

then at the request of D&Z, the RRRRA agrees to restructure the transactions described herein so that regulatory oversight, licensing or certificate is not required of D&Z.

B. Waste Water Provisions.

1. Effluent Delivery Point.

- a. During the Waste Water Term (as hereinafter defined), D&Z shall discharge effluent from one or more parcels of the D&Z Property into trunk lines leading to the RRRRA Waste Water Treatment Facility. So long as the effluent from the Main Parcel is being treated by the RRRRA Waste Water Treatment Facility, there will be one point on the Main Parcel at which effluent from the Main Parcel will discharge into the trunk line leading to the RRRRA Waste Water Treatment Facility (the "Main Parcel Effluent Delivery Point"). The meter measuring such effluent discharge shall be located at or near the point of interconnection and shall be within the easement area that the RRRRA has pursuant to its easement from the Army. Included in the effluent to be so discharged will be the industrial and other waste of D&Z other than that which it treats on D&Z Property under present or future permits. The points of interconnection in Area I and Area H will be the points at which the laterals from each of the buildings owned by D&Z in Area I and Area H connect into the trunk lines.
- b. Effluent delivered into the RRRRA trunk lines from Area I or Area H shall be measured at a volume equal to eighty (80%) percent of water consumption by D&Z in Area I and Area H. Effluent delivered at the Main Parcel Effluent Delivery Point shall be metered. D&Z shall determine the size and design of the meter (subject to the approval of the RRRRA, not to be unreasonably withheld) and shall bear the responsibility for all metering equipment and installation costs associated with the installation of the metering station at the Main Parcel Effluent Delivery Point. D&Z agrees to install and have operational the meter at the Main Parcel Effluent Delivery Point within sixty days of the Effective Date. D&Z agrees to install a manhole at or near the meter so that samples can be taken from the effluent for testing purposes. D&Z agrees to maintain and periodically calibrate the meter to assure accurate measurement. In addition, reasonable adjustments will be made for any infiltration between the meter and the trunk line (which may result in the meter understating usage) and for any backup from the trunk line into the D&Z collector line (which may result in the meter overstating usage).
- c. D&Z will assure that all industrial waste effluent discharged by D&Z into the RRRRA waste water facilities will comply with the requirements imposed by TCEQ for such discharge. In addition, D&Z shall comply with effluent standards for its waste water reasonably established from time to time by the RRRRA that are generally applicable to and uniformly enforced against all entities whose effluent is discharged into the RRRRA waste water facilities.

2. Waste Water Rates, Invoicing and Payment.

- a. The RRRA will provide waste water collection and treatment service to D&Z at the lowest rate offered to commercial users from time to time. The initial rate at which such waste water services will be offered for effluent from the Main Parcel is \$4.85 per 1,000 gallons (which is comprised of \$3.50 per 1000 gallons standard rate and a \$1.35 per 1000 gallon facility charge). The initial rate for such waste water service for effluent from other portions of D&Z Property will be at the same rate, subject to a minimum fee per meter of \$10.80 per month. . On or about the fifteenth (15<sup>th</sup>) day of each calendar month, beginning with the month after Effective Date, the RRRA will deliver to D&Z an invoice (the "RRRA Waste Water Invoice") for amounts due the RRRA for waste water treatment during the previous month. The remittance address shall be such address as may be reflected on the RRRA Invoice from time to time. D&Z shall pay in full the amount indicated on the RRRA Invoice within 15 days of receipt; provided however, D&Z may offset such amounts owed against amounts owed by the RRRA to D&Z under Section A(3)(a) hereof. Subject to the obligations of D&Z to promptly pay, D&Z may dispute the amount indicated on the RRRA Invoice and make payment "under protest" by notifying the RRRA in writing accompanying the payment. D&Z, by making payment under protest, will not be deemed to have waived any of its rights, remedies or defenses under this Agreement or otherwise. Each Party will permit the other to examine, audit and copy all records and information necessary to confirm the accuracy of any RRRA Invoice submitted pursuant to this paragraph. The Parties acknowledge that the meter will not be installed until after the Effective Date. Notwithstanding any other provision hereof to the contrary, the Parties agree that the average daily discharge of D&Z during the ninety day period commencing after the meter that is described in Section B-1-b is installed shall be presumed to be the daily usage for every day from the Effective Date through the date such meter is installed. The RRRA may defer sending the invoice until after the ninety period has expired, and D&Z will make payment to the RRRA for such usage promptly upon being invoiced therefor.

3. Waste Water Term.

- a. The "Waste Water Term" shall begin on the Effective Date and shall continue for one (1) year thereafter. Waste Water Term shall automatically renew for additional one (1) year terms unless terminated by D&Z by at least thirty (30) day written notice to the RRRA prior to expiration of the existing term.

4. Waste Water Regulatory Structure.

- a. The RRRA will maintain all licensing required of it to own and operate a waste water treatment facility and will comply with all federal, state and local environmental and other laws.

C. Miscellaneous Provisions.

1. This Agreement shall be subject to change or modification only by the mutual written consent of the Parties.
2. Each party to this Agreement shall be responsible for all costs and expenses incurred by such Party in connection with this Agreement.
3. Except as expressly provided herein, nothing in this Agreement, expressed or implied, is intended to confer upon any person, other than the Parties, any rights, benefits, or remedies under or by reason of this Agreement.
4. None of the Parties shall be liable or have any responsibility to the other for any indirect, special, consequential, punitive or delay-related or performance-related damages including, without limitation, lost earnings or profits. Such limitation on liability shall apply to any claim or action, whether it is based on whole or in part on contract, negligence, strict liability, tort, statute or any other theory of liability. Notwithstanding the foregoing, fines or penalties imposed by EPA, TCEQ or other regulatory body against one party (the "Non-breaching Party") directly attributable to the failure of the other party (the "Breaching Party") to perform as obligated hereunder may be recovered from the Breaching Party by the Non-Breaching Party.
5. This Agreement and the transactions contemplated hereunder are based upon the active participation of the Parties. Neither the execution nor delivery of this Agreement, nor the consummation of the transactions contemplated hereunder, shall create or constitute a partnership, joint venture, or any other form of business organization or arrangement between the Parties, except for the contractual arrangements specifically set forth in this Agreement. Except as is expressly agreed to in writing in this Agreement, no Party (or any of its agents, officers or employees) have any power to assume or create any obligation on behalf of the other Party.
6. The Effective Date of this Agreement shall be the date the Agreement is last signed by either of the Parties.
7. By their signatures below, the individuals signing this Agreement on behalf of the Parties hereby confirm that they have full authority to execute this Agreement and bind and otherwise compromise the interests of the Party they represent.
8. This agreement is not confidential.
9. This agreement is executed in six originals, one original to be provided to each party. This Agreement may be executed in multiple counterparts and/or with the signatures of the Parties set forth on different signature sheets and all such counterparts, when taken together, shall be deemed one original.
10. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas (other than the conflict of laws principles).
11. This Agreement is performable by both parties in Bowie County, Texas.

12. In the event either party to this Agreement should bring suit against the other party in respect of any matters provided for herein, the prevailing party, as determined by a judicial order, shall be entitled to recover from the other party its costs of court, legal expenses and reasonable attorneys' fees in connection with such suit; otherwise, each party shall pay its own expenses. It is specifically agreed, however, that prior to filing suit, all disputed issues shall proceed in accordance with the dispute resolution procedures set forth in paragraph C-13 hereof.
13. Dispute Resolution Procedures.
- a. If a dispute arises under this Agreement, the following procedures shall apply: (1) either Party may invoke this dispute resolution procedure, (2) the Parties shall make reasonable efforts to informally resolve disputes at the lowest level prior to the issuance of a formal written statement of dispute under the procedures set forth below, and (3) both Parties shall abide by the terms and conditions of any final resolution of the dispute.
  - b. Within thirty (30) days after any action which leads to or generates a dispute or after efforts to informally resolve a dispute have failed, either Party may submit a written statement of dispute to the other Party setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's technical and legal position regarding the dispute, and the relief requested. The Executive Director of the RRRA and the Vice President of D&Z, shall serve as "Dispute Resolution Managers" for the RRRA and D&Z, respectively. The written statement of dispute shall be mailed by the Dispute Resolution Manager for the disputing Party to the Dispute Resolution Manager for the other Party.
  - c. The Dispute Resolution Managers shall have twenty-one (21) working days to resolve the dispute from the date of receipt of the written statement of dispute. The resolution of the dispute shall be memorialized in writing.
  - d. The Parties shall diligently perform under this Agreement pending the completion of these dispute resolution procedures.
  - e. If the Dispute Resolution Managers are unable to resolve the dispute within twenty-one (21) working days of receipt of the written statement of dispute, the Parties may pursue whatever remedies they may have at law or equity.
  - f. The timeframes set forth above for reporting and resolution of disputes may be extended by mutual agreement of the Parties and such agreement shall be memorialized in writing.

14. Texas Local Government Law. The obligations of the RRRA to pay or reimburse money hereunder are subject to availability of current funds pursuant to Texas local government code Chapter 271 and Article XI of the Texas Constitution; provided however in the event the RRRA fails to pay or reimburse D&Z on account of this provision, D&Z may suspend providing water to the RRRA until all payments owed by the RRRA to D&Z have been paid.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, the Parties, intending to be legally bound hereby, have caused their duly appointed representatives to execute this Agreement as of the date first set forth above.

**THE RED RIVER REDEVELOPMENT  
AUTHORITY**

By: Will V. Cook  
Executive Director

**DAY & ZIMMERMANN LONE STAR LLC**

By: Matthew M. DiBao  
President

## ASSIGNMENT OF AND AMENDMENT TO WATER PURCHASE CONTRACT

**THIS ASSIGNMENT OF AND AMENDMENT TO WATER PURCHASE CONTRACT** (this "Amendment") is made and entered into this 1<sup>st</sup> day of September, 2010 by and between the **CITY OF TEXARKANA, TEXAS**, a Texas municipal corporation, acting by and through its City Manager (the "Seller"), **DAY & ZIMMERMANN, INC.-LONESTAR DIVISION**, a Delaware Corporation (the "Assignor") and **DAY & ZIMMERMANN LONE STAR, LLC**, a Delaware Limited Liability Company ("Purchaser").

### WITNESSETH:

**WHEREAS**, the Seller is fully empowered to enter into contracts for the purpose of selling water for municipal, domestic, industrial and other useful purposes permitted by law and upon such terms and for such time as the parties may agree;

**WHEREAS**, the Seller and the Assignor are parties to that certain Water Purchase Contract dated December 13, 1993, which was last amended on April 27, 2009 (as amended, the "Original Agreement") pursuant to which Assignor purchases water for its use on the Lone Star Army Ammunition Plant;

**WHEREAS**, portions of the Lone Star Army Ammunition Plant ("Lone Star") are deemed surplus and designated for closure by the Defense Base Realignment & Closure Commission pursuant to the Base Realignment & Closure Act of 1990, as amended;

**WHEREAS**, the United States of America, acting by and through the Secretary of the Army has agreed to transfer the majority of the real property at Lone Star to the Red River Development Authority ("RRRA"), has agreed to transfer other parcels of the real property at Lone Star to the Purchaser, and will retain for clean up additional parcels of real property at Lone Star;

**WHEREAS**, the Purchaser, an affiliate of Assignor, will continue to manufacture munitions and engage in other business activities upon the portion of Lone Star that it is purchasing from the Army and will continue to have the need for potable water; and

**WHEREAS**, the Assignor desires to assign its interest in the Original Agreement to Purchaser, and Purchaser desires to assume Assignor's interest in the Original Agreement;

**WHEREAS**, after giving effect of the assignment of the Original Agreement from the Assignor to the Purchaser, the Seller and the Purchaser desire to enter into this Amendment of the Original Agreement (a) to provide for the Purchaser's continued need to have water supply for its use and (b) on a limited basis to resell water to others in order to facilitate the reasonable conversion of the Lone Star from military to municipal and commercial use; and

**WHEREAS**, by Ordinance No. 110-2010 enacted on 8/23/10 by the Seller, the sale of water to Purchaser in accordance with the provisions of said Ordinance was approved, and the execution of this Amendment carrying out the said Ordinance by the City Manager and attested by the Secretary was duly authorized.

**NOW THEREFORE**, in consideration of the premises and terms, provisions, conditions and covenants hereinafter set forth, the parties hereto hereby agree as follows:

1. Recitals. The above recitals are true and correct and are hereby incorporated herein by this reference.

2. Definitions. All capitalized terms utilized herein but not otherwise defined herein shall have the meanings ascribed to such terms in the Original Agreement.

3. Assignment. Assignor hereby assigns its interest in the Original Agreement to Purchaser, and Purchaser hereby accepts such assignment. Seller consents to the assignment.

4. Purchase Price. Section B-1 of the Original Agreement is amended by deleting such section (and subparts a, b and c) in its entirety and inserting the following in lieu thereof: "To pay the Seller, not later than the last weekday of each month, for water delivered during the preceding month, at the rate of \$1.40 per 1,000 gallons of water."

5. Access to Property. Section B-4 is amended by striking the words "Government rules and regulations" as it appears in the last sentence thereof and inserting the following in lieu thereof "Purchaser rules and regulations".

6. Volume of Water. Section B-8 is amended by striking the words "when needed at 1100 gpm" and inserting the following in lieu thereof "when needed up to 1100 gpm."

7. Term. Section C-1 of the Agreement is amended by striking the section in its entirety and inserting the following in lieu thereof: "That this contract shall extend for a term commencing on the date of the initial delivery of any water and shall continue until July 31, 2015, and thereafter may be renewed or extended for such term or terms as may be agreed upon by the Seller and Purchaser."

8. Resale of Water. Paragraph C-11. of the Original Agreement is hereby deleted in its entirety and the following inserted in lieu thereof:

"11. Resale of Water.

a. The Purchaser shall not engage in the resale, contribution, donation or other disposition of water to or for the benefit of parties other than Purchaser; provided Purchaser shall not engage in the resale of water; provided, however, the Purchaser, without the consent or permission of the Seller, (i) may furnish water to Purchaser's tenants located on the portions of Lone Star that are purchased by Purchaser and are located East of Central Avenue, and (ii) may resell to the RRRA until RRRA begins receiving water from another source for its purposes including but not limited to providing water service to Areas I and H of the Lone Star. Notwithstanding the foregoing exceptions, Purchaser agrees that it will not resell water for use outside of the present boundaries of Lone Star.

b. Unless otherwise agreed by the Seller and the Purchaser, the rate charged by the Purchaser for resale of water to the RRRA shall not exceed the price paid by Purchaser to Seller for such water.

c. The Purchaser does not object to the RRRA obtaining a certificate of convenience and necessity authorizing the RRRA's resale of water."

8. Other Amendments

a. The last sentence of Section C-2-a (*Seller further agrees that this water will be supplied at a cost of \$1.28 per 1,000 gallons when Purchaser has made timely notification.*) shall be deleted



b. Section C-6 (*That should Seller be unable to deliver water for any thirty (30) day period the minimum billing of \$7680 should not apply.*) shall be deleted in its entirety.

c. Section C-7 (*That the provisions of this contract pertaining to the schedule of rates to be paid by Purchaser for water delivered are subject to modification only at the end of the initial term of one year. Any increase or decrease in rates shall be based on a demonstrable increase or decrease in the costs of performance hereunder, but such costs shall not include increased capitalization of the Seller's system, except as specifically stated in this contract*) shall be deleted in its entirety.

9. Effective Date; Reaffirmation. This Amendment shall be attached to and become a part of the Original Agreement and shall become effective on the 1st day of August, 2010 (the "Effective Date"). The terms and provisions of the Original Agreement, as modified by this Amendment, are hereby ratified and confirmed in all respects and shall continue in full force and effect.

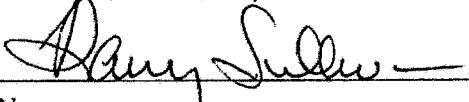
10. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

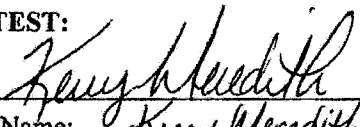
IN WITNESS WHEREOF, the parties hereto, acting under authority of their respective governing bodies, have caused this Amendment to be duly executed as of the day and year first above written.

**SELLER:**

**CITY OF TEXARKANA, TEXAS**

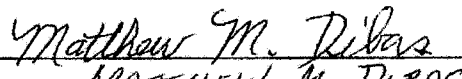
By:   
Name: \_\_\_\_\_  
Title: CEO/City Manager

**ATTEST:**

By:   
Name: Kerry Meredith  
Title: Secretary

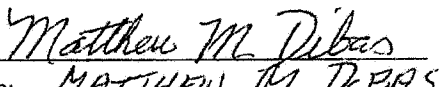
**ASSIGNOR:**

**DAY & ZIMMERMANN, INC -- LONE STAR  
DIVISION**

By:   
Name: MATTHEW M. DIBAS  
Title: V.P. & G.M.

**PURCHASER:**

**DAY & ZIMMERMANN LONE STAR, LLC**

By:   
Name: MATTHEW M. DIBAS  
Title: PRESIDENT

**SCHEDULE G-1**  
**Utility System Real Property Descriptions**

**See Attached Pages**

All lands inside the existing fencing at the Ronald R. Collins Water Reclamation Facility located on the TAC-East Footprint, to be surveyed prior to closing, together with an easement for access to said property from Bowie Parkway over existing roadways, also to be surveyed prior to Closing.

**SCHEDULE F-4**  
**Utility Interconnect with RRAD**

Sixteen inch (16") water line and associated piping and infrastructure from the inside of the TWU water meter located west of the intersection of Cass and Oak Streets, and running approximately 1 mile westward to the western-most boundary of the TAC-East property where it enters the RRAD property.

**SCHEDULE H-1**  
**List of Vehicles**

Unit No.	Year	Driver	Location	Make	Model	VIN No.
#6	2009	Juanita	Collins Plant	Ford	Ranger	1FTKR1AD7APA22365
#3	2008	Dave	IWWTP	Ford	Ranger	1FTYR10D09PA08945
#2	2009	Austin	IWWTP	Ford	F250	1FTNF21S69EA94606
#8	2010	Rickie	IWWTP	Ford	Ranger	1FTKR1AD5APA53694
#5	2010	Keith	MAINT.	Ford	F150	1FTEX1EW5AK501330
#13	2012	Billy	MAINT.	Ford	F150	1FTFX1EF4CKE08745
#9	2010	Mike&Cliff	MAINT.	Ford	F250	1F0BF2B63BEA32589
#15	2012	Eli	OFFICE	Ford	F150	1FTFX1EF8CKE08747
				Mitsubishi Mini Truck		U1STQHPDL2M

**SCHEDULE I-1**  
**List of Office Equipment**

Bookkeeper's Office (currently Kathy Pierce): Computer with all accessories, printer and standard office supplies (stapler, pens, highlighters, etc.) that the position is using on the date of closing.

Administrative Assistant (currently Monica Griffin): Computer with all accessories and standard office supplies (stapler, pens, highlighters, etc.) that the position is using on the date of closing.

Director of Environmental/Safety/Occupational Health (currently Eli Hunt): Computers with all accessories and standard office supplies (stapler, pens, highlighters, etc.) that the position is using on the date of closing.

All aspects of the SCADA system that are located in the TAC HQ building on the date of closing.

## SCHEDULE J-1

## LIST OF KEY EMPLOYEE POSITIONS

[illegible]