



Control Number: 47957



Item Number: 1

Addendum StartPage: 0

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ORIGINAL

Public Utility Commission of Texas  
Application to Amend a Water Certificate of Convenience and  
Necessity (CCN) No. 13030

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FILING CLERK

## City of Dripping Springs

## Hays County, Texas

*Prepared for:*

City of Dripping Springs  
P.O. Box 384  
Dripping Springs, Texas 78620

*Prepared by:*

CMA Engineering, Inc.  
235 Ledge Stone Dr.  
Austin, Texas 78737  
(512) 432-1000

January 2018

*Public Utility Commission of Texas  
Application to Amend a Water Certificate of Convenience and  
Necessity (CCN) No. 13030*

**City of Dripping Springs**

**Hays County, Texas**

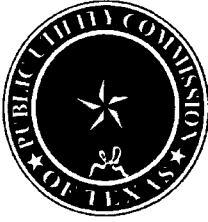
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**January 2018**



PURSUANT TO PUC CHAPTER 24, SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER  
SERVICE PROVIDERS, SUBCHAPTER G: CERTIFICATES OF CONVENIENCE AND NECESSITY

## Application to Obtain or Amend a Water or Sewer Certificate of Convenience and Necessity (CCN)

**Docket Number:** \_\_\_\_\_

(this number will be assigned by the Public Utility Commission after your application is filed)

7 copies of the application, including the original, shall be filed with

Public Utility Commission of Texas  
Attention: Filing Clerk  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326

If submitting digital map data, two copies of the portable electronic storage medium (such as CD or DVD) are required.

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## Application to Obtain or Amend a Water or Sewer Certificate of Convenience and Necessity (CCN)

### Purpose of Application

<input type="checkbox"/> Obtain	<input type="checkbox"/> New Water CCN	<input type="checkbox"/> New Sewer CCN
<input checked="" type="checkbox"/> Amend	<input checked="" type="checkbox"/> Water CCN# (s)	13030
<input type="checkbox"/> Amend	<input type="checkbox"/> Sewer CCN#(s)	

### 1. Applicant Information

#### Applicant

Utility name: City of Dripping Springs

Certificate number: 602491284

Street address (City/ST/ZIP/Code): 511 Mercer Street, Dripping Springs, TX 78620

Mailing address(City/ST/ZIP/Code): P.O. BOX 384, Dripping Springs, TX, 78620

Utility Phone Number and Fax: (512) 858-4725

#### Contact information

Please provide information about the person(s) to be contacted regarding this application. Indicate if this person is the owner, operator, engineer, attorney, accountant manager, or other title related to the applicant.

Name: Robert P. Callegari, P.E.

Title: Engineer

Mailing address: 235 Ledge Stone Drive, Austin, TX 78737

Email: rcallegari@cma-engineering.com

Phone and Fax: (512)432-1000 512-432-1015

List all counties in which service is proposed:

Hays County

A. Check the appropriate box and provide information regarding the legal status of the applicant:

- ☐ Investor Owned Utility      ☐ Individual      ☐ Partnership
- ☐ Home or Property Owners Association      ☐ For-profit Corporation
- ☐ Non-profit, member-owned, member-controlled cooperative corporation  
(Water Code Chapter 67, Water Supply or Sewer Service Corporation)
- ☒ Municipality      ☐ District      ☐ Other - Please explain:

B. If the applicant is a For-Profit business or corporation, please include the following information:

- i. A copy of the corporation's "Certification of Account Status" from the Texas State Comptroller of Public Accounts.
- ii. The corporation's charter number as recorded with the Office of the Texas Secretary of State: N/A
- iii. A listing of all stockholders and their respective percentages of ownership.
- iv. A copy of the company's organizational chart, if available.
- v. A list of all directors and disclose the title of each individual.
- vi. A list of all affiliated organizations (if any) and explain the affiliate's business relationship with the applicant.

C. If the applicant is a Texas Water Code (TWC) Chapter 67 water supply or sewer service corporation please provide:

- i. A copy of the Articles of Incorporation and By-Laws.
- ii. The corporation's charter number as recorded with the Office of the Texas Secretary of State.
- iii. Identification of all board members including name, address, title, and telephone number.
- iv. A copy of the corporation's *Certificate of Account Status* from the Texas Comptroller of Public Accounts.

## 2. Location Information

- A. Are there people already living in the proposed area?      ☒ Yes      ☐ No
- If YES, are any currently receiving utility service?      ☐ Yes      ☒ No
- If YES, from WHOM? \_\_\_\_\_

B. Demonstrate the Need for Service by providing the following:

Have you received any requests for service in the requested service area?

☐ Yes    ☐ No    **See Attachment 1**

If YES, provide the following:

- i. Describe the service area and circumstances driving the need for service in the requested area. Indicate the name(s) and address(es) of landowner(s), prospective landowner(s), tenant(s), or resident(s) that have requested service; and/or
- ii. Describe the economic need(s) for service in the requested area (i.e. plat approvals, recent annexation(s) or annexation request(s), building permits, septic tank permits, hospitals, etc.); and/or
- iii. Discuss in detail the environmental need(s) for service in the requested area (i.e. failing septic tanks in the requested area, fueling wells, etc.); and/or
- iv. Provide copies of any written application(s) or request(s) for service in the requested area; and/or
- v. Provide copies of any reports and/or market studies demonstrating existing or anticipated growth in the requested area.
- vi. If none of these items exist or are available, please justify the need for service in the proposed area in writing. **Water service will be needed for a proposed development**

Note: Failure to demonstrate a need for additional service in the proposed service area may result in the delay and /or possible denial of the application.

C. Is any portion of the proposed service area inside an incorporated city or district?

☒ Yes    ☐ No

If YES, within the corporate limits of: Driftwood Conservation District

Provide a copy of any franchise, permit, or consent granted by the city or district. If not available please explain:

See Attachment 1

D. Is any portion of the proposed service area inside another utility's CCN area?

☐ Yes    ☒ No

If YES, has the current CCN holder agreed to decertify the proposed area?

If NO, are you seeking dual or single certification of the area? Explain why decertification of the area is in the public interest:

N/A

### 3. Map Requirements

Attach the following hard copy maps with each copy of the application:

- A. A location map delineating the proposed service area with enough detail to accurately locate the proposed area within the county. **See Attachment 2**
- B. A map showing only the proposed area by: **See Attachment 3**
  - i. metes and bounds survey certified by a licensed state or register professional land surveyor; or
  - ii. projectable digital data with metadata (proposed areas should be in a single record and clearly labeled). Also, a data disk labeled with the applicant's name must be provided; or
  - iii. following verifiable natural and man-made landmarks; or
  - iv. a copy of recorded plat map with metes and bounds.
- C. A written description of the proposed service area. **See Attachment 4**
- D. Provide separate and additional maps of the proposed area(s) to show the following:
  - i. all facilities, illustrating separately facilities for production, transmission, and distribution of the applicant's service(s); and
  - ii. any facilities, customers or area currently being served outside the applicant's certificated area(s).

**N/A, no facilities have been constructed at this time**

**Note:** Failure to provide adequate mapping information may result in the delay or possible denial of your application.

Digital data submitted in a format other than ArcView shape file or Arc/Info E00 file may result in the delay or inability to review applicant's mapping information.

For information on obtaining a CCN base map or questions about sending digital map data, please visit the Water Utilities section of the PUC website for assistance.

### 4. New System Information or Utilities Requesting a CCN for the First Time

- A. Please provide the following information:
  - i. a list of public drinking water supply system(s) or sewer system(s) within a 2 mile radius of the proposed system; **See Attachment 5**
  - ii. copies of written requests seeking to obtain service from each of the public drinking water systems or sewer systems listed in a. 1 above or documentation that it is not economically feasible to obtain service from each entity; **City intends to extend its existing CCN to service the new development.**
  - iii. copies of written responses from each system or evidence that they did not reply; and
  - iv. for sewer utilities, documentation showing that you have obtained or applied for a wastewater discharge permit.
- B. Were your requests for service denied? ☐ Yes ☒ No



- i. If yes, please provide documentation of the denial of service and go to c.
  - ii. If no, please provide a detailed analysis which justifies your reasons for not accepting service. A separate analysis must be prepared and submitted for each utility that granted your request for service.
- C. Please summarize how the proposed utility system will be constructed and describe each projected construction phase, if any:

The City intends to connect the proposed internal water distribution system to the existing West Travis County Public Utility Agency (WTCPUA), formerly the Lower Colorado River Authority, water transmission line. The connection, water meter station, and internal water distribution system will be designed in accordance with 30 TAC, Chapter 290 Rules and Regulations by a Texas Licensed Professional Engineer.

- D. Date of plat approval, if required: **Not yet developed**  
 Approved by: \_\_\_\_\_
- E. Date Plans & Specifications submitted to the TCEQ for approval:  
**Not yet developed** Attach copy of approval letter, if available. If the letter is not available by the time your CCN application is submitted, please supplement your application with a copy of the letter once you receive it from the TCEQ.
- F. Date construction is scheduled to commence: **Not yet determined**
- G. Date service is scheduled to commence: **Not yet determined**

## 5. Existing System Information

- A. Please provide the following information for each water and/or sewer system, attach additional sheets if necessary.

- i. Water system(s): TCEQ Public Water System identification number(s):

1	0	5	0	1	8	7	;																
							;																
							;																
							;																

- ii. Sewer system(s): TCEQ Discharge Permit number(s)

W Q 1 4 4 8 8 - 0 0 1 ;

W Q -

W Q 1 4 4 8 8 - 0 0 2 ;

W Q -

W Q -

W Q -

- iii. Date of last TCEQ water and/or sewer system inspection(s): N/A
- iv. Attach a copy of the most recent TCEQ water and/or sewer inspection report letter(s).
- v. For each system deficiency listed in the TCEQ inspection report letter; attach a brief explanation listing the actions taken or being taken by the utility to correct the listed deficiencies, including the proposed completion dates.

B. Provide the following information about the utility's certified water and/or sewer operators

Name	Classes	License Number
Inframark - Water Operator	A	W00015650
Inframark - Wastewater Operator	A	WW0045470

- Attach additional sheet(s) if necessary -

- C. Using the current number of customers, is any facility component in systems named in #5A above operating at 85% or greater of minimum standard capacity?
- ☐ Yes **N/A**
- ☐ No

Attach a copy of the 85% rule compliance document filed with the TCEQ if the system is operating at 85% or greater of the TCEQ's minimum standard capacity requirements.

- D. In the table below, the number of existing and/or proposed metered and non-metered connections (by size). The proposed number should reflect the information presented in the business plan or financial **documentation** and reflect the number of service requests identified in Question 2.b in the application.

**See Attachment 6**

TCEQ Water System			TCEQ Sewer System		
Connection	Existing	Proposed	Connection	Existing	Proposed
5/8" or 3/4" meter	0	250	Residential		
1" meter or larger	0	50	Commercial		
Non-Metered	0	0	Industrial		

TCEQ Water System			TCEQ Sewer System		
Other:			Other:		
Total Water			Total Sewer		

- E. If this application is for a water CCN only, please explain how sewer service is or will be provided:

The developer proposes to utilize individual OSSFs.

- F. If this application is for a sewer CCN only, please explain how water service is or will be provided:

N/A

- G. Effect of Granting a Certificate Amendment.

Explain in detail the effect of granting of a certificate or an amendment, including, but not limited to regionalization, compliance and economic effects on the following:

- i. the applicant,
- ii. any retail public utility of the same kind already serving the proximate area; and
- iii. any landowner(s) in the requested area.

**This CCN Amendment allows the proposed development described in Attachment 1 to obtain water service from the City of Dripping Springs.**

- H. Do you currently purchase or plan to purchase water or sewer treatment capacity from another source?

i. ☐ No, (skip the rest of this question and go to #6)

ii. ☒ Yes, Water

Purchased on a ☒ Regular ☐ Seasonal ☐ Emergency basis?

Water Source	% of Total Treatment
West Travis County PUA	100.00%

Water Source	% of Total Treatment
	0.00%
	0.00%

**The City of Dripping Springs has an agreement along with West Travis County Public Utility Agency (WTCPUA), to provide retail water service in the area of the proposed development. See Attachment 1**

iii. ☐ Yes, Sewer treatment capacity

Purchased on a ☐ Regular ☐ Seasonal ☐ Emergency basis?

Sewer Source	% of Total Treatment
	0.00%
	0.00%
	0.00%

iv. Provide a signed and dated copy of the most current water or sewer treatment capacity purchase agreement or contract. **See Attachment 1**

I. Ability to Provide Adequate Service.

Describe the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking both of the following items into consideration: **The applicant is not currently providing**

i. the current and projected density; and **water service to the area, and a concept plan is provided in Attachment 6. The water distribution system will be designed in accordance with 30 TAC, Chapter 290**

ii. the land use of the requested area. **Rules and Regulation. Further, the facilities will be**

J. Effect on the Land. Explain the effect on the land to be included in the certificated area. **operated by a TCEQ licensed operator.**

Amending the City of Dripping Springs existing Water CCN to include the proposed 522 acre area will allow the tract to be developed.

## 6. Financial Information

A. For new water and/or sewer systems and for applicants with existing CCNs who are constructing a new stand-alone water and/or sewer system: **See Attachment 7**

i. the applicant must provide an analysis of all necessary costs for constructing, operating, and maintaining the system, and the source of that capital (such as a financial statement for the developing entity) for which the CCN is requested for at least the first five years. In addition, if service has been offered by an existing retail water service provider as stated in #4.A., but the applicant has determined that the cost of service as finally offered renders the project not economically feasible, the applicant must provide a comparison analysis of all necessary costs for acquiring and continuing to receive service from the existing system for the same period.

ii. Attach projected profit and loss statements, cash flow worksheets, and balance sheets (projected five year financial plan worksheet is attached) for each of the first five years of operation. Income from rates

should correlate to the projected growth in connections, shown on the projected profit and loss statement.

- iii. Attach a proposed rate schedule or tariff. Describe the procedure for determining the rates and fees and indicate the date of last change, if applicable. Attach copies of any cost of service studies or rate analysis worksheets.

B. For existing water and/or sewer systems:

- i. Attach a profit and loss statement and current balance sheet for existing businesses (end of last fiscal year is acceptable). Describe sources and terms for borrowed capital such as loans, bonds, or notes (profit and loss and balance sheet worksheets are attached, if needed).
- ii. Attach a proposed rate schedule or tariff.

❖ **Note: An existing water and/or sewer system may be required to provide the information in 6.A.i. above during the technical review phase if necessary for staff to completely evaluate the application**

C. Identify any funds you are required to accumulate and restrict by lenders or capital providers.

D. In lieu of the information in #6.A. thru #6.C., you may provide information concerning loan approvals within the last three (3) years from lending institutions or agencies including the most recent financial audit of the applicant.

❖ **Note: Failure to provide adequate financial information may result in the delay or possible denial of your application.**

## 7. Notice Requirements

A. All proposed notice forms must be completed and submitted with the application. Do not mail or publish the notices until you receive written approval from the commission to do so. **See Attachment 8**

B. The commission cannot grant a CCN until proper notice of the application has been given. Commission rules do not allow a waiver of notice requirements for CCN applicants.

C. It is the applicant's responsibility to ensure that proper notice is given to all entities that are required to receive notice.

D. Recommended notice forms for publication, neighboring cities and systems, landowners with 25 acres or more, and customers are included with this application for use in preparing proposed notices. (Notice forms are available in Spanish upon request.)

E. After reviewing and, if necessary, modifying the proposed notice, the commission will send the notice to the applicant after the application is accepted for filing along with instructions for publication and/or mailing. Please review the notice carefully before providing the notice.

F. Notice For Publication:

The applicant shall publish the notice in a newspaper with general circulation in the county(ies) where a CCN is being requested. The notice must be published once each week for two consecutive weeks beginning with the week after the notice is received from the commission. Proof of publication in the form of a publisher's affidavit shall be submitted to the commission within 30 days of the last publication date. The affidavit shall state with specificity each county in which the newspaper is of general circulation.

G. Notice To Neighboring Utilities:

- i. List all neighboring retail public utilities and cities providing the same utility service within the following vicinities of the applicant's proposed certificate area.
- ii. For applications for the issuance of a NEW CCN, the applicant must mail the notice with a copy of the proposed CCN map to all cities and neighboring retail public utilities providing the same utility service within five (5) miles of the requested service area.

- iii. For applications for the AMENDMENT of a CCN, the applicant must mail the notice with a copy of the proposed CCN map to all cities and neighboring retail public utilities providing the same utility service within two (2) miles of the requested service area.
- H. Notice to Customers:  
Investor Owned Utilities (IOUs) that are currently providing service without a CCN must provide individual mailed notice to all current customers. The notice must contain the current rates, the date those rates were instituted and any other information required in the application.
- I. The commission may require the applicant to deliver notice to other affected persons or agencies.

**Do not publish or send copies of the proposed notices to anyone at the time you submit the application to the commission. Wait until you receive written authorization to do so. Authorization occurs after the commission has reviewed the notices for completeness, and your application has been accepted for filing. Once the application is accepted for filing, you will receive written authorization to provide notice. Please check the notices for accuracy before providing them to the public. It is the applicant's burden to ensure that correct and accurate notice is provided.**



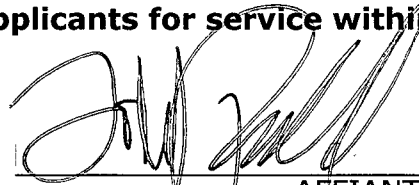
# OATH

STATE OF Texas  
COUNTY OF Hays

I, Todd Purcell, being duly sworn, file this application as Mayor (indicate relationship to Applicant, that is, owner, member of partnership, title as officer of corporation, or other authorized representative of Applicant); that, in such capacity, I am qualified and authorized to file and verify such application, am personally familiar with the maps and financial information filed with this application, and have complied with all the requirements contained in this application; and, that all such statements made and matters set forth therein are true and correct. I further state that the application is made in good faith and that this application does not duplicate any filing presently before the Public Utility Commission of Texas.

I further represent that the application form has not been changed, altered or amended from its original form.

**I further represent that the Applicant will provide continuous and adequate service to all customers and qualified applicants for service within its certificated service area.**



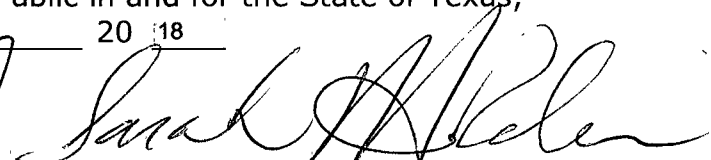
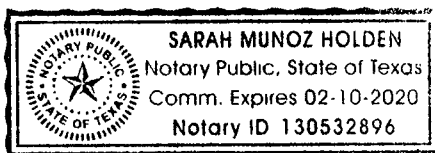
AFFIANT

(Utility's Authorized Representative)

If the Affiant to this form is any person other than the sole owner, partner, officer of the Applicant, or its attorney, a properly verified Power of Attorney must be enclosed.

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public in and for the State of Texas,  
This day 1/14 of January 2018

SEAL



NOTARY PUBLIC IN AND FOR THE  
STATE OF TEXAS

SARAH HOLDEN  
PRINT OR TYPE NAME OF NOTARY

MY COMMISSION EXPIRES

02/10/2020

**City of Dripping Springs**

**Water CCN Application**

**List of Attachments**

Attachment #1 – Driftwood 522, LLC, development agreement for request of service, City of Dripping Springs Driftwood Conservation District Resolution, City of Dripping Springs Wholesale Water Agreement with West Travis County Public Utility Agency (formerly the Lower Colorado River Authority) and City of Dripping Springs Rate Ordinance

Attachment #2 – Location map delineating proposed service area within the county

Attachment #3 – Metes and bounds survey with CD of boundary map in ACAD format

Attachment #4 – Written description of the proposed service area

Attachment #5 – List of public drinking water supply system(s) within a 2-mile radius

Attachment #6 – Concept Plan

Attachment #7 – Financial Information

Attachment #8 – Notice forms for publication and neighboring cities and systems

**Attachment #1 – Driftwood 522, LLC, development agreement for request of service, City of Dripping Springs Driftwood Conservation District Resolution, City of Dripping Springs Wholesale Water Agreement with West Travis County Public Utility Agency (formerly the Lower Colorado River Authority) and City of Dripping Springs Rate Ordinance**

## **AGREEMENT FOR THE PROVISION OF NONSTANDARD RETAIL WATER SERVICE**

This Agreement for the Provision of Nonstandard Retail Water Service (the "Agreement") is entered into by and between the City of Dripping Springs, Texas (the "City") a Type A General Law City located in Hays County, Texas, and DLC DRIFTWOOD 967, LLC, a Delaware limited liability company ("Developer"). Unless otherwise specified, the term "Parties" shall mean the City and Developer, collectively.

WHEREAS, Driftwood 522, LLC (the "Owner") is the current owner of 522 acres along FM 967 in the Driftwood area (the "Property"); and

WHEREAS, Developer is currently under contract to purchase 472 acres of the Property (the "Developer Acquired Land"), and Developer plans to construct a golf course and residential development on the Developer Acquired Land once it is purchased from Owner; and

WHEREAS, Owner will retain 50 acres of the Property (the "Owner Retained Land"), and Owner plans to construct a commercial development on the Owner Retained Land, with Developer extending certain utilities, including water, to the Owner Retained Land; and

WHEREAS, the development of the Developer Acquired Land and the Owner Retained Land (a total of 522 acres collectively referred to herein as the "Development") will be in accordance with a to-be negotiated Development Agreement with the City; and

WHEREAS, Developer desires to obtain retail water service to the Development; and

WHEREAS, The City made request of the West Travis County Public Utility Agency ("WTCPUA") for certain water service and reservations, and the WTCPUA's Board of Directors approved the City's request at their monthly meeting on February 16, 2017; and

WHEREAS, it is the intent of the Parties that the City will obtain wholesale water service from the WTCPUA and will, in turn, provide retail water service to the Development; and

WHEREAS, the Parties now desire to enter into this Agreement to set forth the terms and conditions upon which the City will provide retail water service to the Development.

NOW, THEREFORE, in consideration of the terms, conditions, and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree to the following:

1. **Creation of Municipal Utility District ("MUD").** The Parties acknowledge that Developer has proposed the creation of a MUD through special legislative action of the Texas Legislature. Should the MUD be established, Developer may assign and/or convey certain responsibilities and/or obligations for the water service and/or the construction of facilities to provide service to the MUD subject to the approval of the City, which approval shall not be unreasonably withheld. The Parties further agree that certain

improvements and/or facilities may ultimately be owned and/or operated by the City or the MUD, subject to further mutual agreement between the Parties. The term "Developer Facilities" shall mean those facilities to be constructed and are required to connect to and extend water service from the City's connection point with the WTCPUA to the Development through and including wholesale and retail water meters. Developer Facilities herein shall apply to those facilities that are constructed and/or operated by either the Developer or the MUD.

2. **City to Provide Service.** For and in consideration of Developer's obligations, covenants and conditions set forth in this Agreement, upon securing wholesale water service from the WTCPUA for the Development, the City agrees to provide up to 300 LUEs of retail water service for Retail Customers located within the Development pursuant to the terms of this Agreement, the City's Rules and Policies, the letter dated February 16, 2017 from the WTCPUA to the City (attached as Exhibit A), and the WTCPUA's Rules and Policies. Absent an amendment to this Agreement, the City shall not be obligated to provide retail water service to Retail Customers located within the Development that collectively exceed 300 LUEs. The City's service commitment is for the Development to be constructed on the Property and does not convey to the Property in the event the Development is not constructed. The City will also facilitate the availability of water required by the Developer for the grow-in of the Development's proposed golf course, under terms and conditions to which the Parties will agree and which will be the financial responsibility of the Developer. The 300 LUEs of retail water service provided by the City shall be apportioned between the Developer Acquired Land and the Owner Retained Land pursuant to a separate written agreement to-be negotiated between Developer and Owner.
3. **Conditions Precedent to Commencement of Service.** The Parties agree that the City is not required to commence retail water service to a retail customer in the Development until (1) all fees and charges imposed by the WTCPUA for commencement of wholesale water service to the City for the Development are paid directly to the WTCPUA by the Developer and/or a Retail Customer, (2) Developer has complied with the City Rules and Policies and the WTCPUA Rules and Policies, (3) Developer has satisfied all its obligations under this Agreement; (4) Developer has paid the City the fees and charges set-forth in this Agreement; (5) Developer has obtained from the Texas Commission on Environmental Quality and all other governmental agencies having jurisdiction of all permits, certificates or approvals required to lawfully provide such service; (6) any retail customer executes a Retail Service Agreement that is consistent with 30 Texas Admin. Code § 290.47(b); and (7) Developer has paid any costs City incurs complying with the requirements of the WTCPUA to obtain wholesale water service, including but not limited to the requirements set-forth in the letter dated February 16, 2017 from the WTCPUA to the City (attached as Exhibit A).
4. **No Implied Waivers or Credits.** Nothing in this Agreement shall be interpreted to waive service conditions for retail customers in the Development or otherwise grant credit to Developer or the Development or any portion thereof for any fee, charge, or payment, otherwise applicable under this Agreement or the City's Rules and Policies.

- 5. Charges Related to Agreement.** Within sixty (60) days of the execution of this Agreement, Developer shall reimburse City for the City's reasonably necessary legal fees incurred to prepare and negotiate this Agreement.
- 6. Service Fees and Charges for Commencement of Service.** All fees and charges imposed by WTCPUA that are required for the commencement of water service will be passed through to and paid by Developer directly to the WTCPUA at the same rate that is imposed upon the City. These include, but may not be limited to reservation fees, impact fees, and connection fees.
- 7. Rates and Charges for Continued Service.** Upon Commencement of Service, the Retail Customer in the Development shall pay rates, fees and charges for water service in accordance with City Rules, Policies, and Ordinances.
- 8. Restrictions on Service.** Unless the prior approval of City is obtained, the Developer shall not:

  - (a) construct or install additional water lines or facilities to service areas outside the Development;
  - (b) add any additional lands to the Development for which water service is to be provided pursuant to this agreement without City approval; or
  - (c) connect or serve any person or entity who, in turn, sells water service directly or indirectly to another person or entity.
- 9. Permits.** Developer, at its sole cost and expense, shall be solely responsible for obtaining all permits necessary to construct and operate the Developer Facilities.
- 10. Easements and Facility Siting.** The City shall negotiate and secure any off-site real property interests necessary to construct the off-site Developer Facilities at locations approved by the City. The costs and expenses for obtaining such off-site real property interests will be paid by Developer. Developer shall obtain all real property interests necessary for constructing Developer Facilities on the Property at Developer's cost. Developer will construct the Developer Facilities within easements provided and approved by the City where necessary for the City's operation and maintenance of such facilities. Easements shall be in a form and substance acceptable to the City's attorney. The costs of securing such easements will be agreed upon by the Parties and shall be an expense of the Developer.
- 11. Facilities and Construction.** The Developer Facilities shall be constructed under the terms of a Construction Agreement with the City, which shall provide for the budgeting, standards, warranties, timeline and related items, as reasonably requested by the City. All expenses and costs associated with Developer Facilities shall be paid by Developer.
- 12. Completion and Conveyance.** The Parties shall agree upon a Completion and Conveyance Agreement, which shall provide for the process, documentation, indemnification, legal instruments and related items, as reasonably requested by the City.



**13. Term; Termination.** This Agreement shall become effective upon the latest date of execution by either the Developer or the City (the "Effective Date"). Unless otherwise earlier terminated, this Agreement shall extend from the Effective-Date for as long as the City provides service to retail customers located in the Development. This Agreement shall terminate and the commitment of water service to the Development will be null and void if the Developer does not maintain compliance with the requirements needed to retain a service commitment from the WTCPUA.

**14. Default.**

(a) In the event that Developer defaults on or materially breaches any one or more of the provisions of this Agreement, the City shall give Developer thirty (30) days to cure such default or material breach after the City has made written demand to cure the same (with a courtesy copy of such demand also being provided to Owner). A breach is material if Developer fails to meet or otherwise violates its obligations and responsibilities as set forth in this Agreement. If Developer fails to cure a breach or default involving the payment of money within such thirty (30) days or fails to cure or take reasonable steps to effectuate such a cure within thirty (30) days if the breach or default does not involve the payment of money and is not capable of being cured within thirty (30) days, City may terminate this Agreement upon written notice to Developer (with a courtesy copy of such notice also being provided to Owner). Upon such termination, City will retain all payments made, if any, by Developer to the City made under this Agreement and City shall have no duty to extend water service to Retail Customers within the Proposed Development after the date of termination. If any default is not capable of being cured within thirty (30) days, then City may not terminate this Agreement or exercise any other remedies under this Agreement so long as Developer diligently and continuously pursues curative action to completion.

(b) In the event that City defaults on or materially breaches any one or more of the provisions of this Agreement, Developer shall give City thirty (30) days to cure such default or material breach after Developer has made written demand to cure the same and before Developer files suit to enforce the Agreement. In the event of default by City, Developer may, as its sole and exclusive remedy either: (i) seek specific performance or a writ of mandamus from a court of competent jurisdiction compelling and requiring City and its officers to observe and perform their obligations under this Agreement; or (ii) if specific performance and a writ of mandamus are barred by governmental immunity, then pursue all other legal and equitable remedies.. A breach is material if City violates its obligations and responsibilities as set forth in this Agreement.

**15. Governing Law, Jurisdiction and Venue.** This Agreement must be construed and enforced in accordance with the laws of the State of Texas, as they apply to contracts performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The Parties acknowledge that this Agreement is performable in Hays County, Texas and hereby submit to the jurisdiction of the courts of Hays County, and hereby agree that any such court shall be a proper forum for the determination of any dispute arising hereunder.

- 16. Notice.** Any notices, approvals, or other communications required to be given by one Party to another under this Agreement (a "Notice") shall be given in writing addressed to the Party to be notified at the address set forth below:

To the City:

City of Dripping Springs, Texas  
Attn: City Secretary  
P. O. Box 384  
Dripping Springs, Texas 78620  
FAX: (512) 858-5646

City of Dripping Springs, Texas  
Attn: City Administrator  
P. O. Box 384  
Dripping Springs, Texas 78620  
FAX: (512) 858-5646

To Developer:

DLC DRIFTWOOD 967, LLC  
Attn: Mark Rivers  
124 S. Lasky Drive, Suite 100  
Beverly Hills, CA 90212  
PH: 310.288.1717 or via email, [mrivers@brixusa.com](mailto:mrivers@brixusa.com)

With a Courtesy Copy to:

Driftwood 522, LLC  
Attn: Hunter Brown  
8711 Johnny Morris Rd.  
Austin, Texas 78724  
FAX: (512) 478-0801

- 17. Assignment.** Developer may not assign this Agreement without the written consent of the City, which consent shall not be unreasonably withheld. This Agreement is binding on Developers' successors and assigns. Notwithstanding the foregoing, Developer shall be permitted to assign all or a portion of its rights in and under this Agreement to Owner without the necessity of having to obtain the City's consent to such assignment.
- 18. Amendment.** This Agreement may be amended only with the written consent of the Developer and approval of the governing body of the City.
- 19. No Waiver.** Any failure by a Party to insist upon strict performance by the other Party of any provision of this Agreement shall not be deemed a waiver thereof, and the Party

shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by a writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any Party hereto of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

- 20. Severability.** If any term of this Agreement is to any extent invalid, illegal or incapable of being enforced, such term shall be excluded to the extent of such invalidity, illegality, or unenforceability; all other terms hereof shall remain in full force and effect.
- 21. Counterpart Originals.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.
- 22. Force Majeure.** If any Party is delayed in meeting, or fails to meet, a deadline required by this Agreement (other than a deadline to pay money due and payable hereunder), and such delay or failure is due to causes beyond that Party's reasonable control, including, without limitation, failure of suppliers, contractors, subcontractors and carriers, and third party governmental entities, then the dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused, provided that the Party experiencing the failure or delay gives the other Party reasonably prompt Notice specifically describing the cause relied upon.
- 23. Incorporation of Exhibits by Reference.** All exhibits attached to this Agreement are incorporated into this Agreement by reference for the purposes set forth herein.

**[REMAINDER OF PAGE BLANK, SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, this instrument is executed on the Effective Date.

**CITY OF DRIPPING SPRINGS, TEXAS**

Attest:

Deborah L. Laesch  
Deputy City Secretary

By:

Todd Purcell

Todd Purcell, Mayor

Date:

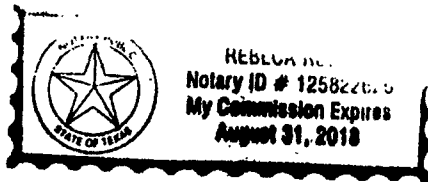
June 1, 2017

**STATE OF TEXAS  
COUNTY OF HAYS**

This instrument was executed by Todd Purcell before me on this the 1 day of June, 2017.

Rebecca Roberts

Notary Public, State of Texas

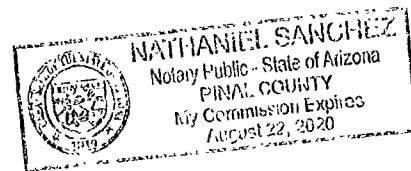


**DLC DRIFTWOOD 967, LLC,**  
a Delaware limited liability company

Mark J. Rivers  
By: Mark J. Rivers  
Title: Manager

Date:

JUNE 14, 2017



**STATE OF ~~TEXAS~~ Arizona**  
**COUNTY OF Maricopa**

This instrument was executed by Mark J. Rivers, in the capacity set forth above, and before me on this the 14<sup>th</sup> day of June, 2017.

Nathaniel Sanchez  
Notary Public, State of Texas Arizona

**CITY OF DRIPPING SPRINGS**

**RESOLUTION NO. 2017-27**

**A RESOLUTION OF THE CITY OF DRIPPING SPRINGS CONSENTING TO THE  
CREATION OF THE DRIFTWOOD CONSERVATION DISTRICT**

**WHEREAS**, a municipal utility district (the "District") is proposed to be created by the Texas Legislature over the land described in Exhibit A within the extraterritorial jurisdiction of the City of Dripping Springs, Texas (the "City") for the benefit of the affected public property, including the construction and maintenance of water, sewer, division and drainage facilities and roads;

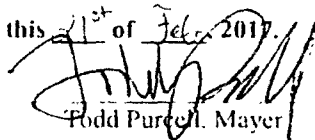
**WHEREAS**, City of Dripping Springs anticipates entering into Agreement Concerning the Creation and Operation of the Driftwood Conservation District prior to the Driftwood Conservation District holding an election to confirm the creation of the district and to elect five permanent directors as provided by Section 49.102, Water Code; and

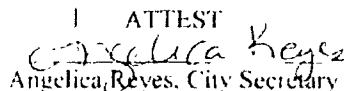
**WHEREAS**, the City of Dripping Springs desires to support the legislation attached as Exhibit A

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF  
DRIPPING SPRINGS, as follows:**

- Section 1. The facts and opinions in the preamble of this Resolution are true and correct.
- Section 2. Subject to the condition specified in Sections 3 and 4 of this Resolution, the City Council of Dripping Springs hereby consents and expresses its support for passage of the special legislation attached at Exhibit A.
- Section 3. This Resolution constitutes consent to the creation of the district and to the inclusion of land in the district subject to the inclusion in any legislation creating the District of a requirement to negotiate an Agreement Concerning the Creation and Operation of the Driftwood Conservation District pursuant to Sections 54.016 or 54.0165 to be executed with the City of Dripping Springs and memorialized by the City of Dripping Springs in a future resolution specifically consenting to the confirmation of the district and to the inclusion of land in the district.
- Section 4. Until the Agreement contemplated by Section 3 has been executed (which will also require the negotiation and execution of a Development Agreement and wastewater and water utility agreements), any District created pursuant to this consent shall not conduct an election to confirm the District or elect permanent directors.
- Section 5. This Resolution shall become effective from and after the date of its passage.

**PASSED AND APPROVED ON this** 21<sup>st</sup> **of** Feb. **2017.**

  
Todd Purcell Mayer

I ATTEST  
  
Angelica Reyes, City Secretary

## Chapter 632

H.B. No. 4301

AN ACT

2 relating to the creation of the Driftwood Conservation District;  
3 granting a limited power of eminent domain; providing authority to  
4 issue bonds; providing authority to impose assessments, fees, and  
5 taxes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle F, Title 6, Special District Local Laws Code, is amended by adding Chapter 7982 to read as follows:

**CHAPTER 7982. DRIFTWOOD CONSERVATION DISTRICT**

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 7982.001. DEFINITIONS. In this chapter:

(1) "Board" means the district's board of directors.

(2) "Commission" means the Texas Commission on  
Environmental Quality.

(3) "Director" means a board member.

(4) "District" means the Driftwood Conservation  
District.

Sec. 7982.002. NATURE OF DISTRICT. The district is a municipal utility district created under Section 59, Article XVI, Texas Constitution.

Sec. 7982.003. CONFIRMATION AND DIRECTORS' ELECTION  
REQUIRED. The temporary directors shall hold an election to  
confirm the creation of the district and to elect five permanent  
directors as provided by Section 49.102, Water Code.



1       Sec. 7982.004. CONSENT OF MUNICIPALITY REQUIRED. The  
2 temporary directors may not hold an election under Section 7982.003  
3 until each municipality in whose corporate limits or  
4 extraterritorial jurisdiction the district is located has  
5 consented by ordinance or resolution to the creation of the  
6 district and to the inclusion of land in the district.

7       Sec. 7982.005. FINDINGS OF PUBLIC PURPOSE AND BENEFIT. (a)  
8 The district is created to serve a public purpose and benefit.

9       (b) The district is created to accomplish the purposes of:  
10           (1) a municipal utility district as provided by  
11 general law and Section 59, Article XVI, Texas Constitution; and  
12           (2) Section 52, Article III, Texas Constitution, that  
13 relate to the construction, acquisition, improvement, operation,  
14 or maintenance of macadamized, graveled, or paved roads, or  
15 improvements, including storm drainage, in aid of those roads.

16       Sec. 7982.006. INITIAL DISTRICT TERRITORY. (a) The  
17 district is initially composed of the territory described by  
18 Section 2 of the Act enacting this chapter.

19       (b) The boundaries and field notes contained in Section 2 of  
20 the Act enacting this chapter form a closure. A mistake made in the  
21 field notes or in copying the field notes in the legislative process  
22 does not affect the district's:

23           (1) organization, existence, or validity;  
24           (2) right to issue any type of bond for the purposes  
25 for which the district is created or to pay the principal of and  
26 interest on a bond;  
27           (3) right to impose a tax; or

1                   (4) legality or operation.

2                   Sec. 7982.007. APPLICABILITY OF OTHER LAW. Chapter 257,  
3 Transportation Code, and other general laws applicable to road  
4 districts created under Section 52, Article III, Texas  
5 Constitution, apply to the district.

6                   SUBCHAPTER B. BOARD OF DIRECTORS

7                   Sec. 7982.051. GOVERNING BODY; TERMS. (a) The district is  
8 governed by a board of five elected directors.

9                   (b) Except as provided by Section 7982.052, directors serve  
10 staggered four-year terms.

11                   Sec. 7982.052. TEMPORARY DIRECTORS. (a) On or after the  
12 effective date of the Act enacting this chapter, the owner or owners  
13 of a majority of the assessed value of the real property in the  
14 district may submit a petition to the commission requesting that  
15 the commission appoint as temporary directors the five persons  
16 named in the petition. The commission shall appoint as temporary  
17 directors the five persons named in the petition.

18                   (b) Temporary directors serve until the earlier of:

19                   (1) the date permanent directors are elected under  
20 Section 7982.003; or

21                   (2) the fourth anniversary of the effective date of  
22 the Act enacting this chapter.

23                   (c) If permanent directors have not been elected under  
24 Section 7982.003 and the terms of the temporary directors have  
25 expired, successor temporary directors shall be appointed or  
26 reappointed as provided by Subsection (d) to serve terms that  
27 expire on the earlier of:

1           (1) the date permanent directors are elected under  
2 Section 7982.003; or

3           (2) the fourth anniversary of the date of the  
4 appointment or reappointment.

5           (d) If Subsection (c) applies, the owner or owners of a  
6 majority of the assessed value of the real property in the district  
7 may submit a petition to the commission requesting that the  
8 commission appoint as successor temporary directors the five  
9 persons named in the petition. The commission shall appoint as  
10 successor temporary directors the five persons named in the  
11 petition.

12                   SUBCHAPTER C. POWERS AND DUTIES

13           Sec. 7982.101. GENERAL POWERS AND DUTIES. The district has  
14 the powers and duties necessary to accomplish the purposes for  
15 which the district is created.

16           Sec. 7982.102. MUNICIPAL UTILITY DISTRICT POWERS AND  
17 DUTIES. The district has the powers and duties provided by the  
18 general law of this state, including Chapters 49 and 54, Water Code,  
19 applicable to municipal utility districts created under Section 59,  
20 Article XVI, Texas Constitution.

21           Sec. 7982.103. AUTHORITY FOR ROAD PROJECTS. Under Section  
22 52, Article III, Texas Constitution, the district may design,  
23 acquire, construct, finance, issue bonds for, improve, operate,  
24 maintain, and convey to this state, a county, or a municipality for  
25 operation and maintenance macadamized, graveled, or paved roads, or  
26 improvements, including storm drainage, in aid of those roads.

27           Sec. 7982.104. ROAD STANDARDS AND REQUIREMENTS. (a) A road

1 project must meet all applicable construction standards, zoning and  
2 subdivision requirements, and regulations of each municipality in  
3 whose corporate limits or extraterritorial jurisdiction the road  
4 project is located.

5       **(b) If a road project is not located in the corporate limits**  
6 **or extraterritorial jurisdiction of a municipality, the road**  
7 **project must meet all applicable construction standards,**  
8 **subdivision requirements, and regulations of each county in which**  
9 **the road project is located.**

10       **(c) If the state will maintain and operate the road, the**  
11 **Texas Transportation Commission must approve the plans and**  
12 **specifications of the road project.**

13       **Sec. 7982.105. IMPROVEMENT PROJECTS. (a) The district may**  
14 **provide or finance, or contract with a governmental or private**  
15 **person to provide or finance, the following types of projects or**  
16 **activities in support of or incidental to one of the projects:**

17               **(1) an improvement project that is a public**  
18 **improvement, facility, or service that may be provided by a**  
19 **municipal utility district or a municipal management district,**  
20 **including:**

21                       **(A) water, wastewater, reclamation, drainage,**  
22 **road, trail, or bridge improvement;**

23                       **(B) utilization and reuse of treated effluent in**  
24 **landscape and other features, including temporary holding**  
25 **features;**

26                       **(C) transportation of treated effluent for**  
27 **reuse; and**

1                   (D) injection of treated stormwater runoff or  
2 stormwater collected from roofs into aquifers as storage or to  
3 recharge the aquifer; and  
4                   (2) the purchase and maintenance of conservation land  
5 for endangered species, including the cost of:  
6                   (A) any permits relating to endangered species or  
7 the maintenance of the land; and  
8                   (B) purchasing land or easements for  
9 conservation mitigation.  
10           (b) The district may inject stormwater as authorized by  
11 Subsection (a)(1)(D) without the consent, concurrence, or  
12 authorization of a groundwater conservation district, but only if  
13 the injection is authorized by a commission rule or permit under  
14 Chapter 27, Water Code.  
15           (c) To finance an improvement project under Subsection  
16 (a)(1), the district may, in the manner authorized by:  
17                   (1) Chapter 375, Local Government Code, or Chapter 54,  
18 Water Code, use funds derived from:  
19                   (A) ad valorem taxes;  
20                   (B) sales and use taxes from a strategic  
21 partnership agreement authorized by Section 7982.109;  
22                   (C) assessments imposed under Section 7982.201;  
23                   (D) revenue from an improvement project;  
24                   (E) impact fees; or  
25                   (F) any other source; and  
26                   (2) Sections 375.201 through 375.205, Local  
27 Government Code, enter into obligations, including:

- 1                   (A) lease purchase agreements;  
2                   (B) certificates of participation in lease  
3 purchase agreements;  
4                   (C) general obligation bonds and notes and  
5 revenue bonds and notes;  
6                   (D) combination general obligation and revenue  
7 bonds and notes; and  
8                   (E) other interest-bearing obligations.  
9           (d) Sections 375.161 through 375.163, Local Government  
10 Code, do not apply to an assessment imposed by the district.  
11           Sec. 7982.106. COMPLIANCE WITH MUNICIPAL CONSENT ORDINANCE  
12 OR RESOLUTION. The district shall comply with all applicable  
13 requirements of any ordinance or resolution that is adopted under  
14 Section 54.016 or 54.0165, Water Code, and that consents to the  
15 creation of the district or to the inclusion of land in the  
16 district.  
17           Sec. 7982.107. LIMITATION ON GROUNDWATER USE. In providing  
18 water services to users in the district, the district may not,  
19 except in emergency situations:  
20                   (1) develop groundwater on land owned by the district  
21 for use as a potable water source; or  
22                   (2) purchase or lease the rights to groundwater  
23 underlying land inside the district for use as a potable water  
24 source.  
25           Sec. 7982.108. DIVISION OF DISTRICT. (a) The district may  
26 be divided into two or more new districts only if the district:  
27                   (1) has no outstanding bonded debt; and



1           (2) is not imposing ad valorem taxes.

2           (b) This chapter applies to any new district created by the  
3 division of the district, and a new district has all the powers and  
4 duties of the district.

5           (c) Any new district created by the division of the district  
6 may not, at the time the new district is created, contain any land  
7 outside the area described by Section 2 of the Act enacting this  
8 chapter.

9           (d) The board, on its own motion or on receipt of a petition  
10 signed by the owner or owners of a majority of the assessed value of  
11 the real property in the district, may adopt an order dividing the  
12 district.

13           (e) The board may adopt an order dividing the district  
14 before or after the date the board holds an election under Section  
15 7982.003 to confirm the creation of the district.

16           (f) An order dividing the district shall:

17                   (1) name each new district;

18                   (2) include the metes and bounds description of the  
19 territory of each new district;

20                   (3) appoint temporary directors for each new district;  
21 and

22                   (4) provide for the division of assets and liabilities  
23 between or among the new districts.

24           (g) On or before the 30th day after the date of adoption of  
25 an order dividing the district, the district shall file the order  
26 with the commission and record the order in the real property  
27 records of each county in which the district is located.

1       (h) Any new district created by the division of the district  
2 shall hold a confirmation and directors' election as required by  
3 Section 7982.003.

4       (i) Any new district created by the division of the district  
5 must hold an election as required by this chapter to obtain voter  
6 approval before the district may impose a maintenance tax or issue  
7 bonds payable wholly or partly from ad valorem taxes.

8       Sec. 7982.109. STRATEGIC PARTNERSHIP AGREEMENT. The  
9 district may negotiate and enter into a written strategic  
10 partnership agreement with a municipality under Section 43.0751,  
11 Local Government Code.

12               SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

13       Sec. 7982.151. ELECTIONS REGARDING TAXES OR BONDS. (a) The  
14 district may issue, without an election, bonds and other  
15 obligations secured by:

16               (1) revenue other than ad valorem taxes; or

17               (2) contract payments described by Section 7982.153.

18       (b) The district must hold an election in the manner  
19 provided by Chapters 49 and 54, Water Code, to obtain voter approval  
20 before the district may impose an ad valorem tax or issue bonds  
21 payable from ad valorem taxes.

22       (c) The district may not issue bonds payable from ad valorem  
23 taxes to finance a road project unless the issuance is approved by a  
24 vote of a two-thirds majority of the district voters voting at an  
25 election held for that purpose.

26       Sec. 7982.152. OPERATION AND MAINTENANCE TAX. (a) If  
27 authorized at an election held under Section 7982.151, the district

1 may impose an operation and maintenance tax on taxable property in  
2 the district in accordance with Section 49.107, Water Code.

3 (b) The board shall determine the tax rate. The rate may not  
4 exceed the rate approved at the election.

5 Sec. 7982.153. CONTRACT TAXES. (a) In accordance with  
6 Section 49.108, Water Code, the district may impose a tax other than  
7 an operation and maintenance tax and use the revenue derived from  
8 the tax to make payments under a contract after the provisions of  
9 the contract have been approved by a majority of the district voters  
10 voting at an election held for that purpose.

11 (b) A contract approved by the district voters may contain a  
12 provision stating that the contract may be modified or amended by  
13 the board without further voter approval.

14 SUBCHAPTER E. ASSESSMENTS; APPLICABILITY OF IMPACT FEES AND  
15 ASSESSMENTS

16 Sec. 7982.201. PETITION REQUIRED FOR FINANCING  
17 RECREATIONAL FACILITY OR IMPROVEMENT BY ASSESSMENT. (a) The  
18 district may finance a recreational facility or improvement,  
19 including an improvement project under Section 7982.105, with  
20 assessments on residential or commercial property or both  
21 residential and commercial property under this subchapter, but only  
22 if:

23 (1) a written petition requesting that facility or  
24 improvement has been filed with the board; and

25 (2) the district holds a hearing on the proposed  
26 assessments.

27 (b) The petition must be signed by the owners of a majority

1 of the assessed value of real property in the district subject to  
2 assessment according to the most recent certified tax appraisal  
3 roll for the county.

4 Sec. 7982.202. METHOD OF NOTICE FOR HEARING. The district  
5 shall mail notice of the hearing to each property owner in the  
6 district who will be subject to the assessment at the current  
7 address to be assessed as reflected on the tax rolls. The district  
8 may mail the notice by certified or first class United States mail.  
9 The board shall determine the method of notice.

10 Sec. 7982.203. ASSESSMENTS; LIENS FOR ASSESSMENTS. (a) An  
11 assessment or a reassessment imposed under this subchapter by the  
12 district, penalties and interest on an assessment or reassessment,  
13 an expense of collection, and reasonable attorney's fees incurred  
14 by the district:

15 (1) are a first and prior lien against the property  
16 assessed;

17 (2) are superior to any other lien or claim other than  
18 a lien or claim for county, school district, or municipal ad valorem  
19 taxes; and

20 (3) are the personal liability of and a charge against  
21 the owners of the property even if the owners are not named in the  
22 assessment proceedings.

23 (b) The lien is effective from the date of the board's  
24 resolution imposing the assessment until the date the assessment is  
25 paid. The board may enforce the lien in the same manner that the  
26 board may enforce an ad valorem tax lien against real property.

27 (c) The board may make a correction to or deletion from the

1 assessment roll that does not increase the amount of assessment of  
2 any parcel of land without providing notice and holding a hearing in  
3 the manner required for additional assessments.

4 Sec. 7982.204. UTILITY PROPERTY EXEMPT FROM IMPACT FEES AND  
5 ASSESSMENTS. The district may not impose an impact fee or  
6 assessment on the property, including the equipment,  
7 rights-of-way, facilities, or improvements, of:

8 (1) an electric utility or a power generation company  
9 as defined by Section 31.002, Utilities Code;

10 (2) a gas utility as defined by Section 101.003 or  
11 121.001, Utilities Code;

12 (3) a telecommunications provider as defined by  
13 Section 51.002, Utilities Code; or

14 (4) a person who provides to the public cable  
15 television or advanced telecommunications services.

16 SUBCHAPTER F. BONDS AND OTHER OBLIGATIONS

17 Sec. 7982.251. AUTHORITY TO ISSUE BONDS AND OTHER  
18 OBLIGATIONS. The district may issue bonds or other obligations  
19 payable wholly or partly from ad valorem taxes, impact fees,  
20 revenue, contract payments, grants, or other district money, or any  
21 combination of those sources, to pay for any authorized district  
22 purpose.

23 Sec. 7982.252. TAXES FOR BONDS. At the time the district  
24 issues bonds payable wholly or partly from ad valorem taxes, the  
25 board shall provide for the annual imposition of a continuing  
26 direct ad valorem tax, without limit as to rate or amount, while all  
27 or part of the bonds are outstanding as required and in the manner

1 provided by Sections 54.601 and 54.602, Water Code.

2 Sec. 7982.253. BONDS FOR ROAD PROJECTS. At the time of  
3 issuance, the total principal amount of bonds or other obligations  
4 issued or incurred to finance road projects and payable from ad  
5 valorem taxes may not exceed one-fourth of the assessed value of the  
6 real property in the district.

7 SUBCHAPTER G. DEFINED AREAS

8 Sec. 7982.301. AUTHORITY TO ESTABLISH DEFINED AREAS OR  
9 DESIGNATED PROPERTY. The district may define areas or designate  
10 certain property of the district to pay for improvements,  
11 facilities, or services that primarily benefit that area or  
12 property and do not generally and directly benefit the district as a  
13 whole.

14 Sec. 7982.302. PROCEDURE FOR ELECTION. (a) Before the  
15 district may impose an ad valorem tax or issue bonds payable from ad  
16 valorem taxes of the defined area or designated property, the board  
17 shall hold an election in the defined area or in the designated  
18 property only.

19 (b) The board may submit the issues to the voters on the same  
20 ballot to be used in another election.

21 Sec. 7982.303. DECLARING RESULT AND ISSUING ORDER. (a) If  
22 a majority of the voters voting at the election approve the  
23 proposition or propositions, the board shall declare the results  
24 and, by order, shall establish the defined area and describe it by  
25 metes and bounds or designate the specific property.

26 (b) A court may not review the board's order except on the  
27 ground of fraud, palpable error, or arbitrary and confiscatory

1 abuse of discretion.

2       Sec. 7982.304. TAXES FOR SERVICES, IMPROVEMENTS, AND  
3 FACILITIES IN DEFINED AREAS OR DESIGNATED PROPERTY. On voter  
4 approval and adoption of the order described by Section 7982.303,  
5 the district may apply separately, differently, equitably, and  
6 specifically its taxing power and lien authority to the defined  
7 area or designated property to provide money to construct,  
8 administer, maintain, and operate services, improvements, and  
9 facilities that primarily benefit the defined area or designated  
10 property.

11       Sec. 7982.305. ISSUANCE OF BONDS FOR DEFINED AREA OR  
12 DESIGNATED PROPERTY. After the order under Section 7982.303 is  
13 adopted, the district may issue bonds to provide for any land,  
14 improvements, facilities, plants, equipment, and appliances for  
15 the defined area or designated property.

16       SECTION 2. The Driftwood Conservation District initially  
17 includes all the territory contained in the following area:

18 Tract I

19       FIELDNOTE DESCRIPTION of a 394.112 acre tract out of the  
20 Freelove Woody Survey No. 23, Hays County, Texas, being a portion  
21 of that 700.03 acre tract conveyed to John Richard Rutherford by  
22 deed recorded in Volume 1214, Page 548 of the Deed Records of Hays  
23 County, Texas; the said 394.112 acre tract is more particularly  
24 described by metes and bounds as follows:

25       BEGINNING at a calculated point for the most westerly corner  
26 of the said 700.03 acre tract, being on the southerly line of that  
27 100 acre tract conveyed to Masa Scott Roberts by deed recorded in

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1 Volume 301, Page 865 of the said Deed Records, and a point in the  
2 northerly right-of-way line of State Highway FM 967 (80.00'  
3 right-of-way), from which a TxDOT concrete highway monument found  
4 bears N41 10'07"Q, 85.92 feet;

5       THENCE, leaving the northerly right-of-way line of State  
6 Highway FM 967, with the common line between the said 700.03 acre  
7 tract and the said 100 acre tract, for the following two (2)  
8 courses:

9               1. N88 43'28"E at .25 feed pass a 1/2" iron rod found,  
10 for a total distance of 2005.48 feet to a 60d nail found in a fence  
11 corner post for the southeast corner of the said 100 acre tract;

12               2. N00 59'15"W, 515.50 feet to a 5/8" iron rod found  
13 stamped "Kent McMillon, Land Surveyor, RPLS 4341", for a northwest  
14 corner of the said 700.03 acre tract, being on a westerly line of  
15 the remainder of that 535.13 acre tract conveyed to Michael Giles  
16 Rutherford, Jr., John Richard Rutherford and Sally Anne Rutherford  
17 by deed recorded in Volume 1214, Page 531 of the said Deed Records,  
18 from which a 1/2 " iron rod found for the northeast corner of the  
19 said 100 acre tract bears N00 59'15"W, 523.55 feet;

20       THENCE, N89 02'23"E, leaving the easterly line of the said  
21 100 acre tract, across the said 535.13 acre tract, with northerly  
22 line of the said 700.03 acre tract, 5479.22 feet to a 1/2 " iron rod  
23 set with plastic cap for the northeast corner of the herein  
24 described tract, being in the westerly line of the remainder of that  
25 652.60 acre tract also conveyed to Michael Giles Rutherford, Jr.,  
26 John Richard Rutherford and Sally Anne Rutherford by deed recorded  
27 in Volume 1214, Page 531 of the said Deed Records;



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1           THENCE, leaving the said remainder of the 535. 13 acre tract  
2 and the 652.60 acre tract, across the said 700.03 acre tract for the  
3 following three (3) courses:

4           1)   S00 15'40 E, 514.97 feet to a 1/2" iron rod set with  
5 plastic cap;

6           2)   S89 02'23"W, 15.17 feet to a fence comer post found;

7           3)   S00°27'04"E, 1260. 14 feet to a metal fence corner  
8 post found for an ell corner in the southerly line of the said  
9 700.03 acre tract, being on the remainder of that certain tract,  
10 described as First Tract, conveyed to Michael Giles Rutherford by  
11 deed recorded in Volume 197, Page 45 of the said Deed Records, from  
12 which a 5/8" iron rod found with aluminum cap stamped "Kent  
13 McMillan, Land Surveyor, RPLS 4341" bears N87 1'36"E, 1675.22 feet;

14           THENCE, S01°00'52"E, across the said Michael Giles Rutherford  
15 First Tract, with an easterly line of the said 700.03 acre tract,  
16 17.61 feet to a 5/8" iron rod found with aluminum cap stamped "Kent  
17 McMillan, Land Surveyor, RPLS 4341" for the most easterly,  
18 southeast comer of the herein described tract, from which a fence  
19 corner post found for the most southerly, southeast corner of the  
20 aforesaid 700.03 acre tract, being an ell comer of the said Michael  
21 Giles Rutherford tract and the northeast corner of that certain  
22 26.25 acre tract conveyed to Denton E. Ragland, Patrice Ragland and  
23 Marilyn Ragland by deed recorded in Volume 282, Page 373 of the said  
24 Deed Records bears S01°00'52"E, 2121.99 feet;

25           THENCE, leaving the remainder of the said Michael Giles  
26 Rutherford tract, across the said 700.03 acre tract, for the  
27 following twenty-three (23) courses:

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- 1                    1) N83°13'49"W, 111.37 feet to a 1/2" iron rod set with  
2 plastic cap;
- 3                    2) N81°56'14"W, 349.24 feet to a 1/2" iron rod set with  
4 plastic cap;
- 5                    3) N71°01'01"W, 274.19 feet to a 1/2" iron rod set with  
6 plastic cap;
- 7                    4) N78°02'17"W, 468.3I feet to a 1/2" iron rod set with  
8 plastic cap;
- 9                    5) N82°55' 15"W, 267.33 feet to a 1/2" iron rod set with  
10 plastic cap;
- 11                   6) S71°57'45"W, 177.28 feet to a 1/2" iron rod set with  
12 plastic cap;
- 13                   7) N78°37'03"W, 375.19 feet to a 1/2" iron rod set with  
14 plastic cap;
- 15                   8) S65°03'19"W, 84.41 feet to a 1/2" iron rod set with  
16 plastic cap;
- 17                   9) S33°11'56"W, 124.67 feet to a 1/2" iron rod set with  
18 plastic cap;
- 19                   10) S01°02'08"W 168.03 feet to a 1/2" iron rod set with  
20 plastic cap;
- 21                   11) S27 03' 16"W, 206.14 feet to a 1/2" iron rod set  
22 with plastic cap;
- 23                   12) S17°49'54"W, 197.44 feet to a 1/2" iron rod set  
24 with plastic cap;
- 25                   13) S30°34'17"W, 272.18 feet to a to a 1/2" iron rod set  
26 with plastic cap;
- 27                   14) S12°51'33"W, 225.06 feet to a 1/2" iron rod set

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1 with plastic cap;  
2 15) S08°30'37"E, 228.34 feet to a 1/2" iron rod set  
3 with plastic cap;  
4 16) S17°32'26"W 215.74 feet to a 1/2" iron rod set with  
5 plastic cap;  
6 17) S18°36'23"W, 192.00 feet to a 1/2" iron rod set  
7 with plastic cap;  
8 18) S01°16'37"E, 177.11 feet to a 1/2" iron rod set  
9 with plastic cap:  
10 19) S63°12'48"W, 153.98 feet to a 1/2" iron rod set with  
11 plastic cap;  
12 20) S45°13'37"W, 150.25 feet to a 1/2" iron rod set  
13 with plastic cap;  
14 21) S29°56'27"W, 113.65 to a 1/2" iron rod set with  
15 plastic cap:  
16 22) S60°22'29"W, 114.26 feet to a 1/2" iron rod set  
17 with plastic cap;  
18 23) S26 35'43"W, 75.57 feet to a 5/8" iron rod found  
19 with aluminum cap, stamped "Kent McMillan, Land Surveyor, RPLS  
20 4341", on the southerly line of the said 700.03 acre tract, being on  
21 the notherly right-of-way line of the aforesaid Sate Highway FM  
22 967, and being 40.00 feet right of State Highway centerline station  
23 587+49.3;  
24 THENCE, with the common line between the said 700.03  
25 acre tract and the said right-of-way line of State Highway FM  
26 967, for the following two (2) courses:  
27 1) N89 12'09"W, at 750.58 feet pass a TxDOT concrete

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1 highway monument found, for a total distance of 1247.30 feet to a  
2 calculated point for the point of curvature of a non-tangent curve  
3 to the right, from which a TxDOT concrete highway monument found  
4 bears S01 07'48"W, 0.38 feet, said calculated point being 40.00  
5 feet right of State Highway centerline station 599+95.5;

6           2) With the said curve to the right having a central  
7 angle of 48 00'30", a radius of 1105.92 feet, a chord distance of  
8 899.79 feet (chord bears N65 10'23"W), for an arc distance of 926.66  
9 feet to a calculated point for the point of tangency, from which a  
10 TxDOT concrete highway monument found bears N81 52'12"E, 1.37 feet,  
11 said calculated point being 40.00 feet right of State Highway  
12 centerline station 609+55.5;

13           THENCE, N41 10'07"W, continuing with the common line between  
14 the said 700.03 acre tract and the northerly right-of-way line of  
15 State Highway FM967, at 1393.60 feet pass a TxDOT concrete monument  
16 found 0.28 feet to the left, at 2244.39 feet pass a TxDOT concrete  
17 highway monument found, for a total distance of 3675.62 feet to the  
18 PLACE OF BEGINNING, CONTAINING within these metes and bounds  
19 394.112 acres of land area.

20 TRACT II.

21           FIELDNOTE DESCRIPTION of a 128.166 acre tract out of the  
22 Freelove Woody Survey No.23, Hays County, Texas, being a portion of  
23 that 700.03 acre tract conveyed to John Richard Rutherford by deed  
24 recorded in Volume 1214, page 548 of the Deed Records of Hays  
25 County, Texas; the said 128.166 acre tract is more particularly  
26 described by metes and bounds as follows:

27           BEGINNING at a fence corner post found for the most southerly

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1 southeast corner of the said 700.03 acre tract, being the northeast  
2 corner of that 26.25 acre tract conveyed to Denton Ragland, Jr.,  
3 Patrice Ragland and Marilyn Ragland by deed recorded in Volume 282,  
4 Page 372 of the said Deed Records and an ell corner of that certain  
5 tract, described as first tract, conveyed to Michael Giles  
6 Rutherford recorded in Volume 197, page 45 of the said Deed Records,  
7 from which a fence corner post found in the common line between the  
8 said 26.25 acre tract and that certain Michael Giles Rutherford  
9 tract bears S00 42'40"E, 446.87 feet;

10       THENCE, N88 53'01"W, leaving the said Michael Giles  
11 Rutherford tract, with the southerly line of the said 700.03 acre  
12 tract, at 21.54 feet pass a 5/8" iron rod found, stamped "Kent  
13 McMillan, Land Surveyor, RPLS 4341", 0.56 feet to the left, at  
14 719.81 feet pass the approximate northwest corner of the said 26.25  
15 acre tract, being approximate northeast corner of the remainder of  
16 that 53.50 acre tract conveyed to Minnie Rogers by deed recorded in  
17 Volume 210, Page 210 of the said Deed Records, for a total distance  
18 of 2711.59 feet to a 5/8" iron pipe found on a curve to the left in  
19 the northerly right of way line of State Highway FM 967;

20       THENCE, with the common line between the said 700.03 acre  
21 tract and the northerly right-of-way line of State Highway 967,  
22 with the said curve to the left having a central angle of 09 18'06",  
23 a radius of 1949.86 feet, a chord distance of 316.20 feet(chord  
24 bears N84 31'41"W), for an arch distance of 316.55 feet to a 5/8"  
25 iron rod found with aluminum cap stamped "Kent McMillan, Land  
26 Surveyor, RPLS 4341" for the point of tangency and southwest corner  
27 of the herein described tract, said point being 40.00 feet right of

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1 State Highway RM 967 centerline station 587+49.3, from which a 5/8"  
2 iron rod found with aluminum cap stamped "Kent McMillan, Land  
3 Surveyor, RPLS 4341" in the common line between said 700.03 acre  
4 tract and northerly right-of-way line of State Highway FM 967,  
5 being 40.00 feet right of State Highway FM 967 centerline station  
6 599+95.5, bears N89 12'09"W, 1247.30 feet;

7       THENCE, leaving the said northerly right-of-way line of State  
8 Highway FM 967, across the said 700.03 acre tract, for the following  
9 twenty-three (23) courses:

- 10               1. N26 35'43"E, 75.57 feet to a 1/2" iron rod set with  
11 plastic cap;
- 12               2. N60 22'29"E, 114.26 feet to a 1/2" iron rod set with  
13 plastic cap;
- 14               3. N29 56'27"E, 113.65 feet to a 1/2" iron rod set with  
15 plastic cap;
- 16               4. N45 13'37"E, 150.25 feet to a 1/2" iron rod set with  
17 plastic cap;
- 18               5. N63 12'48"E, 153.98 feet to a 1/2" iron rod set with  
19 plastic cap;
- 20               6. N01 16'37"W, 177.11 feet to a 1/2" iron rod set with  
21 plastic cap;
- 22               7. N18 36'23"E, 192.00 feet to a 1/2" iron rod set with  
23 plastic cap;
- 24               8. N17 32'26"E, 215.74 feet to a 1/2" iron rod set with  
25 plastic cap;
- 26               9. N08 30'37"W, 228.34 feet to a 1/2" iron rod set with  
27 plastic cap;

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- 1                   10. N12 51'33"E, 225.06 feet to a 1/2" iron rod set  
2 with plastic cap;
- 3                   11. N30 34'17"E, 272.18 feet to a 1/2" iron rod set  
4 with plastic cap;
- 5                   12. N17 49'54"E 197.44 feet to a 1/2" iron rod set with  
6 plastic cap;
- 7                   13. N27 03'16"E, 206.14 feet to a 1/2" iron rod set  
8 with plastic cap;
- 9                   14. N01 02'08"E, 168.03 feet to a 1/2" iron rod set  
10 with plastic cap;
- 11                   15. N33 11'56"E, 124.67 feet to a 1/2" iron rod set  
12 with plastic cap;
- 13                   16. N65 03'19"E, 84.41 feet to a 1/2" iron rod set with  
14 plastic cap;
- 15                   17. S78 37'03"E, 375.19 feet to a 1/2" iron rod set  
16 with plastic cap;
- 17                   18. N71 57'45"E, 177.28 feet to a 1/2" iron rod set  
18 with plastic cap;
- 19                   19. S82 55'15"E, 267.33 feet to a 1/2" iron rod set  
20 with plastic cap;
- 21                   20. S78 02'17"E, 468.31 feet to a 1/2" iron rod set  
22 with plastic cap;
- 23                   21. S71 01'01"E, 274.19 feet to a 1/2" iron rod set  
24 with plastic cap;
- 25                   22. S81 56'14"E, 349.24 feet to a 1/2" iron rod set  
26 with plastic cap;
- 27                   23. S83 13'49"E, 111.37 feet to a 5/8" iron rod found

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1 with aluminum cap stamped "Kent McMillan, Land Surveyor, RPLS 4341"  
2 on an easterly line of the said 700.03 acre tract, being a westerly  
3 line created from the remainder of that certain Michael Giles  
4 Rutherford tract, from which a metal gate post found for an ell  
5 corner of the said 700.03 acre tract bears N01 00'52"W, 17.61 feet;

6       THENCE, S01 00'52"E, across the said Michael Giles Rutherford  
7 tract, with an easterly line of the said 700.03 acre tract, at a  
8 distance of 1885.44 feet to the left, at 2084.56 feet pass a 5/8"  
9 iron rod found, stamped "Kent McMillan, Land Surveyor, RPLS 4341",  
10 0.07 feet to the left, for a total distance of 2104.37 feet to the  
11 PLACE OF BEGINNING, CONTAINING within these metes and bounds of  
12 128.166 acres of land area.

13 TRACT III

14       FIELDNOTE DESCRIPTION OF A 0.1793 acre tract of the Freelove  
15 Woody Survey No. 23, Abstract No.20, Hays County, Texas, being a  
16 portion of that certain tract, described as First Tract, conveyed  
17 to Michael Giles Rutherford (First Tract) by deed recorded in  
18 Volume 197, Page 45 of the Deed Records of Hays County, Texas; the  
19 said 0.1793 acre tract is more particularly described by metes and  
20 bounds as follows:

21       BEGINNING at a cotton in spindle found on the easterly line of  
22 that 522.25 acre tract conveyed to Michael Giles Rutherford by deed  
23 recorded in Volume 3799, Page 263 of the Official Public Records of  
24 Hays County, Texas, same being the southwest corner of that 177.762  
25 acre tract described as Exhibit A-1, as conveyed to LSM Ranch, Ltd.  
26 By deed recorded in Volume 1628, Page 206 of the said Deed Records  
27 and the proposed southwest corner of Rim Rock, Phase One, Section



1 Five, subdivision;

2       THENCE, N87 51'36"E, leaving the easterly line of the said  
3 522.25 acre tract, across the said First Tract, with the southerly  
4 line of the said 177.762 acre tract and proposed Rim Rock, Phase  
5 One, Section Five subdivision, for a distance of 99.82 feet to a  
6 calculated point for the northeast corner of the herein described  
7 tract, same being the most northerly northwest corner of Lot 34,  
8 Block 'A', Rutherford West, Section 2, a subdivision recorded in  
9 Book 14, pages 49 through 53 of the Plat Records of Hay County,  
10 Texas, from which a 1/2"iron rod found with plastic cap marked  
11 "Capital Surveying Company, Inc", bears N00 32'40"W, 0.13 feet;

12       THENCE, leaving the southerly line of the said 177.762 acre  
13 tract and proposed Rim Rock, Phase One, Section Five, subdivision,  
14 across the said First Tract, with the westerly and northerly lines  
15 of said Lot 34, Block 'A", for the following two (2) courses:

16             1. S00 32'40"E, 81.34 feet to a 1/2"iron rod found with  
17 plastic cap marked "Capital Surveying Company, Inc., found;

18             2. N88 52'48"W, 99.21 feet 1/2"iron rod found with  
19 plastic cap marked "Capital Surveying Company, Inc., found for the  
20 most westerly northwest corner of aforesaid Lot 34, Block 'A', same  
21 being on the easterly line of the aforesaid 522.25 acre tract and  
22 the southwest corner of the herein described tract;

23       THENCE, N01 00'52"W, leaving the northerly line of said Lot  
24 34, Block 'A', and continuing across the said First Tract, easterly  
25 line of the aforesaid 522.25 acre tract, at a distance of 58.07 feet  
26 pass a 5/8" iron rod, with aluminum cap marked "Kent McMillan,  
27 Surveyor, RPLS 4341", found and continuing for a total distance of

1 75.68 feet to the PLACE OF BEGINNING, CONTAINING within these metes  
2 and bounds 0.1793 acres of land area.

3 The Bearing Basis for this description is the Texas State  
4 Plane Coordinate System, South Central Zone, NAD 83 Datum, derived  
5 from GPS Survey occupations.

6 SECTION 3. (a) The legal notice of the intention to  
7 introduce this Act, setting forth the general substance of this  
8 Act, has been published as provided by law, and the notice and a  
9 copy of this Act have been furnished to all persons, agencies,  
10 officials, or entities to which they are required to be furnished  
11 under Section 59, Article XVI, Texas Constitution, and Chapter 313,  
12 Government Code.

13 (b) The governor, one of the required recipients, has  
14 submitted the notice and Act to the Texas Commission on  
15 Environmental Quality.

16 (c) The Texas Commission on Environmental Quality has filed  
17 its recommendations relating to this Act with the governor, the  
18 lieutenant governor, and the speaker of the house of  
19 representatives within the required time.

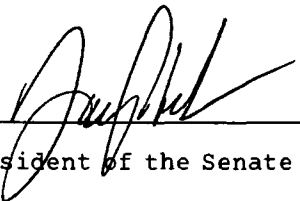
20 (d) All requirements of the constitution and laws of this  
21 state and the rules and procedures of the legislature with respect  
22 to the notice, introduction, and passage of this Act are fulfilled  
23 and accomplished.

24 SECTION 4. (a) If this Act does not receive a two-thirds  
25 vote of all the members elected to each house, Subchapter C, Chapter  
26 7982, Special District Local Laws Code, as added by Section 1 of  
27 this Act, is amended by adding Section 7982.110 to read as follows:

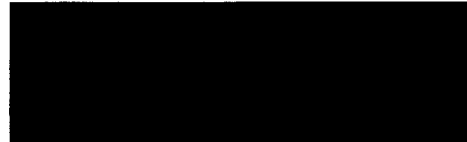
1       Sec. 7982.110. NO EMINENT DOMAIN POWER. The district may  
2       not exercise the power of eminent domain.

3       (b) This section is not intended to be an expression of a  
4       legislative interpretation of the requirements of Section 17(c),  
5       Article I, Texas Constitution.

6       SECTION 5. This Act takes effect immediately if it receives  
7       a vote of two-thirds of all the members elected to each house, as  
8       provided by Section 39, Article III, Texas Constitution. If this  
9       Act does not receive the vote necessary for immediate effect, this  
10      Act takes effect September 1, 2017.

  
\_\_\_\_\_  
President of the Senate

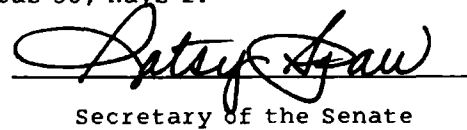
H.B. No. 4301



I certify that H.B. No. 4301 was passed by the House on May 19, 2017, by the following vote: Yeas 137, Nays 7, 2 present, not voting.

  
\_\_\_\_\_  
Chief Clerk of the House

I certify that H.B. No. 4301 was passed by the Senate on May 24, 2017, by the following vote: Yeas 30, Nays 1.

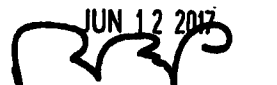
  
\_\_\_\_\_  
Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

\_\_\_\_\_  
Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
5:30 PM O'CLOCK

JUN 12 2017  
  
\_\_\_\_\_  
Secretary of State

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 22, 2017**

**TO:** Honorable Lois W. Kolhorst, Chair, Senate Committee on Administration

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE:** HB4301 by Isaac (Relating to the creation of the Driftwood Conservation District; granting a limited power of eminent domain; providing authority to issue bonds; providing authority to impose assessments, fees, and taxes.), **As Engrossed**

**No fiscal implication to the State is anticipated.**

The bill would amend the Special District Local Laws Code establishing the Driftwood Conservation District. The district would have authority for road projects. The district would have authority to issue bonds and other obligations, without an election. The district would have authority to impose an operation and maintenance tax and a contract tax.

The bill would take effect immediately if the bill receives a two-thirds vote in each house; otherwise, the bill would take effect September 1, 2017.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:**

**LBB Staff:** UP, KK, JGA, GG, BM

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 8, 2017**

**TO:** Honorable Jim Murphy, Chair, House Committee on Special Purpose Districts

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB4301** by Isaac ( Relating to the creation of the Driftwood Conservation District; granting a limited power of eminent domain; providing authority to issue bonds; providing authority to impose assessments, fees, and taxes.), **Committee Report 1st House, Substituted**

<b>No fiscal implication to the State is anticipated.</b>
-----------------------------------------------------------

The bill would amend the Special District Local Laws Code establishing the Driftwood Conservation District. The district would have authority for road projects. The district would have authority to issue bonds and other obligations, without an election. The district would have authority to impose an operation and maintenance tax and a contract tax.

The bill would take effect immediately if the bill receives a two-thirds vote in each house; otherwise, the bill would take effect September 1, 2017.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:**

**LBB Staff:** UP, JGA, GG, BM

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**April 26, 2017**

**TO:** Honorable Jim Murphy, Chair, House Committee on Special Purpose Districts

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB4301** by Isaac (Relating to the creation of the Driftwood Conservation District; granting a limited power of eminent domain; providing authority to issue bonds; providing authority to impose assessments, fees, and taxes.), **As Introduced**

<b>No fiscal implication to the State is anticipated.</b>
-----------------------------------------------------------

The bill would amend the Special District Local Laws Code establishing the Driftwood Conservation District. The district would have authority for road projects. The district would have authority to issue bonds and other obligations, without an election. The district would have authority to impose an operation and maintenance tax and a contract tax. The district would not have authority to exercise the power of eminent domain.

The bill would take effect immediately if the bill receives a two-thirds vote in each house; otherwise, the bill would take effect September 1, 2017.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:**

**LBB Staff:** UP, JGA, GG, BM

**LEGISLATIVE BUDGET BOARD  
Austin, Texas**

**WATER DEVELOPMENT POLICY IMPACT STATEMENT**

**85TH LEGISLATIVE REGULAR SESSION**

**May 8, 2017**

**TO:** Honorable Jim Murphy, Chair, House Committee on Special Purpose Districts

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB4301** by Isaac ( Relating to the creation of the Driftwood Conservation District; granting a limited power of eminent domain; providing authority to issue bonds; providing authority to impose assessments, fees, and taxes.), **Committee Report 1st House, Substituted**

The Legislative Budget Board, in cooperation with the Texas Water Development Board (TWDB) and the Texas Commission on Environmental Quality (TCEQ), has determined that:

This bill creates Driftwood Conservation District (District) with the powers and duties of a standard municipal utility district under Water Code Chapters 49 and 54.

**Population -** The very specific description of the proposed boundaries does not allow staff to develop precise population estimates. Based on the Original Texas Land Surveys mentioned in HB 4301, staff is unable to determine a population estimate.

**Population growth** in the specific area since the 2010 census is unknown. The 2010 population estimate for areas of Hays County served by small systems or private wells (County-Other) is 35,048. The Hays County-Other population projections approved for the 2017 State Water Plan projects the population to grow to 42,032 in 2020, 49,902 in 2030 and 78,147 in 2040.

**Location -** The Proposed district's initial boundaries are described with a combination of Original Texas Land Surveys, Hays County Real Property Records and metes and bounds. Due to the complexity of these boundaries for the various sub areas of the district, staff was able to determine only the general location of the proposed district.

The proposed district's area is approximately 0.82 square miles in central Hays County, located east of the City of Dripping Springs, and west of the City of Buda along Farm to Market Road 967. The proposed district does not appear to overlap any existing Certificate of Convenience and Necessity (CCN) boundary.

**Comments on Powers/Duties Different from Similar Types of Districts:** The House Committee Substitute specified that the District may inject stormwater if they acquire a permit and consult with the groundwater conservation district with jurisdiction over the injection well. The House Committee Substitute also specified the District may develop water by importing groundwater or surface water from outside the District and purchase water from a water supply corporation but cannot develop groundwater on land owned by the District.



The bill requires the TCEQ to appoint the temporary directors upon receipt from the owners of a majority of the assessed value of the real property in the District; the bill requires the temporary directors to hold an election to confirm the creation of the district and to elect five permanent directors as provided by Section 49.102, Water Code; the temporary directors may not hold an election for permanent directors until each municipality in whose corporate limits or extraterritorial jurisdiction the District is located has consented by ordinance or resolution to the creation of the District and to the inclusion of land in the District; the bill grants the District authority for road projects; the bill specifies that the District may provide or finance, or contract to provide or finance the following types of projects: a public improvement, facility, or service that may be provided by a municipal utility district or a municipal management district (MMD), including: water, wastewater, reclamation, drainage, road, trail, or bridge improvement, utilization and reuse of treated effluent in landscape and other features, including temporary holding features, transportation of treated effluent for reuse, and injection of treated stormwater runoff or stormwater collected from roofs into aquifers as storage or to recharge the aquifer; and the purchase and maintenance of conservation land for endangered species, including the cost of any permits relating to endangered species or the maintenance of the land and purchasing land or easements for conservation mitigation; the District may inject stormwater if the District acquires a permit as required by Section 27.011 of the Water Code and consults with the groundwater conservation district with jurisdiction over the injection well; Local Government Code Section 375.161 states that an MMD may not impose an impact fee, assessment, tax, or other requirement for payment, construction, alteration, or dedication under this chapter on single-family detached residential property, duplexes, triplexes, and fourplexes. The bill specifies the District may develop water by importing groundwater or surface water from outside the District and purchase water from a water supply corporation but cannot develop groundwater on land owned by the District. The bill specifies that this section does not apply to the District; Local Government Code Section 375.163 relation to the exemption of recreational, park, or scenic use property does not apply to the District; the bill allows the District to divide; the District may not issue bonds payable from ad valorem taxes to finance a road project unless the issuance is approved by a vote of a two-thirds majority of the District voters voting at an election held for that purpose; the District may not impose an impact fee or assessment on the property of: an electric utility or a power generation company; a gas utility; a telecommunications provider; or a person who provides to the public cable television or advanced telecommunications services; the bill specifies that at the time of issuance, the total principal amount of bonds or other obligations issued or incurred to finance road projects and payable from ad valorem taxes may not exceed one-fourth of the assessed valuation; the District may define areas or designate certain property of the district to pay for improvements, facilities, or services that primarily benefit that area or property and do not generally and directly benefit the District as a whole; if the bill does not receive a two-thirds vote of all members elected to each house, the District may not exercise the power of eminent domain.

The bill requires the TCEQ to appoint the temporary directors upon receipt from the owners of a majority of the assessed value of the real property in the District; the bill requires the temporary directors to hold an election to confirm the creation of the district and to elect five permanent directors as provided by Section 49.102, Water Code; the temporary directors may not hold an election for permanent directors until each municipality in whose corporate limits or extraterritorial jurisdiction the District is located has consented by ordinance or resolution to the creation of the District and to the inclusion of land in the District; the bill grants the District authority for road projects; the bill specifies that the District may provide or finance, or contract to provide or finance the following types of projects: a public improvement, facility, or service that may be provided by a municipal utility district or a municipal management district (MMD), including: water, wastewater, reclamation, drainage, road, trail, or bridge improvement, utilization

and reuse of treated effluent in landscape and other features, including temporary holding features, transportation of treated effluent for reuse, and injection of treated stormwater runoff or stormwater collected from roofs into aquifers as storage or to recharge the aquifer; and the purchase and maintenance of conservation land for endangered species, including the cost of any permits relating to endangered species or the maintenance of the land and purchasing land or easements for conservation mitigation; the District may inject stormwater without the consent, concurrence, or authorization of a groundwater conservation district, but only if the District acquires a permit as required by Section 27.011, Water Code; Local Government Code Section 375.161 states that an MMD may not impose an impact fee, assessment, tax, or other requirement for payment, construction, alteration, or dedication under this chapter on single-family detached residential property, duplexes, triplexes, and fourplexes. The bill specifies that this section does not apply to the District; Local Government Code Section 375.163 relation to the exemption of recreational, park, or scenic use property does not apply to the District; the bill allows the District to divide; the District may not issue bonds payable from ad valorem taxes to finance a road project unless the issuance is approved by a vote of a two-thirds majority of the District voters voting at an election held for that purpose; the District may not impose an impact fee or assessment on the property of: an electric utility or a power generation company; a gas utility; a telecommunications provider; or a person who provides to the public cable television or advanced telecommunications services; the bill specifies that at the time of issuance, the total principal amount of bonds or other obligations issued or incurred to finance road projects and payable from ad valorem taxes may not exceed one-fourth of the assessed valuation; the District may define areas or designate certain property of the district to pay for improvements, facilities, or services that primarily benefit that area or property and do not generally and directly benefit the District as a whole; if the bill does not receive a two-thirds vote of all members elected to each house, the District may not exercise the power of eminent domain.

**Overlapping Services:** TCEQ does not have mapping information for water and/or wastewater providers because this function was transferred from the TCEQ to the Public Utility Commission on September 1, 2014. As a result, TCEQ is unaware of possible overlapping service providers.

**TCEQ's Supervision:** As with general law districts, the TCEQ will have general supervisory authority, including bond review authority and review of financial reports.

**Water Use - HB 4301** specifies that "the district has the powers and duties provided by the general law of this state, including Chapters 49 and 54, Water Code, applicable to municipal utility districts created under Section 59, Article XVI, Texas Constitution".

Within Hays County, 40 percent of the total water use was groundwater (Edwards Aquifer) in 2014. Eighty two percent of all the groundwater pumping was for municipal use. The water source of the proposed district might pursue is unknown.

**Source Agencies:** 582 Commission on Environmental Quality, 580 Water Development Board

**LBB Staff:** UP, SZ

**LEGISLATIVE BUDGET BOARD  
Austin, Texas**

**WATER DEVELOPMENT POLICY IMPACT STATEMENT**

**85TH LEGISLATIVE REGULAR SESSION**

**April 24, 2017**

**TO:** Honorable Jim Murphy, Chair, House Committee on Special Purpose Districts

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB4301** by Isaac (Relating to the creation of the Driftwood Conservation District; granting a limited power of eminent domain; providing authority to issue bonds; providing authority to impose assessments, fees, and taxes.), **As Introduced**

The Legislative Budget Board, in cooperation with the Texas Water Development Board (TWDB) and the Texas Commission on Environmental Quality (TCEQ), has determined that:

This bill creates Driftwood Conservation District (District) with the powers and duties of a standard municipal utility district under Water Code Chapters 49 and 54.

**Population** - The very specific description of the proposed boundaries does not allow staff to develop precise population estimates. Based on the Original Texas Land Surveys mentioned in HB 4301, staff is unable to determine a population estimate.

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**Location** - The Proposed district's initial boundaries are described with a combination of Original Texas Land Surveys, Hays County Real Property Records and metes and bounds. Due to the complexity of these boundaries for the various sub areas of the district, staff was able to determine only the general location of the proposed district.

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**Comments on Powers/Duties Different from Similar Types of Districts:** The bill requires the TCEQ to appoint the temporary directors upon receipt from the owners of a majority of the assessed value of the real property in the District; the bill requires the temporary directors to hold an election to confirm the creation of the district and to elect five permanent directors as provided by Section 49.102, Water Code; the temporary directors may not hold an election for permanent directors until each municipality in whose corporate limits or extraterritorial jurisdiction the District is located has consented by ordinance or resolution to the creation of the District and to

the inclusion of land in the District; the bill grants the District authority for road projects; the bill specifies that the District may provide or finance, or contract to provide or finance the following types of projects: a public improvement, facility, or service that may be provided by a municipal utility district or a municipal management district (MMD), including: water, wastewater, reclamation, drainage, road, trail, or bridge improvement, utilization and reuse of treated effluent in landscape and other features, including temporary holding features, transportation of treated effluent for reuse, and injection of treated stormwater runoff or stormwater collected from roofs into aquifers as storage or to recharge the aquifer; and the purchase and maintenance of conservation land for endangered species, including the cost of any permits relating to endangered species or the maintenance of the land and purchasing land or easements for conservation mitigation; the District may inject stormwater without the consent, concurrence, or authorization of a groundwater conservation district, but only if the District acquires a permit as required by Section 27.011, Water Code; Local Government Code Section 375.161 states that an MMD may not impose an impact fee, assessment, tax, or other requirement for payment, construction, alteration, or dedication under this chapter on single-family detached residential property, duplexes, triplexes, and fourplexes. The bill specifies that this section does not apply to the District; Local Government Code Section 375.163 relation to the exemption of recreational, park, or scenic use property does not apply to the District; the bill allows the District to divide; the District may not issue bonds payable from ad valorem taxes to finance a road project unless the issuance is approved by a vote of a two-thirds majority of the District voters voting at an election held for that purpose; the District may not impose an impact fee or assessment on the property of: an electric utility or a power generation company; a gas utility; a telecommunications provider; or a person who provides to the public cable television or advanced telecommunications services; the bill specifies that at the time of issuance, the total principal amount of bonds or other obligations issued or incurred to finance road projects and payable from ad valorem taxes may not exceed one-fourth of the assessed valuation; the District may define areas or designate certain property of the district to pay for improvements, facilities, or services that primarily benefit that area or property and do not generally and directly benefit the District as a whole; if the bill does not receive a two-thirds vote of all members elected to each house, the District may not exercise the power of eminent domain.

**Overlapping Services:** TCEQ does not have mapping information for water and/or wastewater providers because this function was transferred from the TCEQ to the Public Utility Commission on September 1, 2014. As a result, TCEQ is unaware of possible overlapping service providers.

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Within Hays County, 40 percent of the total water use was groundwater (Edwards Aquifer) in 2014. Eighty two percent of all the groundwater pumping was for municipal use. The water source of the proposed district might pursue is unknown.

**Source Agencies:** 580 Water Development Board, 582 Commission on Environmental Quality

**LBB Staff:** UP, SZ

**HB 4301**  
**Bill Number**

05B HB 0430

Bryan W. Shaw, Ph.D., P.E., *Chairman*  
Toby Baker, *Commissioner*  
Jon Niemann, *Commissioner*  
Richard A. Hyde, P.E., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

May 4, 2017

The Honorable Joe Straus  
Texas House of Representatives  
Capitol Station  
PO Box 2910  
Austin, Texas 78768-2910

Re: Responsibility of the Texas Commission on Environmental Quality (TCEQ) Pursuant to Article XVI, Section 59(d), Texas Constitution

House Bill (HB) 4301, as Filed by Representative Jason Isaac - Relating to the creation of the Driftwood Conservation District; granting a limited power of eminent domain; providing authority to issue bonds; providing authority to impose assessments, fees, and taxes.

Dear Speaker Straus:

The following comments are provided pursuant to the Constitutional requirements referenced above. Under those requirements, the TCEQ must submit, to the Governor, Lieutenant Governor and Speaker of the House of Representatives, the TCEQ's recommendations on specific legislation affecting water districts. We recommend that these comments be considered in the evaluation of the proposed legislation.

Sincerely,

Cari-Michel LaCaille, Director  
Water Supply Division

cc: Honorable Jim Murphy, Chairman, House Special Purpose Districts Committee  
Representative Jason Isaac, Texas House of Representatives

Enclosure

**HB 4301, as Filed by Representative Jason Isaac  
Texas Commission on Environmental Quality's Comments**

The Legislative Budget Board, in cooperation with the Texas Water Development Board (TWDB) and the Texas Commission on Environmental Quality (TCEQ), has determined that:

This bill creates Driftwood Conservation District (District) with the powers and duties of a standard municipal utility district under Water Code Chapters 49 and 54.

**Comments on Powers/Duties Different from Similar Types of Districts:** The bill requires the TCEQ to appoint the temporary directors upon receipt from the owners of a majority of the assessed value of the real property in the District; the bill requires the temporary directors to hold an election to confirm the creation of the district and to elect five permanent directors as provided by Section 49.102, Water Code; the temporary directors may not hold an election for permanent directors until each municipality in whose corporate limits or extraterritorial jurisdiction the District is located has consented by ordinance or resolution to the creation of the District and to the inclusion of land in the District; the bill grants the District authority for road projects; the bill specifies that the District may provide or finance, or contract to provide or finance the following types of projects: a public improvement, facility, or service that may be provided by a municipal utility district or a municipal management district (MMD), including: water, wastewater, reclamation, drainage, road, trail, or bridge improvement, utilization and reuse of treated effluent in landscape and other features, including temporary holding features, transportation of treated effluent for reuse, and injection of treated stormwater runoff or stormwater collected from roofs into aquifers as storage or to recharge the aquifer; and the purchase and maintenance of conservation land for endangered species, including the cost of any permits relating to endangered species or the maintenance of the land and purchasing land or easements for conservation mitigation; the District may inject stormwater without the consent, concurrence, or authorization of a groundwater conservation district, but only if the District acquires a permit as required by Section 27.011, Water Code; Local Government Code Section 375.161 states that an MMD may not impose an impact fee, assessment, tax, or other requirement for payment, construction, alteration, or dedication under this chapter on single-family detached residential property, duplexes,

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**TCEQ's Supervision:** As with general law districts, the TCEQ will have general supervisory authority, including bond review authority and review of financial reports.





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NOTICE OF INTENT TO INTRODUCE

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#### NOTICE

This is to give notice of intent to introduce in the 85th Legislature, Regular Session, a bill to be entitled an Act relating to the creation of the Driftwood Conservation District which bill shall pertain to the creation, and to the administration, powers, additional powers, duties, operation and financing of the Driftwood Conservation District of Hays County, a Conservation and Reclamation District to be Created Under Article XVI, Section 59 and Article III Section 52 of the Texas Constitution created to Acquire, Construct, Finance, and Operate Water, Sewer, Drainage, and Road improvements serving the following respective tracts of land:

Tract 1: Being 394.112 acres of land, more or less, out of the FREELOVE WOODY LEAGUE NO. 23, ABSTRACT 20, in Hays County, Texas, being a portion of that 700.03 acre tract conveyed to John Richard Rutherford by deed recorded in Volume 1214, Page 548, of the Official Public Records of Hays County, Texas;

Tract 2: Being 128.166 acres of land, more or less, out of the FREELOVE WOODY LEAGUE NO. 23, ABSTRACT 20, in Hays County, Texas, being a portion of that 700.03 acre tract conveyed by deed recorded in Volume 1214, Page 548, of the Official Public Records of Hays County, Texas;

Tract 3: Being 0.1783 acres of land, more or less, out of the FREELOVE WOODY LEAGUE NO. 23, ABSTRACT 20, in Hays County, Texas, being a portion of that certain tract, described as First Tract, conveyed to Michael Giles Rutherford by deed recorded in Volume 197, Page 45, of the Official Public Records of Hays County, Texas.

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Public

THE STATE OF TEXAS }  
County of Hays: }

Before me, the undersigned, holding the office of Notary Public in and

for Hays County, Texas, personally appeared Don Moore,  
who states under oath that he is the publisher of the San Marcos Daily Record, a newspaper which has been  
regularly and continuously published in San Marcos, Hays County, Texas, for a period of more than one  
year immediately preceding the date of publication of this notice and that the Notice by Publication hereto  
attached was published in the regular edition of said newspaper for a period of 1 day

on the following dates

January 15, 20 17,  
\_\_\_\_\_, 20 \_\_\_\_\_, 20 \_\_\_\_\_,  
\_\_\_\_\_, 20 \_\_\_\_\_, 20 \_\_\_\_\_,  
\_\_\_\_\_, 20 \_\_\_\_\_, a printed clipping of said notice being hereto attached.

The said publisher states that the rate charged for this publication is the lowest rate charged  
commercial advertising for the same class of advertising for a like amount of space.

(Signed) \_\_\_\_\_

Publisher

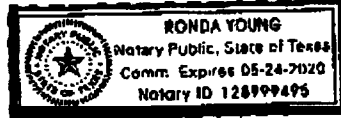
Subscribed and sworn to before me this \_\_\_\_\_

16<sup>th</sup>

day of

January

20 17



\_\_\_\_\_  
Ronda Young  
\_\_\_\_\_  
Ronda Young

COPY

**WHOLESALE WATER SUPPLY AGREEMENT  
BETWEEN  
LOWER COLORADO RIVER AUTHORITY AND  
THE CITY OF DRIPPING SPRINGS**

THIS WHOLESALE WATER SUPPLY AGREEMENT (this "Agreement") is made and entered into by and between LOWER COLORADO RIVER AUTHORITY, a conservation and reclamation district and a political subdivision of the State of Texas ("LCRA") and the CITY OF DRIPPING SPRINGS, TEXAS, a Texas general law municipality (the "City").

**RECITALS**

1. LCRA owns and operates a regional water supply system consisting of a raw water intake and pumping system, a raw water transmission main, a water treatment plant, treated water storage facilities and treated water transmission and distribution facilities to serve the needs of its wholesale and retail customers in Travis and Hays Counties, Texas (the "LCRA System"), including that area within the Colorado River watershed in Hays County (the "LCRA Service Area").
2. The City does not presently have a water system or a water certificate of convenience and necessity ("CCN"), but desires to provide retail potable water utility service within certain portions of the City's current corporate limits and extraterritorial jurisdiction ("ETJ"), including the area identified on Exhibit A hereto (the "City's Potential Service Area").
3. LCRA is in the process of expanding the LCRA System in order to provide wholesale and retail water service within the LCRA Service Area, which includes the City's Potential Service Area.
4. The City has no facilities to divert, treat, transport, store or distribute the water to potential retail customers in the City's Potential Service Area and desires that LCRA, which is in the process of expanding the LCRA System in order to provide wholesale and retail potable water service within the LCRA Service Area as described on Exhibit B hereto (the "LCRA Service Area"), which includes the City's Potential Service Area.
5. The City intends to provide retail water service to the potential retail customers in the City's Potential Service Area, subject to agreements with other parties regarding areas to be served.
6. The City and LCRA now desire to enter into this Agreement pursuant to which LCRA will agree to provide a wholesale treated water supply to the City from the LCRA System and certain related operation and maintenance services for areas where the City obtains a CCN granting the City the Exclusive Right (as hereafter defined) to provide retail potable water utility service.

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7. The City desires that LCRA include in the improvements that it constructs for the LCRA System facilities needed by the City to provide retail potable water utility service to all or any portion of the City's Potential Service Area to which the City obtains a CCN granting it the Exclusive Right to provide retail potable water utility service.
8. LCRA is willing to include in the improvements constructed by it facilities needed to enable the City to provide retail potable water utility service in all or any portion of the City's Potential Service Area for which the City obtains a CCN granting it the Exclusive Right to provide retail potable water utility service.
9. The City is willing to obtain Wholesale Water Supply (as hereafter defined) from the LCRA System and the related operation and maintenance services as provided herein for areas where the City obtains a CCN granting it the Exclusive Right to provide retail potable water utility service within the City's Potential Service Area.
10. LCRA and the City also wish to undertake good faith efforts to extend the City's Potential Service Area wherever possible to include areas along U.S. Highway 290 in Hays County (the "290 Corridor") to facilitate the City's ability to annex these areas and thereby further regulate growth and development and promote the health, safety and general welfare of the residents of the City and its ETJ.
11. LCRA is aware that the City and Dripping Springs Water Supply Corporation (the "Corporation") entered into a "Settlement Agreement and Water and Wastewater Service Agreement" (the "Settlement Agreement") with an effective date of May 28, 2002, that establishes water and wastewater service areas, as between the City and the Corporation, in the City's corporate limits and ETJ and the City and LCRA intend that this Agreement not create a default or breach of the Settlement Agreement.
12. The City is aware that LCRA has also entered into agreements with Dripping Springs Water Supply Corporation and the Hays County Commissioners Court obligating LCRA to undertake certain actions with each of those entities in regard to the City's Potential Service Area, and the City and LCRA acknowledge LCRA's obligations under those agreements and intend that this Agreement not create a default or breach of said agreements.
13. Subject to compliance with the provisions of this Agreement by all parties hereto, and to the extent indicated hereafter, LCRA's System will be capable of providing Wholesale Water Supply to the City, and LCRA agrees to improve its System in order to provide adequate Wholesale Water Supply to the City under this Agreement and to the other wholesale and retail customers of the LCRA System under other agreements, with all costs of the LCRA System (hereafter, the "Costs of the LCRA System") to be recovered through the rates and charges of LCRA to the customers of the LCRA System.
14. LCRA and the City now wish to execute this Agreement to evidence the agreement of LCRA to provide Wholesale Water Supply to the City under the conditions described in this Agreement.

## AGREEMENTS

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, LCRA and the City agree as follows:

### ARTICLE I DEFINITIONS

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

"Agreement" means this agreement.

"CCN" means a certificate of convenience and public necessity for retail water utility service issued by the Texas Commission on Environmental Quality or its successors.

"Charges" means the LCRA's charges set from time to time by the LCRA Tariff (as hereafter defined) approved by its Board of Directors for water utility service from the LCRA System.

"City" means the City of Dripping Springs, Texas.

"City's Potential Service Area" means the area described as such on Exhibit A hereto, and may be expanded by agreement of LCRA and the City to include, wherever possible, areas of the 290 Corridor.

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

"Costs of the LCRA System" means all costs of acquiring, constructing, developing, permitting, implementing, expanding, improving, enlarging, bettering, extending, replacing, repairing, maintaining and operating, and obtaining, reserving and using water for, the LCRA System, including, without limiting the generality of the foregoing, the costs of property, interests in property, water and water rights, capitalized interest, land, easements and rights-of-way, damages to land and property, leases, facilities, equipment, machinery, pumps, pipes, tanks, lines, meters, taps, valves, fittings, mechanical devices, office equipment, assets, contract rights, wages and salaries, employee benefits, chemicals, stores, material, supplies, power, supervision, engineering, testing, auditing, franchises, charges, assessments, claims, insurance, engineering, financing, consultants, administrative expenses, auditing expenses, legal expenses and other similar or dissimilar expenses and costs required for the LCRA System. The Costs of the LCRA System shall include reasonable amounts for an operation and maintenance reserve fund, debt service reserve fund, required coverage of debt service, working capital and appropriate general and administrative costs.

"Delivery Point(s)" means the point(s) at which LCRA is obligated to deliver treated water to the City for the City's retail customers under this Agreement, which shall be the points at which the City delivers retail potable water utility service to its retail customers.

"Emergency" means a sudden unexpected happening; an unforeseen occurrence of condition; exigency; pressing necessity; or a relatively permanent condition of insufficiency of service or of facilities resulting in social distress. The term includes Force Majeure and acts of third parties which cause the LCRA System to be unable to provide the Wholesale Water Supply agreed to be provided herein.

"Exclusive Right" means the City's right pursuant to a CCN to provide exclusive retail water utility service but also includes dual certification rights with the Corporation along RR 12 where the Settlement Agreement so allows the City to have dual certification with the Corporation.

"Force Majeure" means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, acts of terrorism, orders of any kind of any governmental entity or any civil or military authority, acts, orders or delays thereof of any regulatory authorities with jurisdiction over the parties, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or any other conditions which are not within the control of such party.

"LCRA" means Lower Colorado River Authority.

"LCRA Service Area" means that area described as such in Exhibit B hereto together with such other areas as may be added by LCRA in the future.

"LCRA System" means the facilities owned by LCRA as described in Recital No. 1 above together with all extensions, expansions, improvements, enlargements, betterments and replacements thereof to provide wholesale or retail water service or supply to LCRA's customers in the LCRA Service Area.

"LCRA Tariff" means the water related portions of LCRA's West Travis County Regional System Schedules for Rates, Fees, Charges and Terms and Conditions of Retail Treated Water and Wastewater Service as approved for the LCRA System, together with future amendments thereto or replacements thereof as adopted from time to time by the LCRA Board of Directors.

"LUE" means an amount of Wholesale Water Supply sufficient for one living unit equivalent as defined in the LCRA Tariff.

"Meter(s)" means the meter(s) which shall be installed by LCRA at the Delivery Point(s).

"TCEQ" means the Texas Commission on Environmental Quality or its predecessor or successors.

"Wholesale Water Supply" means the supply of potable water to the City at the Delivery Point(s).

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

**Section 1.03. Wholesale Water Supply.** LCRA agrees to provide Wholesale Water Supply to the City under this Agreement all as hereafter specified. Notwithstanding anything herein to the contrary, LCRA shall provide Wholesale Water Supply to the City, and the City shall provide retail potable water utility service from the LCRA System, in a manner which complies with that certain Memorandum of Understanding between LCRA and the United States Fish and Wildlife Service dated May, 2000 (the "MOU"), and only for areas for which the City has obtained a CCN authorizing it the Exclusive Right to provide retail potable water utility service within the City's Potential Service Area. In that regard, the City agrees that its retail water service from the Wholesale Water Supply to "New Development" (as defined in the MOU) will only be provided where (a) the development complies with any final water quality protection measures that result from the Fish and Wildlife Service's review of LCRA's environmental study, or (b) the Fish and Wildlife Service determines in writing that the water quality protection measures provided for the development are consistent with the requirements of the Endangered Species Act, or (c) the development complies with a regional plan that Fish and Wildlife Service determines in writing to be consistent with the requirements of the Endangered Species Act. Further, the City agrees that as a condition to providing retail water service from the Wholesale Water Supply to such "New Development" that it will require that each landowner provide for its development an engineer's certification that the plat for the development contains enforceable restrictions against altering physical elements of any applicable water quality protection measures or alternatives, such as buffer zones and impervious cover, and that the City will require that the landowner also provide an engineer's certification after completion of construction of a subdivision to ensure that construction of the subdivision has been in accordance with the plat restrictions.

## **ARTICLE II LCRA SYSTEM**

**Section 2.01. Use of City Property.** The City hereby authorizes LCRA to have, acquire, construct, enlarge, extend, improve, maintain, operate, repair, replace, hold, and own the LCRA System in, on, upon, and under the present and future streets, alleys, highways, parkways, easements, rights-of-way, and other public places of the City in order to supply regional water service to LCRA's and the City's customers within and without the City.

**Section 2.02. Construction of LCRA System Within City and Its Extraterritorial Jurisdiction.** All new construction by LCRA that is related to the LCRA System shall be done in accordance with applicable ordinances, rules, and regulations of the City which are related to the construction of facilities and the use of streets, alleys, highways, parkways, and public places as are now in effect or may be hereafter adopted by the City. The parties agree that the provisions of that certain "Interlocal Cooperation Agreement" between them dated December 21, 2000, shall apply to construction of any part of the LCRA System within the City's limits or extraterritorial jurisdiction except that LCRA shall pay as fee to the City the actual and reasonable time and expenses incurred by the City Engineer and/or Attorneys in reviewing the plans related to construction of retail distribution system facilities. The LCRA System shall not be so located as to prevent the City from making reasonable use of the streets, alleys, highways, parkways, easements, rights-of-way, or other public places in accordance with the use(s) for which they were intended. In constructing or maintaining the LCRA System within the City limits, LCRA

shall not interfere with any existing underground facilities of the City except with the City's consent and under the City's reasonable direction. The City's consent shall not be unreasonably withheld or delayed.

**Section 2.03. City's Right to Construct Facilities.** If LCRA is unable to construct or have constructed the LCRA System to provide Wholesale Water Supply to any part of the City's Potential Service Area within the time frame provided in Section 3.01 of this Agreement, the City retains, and shall have, the right to construct, contract for the construction of, or accept as contributions from third parties, and thereafter own and operate, subject to the other provisions of this Agreement, any facilities that it needs to provide retail potable water utility service to such portion of the City's Potential Service Area.

**Section 2.04. Preservation of Right.** The City shall not (i) grant any other easement, license, or franchise to any other entity (other than Dripping Springs Water Supply Corporation) or (ii) construct any facility, to the extent that either of such actions would prevent LCRA from utilizing the authority granted herein without written consent from the LCRA which consent shall not be unreasonably withheld or delayed. Notwithstanding anything herein to the contrary, LCRA understands and confirms that to the extent easements or licenses are granted to LCRA by the City, such easements and licenses are non-exclusive.

**Section 2.05. Repairs, etc.** Except during Emergencies or to repair breaks or leaks or as provided by that certain "Interlocal Cooperation Agreement" between the parties dated December 21, 2000, LCRA shall provide ten (10) days notice in advance of any construction or maintenance activities in any of the City's public rights-of-way or public areas. LCRA shall return the area impacted by such construction or maintenance to the condition the area was in prior to such construction or maintenance. In the event Emergency maintenance or construction is required, LCRA shall notify the City of the activity as soon as is practicable.

**Section 2.06. Relocations.** If the City, in constructing public works, should require the LCRA System to be relocated, LCRA shall relocate the LCRA System as required by the City at the LCRA's sole cost and expense. Whenever the City shall intend to pave, construct, or improve any street, highway, alleyway, or other public area in which the LCRA System or other LCRA facilities are located, the City shall provide LCRA with reasonable written notice of the intended improvement to enable LCRA to improve the LCRA System or other facilities, if needed, so as to minimize and coordinate any inconvenience caused to the public by the construction.

**Section 2.07. Map of LCRA System.** LCRA shall supply the City with a map or maps showing in reasonable and sufficient detail the probable location(s) of the part of the LCRA System in the City limits to be constructed by the LCRA after the date of this Agreement. Information regarding the location(s) of the portion(s) of the LCRA System constructed and located in the City limits prior to the date of this Agreement have been provided to the City and relied upon by the City. LCRA shall be responsible for the accuracy of the information given to the City by LCRA and for providing maps to the City showing lines or facilities in the City corporate limits constructed by LCRA prior to LCRA's execution of this Agreement. To the extent LCRA subsequently determines that such information is inaccurate, it will provide the City with information regarding the inaccuracy.



Section 2.08. Not a Franchise Agreement. The City agrees that nothing in this Agreement constitutes an admission by the LCRA that it is required by law to obtain a franchise from the City. However, in the event that LCRA is required by law, now or in the future, to obtain a franchise from the City for the provision of water service within the LCRA Service Area, then this document shall satisfy such requirement and no other franchise cost or payment shall be due the City. This provision does not prohibit the City from lawfully imposing fees on entities other than LCRA that may be wholesale water customers of LCRA.

Section 2.09. Water Meter(s). LCRA shall install a Meter(s) at or near the point(s) of connection of the LCRA System with each of the City's retail potable water customers. After completion of installation of the Meter(s), the Meter(s) shall be part of the LCRA System, and service from the Meter shall be provided pursuant to this Agreement.

### **ARTICLE III CONDITIONS REGARDING PROVISION OF WHOLESALE WATER SUPPLY**

Section 3.01. Supply of Water. Subject to the matters provided in Sections 1.03, 3.03 and 5.03, and completion of construction or dedication of any internal distribution system improvements needed, LCRA agrees to provide Wholesale Water Supply to the City for the City's retail customers. Except as otherwise expressly authorized in this Agreement, the City agrees that, within its Service Area, it will not use potable water from any source or facilities other than water made available from the LCRA System; provided, however, within ninety (90) days after the City notifies LCRA in writing that the City intends to provide retail potable water utility service to an area pursuant to Section 5.03 of this Agreement, LCRA shall notify the City in writing as to whether LCRA is able to supply Wholesale Water Supply to the City for such area. If LCRA is unable to provide Wholesale Water Supply to the City for such area, then the City, in its sole discretion, shall be free to pursue and obtain any other source of water service or supply for such area that it deems appropriate. For any area where, pursuant to this paragraph 3.01, the City has requested service and LCRA has notified the City that it is unable to serve, if LCRA later seeks to provide retail or wholesale service to that area, then LCRA shall first notify the City in writing that it intends to provide such service, and the City shall have 90 days to respond to LCRA in writing that it wishes to proceed with the provision of retail potable water utility service to such area pursuant to this Agreement; if the City so responds in writing, then the parties shall proceed pursuant to this Agreement as if, pursuant to this Section 3.01, the City had notified LCRA that it intended to provide retail potable water utility service to that area pursuant to Section 5.03 of this Agreement, and that LCRA had responded that it was able to supply Wholesale Water Supply to the City for such area.

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

- a. Title to the water supplied to the City by LCRA under this Agreement shall remain with the LCRA at all times while it is in the LCRA System; even when that water is commingled with water belonging to other customers of the LCRA System, and the City shall have no right of control or dominion over the water until it reaches the Delivery Point(s).

- b. Water delivered by LCRA shall be delivered at the Delivery Point(s) and at no other points.

**Section 3.03. Quantity and Pressure.**

- a. Subject to the limitations set forth herein and in the LCRA Tariff, and subject to the availability of capacity in the LCRA System at a feasible cost at the time the City requests a service commitment from LCRA for any part of the City's Potential Service Area, upon completion of construction or dedication of any internal distribution system improvements needed, LCRA agrees to supply to the City (i) all water needed and requested by the City for its retail customers in any portion of the City's Potential Service Area, for which the City obtains a CCN granting it the Exclusive Right to provide retail potable water utility service, or (ii) such lesser amount as LCRA may be able to supply in the event of an Emergency and shall make the water available at the Delivery Point(s) at a minimum pressure of thirty-five (35) psi under non-Emergency operating conditions, or at such other pressure as may be required by applicable law or state or federal regulation.
- b. LCRA reserves the right to install flow restriction devices, at such locations as LCRA may hereafter specify, in order to restrict the flow of water to the City to the levels agreed to herein. If the demands of the City for Wholesale Water Supply ever exceed the amount LCRA is able to supply, then the City shall notify LCRA of such shortage and the amount of water needed by the City. LCRA and the City shall consider undertaking all reasonable conservation efforts to allow LCRA to meet said demand subject to the other provisions of this Agreement, LCRA's agreements with other parties, the LCRA Tariff and applicable law.

**Section 3.04. Quality of Water Delivered to City.** The water delivered by LCRA hereunder at the Delivery Point(s) shall be potable water of a quality conforming to the requirements of all applicable federal or state laws, rules, regulations or orders including requirements of the TCEQ for human consumption and other domestic use.

**Section 3.05. Construction, Maintenance and Operation.** LCRA shall be responsible for owning, constructing, operating, maintaining, repairing, replacing, extending, improving and enlarging the LCRA System and shall promptly repair any leaks or breaks in LCRA's System.

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

- a. The City shall be responsible for paying for all water delivered to it or its retail customers under this Agreement at the Delivery Point(s) regardless of the fact that such water passed through the Delivery Point(s) as a result of leaks or breaks in the City's retail customers' lines or facilities. In the event a leak, break, rupture or other defect occurs within the City's retail customers' lines or facilities which could either endanger or contaminate the LCRA System or prejudice LCRA's ability to provide water service to its other customers, LCRA, after providing notice conforming to the LCRA Tariff, shall have the right to take whatever actions LCRA reasonably considers appropriate to protect the public health or welfare or the LCRA System or the water systems of LCRA's customers

including, without limitation, the right to restrict, valve off or discontinue service until such leak, break, rupture or other defect has been repaired.

- b. The City further understands that LCRA delivers water from the LCRA System at other points to other customers and has rights under its contracts with those customers which are similar to its rights under Section 3.06.a. of this Agreement. Nothing in this Agreement shall be construed as impairing any of LCRA's rights under its contracts with those other customers. LCRA may exercise any of said rights, including those rights similar to its rights under Section 3.06.a. of this Agreement, and in such event, the City shall have the same rights and obligations with respect to LCRA as the City would have had LCRA exercised its rights under Section 3.06.a. of this Agreement.

#### **ARTICLE IV CHARGES, BILLING AND FINANCIAL MATTERS**

##### **Section 4.01. Connection Fee; Rates.**

- a. The City shall be obligated to pay LCRA, a connection fee (the "Connection Fee") as set from time to time by the LCRA Board of Directors in the LCRA Tariff, and currently estimated to be four thousand five hundred dollars (\$4,500) per LUE, for each new LUE connection which is served by the City with water from the LCRA System pursuant to this Agreement. The Connection Fee for each new retail water connection shall be due and payable to LCRA before the City makes a new retail water connection. The Connection Fee shall be designed primarily to fund or recover all or a part of the Costs of the LCRA System for capital improvements or facility expansion intended to serve new retail connections in the LCRA Service Area.
- b. The City also shall pay to LCRA such other Charges as are imposed by the LCRA Tariff from time to time. The Charges shall be designed primarily to recover the share of the capital related Costs of the System attributable to the City not recovered through the Connection Fee, and the operation and maintenance related costs of the System attributable to the City.
- c. The City hereby appoints LCRA as its agent to collect the Connection Fee and the Charges and other amounts billed to the City's retail customers who are served pursuant to this Agreement and remit same to LCRA and the remainder to the City, subject to the annual review by the City of the LCRA's performance of this agency. LCRA's reasonable and necessary costs of billing and collecting from the City's retail customers, including bad debt accounts, shall be a cost of the LCRA System. This appointment shall be for the duration of this Agreement.
- d. At any time while this Agreement is in effect, LCRA, subject to applicable law, may modify the Connection Fee and the Charges as appropriate to recover the Costs of the LCRA System in a just and reasonable manner from the City and the other customers of the LCRA System.

*LCRA bills in city?*

**Section 4.02. City's Retail Charges.** During the term of this Agreement, the City agrees to charge its retail customers the same Connection Fee and Charges as imposed by the LCRA Tariff upon the City. In addition, the City may charge an additional amount not to exceed six (6) percent of the Charges, which amount shall be collected by LCRA on behalf of the City as its agent and remitted to the City to reimburse the City for any expenses incurred by the City for, among other things, administering the retail service from the LCRA System and this Agreement. Otherwise, the City shall impose no other charges upon its customers for retail water service from the LCRA System. It is understood and agreed between the parties that this covenant by the City has served as partial inducement to LCRA in entering into this Agreement, and but for this promise, LCRA would not have entered into this Agreement.

**Section 4.03. LCRA System to be Self-Sufficient.** The LCRA System shall be comprised of the facilities described in Recital No. 1 hereof, together with such improvements, extensions, enlargements, betterments, additions, improvements and replacements thereto as are considered reasonable and necessary by LCRA to provide water to the LCRA Service Area. The parties agree that the Costs of the LCRA System shall be borne by all of the customers of the LCRA System, including the City, in a fair and equitable manner and so that the LCRA System is self-sufficient. Without limiting the foregoing, the parties further agree that LCRA is authorized to issue such indebtedness as it may deem appropriate to pay for any Costs of the LCRA System or, in lieu of issuing indebtedness, to provide for the borrowing of internal LCRA funds from LCRA resources other than the LCRA System and, in such events, the Costs of the LCRA System borne by the customers, including the City, shall include debt service, paying agent/registrar fees and reasonable coverage on any indebtedness issued by LCRA or the recovery (amortized over a reasonable period) of any internal LCRA funds utilized together with reasonable interest and coverage thereon to be established in accordance with LCRA policy as now or hereafter implemented.

## ARTICLE V

### CITY'S OTHER COMMITMENTS AND FUTURE SERVICE AREA

**Section 5.01. City's Rates and Charges.**

- a. Subject to the limitations provided in Article IV, the City shall be solely responsible for implementing water rates for its own customers in accordance with applicable law and this Agreement. Failure to collect from its customers will not affect the City's obligation to make all payments due to LCRA, except that, as provided in Section 4.01 (c), bad debt accounts shall be a Cost of the LCRA System.
- b. The parties agree, and the City represents and covenants, that all moneys required to be paid by the City under this Agreement shall constitute an operating expense of the City's waterworks system authorized by the Constitution and laws of the State of Texas, including Chapter 402, Texas Local Government Code, as amended, and Section 791.026, Texas Government Code.
- c. The City covenants and agrees to compute, ascertain, fix, levy and collect such rates and charges for the facilities and services provided by it which will be consistent with this Agreement and adequate to permit the City to make prompt and complete payments pursuant to this Agreement.

Section 5.02. Governmental Approvals. Each party is solely responsible for obtaining any governmental approval required of it under this Agreement.

Section 5.03. City's Future Service Area. The City has identified the City's Potential Service Area in Exhibit A. As more fully described in this paragraph, LCRA and the City acknowledge and agree that the provision of water service by the two entities in City's Potential Service Area and the LCRA Service Area in the manner described in this paragraph is intended to be consistent with policies of the State of Texas and the TCEQ regarding regionalization of water service for the respective areas and will inure to the benefit of the present and future customers in the said areas. LCRA agrees that as between it and the City, the City shall have the right to provide retail water service in the City's Potential Service Area provided that it (i) files an application to obtain a CCN or add to its CCN any area within the City's Potential Service Area within sixty days after receiving notice in writing from LCRA that LCRA is able to provide Wholesale Water Supply to the City for such area or any portion thereof pursuant to Section 3.01 of this Agreement and (ii) is able to obtain approval of a CCN granting the City the Exclusive Right to provide potable water service to the area, or any applicable portion thereof, within one year of the City's filing the CCN application or amendment; provided that if the City is diligently pursuing such an application and would have obtained it within such time but for protests filed against it, the LCRA shall grant the City up to an additional year to obtain the CCN or amendment thereto. LCRA will neither object to nor support the City's application during this time period nor will LCRA object to or support any application of any other person or entity for such area during this time period. If (i) the City does not file an application for, or obtain approval of, such service area within such time frames or if the City chooses within such time frames not to provide water service to such area or if another entity obtains a CCN for such area or portion thereof, or (ii) to the extent the Dripping Springs Water Supply Corporation likewise does not file an application for, or obtain approval of, inclusion of such area in the Corporation's CCN within the time frames provided in the water supply contract between LCRA and the Corporation, or if the Corporation chooses not to provide water service to such area, then LCRA may provide retail or, as appropriate, wholesale service in such area and the City will neither object to nor support any application for a CCN by LCRA related thereto. LCRA and the City agree to cooperate with each other in the provision of service to the City's Potential Service Area and the LCRA Service Area to ensure that retail potable water utility service is provided in the most efficient and economical method possible taking environmental measures into account. Notwithstanding the foregoing, nothing in this Section shall prevent LCRA from providing wholesale water service to any entity which obtains a certificate of convenience and necessity for any portion of the area described in Exhibit A. However, LCRA and the City agree to cooperate in good faith if the City expresses a desire to provide wholesale water service to an area in the City's Potential Service Area where LCRA likewise may supply wholesale water service.

Section 5.04. Use of LCRA's System. Except as otherwise provided in this Agreement, the City agrees to use the Wholesale Water Supply provided by LCRA under this Agreement as its sole source of potable water for its retail customers during the term of this Agreement. The parties understand that LCRA has relied on this commitment by the City in agreeing to not require the City to make certain minimum payments that LCRA otherwise might have required in this Agreement. Notwithstanding the foregoing, because the City agrees to use the LCRA System as its sole source of Wholesale Water Supply in areas where LCRA is able to provide that water supply pursuant to this Agreement, the City shall nevertheless have the right, within such areas, to use or reuse effluent from a wastewater treatment facility for any purpose and to use water from a City-owned water well to irrigate City-owned property, such as parks and recreation areas.

Section 5.05. City's Service Extension Policy. In agreeing to expand the LCRA System, including constructing or acquiring additional retail distribution system lines in order to provide Wholesale Water Supply to the City under this Agreement, LCRA has not only incurred the additional costs of such facilities, but has also delayed or foregone its opportunity to provide retail service to any area for which the City obtains a CCN authorizing it the Exclusive Right to provide retail service. In addition to the increased Costs of the System for these retail distribution lines and related facilities, LCRA is entering into this Agreement in reliance upon the City's rate covenants in Article IV of this Agreement and this Section 5.05 to conform the City's service extension policy to that of LCRA in the LCRA Tariff for the areas receiving Wholesale Water Supply. Specifically, the City covenants and agrees that its retail water service extension policy for any area for which it obtains a CCN granting it the Exclusive Right to provide retail service in the City's Potential Service Area, and for which LCRA has agreed to provide the Wholesale Water Supply pursuant to this Agreement, will conform in all respects to LCRA's service extension policies that would apply to such area if LCRA were the retail service provider. In addition, in any developer line extension and service commitment agreements, LCRA and the City will jointly negotiate all contract terms for the water line extensions, consistent with that extension policy.

#### ARTICLE VI

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

Section 6.01. Termination, Discontinuance and Curtailment of Service; Modification of Agreement. Notwithstanding any other provision herein to the contrary, it is specifically understood and agreed between the parties that the obligation of LCRA to provide Wholesale Water Supply to the City during the term of this Agreement is contingent upon the matters provided herein and further is neither superior nor inferior to the obligation of LCRA to provide similarly situated customers with wholesale or retail water utility service within LCRA's Service Area and to its other presently committed customers or any future customers of the LCRA System. Pursuant to such understanding, the parties hereby agree that if it is ever reasonably determined by LCRA during the term of this Agreement that it is unable to adequately provide water or Wholesale Water Supply to the LCRA Service Area or its existing committed customers because of an Emergency or shortage of water supply, production, treatment, storage or transportation capability in the LCRA System, or if LCRA needs to cause repairs to be made to the LCRA System to repair, replace or improve the level of water supply or Wholesale Water Supply to its customers, then LCRA shall have the right, after reasonable notice to the City and

opportunity for consultation, to curtail or limit service to the City and all other customers of LCRA on a reasonable, non-discriminatory basis so that all similarly situated customers are treated equally, fairly and uniformly. The City further agrees, in times of such Emergency or shortage or the need for repair, replacement or improvement of the LCRA System, to take appropriate action to curtail or limit all usage in the City's Potential Service Area receiving Wholesale Water Supply so that all users of LCRA water will be equally and uniformly restricted and protected. Any such measures taken by the City will be at least as stringent as those adopted by LCRA for the LCRA's Service Area. The parties agree that domestic uses of water shall have priority in times of Emergency or shortage over uses of water for construction or commercial uses and that construction or commercial uses shall have priority over irrigation uses from the LCRA System. Further, both parties agree that use of water for irrigation of lawns shall have the lowest priority in times of Emergency or shortage. Notwithstanding anything herein to the contrary, if it is ever determined by any governmental or regulatory authority that provision of Wholesale Water Supply by LCRA under this Agreement or curtailment or limitation of water or Wholesale Water Supply by LCRA to any of its customers is in violation of applicable law, regulation or order, then LCRA, after reasonable notice to the City and opportunity for consultation, may take such action as will best effectuate this Agreement and comply with applicable law.

**Section 6.02. Service Availability and Plumbing Regulations.** The City covenants and agrees to adopt and enforce the same service availability and plumbing regulations as contained in the LCRA Tariff with provisions for the proper enforcement thereof, to ensure that neither connections, re-connections, cross-connection or other undesirable practices are permitted, including an agreement with each retail water customer that allows the retail provider to said customer to inspect individual water facilities prior to providing service to ensure that no substandard materials are used and to prevent unlawful connections, cross-connection and other undesirable plumbing practices. LCRA is hereby appointed by the City as its agent during the term of this Agreement to enforce the City's plumbing regulations related to customer inspection at the time of initial connection to the LCRA System.

**Section 6.03. Default.**

- a. In the event the City shall default in the payment of any amounts due LCRA under this Agreement, or in the performance of any material obligation to be performed by the City under this Agreement, then LCRA, after having given the City thirty (30) days written notice of such default and the opportunity to cure same, shall have the right to temporarily limit Wholesale Water Supply to the City under this Agreement, pending cure of such default by the City. In the event such default remains uncured for a period of (i) ninety (90) days in the event of a monetary default or (ii) three hundred sixty-five (365) days in the event of a non-monetary default, then LCRA, after giving the City thirty (30) days notice of its intent to do so and opportunity to cure, at its sole option, shall have the right either (x) to permanently restrict service to the City under this Agreement and to require the City to stop making new retail connections to the City's System, or (y) to require the City to, and the City hereby agrees to, allow LCRA to assume the power and responsibility to provide retail service in the area receiving Wholesale Water Supply, thereby taking over all retail service responsibilities and functions in LCRA's name and pursuant to the retail service requirements of the LCRA Tariff and in such event the City

and LCRA will diligently pursue transfer of that portion of the City's CCN covering the areas receiving Wholesale Water Supply to LCRA.

- b. In the event LCRA shall default in the performance of any material obligation to be performed by LCRA under this Agreement, then the City, after having given LCRA thirty (30) days written notice of such default and the opportunity to cure same, shall have the right to pursue any remedy available at law or in equity, pending cure of such default by LCRA. In the event such default remains uncured for a period of (i) one hundred eighty (180) days in the event of a default which causes the City to be unable to provide service to new retail connections to the City's System or (ii) three hundred sixty-five (365) days in the event of any other type of material default, then the City shall have the right to notify LCRA that the City intends to take a more limited amount of Wholesale Water Supply from LCRA (which shall be at least the amount LCRA is then providing to the City) and the City may then obtain other water service or supplies from another provider or may take appropriate action to supply itself with additional water after giving LCRA thirty (30) days notice of its intent to do so and opportunity to cure.

Section 6.04. Additional Remedies Upon Default. It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies existing at law or in equity may be availed of by any party hereto and shall be cumulative of the remedies provided herein. Recognizing however, that LCRA's undertaking to provide and maintain the services of the LCRA System is an obligation, failure in the performance of which cannot be adequately compensated in money damages alone, LCRA agrees, in the event of any default on its part, that the City shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination of this Agreement) which may also be available to the City. Recognizing that failure in the performance of the City's obligations hereunder could not be adequately compensated in money damages alone, the City agrees in the event of any default on its part that LCRA shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination of this Agreement) which may also be available to LCRA including, without limitation, the right of LCRA to obtain a writ of mandamus or an injunction against the City (i) requiring the City Council of the City to levy and collect rates and charges sufficient to pay the amounts owed to LCRA by the City under this Agreement and (ii) enjoining the City from making additional retail water connections as specified in Section 6.03.a.

## ARTICLE VII MISCELLANEOUS PROVISIONS

Section 7.01. Contracts. LCRA shall have the right to enter into other water supply or Wholesale Water Supply contracts so long as LCRA's performance of its obligations under such contracts does not prevent LCRA from being able to perform its obligations hereunder. This section shall not be construed as limiting LCRA's rights to temporarily curtail service in times of shortage or Emergency as otherwise provided herein. The City agrees that it will not, without the written consent of LCRA, provide or sell water to any entity, private or public, except retail customers of the City within the City's Potential Service Area where the City has obtained a



CCN authorizing it the Exclusive Right to provide retail potable water utility service from the Wholesale Water Supply provided by LCRA under this Agreement; provided, however, that such restriction on the provision or sale of water shall not prevent the City from providing, selling or using water as expressly authorized in sections 3.01 and 5.04, or pursuant to the remedies of section 6.03(b) and 6.04 of this Agreement.

Section 7.02. Records. LCRA and the City each agree to preserve, for a period of at least two years from their respective origins, all books, records, test data, charts and other records pertaining to this Agreement. LCRA and the City shall each, respectively, have the right at all reasonable business hours to inspect such records to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to any provisions of this Agreement.

Section 7.03. State Approval. Each party represents and warrants that the plans and specifications for its System have been or will be approved by the TCEQ.

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

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

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

Section 7.07. Addresses and Notices. Unless otherwise notified in writing by the other, the addresses of LCRA and the City are and shall remain as follows:

LCRA:

Lower Colorado River Authority  
Attn: Executive Manager  
Water and Wastewater Utilities  
3700 Lake Austin Boulevard  
Austin, Texas 78703

The City:

City of Dripping Springs, Texas  
Attn: Mayor  
PO Box 384  
Dripping Springs, Texas 78620-0384

Section 7.08. Assignability. This Agreement shall be assignable by LCRA to any affiliate of LCRA without the necessity of obtaining the consent of the City if written notice is provided to the City. Otherwise, this Agreement may be assigned by either party to any other entity with the express written consent of either party, which consent shall not be unreasonably withheld or delayed.

Section 7.09. Customer Advisory Committee Representative. LCRA has previously established a Customer Advisory Committee for the System. The parties agree that so long as the Customer Advisory Committee for the System exists, the City may appoint one representative to serve on the Committee. Such appointment shall be evidenced in writing, signed by the Mayor of the City and delivered to LCRA. The representative shall serve until further written designation of a successor from the Mayor of the City.

Section 7.10. Good Faith. Each party agrees that, notwithstanding any provision herein to the contrary, neither party will unreasonably withhold or unduly delay any consent, approval, decision, determination or other action which is required or permitted under the terms of this Agreement, it being agreed and understood that each party shall act in good faith and shall at all times deal fairly with the other party.

Section 7.11. Counterparts. This Agreement may be executed in as many counterparts as may be convenient or required. All counterparts shall collectively constitute a single instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart.

Section 7.12. Governing Law. The terms and provisions hereof shall be governed by and construed in accordance with the laws of the State of Texas and the United States of America from time to time in effect. Either Hays or Travis County, Texas shall be a proper place of venue for suit hereon, and the Parties hereby agree that any and all legal proceedings in respect of this Agreement shall be brought in the District Courts of Hays or Travis County, Texas, or the United States District Court for the Western District of Texas, Austin Division.

Section 7.13. Construction. The parties acknowledge that each party and, if it so chooses, its counsel, have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

Section 7.14. Water Conservation Plan. The City agrees to adopt and enforce a water conservation and drought contingency plan in compliance with TCEQ Rules, 30 TAC ch. 288, for water use within the areas receiving Wholesale Water Supply. The plan shall be at least as stringent as those adopted by LCRA for its retail customers in the LCRA Service Area. Within 180 days after the execution of this Agreement, the City will submit its water conservation and

drought contingency plan to the LCRA for the LCRA's review and approval as being consistent with the requirements of this Section 7.14. The City agrees to consider measures described on Exhibit C attached hereto in adopting its water conservation plan.

Section 7.15. Authority of Parties Executing Agreement. By their execution hereof each of the undersigned parties represents and warrants to the parties to this document that he or she has the authority to execute the document in the capacity shown on this document.

Section 7.16. Term. The term of this Agreement is forty (40) years from the effective date set forth below. After the expiration of the term, the parties shall cooperate in good faith to consider renewing this Agreement.

Section 7.17. Section 13.248 Agreement. This Agreement is a contract between retail public utilities designating areas to be served and customers to be served by those retail public utilities pursuant to Section 13.248, Texas Water Code ("Section 13.248"). Each of the parties may file a copy of this Agreement with the TCEQ in support of applications or other filings provided for in, or consistent with, this Agreement and may request that the TCEQ honor the terms of this Agreement as a contract between retail public utilities pursuant Section 13.248.

Section 7.18. Authority of Parties Executing Agreement. By their execution hereof, each of the undersigned parties represents and warrants to the parties to this document that he or she has the authority to execute the document in the capacity shown on this document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of which shall be deemed to be an original and of equal force and effect this 11<sup>th</sup> day of March, 2003.

**LOWER COLORADO RIVER AUTHORITY**

BY: \_\_\_\_\_

Randy J. Goss  
Randy J. Goss, P.E.  
Executive Manager,  
Water and Wastewater Utility Services



**CITY OF DRIPPING SPRINGS, TEXAS**

BY: \_\_\_\_\_

Bill Powell  
Mayor



ATTEST: \_\_\_\_\_

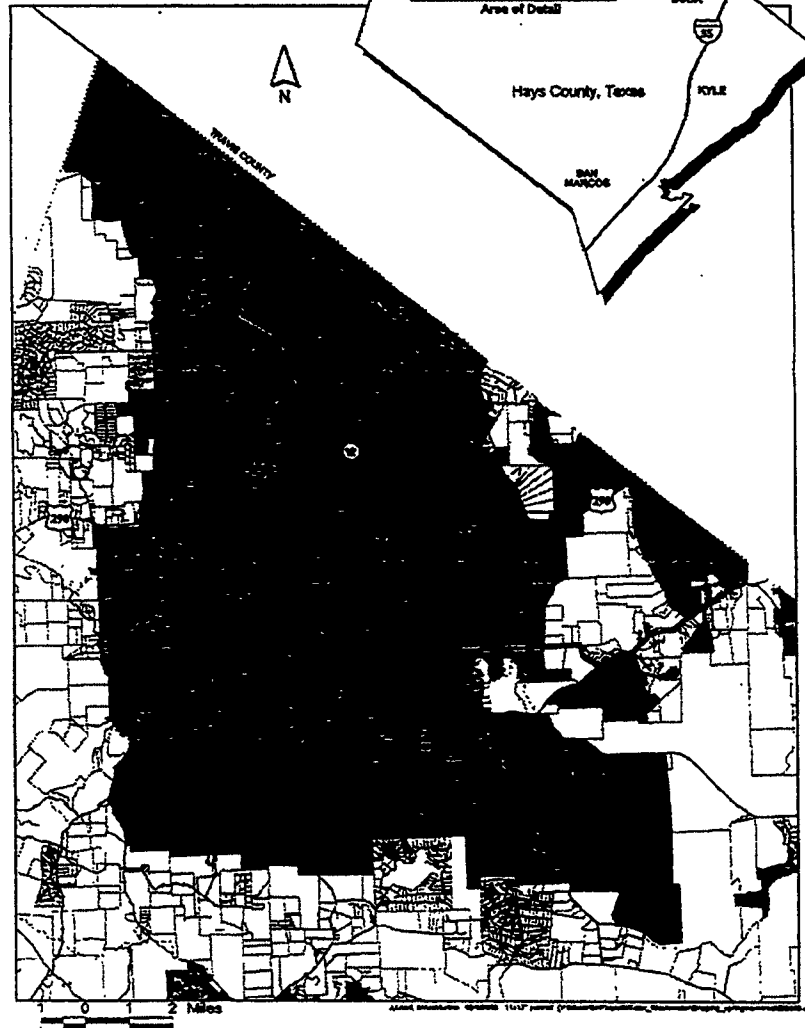
Allynn Fugitt  
City Secretary

**EXHIBIT "A"**

**CITY OF DRIPPING SPRINGS SERVICE AREA**

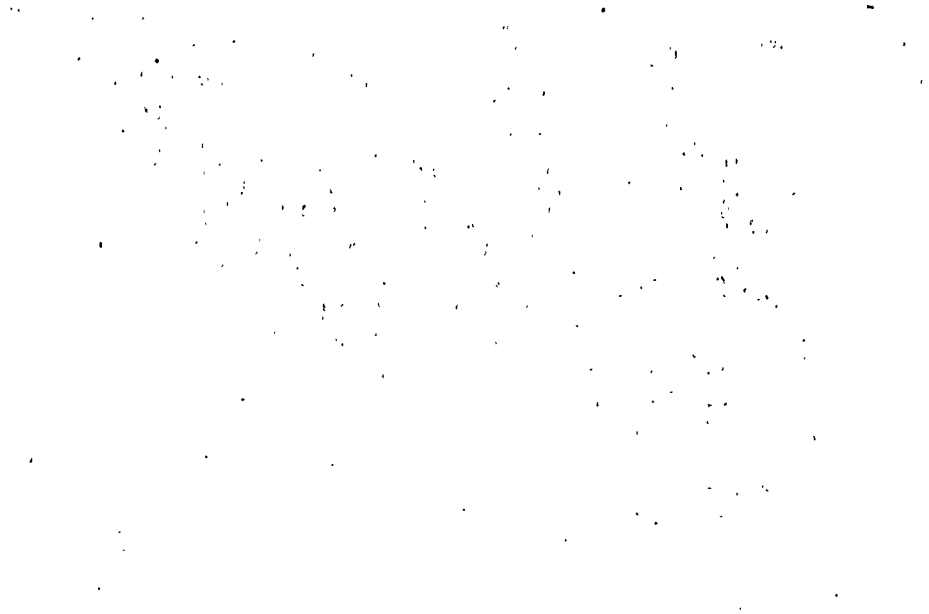
Exhibit A  
City of Dripping Springs Potential Service Area

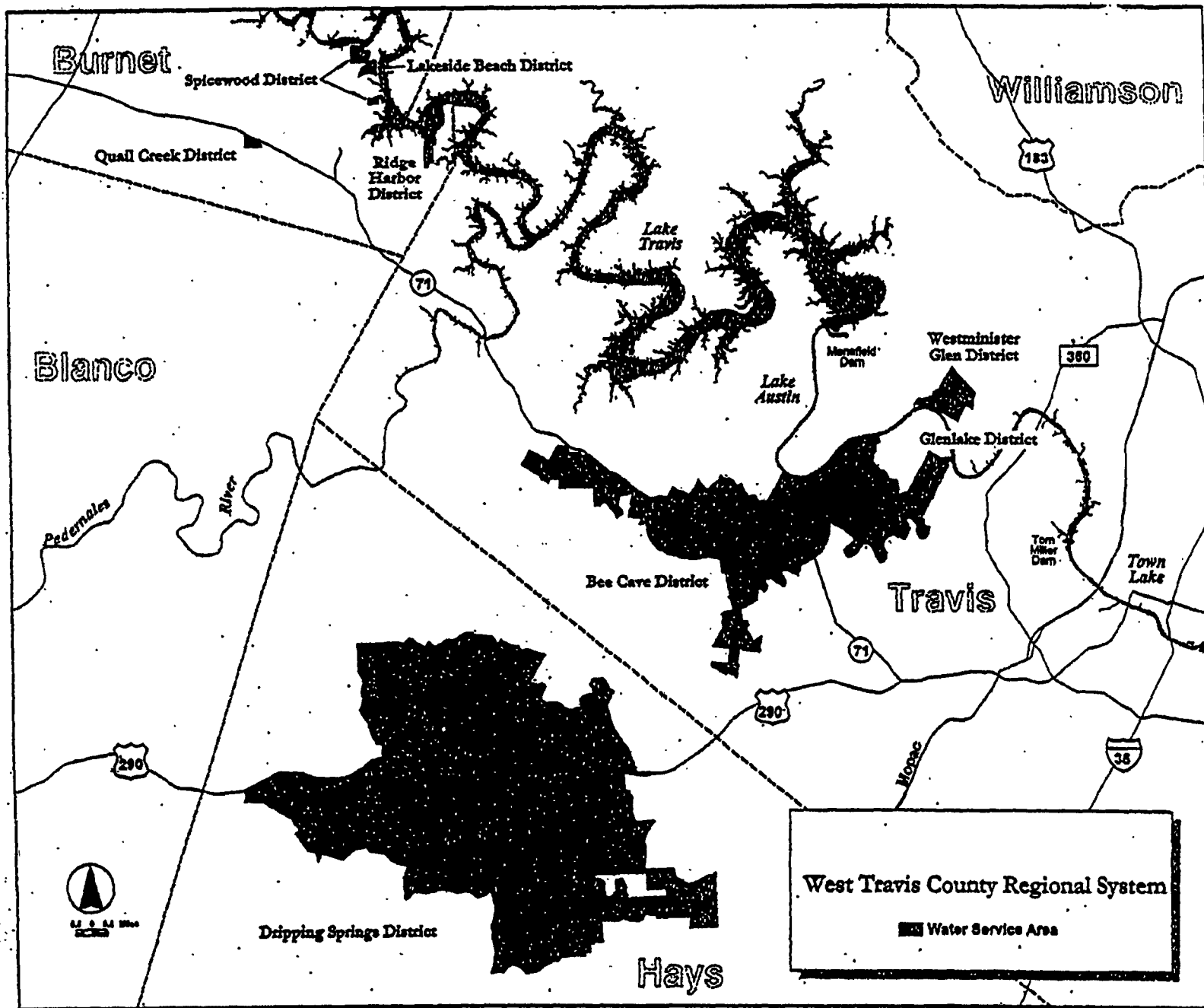
-  City of Dripping Springs Potential Service Area  
 Existing Water CCNs, 1/1/2003



**EXHIBIT "B"**

**LCRA SERVICE AREA**





## **EXHIBIT "C"**

### **CONSERVATION MEASURES**

- Water waste prohibition. Applicant must enact and enforce ordinances to prohibit wasteful activities, some of which include gutter flooding, watering between the hours of 10:00 a.m. and 8:00 p.m., single pass cooling systems in new connections, non-recirculating systems in new conveyer car washes.
- Additional public information programs. Activities should include, but are not limited to: providing speakers, using paid and public service announcements, providing trend information on bills, and providing informational pamphlets, flyers and manuals.
- School education programs. This includes classroom presentations, instructional assistance and distribution of educational materials.
- Large landscape conservation programs and incentives. Customer could identify accounts with dedicated irrigation meters and conduct irrigation audits or assign evapotranspiration (ET)-based water use budgets. Other possibilities include ordinances, training, financial incentives, rebates and other educational activities.
- Small landscape conservation programs and incentives. Conduct irrigation audits, rebates, financial incentives, training or other educational activities.
- Conservation coordinator staff. Designate at least one person who will be responsible for preparation and implementation of the conservation plan.
- Conservation programs for industrial, commercial, and institutional accounts. Identify and rank ICI customers according to water usage and offer water use surveys and customer incentives.
- Water survey programs for single and multi-family residential customers.
- Residential plumbing retrofit programs. Identify homes built before 1992 and develop a plan to distribute or install low-flow plumbing devices as needed.
- High-efficiency washing machine rebate programs.
- Residential ultra-low flush toilet replacement programs.



**CITY OF DRIPPING SPRINGS**

**ORDINANCE NO. 1725.01**

**WATER RATE ORDINANCE**

**AN ORDINANCE ESTABLISHING RETAIL WATER SERVICE RULES, RATES, AND POLICIES WITHIN THE CITY OF DRIPPING SPRINGS; AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; ENACTMENT; REPEALER; SEVERABILITY; CODIFICATION; EFFECTIVE DATE; AND PROPER NOTICE AND MEETING.**

**WHEREAS**, the City of Dripping Springs has the authority under Chapter 552 of the Texas Local Government Code (the "Code") to purchase, construct, and operate a water utility system inside or outside the municipal boundaries and may regulate the system in a manner that protects the interests of the municipality; and

**WHEREAS**, the Wholesale Water Supply Agreement between the Lower Colorado River Authority (now the West Travis County Public Utility Agency or WTCPUA) and the City of Dripping Springs (Blue Blazes Service Property Amendment) (executed in 2003) allows the City to provide retail water service under certain circumstances; and

**WHEREAS**, the City desires to operate a water utility and provide retail water service; and

**WHEREAS**, the City has determined that providing retail water service in a manner the City deems necessary and as is described in "Attachment A" benefits the City and its residents.

**NOW, THEREFORE, BE IT ORDAINED by the City Council of Dripping Springs, Texas:**

**1. FINDINGS OF FACT**

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

## **2. ENACTMENT**

Chapter 20, Article 20.06 is added to the City of Dripping Springs Code of Ordinances in accordance with Attachment A, which is attached hereto and incorporated into this Ordinance for all intents and purposes. Any underlined text shall be inserted into the Code, as stated on Attachment A.

## **3. REPEALER**

All ordinances, resolutions, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance, are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

## **4. SEVERABILITY**

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

## **5. CODIFICATION**

The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

## **6. EFFECTIVE DATE**

This Ordinance shall be effective immediately upon passage.

## **7. PROPER NOTICE & MEETING**

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

NOW THEREFORE, BE IT ORDAINED BY THE City Council of the City of Dripping Springs, Texas:

PASSED & APPROVED this, the 16<sup>th</sup> day of May 2017, by a vote of 5 (ayes) to 0 (nays) to (abstentions)

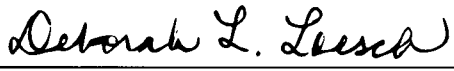
CITY OF DRIPPING SPRINGS

By:

  
Todd Purcell, Mayor



ATTEST:

  
Deborah L. Loesch, Deputy City Secretary

City of Dripping Springs

# CODE OF ORDINANCES

## CHAPTER 20: UTILITIES

### ARTICLE 20.06 RETAIL WATER SERVICE

#### Sec. 20.06.001 Retail Water Service Rules and Policies

This Article sets-forth the City of Dripping Springs Rules and Policies that apply to any retail water service that is provided by the City of Dripping Springs.

#### Sec. 20.06.001 Definitions

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in Article 20.06, except where the context clearly indicates a different meaning:

LCRA, means the Lower Colorado River Authority.

New Development, means "New Development" as that term is defined in the MOU.

MOU, means that certain Memorandum of Understanding between LCRA and USFWS dated May, 2000.

TCEQ, means the Texas Commission on Environmental Quality.

USFWS, means the United States Fish and Wildlife Service.

WTCPUA, means the West Travis County Public Utility Agency.

**Secs. 20.06.002–20.06.009 Reserved**

**Sec. 20.06.010 Initiation and Continuation of Retail Water Service**

- (a) The City has agreed by contract with its wholesale water provider to provide retail potable water utility service only in a manner that complies with the MOU. Any New Development will only be provided with retail water service where the New Development complies with (1) Measures approved by the USFWS through separate Section 7 consultation, or other independent consultation, (2) TCEQ optional enhanced measures, Appendix A and Appendix B to RG-348; or (3) USFWS Recommendations for Protection of Water Quality of the Edwards Aquifer dated September 1, 2000.
- (b) As a condition to obtaining retail water service from the City, the landowner for any New Development must provide for the development to the City an engineer's certification that the plat for the development contains enforceable restrictions against altering physical elements of any applicable water quality protection measures or alternatives, such as buffer zones and impervious cover, and the landowner must also provide an engineer's certification after completion of construction of a development or subdivision to ensure that the construction of the development or subdivision has been in accordance with the plat restrictions.
- (c) All WTCPUA's service extension policies apply to retail water utility service provided by the City as if the WTCPUA were the retail service provider.
- (d) The City hereby adopts by reference the same service availability and plumbing regulations as contained in the duly adopted WTCPUA Tariff.

**Secs. 20.06.011–20.06.029 Reserved**

**Sec. 20.06.030 Water Rates and Charges**

- (a) Applicability. These rates and charges are applicable to all sales or service of water within and outside the corporate limits of the city.
- (b) Rates and Charges. The City's rates and charges to customers for the sales or service of water shall consist of two parts: 1) base rates, and 2) administrative fee.

- (1) Base Rates. The City shall charge as its base rates the same rates, fees, and charges (including, but not limited to, water impact fees, connection fees, minimum monthly charges, capital charges, and volumetric charges), imposed on the City by its wholesale water provider, WTCPUA pursuant to WTCPUA tariff and policies for water service and all contracts with the WTCPUA. All rates, charges, and fees imposed by the WTCPUA on the City will be passed through to each customer and will be shown separately on customer's water bill.
- (2) Administrative Fee. The City shall charge an administrative fee calculated as a percentage of the sum of the base rates charged pursuant to Sec. 20.06.030 (b)(1). The applicable percentage shall initially be six percent (6%) and periodically reviewed and revised, as appropriate. The administrative fee will be shown separately on customer's water bill.

**Secs. 20.06.031–20.06.039 Reserved**

**Sec. 20.06.040 Reclaimed Water**

- (a) Definitions. The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in sections 20.06.040 and 20.06.041, except where the context clearly indicates a different meaning:
- (1) Reclaimed water means effluent owned or controlled by the city that is produced from the treatment of the city's wastewater through a wastewater treatment plant and treated to the standards required in 30 Texas Admin. Code § 210 et seq.
  - (2) Reclaimed water system means the distribution, transmission and storage facilities designed to meet the requirements of 30 Texas Admin. Code § 210 et seq. as described in this division for the distribution of reclaimed water to users.
  - (3) Users means entities or individuals that purchase reclaimed water from the city through the city's reclaimed water system.
- (b) Prohibitions.
- (1) It shall be unlawful to tap into, connect, or obtain reclaimed water from the reclaimed water system except in accordance with the terms of an executed reclaimed water use agreement with the city and this division.
  - (2) It shall be unlawful to use reclaimed water in a manner that violates this division or the rules and regulations of the Texas Commission on Environmental Quality.
- (c) Construction standards for reclaimed water system. The reclaimed water system shall be constructed in accordance with the following standards:
- (1) Transmission lines. Any reclaimed water transmission lines shall be constructed with a minimum separation from potable waterlines of nine

feet whenever possible. When it is not possible to maintain such separation, the reclaimed waterlines shall be constructed in accordance with 30 Texas Admin. Code ch. 290 concerning separation of potable and nonpotable water piping. A nondegradable warning tape shall be placed in the trench above the pipe to reduce the possibility of inadvertent connections. Pipe used for the construction of any additional reclaimed waterlines shall be purple, covered with a purple polywrap bag, or marked with purple tape. Construction plans for any additional reclaimed waterlines shall be submitted to the Texas Commission on Environmental Quality for review and approval in accordance with 30 Texas Admin. Code § 210.25(h).

- (2) Internal lines. Users shall be responsible for the design of any internal reclaimed water distribution piping or irrigation piping. The user shall design all piping in accordance with 30 Texas Admin. Code § 210.25.
- (3) Storage ponds. All reclaimed water storage ponds shall be designed and constructed in accordance with 30 Texas Admin. Code § 210.25(c).

(d) User responsibilities. Reclaimed water users shall comply with the following requirements:

- (1) Users shall post signs at all storage areas, hose bibs, faucets and other points of access to the reclaimed water that comply with the requirements of 30 Texas Admin. Code § 210.25b.
- (2) Users shall design all hose bibs, faucets, and valves in accordance with 30 Texas Admin. Code § 210.25a.
- (3) Users shall ensure that irrigation activities occur during times that will minimize the risk of inadvertent human exposure.
- (4) Users shall operate irrigation systems in a manner that will not cause any surface or airborne discharge of reclaimed water.
- (5) Users shall not operate irrigation systems when the earth is frozen or saturated with water.
- (6) Users shall utilize operational procedures for irrigation systems that will minimize wet grass conditions in unrestricted landscape areas during the periods the areas could be in use.
- (7) Users shall maintain transmission mains, storage pond, pumping facilities and internal irrigation piping beyond the point of delivery.
- (8) Users shall design a routine maintenance schedule that includes a routine check of the sprinkler heads, distribution piping, pumps, valves, and other mechanical equipment and shall conduct repairs as necessary. Preventive maintenance on all mechanical equipment shall be as specified by the manufacturer.

#### **Sec. 20.06.041 Judicial Enforcement Remedies Applicable to Reclaimed Water Use**

- (a) Criminal penalty. Any person who has violated any provision of this division regarding the use of reclaimed water shall be strictly liable for such violation and shall, upon conviction, be subject to a fine of not more than \$2,000.00 per violation per day.
- (b) Pursuant to Texas Local Government Code Section 552.0025, the compensation due to the City shall be a delinquent cost of providing utility services, and the city may impose a lien on the landowner's real property, unless the property is a homestead as protected by the state constitution.
- (c) Remedies nonexclusive. The remedies provided for in this division are not exclusive of any other remedies that the city may have under state or federal law or other city ordinances. The City may take any, all, or any combination of these actions against a violator. The City is empowered to take more than one enforcement action against any violator. These actions may be taken concurrently.
- (d) Supplemental enforcement action.
  - (1) Whenever a user has violated or continues to violate any provision of this division, reclaimed water service to the user may be severed. Service will only recommence, at the user's expense, after he has satisfactorily demonstrated his ability to comply.
  - (2) The misuse of reclaimed water in violation of this division is hereby declared a public nuisance and shall be corrected or abated as directed by the city public works director. Any person creating a public nuisance shall be subject to the provisions of this Code governing such nuisances, including reimbursing the city for any costs, including but not limited to, attorneys fees and costs of court, incurred in removing, abating, or remedying said nuisance.
  - (3) In addition to prohibiting certain conduct by natural persons, it is the intent of this division to hold a corporation or association legally responsible for prohibited conduct performed by an agent acting on behalf of a corporation or association and within the scope of his office or employment.
  - (4) Any user that violates any provision of this division and thereby causes the city to violate a rule or regulation of the Texas Commission on Environmental Quality or any other state or federal agency, and as a consequence causes the city to incur any civil or criminal penalty, shall be liable to the city for the amount of any such civil or criminal penalty, as well as any costs of compliance with any order issued by the Texas Commission on Environmental Quality or any state or federal court and,



additionally, any costs and/or attorneys fees incurred by the city in defense or compliance with such judicial or administrative action.

**Secs. 20.06.042–20.06.059 Reserved**

**Sec. 20.06.060 Regulation of Water Connections**

**Sec. 20.06.061 Definitions.** The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in sections 20.06.060 through 20.06.069, except where the context clearly indicates a different meaning:

*Air gap* means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water or waste to a tank, plumbing fixture, receptor, or other assembly and the flood level rim of the receptacle. These vertical, physical separations must be at least twice the diameter of the water supply outlet, never less than one inch (25 millimeters).

*Approved* means accepted by the authority responsible as meeting an applicable specification stated or cited in this division or as suitable for the proposed use.

*Auxiliary water supply* means any water supply on or available to the premises other than the city's approved public water supply. These auxiliary waters may include water from another purveyor's public potable water supply or any natural source, such as a well, spring, river, stream, harbor, and so forth; used waters; or industrial fluids. These waters may be contaminated or polluted, or they may be objectionable and constitute an unacceptable water source over which the city does not have sanitary control.

*Backflow* means the undesirable reversal of flow in a potable water distribution system as a result of a cross connection.

*Backflow preventer* or *backflow prevention assemblies* means an assembly or means designed to prevent backflow.

*Backpressure* means a pressure, higher than the supply pressure, caused by a pump, elevated tank, boiler, or any other means that may cause backflow.

*Backsiphonage* means backflow caused by negative or reduced pressure in the supply piping.

*City administrator* means the administrator of the city, and the agents, officers or employees of the city designated by the city administrator to be in charge of the water department of the city, and the designees of such agents and officers. The city administrator is invested with the authority and responsibility for the implementation of an effective cross connection control program and for the

enforcement of the provisions of this division. The city administrator may further, with the approval of the city council, designate the county health department as an agent authorized to enforce this division.

*Contamination* means an impairment of a potable water supply by the introduction or admission of any foreign substance that degrades the quality and creates a health hazard.

*Cross connection* means connection or potential connection between any part of a potable water system and any other environment containing other substances in a manner that, under any circumstances would allow such substances to enter the potable water system. Other substances may be gases, liquids, or solids, such as chemicals, waste products, steam, water from other sources (potable or nonpotable), or any matter that may change the color or add odor to the water.

*Cross connection control by containment* means the installation of any approved backflow-prevention assembly at the water service connection to any customer's premises, where it is physically and economically unfeasible to find and permanently eliminate or control all actual or potential cross connections within the customer's water system; or the term "cross connection control by containment" means the installation of an approved backflow-prevention assembly on the service line leading to and supplying a portion of a customer's water system where there are actual or potential cross connections that cannot be effectively eliminated or controlled at the point of the cross connection.

*Cross connections, controlled,* means a connection between a potable water system and a nonpotable water system with an approved backflow-prevention assembly properly installed and maintained so that it will continuously afford the protection commensurate with the degree of hazard.

*Double check valve assembly* means the approved double check valve assembly consists of two internally loaded check valves, either spring loaded or internally weighted, installed as a unit between two tightly closing resilient-seated shutoff valves and fittings with properly located resilient-seated test cocks. This assembly shall only be used to protect against a nonhealth hazard (i.e., a pollutant).

*Hazard, degree of,* the term is derived from an evaluation of the potential risk to public health and the adverse effect of the hazard upon the potable water system.

*Hazard, health,* means a cross connection or potential cross connection involving any substance that could, if introduced in the potable water supply, cause death, illness, spread disease, or have a high probability of causing such effects.

Hazard, nonhealth, means a cross connection or potential cross connection involving any substance that generally would not be a health hazard but would constitute a nuisance or be aesthetically objectionable, if introduced into the potable water supply.

Hazard, plumbing, means a plumbing-type cross connection in a consumer's potable water system that has not been properly protected by an approved air gap or an approved backflow-prevention assembly.

Hazard, system, means an actual or potential threat of severe damage to the physical properties of the public potable water system or the consumer's potable water system or of a pollution or contamination that would have a protracted effect on the quality of the potable water in the system.

Industrial fluids system means any system containing a fluid or solution that may be chemical, biologically, or otherwise contaminated or polluted in a form or concentration, such as would constitute a health, system, pollution or plumbing hazard, if introduced into an approved water supply. The term "industrial fluids system" may include, but not be limited to:

- (1) Polluted or contaminated waters;
- (2) All types of process waters and used waters originating from the public potable water system that may have deteriorated in sanitary quality;
- (3) Chemicals in fluid form;
- (4) Plating acids and alkalies;
- (5) Circulating cooling waters connected to an open cooling tower;
- (6) Cooling towers that are chemically or biologically treated or stabilized with toxic substances; and/or
- (7) Contaminated natural waters, such as wells, springs, streams, rivers, bays, harbors, seas, irrigation canals or systems, and so forth; oils, gases, glycerine, paraffins, caustic and acid solutions, and other liquid and gaseous fluids used in industrial or other purposes for firefighting purposes.

Pollution means the presence of any foreign substance in the water that tends to degrade its quality so as to constitute a nonhealth hazard or impair the usefulness of the water.

Reduced-pressure backflow-prevention assembly means the approved reduced-pressure principle backflow-prevention assembly consisting of two independently acting approved check valves together with a hydraulically operating, mechanically independent pressure differential relief valve located between the check valves and below the first check valve. These units are located between two tightly closing resilient-seated shutoff valves

as an assembly and equipped with properly located resilient-seated test cocks.

Regulations means the provisions of any applicable ordinance, rule, regulation or policy.

Service connection means the terminal end of a service connection from the public potable water system, that is, where the water purveyor loses jurisdiction and sanitary control over the water at its point of delivery to the customer's water system. The term "service connection" means, if a meter is installed at the end of the service connection, the downstream end of the meter. There should be no unprotected takeoffs from the service line ahead of any meter or backflow-prevention assembly located at the point of delivery to the customer's water system. The term "service connection" also includes water service connections from the public potable water system.

Water, nonpotable, means water that is not safe for human consumption or that is of questionable quality.

Water, potable, means water that is safe for human consumption as described by the public health authority having jurisdiction.

Water, used, means any water supplied by a water purveyor from a public potable water system to a consumer's water system after it has passed through the point of delivery and is no longer under the sanitary control of the water purveyor.

**Sec. 20.06.061 Purpose.** The purpose of sections 20.06.060 through 20.06.069 of this division is the following:

- (a) Protect public water. To protect the public potable water supply of the city from the possibility of contamination or pollution by isolation within the customer's internal distribution system or the customer's private water system such contaminants or pollutants that could backflow into the public water system;
- (b) Eliminate cross connections. To promote the elimination or control of existing cross connections, actual or potential, between the customer's in-plant potable water system and nonpotable water systems, plumbing fixtures, and industrial piping systems; and