Utilities.
- (iv) In transferring the groundwater rights and surface water rights, LCRA is transferring to Buyer a raw water supply for the Utilities that has the same degree of reliability and on substantially the same terms as the water supply that is being relied upon by LCRA subject to LCRA Board approval of the Corix Raw Water Contract and Upstream Raw Water Contract.

Subject to the limitations provided in this Section 7.2B, LCRA has good, marketable and valid title to, or a valid leasehold or contractual interest in, all of the Assets and, in respect of Property, LCRA shall provide the warranty of: (i) a general warranty deed for those portions of the Property (as reflected in **Schedule 3 of Exhibit A**): (a) granted to LCRA with a general warranty; or, (b) for which LCRA holds a title insurance policy; or, otherwise, (ii) the warranty, if any, provided in the deed granting the portion of the Property to LCRA. At Closing all Assets (including leasehold interests) shall be free and clear of Encumbrances except for the following (collectively referred to as "Permitted Encumbrances"):

- (i) those items set forth in the Claims or Disclosures provided in **Exhibit F** or Schedule B of **Exhibit G**; or
- (ii) easements, rights of way, zoning ordinances, licenses and other similar interest or restriction affecting the Property which are not, individually or in the aggregate, material to the relevant Utility or Assets, and which do not prohibit or interfere with the current operation of any Property and which do not render title to any Property unmarketable or would not

hinder the use or operation of any Property in the future.

LCRA represents and warrants that all Assets presently are free and clear of Encumbrances other than Permitted Encumbrances and mechanics', carriers', workmen's, repairmen's or other like liens ("M&M Liens") arising or incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent and which are not, individually or in the aggregate, material to the Utilities or the Assets; provided, however, that LCRA shall be willing to issue any affidavit required by the title company enabling the title company to delete any exception to M&M Liens. In this Agreement, the term "Encumbrance" means any of the following: third party rights or claims filed of record in the official county records or Texas Secretary of State's office; a claim filed in a legal or administrative tribunal; a pledge or security interest; a lien (statutory or otherwise); an easement, right-of-way, a judgment, a real property interest pledged to another such as a right of first refusal or right of reverter, or similar property interest and other similar burdens on property.

**C. Required Items.** Schedules 4, 5, 6 and 7 of **Exhibit A** list all material Required Approvals, Required Consents, Required Notices and Required Rights known to LCRA. Other than the Required Approvals and Required Consents, there are no other approvals or consents needed for LCRA to transfer the Assets to Buyer at Closing as contemplated herein or for the Buyer to use the Assets for their intended purpose.

**D. Financial Statements.** Complete copies of internally prepared financial documents consisting of statements of income, expenses and cash flows, net assets and liabilities for each individual Utility as of June 30, 2011, 2010 and 2009 have been delivered to Buyer (and such documents as of June 30, 2012 and if Closing does not occur before July 31, 2013 such documents as of June 30, 2013 shall be delivered to Buyer by July 31 of such years) (any and all of the foregoing being "Financial Documents"). The financial documents are based on the books and records of the LCRA and fairly present the financial conditions of the individual Utilities as of the dates stated thereon, including the original cost less reasonable depreciation of each asset, operating revenues, other revenues including Impact Fees, normal operating expenses, cash flows, and debt service coverage and reserves as incurred or required by LCRA policies. The Financial Documents reflect LCRA's rate base being Used and Useful. The Purchase Price allocated to specific Assets on **Exhibit D** are consistent with the Financial Documents and fairly approximate the original cost, less reasonable depreciation, of the specific Assets.

**E. Liabilities.** LCRA has no liabilities with respect to the Utilities, except:

(i) those which are adequately reflected or reserved against in the statement of liabilities at June 30, 2011 (the "Statement Date");

(ii) those that are disclosed in this Agreement including but not limited to contractual liabilities incurred as a result of Planned Improvements, Emergency

Improvements, Required Improvements and Buyer Improvements; and

(iii) those which have been incurred in the ordinary course of business consistent with past practice since the Statement Date and which are not, individually or in the aggregate, material in amount.

**F. Absence of Certain Changes, Events and Conditions.** Since the Statement Date and other than in the ordinary course of business consistent with past practice, except as disclosed on Schedule F of **Exhibit G**, LCRA represents that there has not been any:

- (i) event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a material adverse effect on any of the Utilities;
- (ii) transfer, assignment, sale or other disposition of any of the Assets shown or reflected in the net asset statement included in the Financial Documents for the Statement Date except for the sale of inventory in the ordinary course of business, the deletion of any items no longer owned by LCRA as a result of normal operation and maintenance of the Assets and addition of items purchased by LCRA as a result of normal operation and maintenance of the Assets;
- (iii) amendment, termination or waiver of any claims or rights constituting Assets except with Buyer's written consent;
- (iv) damage, destruction or loss, or any material interruption in use of any Assets resulting in a loss of Fifty Thousand Dollars (\$50,000) or more, whether or not covered by insurance;
- (v) purchase, lease or other acquisition of the right to own, use or lease any property or assets in connection with the Utilities for an amount in excess of Twenty Five Thousand Dollars (\$25,000), individually (in the case of a lease, per annum) or Fifty Thousand Dollars (\$50,000) in the aggregate (in the case of a lease, for the entire term of the lease, not including any option term), except for purchases of inventory or supplies in the ordinary course of business consistent with past practice;
- (vi) any material changes to employee compensation or benefits or terms of employment;
- (vii) grant of any bonuses, whether monetary or otherwise, or any general wage or salary increases in respect of any employees, other than as provided for in any written agreements or consistent with past practice, or change in the terms of employment for any employee; or
- (viii) adoption, amendment, modification or termination of any bonus, profit sharing, incentive, severance, or other plan, contract or commitment for

the benefit of any employees (or any such action taken with respect to any other benefit plan).

- G. Material Contracts.** Schedule 2 of Exhibit A lists each of the following contracts by which any of the Utilities or Assets are bound or affected or to which LCRA is a party or by which it is bound in connection with the Utilities or Assets (such contracts, including without limitation all contracts concerning the occupancy, management or operation of any Asset) ("Material Contracts"):
- (i) all contracts involving aggregate consideration in excess of \$50,000;
  - (ii) all contracts which cannot be cancelled without penalty or without more than 90 days' notice;
  - (iii) all contracts that require LCRA to purchase or sell a stated portion of the requirements or outputs of the Utilities or that contain "take or pay" provisions;
  - (iv) all contracts that provide for the indemnification of any person or the assumption of any liability of any person;
  - (v) all contracts with any governmental authority;
  - (vi) all joint venture, partnership or similar contracts;
  - (vii) all contracts for the sale of any of the Assets or for the grant to any person of any option, right of first refusal or preferential or similar right to purchase any of the Assets;
  - (viii) all powers of attorney with respect to the Utilities or any Asset;
  - (ix) all employment contracts and collective bargaining agreements;
  - (x) all contracts that grant any person a right to consent to the transfer or assignment of any of the Assets;
  - (xi) all memorandums of understanding (MOUs), letters of intent, term sheets and similar undertakings if the same constitute enforceable contracts, or the parties thereto are acting in accordance with their terms, or it is expected the same will govern relationships between the parties thereto;
  - (xii) all Assigned Contracts;
  - (xiii) all vendor or manufacturer warranties in or concerning contracts of \$50,000 or more;
  - (xiv) all contracts in respect of Permitted Capital Expenditures; and
  - (xv) all other contracts that are material to the value of the Assets or the

operation of the Utilities and not previously disclosed pursuant to this Section 7.2G.

Each Material Contract is valid and binding on LCRA in accordance with its terms and is in full force and effect. There are no material disputes pending or threatened under any contract included in the Assets and LCRA has disclosed in Schedule 1 of **Exhibit F**, or agrees to disclose to Buyer promptly after filing, any filed allegation against LCRA of breach of or default under any contract included in the Assets that is filed in a legal or administrative tribunal. None of LCRA or, to LCRA's knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under) in any material respect has repudiated, or has provided or received any notice of any intention to terminate or repudiate, any material contract included in the Assets. Except as disclosed in Schedule 2 of **Exhibit F**, LCRA has not made any claims under any vendor's or manufacturer's warranty in or concerning contracts of \$50,000 or more, and to LCRA's knowledge there are no defects in the Assets which would give rise to any such warranty claims. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any such contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder and there are no material disputes pending or threatened under any such contract. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Buyer.

**H. Insurance. Schedule H of Exhibit G sets forth:**

- (i) a true and complete list of all current policies or binders of fire, liability, property, workers' compensation, casualty and other insurance maintained by LCRA relating to the Utilities or the Assets (collectively, the "Insurance Policies");
- (ii) with respect to the Utilities or the Assets, a list of all pending claims and the claims history for LCRA since July 1, 2008.

Except as set forth on Schedule 1 **Exhibit F**, there are no claims related to the Utilities or the Assets pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. All such Insurance Policies:

- (a) are in full force and effect and enforceable in accordance with their terms;
- (b) are provided by carriers who are financially solvent; and
- (c) have not been subject to any lapse in coverage.

None of LCRA or any of its affiliates is in default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such



Insurance Policy. The Insurance Policies are of the type and in the amounts customarily carried by persons conducting a business similar to the Utilities and are sufficient for compliance with all applicable laws and contracts to which LCRA is a party or by which it is bound. True and complete copies of the Insurance Policies have been made available to Buyer.

**I. Property.**

- (i) Schedule 3 of **Exhibit A** sets forth each parcel of real property owned in fee simple by LCRA and used in or necessary for the conduct of the business of the Utilities as currently conducted (together with all buildings, fixtures, structures and improvements situated thereon and all easements, rights-of-way and other rights and privileges appurtenant thereto, collectively, the "Owned Real Property"), including with respect to each property, the address location and use. LCRA has delivered to Buyer copies of the deeds and other instruments (as recorded) by which LCRA acquired such parcel of Owned Real Property, and copies of all title insurance policies, opinions, abstracts and surveys in the possession of LCRA with respect to such parcel. With respect to each parcel of Owned Real Property:
  - (1) LCRA has good and marketable fee simple title, free and clear of all Encumbrances, except Permitted Encumbrances and those Encumbrances set forth on Schedule I of **Exhibit G**, and subject to the limitations on warranties of title contained in Section 7.2B above;
  - (2) except as set forth on Schedule I of **Exhibit G**, LCRA has not leased or otherwise granted to any person the right to use or occupy such Owned Real Property or any portion thereof; and
  - (3) except for the Lometa ROFR, there are no unrecorded outstanding options, rights of first offer or rights of first refusal, rights of reverter or other rights to purchase such Owned Real Property or any portion thereof or interest therein. (The parties acknowledge that a Right of First Refusal exists under the wastewater service agreement between LCRA and XS Ranch Fund VI, L.P., with regard to facilities to be constructed pursuant to that agreement but, as of the Effective Date, no facilities are yet constructed.)
  - (4) LCRA has legal and actual vehicular and pedestrian access to each of the Owned Real Property and Leased Real Property. LCRA has no knowledge of any fact or condition existing which would result or could result in the termination or reduction of the current access from any Owned Real Property or Leased Real Property to the existing highways and roads that provide access to the Owned Real Property or any Leased Real Property.

- (5) Each of the Owned Real Property is a separate tax parcel and is not part of any other tax parcel.
- (ii) Schedule 3 of **Exhibit A**, sets forth each parcel of real property leased by LCRA and used in or necessary for the conduct of the business of the Utilities as currently conducted (together with all rights, title and interest of LCRA in and to leasehold improvements relating thereto, including, but not limited to, security deposits, reserves or prepaid rents paid in connection therewith, collectively, the "Leased Real Property"), and a true and complete list of all leases, subleases, licenses, concessions and other agreements (whether written or oral), including all amendments, extensions renewals, guaranties and other agreements with respect thereto, pursuant to which LCRA holds any Leased Real Property (collectively, the "Leases"). LCRA has delivered to Buyer a true and complete copy of each Lease. With respect to each Lease:
- (1) such Lease is valid, binding, enforceable and in full force and effect, and LCRA enjoys peaceful and undisturbed possession of the Leased Real Property;
  - (2) LCRA is not in breach or default under such Lease, and no event has occurred or circumstance exists which, with the delivery of notice, passage of time or both, would constitute such a breach or default, and LCRA has paid all rent due and payable under such Lease;
  - (3) LCRA has not received nor given any notice of any default or event that with notice or lapse of time, or both, would constitute a default by LCRA under any of the Leases and, to the knowledge of LCRA, no other party is in default thereof, and no party to any Lease has exercised any termination rights with respect thereto;
  - (4) LCRA has not subleased, assigned or otherwise granted to any person the right to use or occupy such Leased Real Property or any portion thereof; and
  - (5) LCRA has not pledged, mortgaged or otherwise granted an Encumbrance on its leasehold interest in any Leased Real Property.
- (iii) No Facilities are located outside the Property or dedicated public utility easements or public utility easements or rights-of-way appropriate for same except as disclosed on Schedule I of **Exhibit G**; provided, however, that LCRA does not so represent and warrant in respect of the Small Distribution Assets.
- (iv) LCRA has not received any written notice of (i) violations of building codes and/or zoning ordinances or other governmental or regulatory Laws affecting the Property, (ii) existing, pending or threatened condemnation

proceedings affecting the Property, or (iii) existing, pending or threatened zoning, building code or other moratorium proceedings, or similar matters which could reasonably be expected to materially and adversely affect the ability to operate the Property as currently operated. Neither the whole nor any material portion of any Property has been damaged or destroyed by fire or other casualty.

- (v) The Property is sufficient for the continued conduct of the business of the Utilities after the Closing in substantially the same manner as conducted prior to the Closing and constitutes all of the real property necessary to conduct the business of the Utilities as currently conducted; provided, however, that LCRA does not represent and warrant that the Property comprises all the real property on which Small Distribution and Collection Assets are situated.

- J. **Legal Proceedings; Governmental Orders.** Except as set forth in Schedule J of **Exhibit G**, there are no actions pending or, to LCRA's knowledge, threatened against or by LCRA (a) relating to or affecting the Utilities, the Assets or the Assumed Liabilities; or (b) that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. To the best of LCRA's knowledge, no event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such action. Except as set forth in Schedule J of **Exhibit G**, there are no outstanding governmental orders and no unsatisfied judgments, penalties or awards against, relating to or affecting the Utilities.
- K. **Compliance With Laws; Permits.** Except as set forth in Schedule K of **Exhibit G**, LCRA has complied, and is now complying, with all material laws and regulations applicable to LCRA in relation to the Utilities as the business is currently conducted and as the Assets are owned and, to the best of its knowledge, LCRA has complied, and is now complying, with all other such laws and regulations. All permits required for LCRA to conduct the business of the Utilities as currently conducted or for the ownership and use of the Assets have been obtained by LCRA and are valid and in full force and effect and are listed on Schedule K of **Exhibit G**. To the best of LCRA's knowledge, no event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any such permit.
- L. **Employee and Benefits Matters.** Any and all benefits and assets held in trust for the benefit of the participants and beneficiaries of LCRA's eligible defined benefit and contribution plans are Excluded Assets. LCRA does not have any multi-employers benefit plans. LCRA has withheld and paid each tax required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, shareholder or other party, and complied with all information reporting and backup withholding provisions of applicable law.

M. **Taxes.** To the extent required by applicable law, all tax returns with respect to the Utilities required to be filed by LCRA for any pre-Closing tax period have been, or will be, timely filed. Such tax returns are, or will be, true, complete and correct in all respects. All taxes, if any, due and owing by LCRA (whether or not shown on any tax return) have been, or will be, timely paid by LCRA. There is no material dispute or claim concerning tax liability of LCRA relating to the Utilities or Assets.

N. **Environmental Matters.** Except as otherwise disclosed on Schedule N of **Exhibit G**, the operations of LCRA with respect to the Utilities and the Assets are currently and have been in material compliance with all applicable Environmental Laws. Except as otherwise disclosed on Schedule N of **Exhibit G**, [REDACTED]

[REDACTED]

[REDACTED]

Excluded Assets are excluded from the representations, warranties and covenants made by LCRA in this Section 7.2N.

**O. Impact Fees.** Except as disclosed on Schedule O Exhibit G:

- (i) LCRA has complied with all provisions of Texas LGC Chapter 395 regarding the calculation and collection and expenditures (including to debt service, capital, administration and operating expense or payment of costs) related to Impact Fees.
- (ii) Pursuant to TWC Section 49.212(d) all charges and fees collected by LCRA prior to Fiscal Year 2001 were properly recorded as revenues and for all relevant purposes treated as revenues and not as Impact Fees.
- (iii) The aggregate dollar amount of the Relevant Impact Fees collected in Fiscal Years 2001 – 2006 was [REDACTED]. The specific dollar amounts of the Relevant Impact Fees collected from and after Fiscal Year 2007 through June 30, 2011 for each of the Utilities from:
  - (1) customer payments were [REDACTED], and
  - (2) developer payments were [REDACTED]
- (iv) Since Fiscal Year 2007, LCRA used the Relevant Impact Fees from the Camp Swift Wastewater System to pay [REDACTED] in capital expenditures and [REDACTED] for annual debt service payments as of June 30, 2011.
- (v) Pursuant to TWC Section 13.301(j) and as disclosed in Schedule O of Exhibit G, LCRA has received [REDACTED] in customer contributions in aid of construction derived from specific surcharges and thus was “partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges approved by the regulatory authority over and above revenues required for normal operating expenses and return.” LCRA advises Buyer that such amount may not be included in invested capital or allowed depreciation expense by the regulatory authority in rate-making proceedings.
- (vi) From the Effective Date to Closing, LCRA shall use all Impact Fees for purposes other than Capital Expenditures.

**P. Disclaimer.** IT IS THE EXPLICIT INTENT OF LCRA AND BUYER, AND LCRA AND BUYER HEREBY AGREE, THAT NEITHER LCRA, NOR ANY OF ITS AFFILIATES OR REPRESENTATIVES, HAS MADE OR IS MAKING ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING ANY IMPLIED REPRESENTATION OR WARRANTY, AS TO THE CONDITION, MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS OF THE ASSETS FOR ANY PARTICULAR PURPOSE EXCEPT THOSE REPRESENTATIONS AND

**WARRANTIES PROVIDED IN THIS AGREEMENT OR THE TRANSACTION DOCUMENTS.**

BUYER ACKNOWLEDGES AND AGREES THAT EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES PROVIDED IN THIS AGREEMENT OR THE TRANSACTION DOCUMENTS, AT CLOSING BUYER IS ACCEPTING THE ASSETS IN THEIR "AS-IS, WHERE-IS" CONDITION "WITH ALL FAULTS" AND DEFECTS IN EXISTENCE AS OF THE CLOSING AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY OTHER WARRANTIES, REPRESENTATIONS, OR GUARANTEES, EITHER EXPRESS OR IMPLIED, AS TO THEIR CONDITION, VALUE, QUALITY, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, OR ANY OTHER WARRANTY OF ANY KIND, NATURE, OR TYPE WHATSOEVER FROM OR ON BEHALF OF LCRA. THE FOREGOING DISCLAIMER DOES NOT APPLY TO THIRD-PARTY WARRANTIES RELATED TO THE ASSETS TO THE EXTENT SAME ARE ASSIGNABLE AND ARE ASSIGNED. BUYER ASSUMES ALL RESPONSIBILITY FOR ANY DAMAGES CAUSED BY THE CONDITIONS ON THE PROPERTY AFTER CLOSING.

- Q. Brokers.** No broker, finder or investment banker other than BMO Capital Markets is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of LCRA, and LCRA is entirely responsible for the fees of BMO Capital Markets.
- R. Full Disclosure.** Notwithstanding anything to the contrary in this Agreement, no representation or warranty by LCRA in this Agreement or the Transaction Documents and no statement made by LCRA that is contained in the Exhibits or Schedules to this Agreement or any certificate or other document furnished or to be furnished to Buyer pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

**VIII.**

**OPERATIONS AND MATTERS PRIOR TO CLOSING**

**Section 8.1 Ownership and Operation of Assets.**

- A.** Between the Effective Date and the Start Date LCRA shall operate the Utilities and Assets substantially in accordance with its past practices and procedures, substantially in compliance with local, state and federal regulations, and in a manner generally consistent with accepted industry standards.
- B.** The parties anticipate that LCRA will timely initiate rate increases as appropriate in light of normal operating expenses and return, as required for the recovery of LCRA's cost of services, and as appropriate for the revenue requirements of the Utilities.

- C. After the Effective Date, LCRA shall not place any new Encumbrance on title to any Asset without Buyer's prior written consent unless mandated by regulatory agency or court of law and if so mandated shall convey the Assets free and clear of such Encumbrances at Closing.

**Section 8.2 Capital Projects and Repairs by LCRA Pending Closing.**

- A. The parties agree that between the Effective Date and the Closing Date:
- (i) LCRA may design, engineer or construct any replacements, expansions, enlargements, extensions or other capital projects and improvements to the Assets:
    - (1) previously identified in the LCRA business plan or LCRA capital plan, including the draft fiscal year 2013 capital plan as of the Effective Date to the extent approved by the LCRA Board and added to LCRA's asset management system or construction work in progress list and provided to Buyer to the Effective Date ("Planned Improvements"); or
    - (2) as reasonably determined by LCRA to be necessary for continued operation of the Assets in compliance with, or to be mandated by, applicable local, state or federal regulations or as specifically identified in LCRA's current business plan ("Required Improvements"); or
    - (3) as reasonably determined by LCRA to be necessary to prevent imminent harm to public health or safety, or to the environment or to the Assets ("Emergency Improvements"); or,
    - (4) as approved by Buyer, in its discretion, after the Effective Date ("Buyer Improvements"),
  - (ii) unless expressly identified in the LCRA business plan or LCRA capital plan prior to the Effective Date, LCRA will not design, engineer or construct any changes to the Facilities without the prior express written consent of Buyer.

Notwithstanding the foregoing, all such capital projects and improvements, including without limitation the design, engineering and contracts related thereto shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld, for any capital project or improvement in excess of \$5,000,000 or if all such capital projects and improvements will exceed in aggregate \$10,000,000 in Fiscal Years 2012 and 2013.

- B. Buyer acknowledges and agrees that LCRA may reasonably adjust schedules for construction of Planned Improvements (adjusted from any schedules currently provided in the LCRA business plan or LCRA capital plan) in the course of operating the Assets prior to Closing in accordance with this Agreement.



- C. Any contracts related to such construction that remain in effect at Closing will be assigned by LCRA to Buyer.
- D. As set forth in the definition of "Closing Price Adjustment," Capital Expenditures for all such Planned Improvements, Required Improvements, Emergency Improvements and Buyer Improvements ("Permitted Capital Expenditures") from June 30, 2011 to the Closing Date shall be included the Purchase Price.

**Section 8.3 Reports.** LCRA will provide Buyer with a report quarterly beginning ninety (90) days after the Effective Date describing the status of the plans for, or design or construction of, any Planned Improvements, Required Improvements or Emergency Improvements, including the estimated cost and cost-to-date thereof (except where Buyer is managing such matter under the O&M Agreement). Within five (5) days prior to Closing, LCRA and Buyer shall in good faith agree to a final report regarding such matters including the costs to be added to the Purchase Price as provided by Section 3.1.

**Section 8.4 Casualty.** In the event Assets or any part thereof are damaged by any casualty prior to Closing, LCRA shall pay to Buyer, at Closing, any funds actually received by LCRA as insurance proceeds relating to such casualty (the "Insurance Proceeds") for repair or replacement of the damaged property by LCRA as insurance proceeds relating to such casualty, and the sale shall be closed without LCRA repairing any such damage and to the extent the cost to repair or replace will exceed the Insurance Proceeds actually turned over by LCRA to Buyer the Purchase Price shall be reduced. Buyer acknowledges and agrees that LCRA is self-insured for casualty events that result in damages of amounts less than One Hundred Thousand Dollars (\$100,000). LCRA shall apply insurance proceeds received, if any, in replacement of the damaged property to such repair or replacement. If the cost of such repair or replacement exceeds or is not covered by third-party Insurance Proceeds or is less than \$100,000, then LCRA shall cover the cost of such repair and replacement by a reduction to the Purchase Price. Buyer shall remain entitled, regardless, to receive at Closing any surplus insurance proceeds remaining after LCRA's repair or replacement of the Assets. In the event the viability of a Utility or the economics of owning it is impaired, or a Utility or Assets are no longer Used or Useful, due to any casualty prior to Closing, the parties shall in good faith negotiate amendments to this Agreement including an equitable adjustment to the Purchase Price.

**Section 8.5 Eminent Domain.** LCRA will notify Buyer promptly in writing of any eminent domain or condemnation proceedings concerning the Assets pending or arising after the Effective Date. If before Closing any of the Assets are taken by eminent domain or condemnation they shall thereupon be Excluded Assets. If any of the Assets are subject to an eminent domain or condemnation proceeding pending at Closing, Closing on such Assets shall be subject to Section 9.14.

**Section 8.6 No Solicitation.**

- A. Except as expressly provided in this Agreement (including but not limited to

Section 2.2) to the contrary, LCRA shall not, and shall not authorize or permit any of its affiliates or any of its or their representatives to, directly or indirectly, after the Effective Date and continuing until termination of this Agreement in accordance with its terms: (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an acquisition proposal for the Utilities; (ii) enter into discussions or negotiations with, or provide any information to, any person concerning a possible acquisition proposal for the Utilities; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an acquisition proposal for the Utilities. For purposes hereof, "acquisition proposal" means any inquiry, proposal or offer from any person (other than Buyer or any of its affiliates) relating to the direct or indirect disposition, whether by sale, merger or otherwise, of all or any portion of the Utilities or the Assets.

- B. Provided Buyer offers key experienced managerial, administrative and operations employees comparable compensation for employees whose job descriptions are specifically listed in Exhibit Q below, to the extent permitted by applicable law LCRA will not solicit or compete with Buyer to retain such employees (it being understood that normal pay increases offered by LCRA shall not be considered as solicitation or competition by LCRA).

**Section 8.7 O&M Agreement.** The parties are entering into an Operations and Maintenance Agreement (the "O&M Agreement") as of the date of this Agreement providing for, among other things, (i) the use of LCRA IT and communications infrastructure, (ii) the establishment of Buyer's Texas regional utility operational and administrative offices in the Austin area, (iii) to the extent required by the Buyer in relation to the operations of the Utilities and Assets actually acquired, or to be operated pursuant to the O&M Agreement, and where affected LCRA Utility staff meet the criteria and qualifications required by the Buyer for these Utilities and Buyer does not already have internal staff available to undertake the managerial, administrative or operational requirements of the Utilities, Buyer making employment offers to LCRA utility staff that are affected as a result of this transaction (which offers shall be on Buyer's normal terms), (iv) LCRA's encouragement of those staff members whose jobs are being eliminated by LCRA upon transfer of Utilities operations by LCRA pursuant to the O&M Agreement (whose job descriptions are a subset of those listed in Exhibit P) to consider Buyer's offers of employment (subject to Buyer offering comparable compensation), (v) LCRA's undertaking to reimburse Buyer for transitional costs incurred if Closing does not occur or to the extent the O&M Agreement is terminated early, (vi) the operation and maintenance of the Utilities.

**Section 8.8 Camp Swift Contract.** LCRA will make all payments of principal and interest due to the Sanders Trust on the \$395,364 promissory note issued under the Camp Swift Contract falling due prior to Closing.

**Section 8.9 Buyer's ROFRs.** The parties are entering into a Right of First Refusal Agreement (the "ROFR Agreement") as of the date of this Agreement providing for, among other things, a right of first refusal concerning West Travis Regional Water System and West Travis Wastewater System.

**Section 8.10 Raw Water Supply.** LCRA shall continue until Closing the reservation and supply of raw water for the Utilities pursuant to: (i) that certain reservation pertaining to the Windmill Ranch systems approved by the LCRA Board in November 2003; and, (ii) that certain reservation pertaining to the Utilities other than the Windmill Ranch systems approved by the LCRA Board in March 2012 (the "Raw Water Reservations"). LCRA owns or holds and shall transfer to Buyer, subject to Section 2.2B and subject to the Required Approvals for same, at Closing the following: (1) "Permit to Store & Use State Water," Permit No. 5715, issued by the Texas Natural Resource Conservation Commission on December 7, 2001 (related to Lometa Reservoir); (2) that certain "Lease of Water Rights" between LCRA, Emmet Grumbles and John Pat Grumbles entered on or about March 16, 2011, and the related "Temporary Water Use Permit" No. 12755 issued by the Texas Commission on Environmental Quality on September 27, 2011 (also related to the Lometa Water System); and (3) that certain "Lease of Water Rights" between LCRA and Joe Rogan Miller entered March 28, 2007, as amended (also related to the Lometa Water System), and the related "Amendment to a Certificate of Adjudication" No. 14-1891B issued by the Texas Commission on Environmental Quality on January 31, 2011 (collectively, the foregoing are referred to as the "Lometa Water Rights"). In addition, prior to expiration of the Asset Review Period, Buyer agrees to submit to LCRA two applications (along with application fees in accordance with LCRA Water Contract Rules) as follows: one application will be for a standard-form municipal use raw water contract ("Raw Water Contract") for these utilities: Lake Buchanan, Paradise Point, Ridge Harbor, Sandy Harbor, and Smithwick Mills; the other application, subject to Section 2.2B, will be for a standard-form upstream municipal use raw water contract ("Upstream Raw Water Contract") to replace the LCRA reservation of raw water for the Lometa Water System. The applications for the Raw Water Contract and Upstream Raw Water Contract will be subject to review by LCRA in accordance with LCRA's Water Contract Rules. The Raw Water Contract and Upstream Raw Water Contract shall be in forms substantially similar to those attached hereto as **Exhibit Q**. The parties agree to use good faith efforts to complete and execute the Raw Water Contract and Upstream Raw Water Contract by Closing.

**Section 8.11 Pre-Closing Cooperation.** The parties shall meet monthly after the Effective Date, unless the parties otherwise agree or schedule, to discuss and update each other on the status of all conditions to Closing and on transition planning.

**Section 8.12 Exhibit Updates.** LCRA may provide Buyer with an update to the disclosures contained in Schedules B and I of Exhibit G (the "Exhibit G Update") and shall provide Schedule 2 of Exhibit F and Schedule N of Exhibit G prior to or on May 16, 2012. By notice to LCRA within fifteen (15) days (the "Confirmation Date") following the first to occur of (i) May 16, 2012 and (ii) the date LCRA provides Buyer with the last of the Exhibit G Update, Schedule 2 of Exhibit F and Schedule N of Exhibit G and notice that it waives any further right under this Section 8.12, Buyer will have the right to either: (1) terminate this Agreement upon which LCRA shall reimburse Buyer for the costs reasonably incurred by Buyer in relation to this Agreement from the Effective Date to such date of termination up to a maximum of the Reimbursement Fee; or (2) confirm this Agreement subject to the Exhibit G Update, Schedule 2 of Exhibit F and Schedule N of Exhibit G so provided and deposit the Initial Earnest Money further to Section 3.3A(i).

**Section 8.13 Quail Creek.** Before the end of the Asset Review Period LCRA shall decommission, plug and cap, to Buyer's satisfaction, the out-of-service groundwater well associated with the Quail Creek Water System.

## **IX.**

### **CLOSING**

**Section 9.1 Closing Period.** The Regulatory Review Period for a Utility or group of Utilities will end on the date that the TCEQ approves the sale and transfer of the Assets of a Utility or group of Utilities to Buyer (the "STM End Date"). Within ten business days of the STM End Date for a Utility or group of Utilities, and subject to Buyer and LCRA having performed in accordance with the O&M Agreement and the transfer of all existing Required CCNs or issuance of all Required CCNs for a Utility or group of Utilities, Buyer will notify LCRA of a date for the Closing (the "Closing Date") for a Utility or group of Utilities, which shall be not less than 60 days after the STM End Date; provided that Closing always remains subject to the terms and conditions of this Article IX.

**Section 9.2 Time and Place of Closing.** The closing (the "Closing") of the transactions contemplated by this Agreement shall be held at 10:00 a.m., local time on the Closing Date, at the offices of LCRA, 3700 Lake Austin Blvd. Austin, Texas 78703 or at such other time and place as may be agreed between the parties. All matters to take place at the Closing shall take place simultaneously, and no delivery shall be considered to have been made until all such Closing deliveries and proceedings have been completed.

**Section 9.3 Mutual Conditions to Closing.** Neither party shall be required to Close if a court of competent jurisdiction issues an order permanently restraining, enjoining or otherwise prohibiting Closing and, notwithstanding anything in this Agreement to the contrary, subject to Section 9.14 neither party shall be under any obligation to Close the transaction(s), or any portion thereof, contemplated by this Agreement, until:

- A. all Required Notices have been provided, unless waived in writing by LCRA and Buyer;
- B. all Required Approvals have been obtained, unless waived in writing by LCRA and Buyer, and without limiting the generality of the foregoing LCRA acknowledges that the Purchase Price, payment of the Closing Payment, and Buyer's obligations under this Agreement are contingent upon no Required Approvals imposing any capricious, unreasonable or materially costly conditions or any conditions which are not directly related to the relevant Utility;
- C. all Required Consents have been obtained unless waived in writing by both LCRA and Buyer.

If any or all of these conditions have not occurred or have not been waived by both

LCRA and Buyer as permitted herein by the Closing Date, as contemplated in Section 9.14 the Closing Date shall be extended for a reasonable period of time in order to allow the unresolved condition to be satisfied, provided in no event shall the Closing Date be extended beyond December 31, 2013, unless a Required Approval necessary from a regulatory agency of the State of Texas and/or United States is still pending without resolution and is being pursued in good faith by Buyer and there is a reasonable likelihood of receiving such Required Approval, in which event the Closing Date shall continue to be extended periodically for reasonable periods of time to allow such Required Approval to be obtained. Within five business days after December 31, 2013, and provided that Buyer is not in default under this Agreement (other than a default caused by the failure of a condition to close or a default caused by the LCRA), the Escrow Agent will deliver the Earnest Money to Buyer unless a Required Approval necessary from a regulatory agency of the State of Texas and/or United States is still pending without resolution and is being pursued in good faith by Buyer and there is a reasonable likelihood of receiving such Required Approval, in which event the Closing Date shall continue to be extended periodically for reasonable periods of time to allow such Required Approval to be obtained.

**Section 9.4 Buyer's Conditions to Closing.** Buyer shall have no obligation to Close unless and until at Closing:

- A. unless waived by Buyer further to Section 4.6, title insurance will be issued consistent with the commitment received further to Section 4.6;
- B. all Required Rights have been established;
- C. TCEQ has confirmed: (i) to Buyer, in form and substance reasonably acceptable to Buyer, that it will not seek to hold Buyer responsible, due to Buyer's operation of the Tow Village Water System, Bonanza Beach Water System or Quail Creek Water System (exclusive of the Environmental Excluded Assets), for any losses or claims arising due to matters prior to Buyer's ownership or operation of such Utilities; or, (ii) through written inspection report for the Tow Village Water System, Bonanza Beach Water System or Quail Creek Water System exclusive of the Environmental Excluded Assets that no notice of violation exists for each respective system;
- D. experienced employees of LCRA or other suitable personnel filling 90% of the key managerial, administrative and operations positions listed on **Exhibit P** have accepted Buyer's offers of employment to fill such key positions within 90 days of the Start Date (provided that Buyer has extended offers at least 30 days prior to the Start Date);
- E. LCRA has paid all amounts due in accordance with the O&M Agreement; and
- F. all of LCRA's representations and warranties shall be repeated at Closing and shall be true and correct when repeated at Closing.

**Section 9.5 LCRA Deliveries.** At Closing, LCRA shall deliver or cause to be delivered to Buyer, at LCRA's sole cost and expense, each of the following items:

- A. A duly executed and acknowledged deed(s) conveying LCRA's interest in the portion of the Property consisting of the Owned Real Property with warranties as provided in Section 7.2B, and an Assignment of Easements for the portion of the Property which is not held in fee simple by LCRA with a special warranty, each free and clear of Encumbrances other than Permitted Encumbrances, substantially in the form attached hereto as **Exhibit L** or **Exhibit M** (respectively, the "Deed(s)" and the "Assignment of Easements") but indicating that the Property otherwise is accepted in its AS-IS condition with no warranties, representations or guarantees except as expressly provided in this Agreement or such Transaction Document.
- B. A Bill of Sale, Assignment and Assumption substantially in the form attached hereto as **Exhibit N** ("Bill of Sale, Assignment and Assumption") duly executed by LCRA, transferring and assigning to Buyer LCRA's interest in the Facilities, the Intangible Assets and the other Assets apart from the Property, free and clear of Encumbrances other than Permitted Encumbrances, but indicating that the same are accepted in their AS-IS condition with no warranties, representations or guarantees except as expressly provided in this Agreement or such Transaction Document.
- C. An instrument, in a form acceptable to Buyer and LCRA, duly executed by LCRA assigning to Buyer all of LCRA's interests in any easements, licenses, or rights-of-way included in the Property free and clear of Encumbrances other than Permitted Encumbrances but indicating that the interests in any easements, licenses, or rights-of-way included in the Property otherwise are accepted in their AS-IS condition without any representations, warranties or guarantees except as expressly provided in this Agreement or such Transaction Document.
- D. At Closing, LCRA shall provide to Buyer a certificate (the "LCRA Closing Certificate") executed by a senior officer of LCRA which shall certify, represent, and warrant to Buyer, as of the Closing Date, that: (a) each and every of the covenants contained in Article VII of this Agreement has been fully satisfied; (b) each and every of the representations and warranties contained in this Agreement are and continue to be true and correct on the Closing Date, provided, should an event occurring during the pendency of this Agreement make any of such representations and warranties not correct on the Closing Date, such noncompliance shall be indicated and described on the LCRA Closing Certificate; and (c) unless waived by both LCRA and Buyer, that all Required Notices have been given. In addition, LCRA will provide to Buyer a certified copy of the previously adopted Board resolution determining that the Assets are no longer necessary, convenient or of beneficial use to the business of LCRA. Notwithstanding the foregoing, the obligation of Buyer to close this transaction is expressly conditioned upon the representations and warranties contained in Article VII hereof being true and correct on the Closing Date and the covenants

contained in this Agreement being fully satisfied on the Closing Date.

- E. The Transaction Documents duly entered into by LCRA.
- F. An opinion letter of LCRA's counsel substantially in the form attached hereto as **Exhibit H**.
- G. To the extent reasonably available, the originals of all Intangible Assets to be transferred to Buyer at Closing, unless LCRA is otherwise required by law (including but not limited to Texas LGC Chapter 201) to retain the originals, in which event LCRA will deliver copies to Buyer.
- H. Vehicle and rolling stock licenses duly assigned to Buyer.
- I. Such evidence of documents as may reasonably be required by Buyer evidencing the capacity of LCRA to close the transaction and the authority of the person or persons who are executing the various documents on behalf of LCRA in connection with the sale of the Assets.
- J. A termination notice terminating the Letters of Credit.
- K. Any other additional documents and instruments as in the mutual opinion of Buyer's counsel and LCRA's counsel are reasonably necessary for the proper consummation of this transaction.

**Section 9.6 Buyer Deliveries.** At Closing, Buyer shall deliver to LCRA the following items:

- A. Buyer shall provide to LCRA a certificate ("Buyer's Closing Certificate") executed by a senior officer of Buyer that shall certify, represent and warrant to LCRA, as of the Closing Date, that: (a) each and every of the covenants contained in this Agreement has been fully satisfied; (b) each and every of the representations and warranties contained in Article VI of this Agreement are and continue to be true and correct on the Closing Date, provided, should an event occurring during the pendency of this Agreement make any of such representations and warranties not correct on the Closing Date, such noncompliance shall be indicated and described on the Buyer's Closing Certificate; and, (c) unless waived by both LCRA and Buyer, all of the Required Consents and Required Approvals have been obtained. Notwithstanding the foregoing, the obligation of the LCRA to close this transaction is expressly conditioned upon the representations and warranties contained in this Agreement being true and correct on the date of Closing.
- B. The Closing Payment.
- C. As provided in section 4 of the Camp Swift Contract, for onward delivery to Sanders Trust either a deed of trust in the form attached to the Camp Swift Contract or the principal amount of the promissory note (up to \$395,364) under

the Camp Swift Contract minus the principal portion any payments made by LCRA thereon prior to Closing.

- D. The Transaction Documents duly entered into by Buyer (where Buyer is a contemplated signatory thereto).
- E. An opinion letter of Buyer's counsel substantially in the form attached hereto as **Exhibit I**.
- F. Such evidence or documents as may reasonably be required by LCRA evidencing the capacity of Buyer to close the transaction and the authority of the person or persons who are executing the various documents on behalf of Buyer in connection with the purchase of the Assets.
- G. Any other additional documents or instruments as in the mutual opinion of Buyer's counsel and LCRA's counsel are reasonably necessary to the proper consummation of this transaction.

**Section 9.7 Post-Closing Adjustment.** If any adjustments pursuant to Section 3.5 are, subsequent to Closing, found to be erroneous, then either party hereto who is entitled to additional monies shall invoice the other party for such additional amounts as may be owing, and such amount shall be paid within thirty (30) days from receipt of the invoice. This covenant shall not merge with the instruments of conveyance, transfer, or assignment to be delivered hereunder but shall survive the Closing.

**Section 9.8 Possession.** Possession of the Assets shall be delivered to Buyer by LCRA at Closing. Buyer will assume the Assumed Liabilities at Closing.

**Section 9.9 Accounts Receivable.** Unless Buyer does so under the O&M Agreement prior to Closing, LCRA will read customer meters as close as commercially feasible to the Closing Date ("Final Reading") but not more than three business days after the Closing Date. The Final Reading will promptly be provided to Buyer. Unless Buyer does so under the O&M Agreement, LCRA shall continue to bill customers and shall be entitled to collect the associated revenue, including any past due amounts, based on service meter readings up to and including the Final Reading. Buyer shall bill customers and shall collect the associated revenue based on meter readings after the Final Reading. If customers are billed based on interim refundable rates and a refund ultimately is required, then each party shall be solely responsible for making refunds to customers corresponding to the interim refundable rates such party collected.

**Section 9.10 Costs and Expenses.** Unless expressly provided herein to the contrary, all costs and expenses in connection with the transaction contemplated by this Agreement shall be borne by the party who incurs such costs. Costs of the Escrow Agent shall be shared evenly between the parties.

**Section 9.11 Transfer Taxes.** If Buyer timely applied to be a regional service provider under TWC Section 15.001(13) and Texas Tax Code Section 151.355(5) and diligently prosecuted said application further to Section 5.6, all transfer, documentary,



sales, use, stamp, registration, value added and other such taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the other Transaction Documents (including any real property transfer tax and any other similar tax) shall be borne and paid by LCRA when due. If Buyer did not timely so apply and diligently prosecute as aforesaid, Buyer shall bear and pay such taxes. The appropriate party shall, at its own expense, timely file any tax return or other document with respect to such taxes or fees (and the other party shall cooperate with respect thereto as necessary).

**Section 9.12 Claims; [REDACTED]**

A. Except as provided in Section 9.12D, LCRA's representations, warranties, covenants and obligations in this Agreement shall survive Closing (and shall not be merged with any deed or other document delivered at Closing) and LCRA shall remain liable, and Buyer may claim against LCRA [REDACTED] based upon, arising out of, with respect to or by reason of damages or costs incurred by Buyer as a result of:

(i) any inaccuracy in or breach of any of the representations or warranties of LCRA contained in this Agreement, the other Transaction Documents or in any certificate or instrument delivered by or on behalf of LCRA pursuant to this Agreement, as of the date such representation or warranty was made or repeated on and as of the Closing Date;

(ii) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by LCRA pursuant to this Agreement, the other Transaction Documents or any certificate or instrument delivered by or on behalf of LCRA pursuant to this Agreement;

(iii) any Excluded Asset or any Excluded Liability; or

(iv) any third party claim based upon, resulting from or arising out of the Utilities or Assets existing or arising on or prior to the Closing Date or arising from the acts or omissions of LCRA prior to the Closing Date.

B. [REDACTED]

C. [REDACTED]

D. Notwithstanding anything in this Section 9.12 to the contrary, [REDACTED] LCRA shall hold Buyer harmless in accordance with Section 11.6 from, any liabilities imposed on LCRA concerning

the Utilities by federal, state or local regulatory agencies under applicable Environmental Law except as otherwise expressly provided in this Agreement.

#### **Section 9.13 Expiry.**

- A. LCRA's representations and warranties shall expire, and Buyer shall have no right to claim against LCRA thereunder, five years after Closing; provided, however, that such limitation shall not apply to the representations and warranties contained in Sections 7.1A – D and as to LCRA's title to Assets and as to the absence of Encumbrances, whether set forth in this Agreement, the Deeds, the Bill of Sale, Assignment and Assumption, or another transaction or document.
- B. Buyer's representations and warranties shall expire, and LCRA shall have no right to claim against Buyer thereunder, five years after Closing; provided, however, that such limitation shall not apply to the representations and warranties contained in Sections 6.1A – D. The expiry provided in this subsection shall not apply to Buyer's obligations to indemnify LCRA as provided in Section 11.5.

**Section 9.14 Phased Closings.** Notwithstanding the foregoing in this Article IX, if a Required Approval, Required Consent, Required Right or other condition precedent has not been fulfilled, or eminent domain proceedings are pending, or a title defect is subsisting and not waived under Section 4.5, concerning a Utility on the Closing Date, Closing for that Utility may be postponed until such time as the Required Approval, Required Consent, Required Right or other condition precedent has been fulfilled, or eminent domain proceedings have been resolved (and there is no confiscation), or the title defect is cured, if both parties agree, whereupon Closing for such Utility shall occur. The Purchase Price and amount of Earnest Money retained in Escrow (as security for Buyer's obligation to eventually so Close) shall be adjusted to reflect the Purchase Price allocated to the relevant Utility in **Exhibit D**. The parties shall reasonably and in good faith document their respective rights and obligations arising in respect of any such postponed Closing.

### **X.**

#### **DEFAULT AND REMEDIES**

##### **Section 10.1 Termination by Either or Both Parties for Certain Matters.**

- A. This Agreement may be terminated at any time prior to the Closing by written agreement of LCRA and Buyer.
- B. Without prejudice to Buyer's termination rights set forth elsewhere in this Agreement, this Agreement may be terminated by Buyer prior to the Closing: (i) if the TCEQ affirmatively and finally rejects Buyer's STM Application; or (ii) there is a material adverse change to the Utilities or Assets on or after the Effective Date, including due to material changes in applicable laws or governmental policies materially detrimental to the ability of an investor owned utility to sensibly and economically own and operate utilities.

- C. Without prejudice to LCRA's termination rights set forth elsewhere in this Agreement, this Agreement may be terminated by LCRA prior to the Closing: (i) if the TCEQ affirmatively and finally rejects Buyer's STM Application; or (ii) if a court of competent jurisdiction issues an order permanently restraining, enjoining or otherwise prohibiting the Closing, and such order has become final and non-appealable.
- D. Should this Agreement be terminated as permitted in this Section 10.1 or Article IV, both LCRA and Buyer shall be relieved and released of all obligations, claims, and liabilities hereunder and the Earnest Money shall be returned to Buyer.

**Section 10.2 Buyer's Default.** This Agreement may be terminated by LCRA at any time prior to the Closing if one or more of the following conditions occurs: (a) Buyer files a petition in bankruptcy under the United States Bankruptcy Code; (b) there is a material breach of any material representation, warranty or covenant, including a material condition to Closing entirely within Buyer's control made by Buyer in this Agreement after LCRA has provided Buyer with written notice and opportunity to cure as otherwise provided herein; or (c) any litigation is commenced against or involving Buyer which is likely to have a material adverse effect on Buyer's ability to perform its obligations under this Agreement. In the event of termination pursuant to subsections (a) and (b) of this Section 10.2, the Escrow Agent will disburse to LCRA all Earnest Money and previously deposited into escrow as provided in the Escrow Agreement. In the event of termination pursuant to subsection (c) of this Section 10.2 (but not including litigation seeking to restrain, enjoin or otherwise prohibit the Closing and involving Buyer merely in such capacity hereunder), the Initial Earnest Money shall be distributed to LCRA and the remainder of the Earnest Money (other than the Initial Earnest Money) shall be distributed to Buyer.

**Section 10.3 LCRA's Remedies.** Notwithstanding any express provision of this Agreement to the contrary, in the event Buyer breaches any of Buyer's material obligations hereunder before or at Closing, LCRA may, as its sole and exclusive remedies: (a) terminate this Agreement by giving Buyer written notice of such election and have Escrow Agent disburse to LCRA all Earnest Money previously deposited into Escrow as provided in the Escrow Agreement; or (b) waive prior to or at Closing the applicable breach and proceed to close the transactions contemplated herein in accordance with the remaining terms hereof. LCRA shall have no other rights against Buyer and Buyer shall have no further liability to LCRA for breach of this Agreement beyond the loss of the Earnest Money as provided in this Section 10.3.

**Section 10.4 LCRA's Default.** This Agreement may be terminated by Buyer prior to the Closing if: (a) there is a material breach of any representation, warranty or covenant made by LCRA in this Agreement; (b) LCRA fails to perform any of its material obligations under this Agreement after Buyer has provided LCRA with written notice and opportunity to cure as otherwise provided herein; (c) any litigation is commenced against or involving LCRA, the Utilities or Assets, which is likely to have a material adverse effect on LCRA's ability to perform its obligations under this

Agreement. In the event of termination pursuant to this Section 10.4, the Escrow Agent will disburse to Buyer all Earnest Money previously deposited into escrow as provided in the Escrow Agreement.

**Section 10.5 Buyer's Remedies.** In the event LCRA breaches any of LCRA's material obligations hereunder before or at Closing, Buyer shall have the following remedies as its sole and exclusive remedies: (a) to enforce this Agreement by specific performance, mandamus, or similar remedy; (b) to terminate this Agreement prior to or at Closing by giving LCRA written notice of such election, [REDACTED] and have the Escrow Agent disburse to Buyer all Earnest Money previously deposited into escrow and all interest, if any, accrued thereon as provided in the Escrow Agreement; or (c) to waive prior to or at Closing the applicable breach and proceed to close the transaction contemplated hereby in accordance with the remaining terms hereof.

**Section 10.6 Remedies in Sections 10.3 and 10.5 as Sole Remedies.** LCRA and Buyer agree that the nature of this Agreement is such that it would be difficult, if not impossible, to determine the amount of damages to either party which may result from a termination following breach of this Agreement by the other party. Likewise, LCRA and Buyer recognize that a termination of this Agreement by either party as permitted herein, may result in either or both parties suffering harm, the amount of which would likewise be difficult, if not impossible, to determine. The parties acknowledge that the provisions in this Agreement relating to the Earnest Money [REDACTED] are a reasonable forecast of just compensation to each party for violation of this Agreement by the other party. Therefore, LCRA and Buyer agree that the remedy of damages upon termination for breach of this Agreement by either party is inappropriate and the sole monetary remedies of either party following termination upon breach of this Agreement by the other shall be limited to the Earnest Money [REDACTED] as provided in this Agreement. LCRA and Buyer waive to the fullest extent provided by law any and all rights they have or in the future may have to dispute or otherwise object to any or all of the provisions in this Article X.

**Section 10.7 Notice of Default and Opportunity to Cure.** If either Buyer or LCRA at anytime alleges that the other is in default under this Agreement, before exercising any remedy as a result of such default, the party alleging the default shall first provide written notice to the party alleged to be in default specifying the nature of the default and provide the allegedly defaulting party thirty (30) days opportunity to cure the default, unless a shorter or longer period is provided elsewhere in this Agreement for a specific default. Said thirty (30) day cure period shall be extended for up to an additional thirty (30) days if the defaulting party is diligently attempting to cure the default and such default is reasonably likely to be cured within such additional period of time. Any such cured default shall no longer be a default.

## **XI.**

### **CONTINUING COVENANTS**

**Section 11.1 Further Assurances.** Following Closing each of the parties shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably requested by the other party to carry out the provisions and intentions of this Agreement and to give effect to the transaction herein contemplated.

**Section 11.2 Database.** LCRA shall maintain its database relating to the Utilities for six years after Closing and make all relevant information available to Buyer on request.

**Section 11.3 Buyer's Rate Case.** Buyer shall file its first rate case concerning the Utilities with the TCEQ after accumulating at least one year of operating history following Closing, with the intention of making such filing as soon as reasonably practical but not later than two years after Closing. LCRA acknowledges that in light of regulatory requirements, and the marshalling and presentation of facts and data, Buyer gives no assurance that its reasonable efforts will permit such filing before such date. Buyer agrees to seek inclusion of Permitted Capital Expenditures in such rate case unless funded by contributions in aid of construction or contributed property (provided that LCRA timely notifies Buyer of such Permitted Capital Expenditures in accordance with this Agreement). LCRA shall reasonably cooperate with Buyer on Buyer's first rate case, including providing with information relevant to such rate case, and shall not intervene in or oppose any elements of Buyer's first rate case.

**Section 11.4 Excluded Liabilities.** LCRA covenants and agrees that it shall be solely responsible for, timely pay and perform (subject to any rights and defenses available to LCRA under law or under the Excluded Liabilities) and hold Buyer harmless from all Excluded Liabilities associated with the Utilities.

**Section 11.5 Indemnification.** Buyer hereby covenants and agrees, at its sole cost and expense, to pay for and indemnify, defend, and hold LCRA harmless from and against any and all losses, costs, liabilities, causes of action, civil, administrative or investigative action or proceeding claims, fines, judgments, damages or expenses (including, without limitation, interest, penalties and reasonable expert witness and attorneys' fees) ("Claims") of every kind and nature arising after Closing solely due to acts or omissions of Buyer and its agents or contractors in relation to the Utilities or Assets including, not limited to, any Claims arising solely out of the acts or omissions of Buyer and its agents or contractors in respect any one or more of the following occurring after Closing:

- A. any Release of Hazardous Materials in, on, above, under or from the Property in violation of any applicable Environmental Laws;
- B. any activity by Buyer or any person affiliated with Buyer in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other Release, generation, production, manufacturing, processing, control, management, abatement, removal, handling, transfer or transportation to

or from the Property of any Hazardous Materials in violation of any applicable Environmental Laws;

- C. any activity by Buyer or any person affiliated with Buyer in connection with any actual or proposed remediation of any Hazardous Materials in violation of any applicable Environmental Laws located in, under, on or above the Property, including but not limited to any removal, remedial or corrective action;
- D. any non-compliance or violations of any Environmental Laws in connection with the Property or operations thereon, including but not limited to any failure by Buyer or any person affiliated with Buyer to comply with any environmental order concerning the Property;
- E. the imposition, recording or filing or the threatened imposition, recording or filing of any environmental order concerning the Property;
- F. any administrative processes or proceedings or judicial proceedings in any way connected with any environmental matter relating to the Property addressed in this Agreement;
- G. any injury to, destruction of or loss of natural resources connected with the Property, including but not limited to costs to investigate and assess such injury, destruction or loss; and,
- H. any personal injury, wrongful death, or property or other damage arising under any statutory or common law or tort law theory with respect to any Hazardous Materials, including but not limited to damages assessed for private or public nuisance or for the conducting of an abnormally dangerous activity on or near the Property.

**THESE INDEMNITIES SHALL APPLY TO CLAIMS ARISING OUT OF, RESULTING FROM, OR RELATING TO BUYER'S OWNERSHIP OR OPERATION AFTER CLOSING OF THE ASSETS. THE PROVISIONS OF THIS SECTION 11.5 SHALL SURVIVE THE CLOSING AND ANY SUBSEQUENT SALE OF THE ASSETS BY BUYER. FOR PURPOSES OF THIS SECTION 11.5, THE INDEMNITEES WILL INCLUDE ALL DIRECTORS, OFFICERS AND EMPLOYEES OF LCRA.**

Any entity receiving notice of the commencement or threatened commencement of any Claims for which LCRA seeks indemnification shall promptly notify Buyer of such claim in writing. Notice shall be considered prompt if received by Buyer within three (3) business days after LCRA receives notice. No failure to so notify Buyer shall relieve Buyer of its obligations under this Agreement except to the extent that Buyer can demonstrate damages attributable to such failure. Within fifteen (15) days following receipt of written notice from LCRA relating to any claim, but no later than ten (10) days before the date on which any response to a complaint or summons is due, Buyer shall assume control of the defense and settlement of the Claims.

**Section 11.6 Release and Responsibility.** LCRA hereby covenants and agrees that, except as otherwise provided in the O&M Agreement, it is solely responsible for, and releases Buyer from, any and all Claims of every kind and nature in existence as of or arising before Closing in relation to the Utilities or Assets including, but not limited to, any Claims arising out of the acts or omissions of LCRA or its agents or contractors in respect any one or more of the following occurring before Closing:

- A. any presence of any Hazardous Materials in, on, above or under the Property and any Release of Hazardous Materials in, on, above, under or from the Property;
- B. any activity by LCRA or any person affiliated with LCRA in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other Release, generation, production, manufacturing, processing, control, management, abatement, removal, handling, transfer or transportation to or from the Property of any Hazardous Materials;
- C. any activity by LCRA or any person affiliated with LCRA in connection with any actual or proposed remediation of any Hazardous Materials located in, under, on or above the Property, including but not limited to any removal, remedial or corrective action;
- D. any non-compliance or violations of any Environmental Laws in connection with the Property or operations thereon, including but not limited to any failure by LCRA or any person affiliated with LCRA to comply with any environmental order concerning the Property;
- E. the imposition, recording or filing or the threatened imposition, recording or filing of any environmental order concerning the Property;
- F. any administrative processes or proceedings or judicial proceedings in any way connected with any environmental matter relating to the Property addressed in this Agreement;
- G. any injury to, destruction of or loss of natural resources connected with the Property, including but not limited to costs to investigate and assess such injury, destruction or loss; and,
- H. any personal injury, wrongful death, or property or other damage arising under any statutory or common law or tort law theory with respect to any Hazardous Materials, including but not limited to damages assessed for private or public nuisance or for the conducting of an abnormally dangerous activity on or near the Property.

**THE ABOVE SHALL APPLY TO CLAIMS ARISING OUT OF, RESULTING FROM, OR RELATING TO LCRA'S OWNERSHIP OR OPERATION OF THE ASSETS BEFORE CLOSING, EXCEPT AS MAY BE OTHERWISE EXPRESSLY PROVIDED IN THE O&M AGREEMENT. THE PROVISIONS OF THIS SECTION 11.6 SHALL SURVIVE THE CLOSING.**

**Section 11.7 COBRA.** LCRA shall be responsible for complying with the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") with respect to its employees (including any and all employees that do not become an employee of Buyer as of the Start Date or Closing Date) and their qualified beneficiaries by reason of any such employees' termination of employment with LCRA, and except as required by applicable law Buyer shall not have any obligation or liability to provide rights under COBRA on account of any such termination of employment.

## **XII.**

### **GENERAL PROVISIONS**

**Section 12.1 Notices.** All notices and other communications hereunder shall be in writing and shall be delivered by one of the following means unless otherwise expressly provided: hand delivery; overnight delivery; mailed by registered or certified mail, return receipt requested, postage prepaid; or, electronic mail provided that a duplicate of the same notice or communication is also mailed by first-class mail. All notices and communications hereunder shall be addressed as follows, and shall be effective upon actual delivery if delivered by hand or by expedited courier delivery or, if mailed, three business days after deposit in the United States mail:

**A. If to LCRA, to:**

Rebecca S. Motal  
General Manager  
LCRA  
P. O. Box 220 – Mail Stop H107  
Austin, Texas 78767-0220  
Phone: (512) 473-3283  
Email:

With a copy to:

Madison Jechow  
Associate General Counsel  
LCRA  
P. O. Box 220 – Mail Stop H429  
Austin, Texas 78767-0220  
Phone: (512) 473-4067  
Email:

**B. If to the Buyer, to:**

Kevin Meagher  
Chief Operating Officer  
Suite 100, 11020 W. Plank Court  
Wauwatosa, Wisconsin 53226



Phone: (414 203 8700  
Email: kevin.meagher@corix.com

With a copy to:

Hamish Cumming  
Executive Vice President, Legal and Risk Management  
Corix Infrastructure Inc.  
Suite 1160 – 1180 West Georgia Street  
Vancouver, British Columbia V7W 1Y2  
Phone: (604) 697-6714  
Email: hamish.cumming@corix.com

Any party may change its address for receiving notice by giving notice of a new address in the manner herein provided; however, if mailed, notice of such new address will be effective only upon actual receipt by the other parties.

**Section 12.2 Headings and Defined Terms.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

**Section 12.3 Assignment.** Buyer may assign its rights, but may not delegate its obligations, under this Agreement to a wholly-owned subsidiary or another wholly-owned member of its ultimate holding company. Assignment of this Agreement by either party is otherwise prohibited without the prior written consent of the other party, which consent shall not be unreasonably withheld, delayed or conditioned. Upon granting such consent, the assigning party shall be released from the obligations of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns.

**Section 12.4 Governing Law.** This Agreement shall be construed and interpreted in accordance with the law of the State of Texas.

**Section 12.5 Arbitration.** Any controversy or claim arising out of or under this Agreement, including as to the retention or refund of Earnest Money and amounts held in Escrow, shall be settled by arbitration in accordance with the International Arbitration Rules of the American Arbitration Association, and judgment thereon may be entered in any court having jurisdiction thereof. There shall be one arbitrator. The place of arbitration shall be Austin, Texas.

**Section 12.6 No Oral Modification.** This Agreement may not be modified or amended, except by an agreement in writing signed by both the LCRA and Buyer.

**Section 12.7 No Oral Waiver.** The parties may waive any of the conditions contained herein or any of the obligations of the other party hereunder, but any such waiver shall be effective only if in writing and signed by the party waiving such

conditions or obligations. No waiver or waivers of any breach or default (or any breaches or defaults) of any term, covenant, condition or liability under this contract, or of performance by the other parties of any duty or obligation under this contract, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances.

**Section 12.8 Total Agreement.** This Agreement, including the Exhibits hereto and the Transaction Documents, constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No representation, warranty, covenant, agreement, or condition not expressed in this Agreement, a Closing document, or another agreement in writing signed by both LCRA and Buyer shall be binding upon the parties hereto or shall affect or be effective to interpret, change, or restrict the provisions of this Agreement.

**Section 12.9 Partial Invalidity.** If any clause or provision of this Agreement is or should ever be held to be illegal, invalid, or unenforceable under any present or future law applicable to the terms hereof, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and that in lieu of each such clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable such that the intention of the parties is effected as closely as is possible.

**Section 12.10 Counterpart Execution.** To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of all persons required to bind any party appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto.

**Section 12.11 Holidays.** In the event that the date upon which any duties or obligations hereunder to be performed shall occur upon a Saturday, Sunday or legal holiday, then, in such event, the due date for performance of any duty or obligation shall thereupon be automatically extended to the next succeeding business day.

**Section 12.12 Consents and Approvals.** Whenever this Agreement requires Buyer or LCRA to give an approval or consent or to take or not take an action, Buyer and LCRA agree that such consent, approval, or action or inaction will not be unreasonably withheld, delayed, or conditioned.

**Section 12.13 Exhibits.** The following Exhibits are attached hereto and incorporated herein for all purposes:

**Exhibit A**     Assets