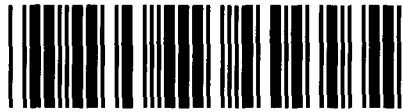




Control Number: 48005



Item Number: 8

Addendum StartPage: 0

DOCKET NO. 48005

RECEIVED

APPLICATION OF NORTHSIDE §  
WATER SUPPLY CORPORATION §  
AND RED RIVER AUTHORITY OF §  
TEXAS FOR SALE, TRANSFER, OR §  
MERGER OF FACILITIES AND §  
CERTIFICATE RIGHTS IN §  
WILBARGER COUNTY §

PUBLIC UTILITY COMMISSION  
PUBLIC UTILITY COMMISSION  
OF TEXAS  
FILING CLERK

2010 MAR 26 AM 9:24

**RED RIVER AUTHORITY'S RESPONSE TO COMMISSION STAFF'S FIRST  
REQUEST FOR INFORMATION**

**QUESTION NUMBERS STAFF 1-1 THROUGH 1-2**

Red River Authority of Texas, provides the following responses to Questions Staff 1-1 through 1-2. The following responses were prepared under the direct supervision of **Randy Whiteman**, General Manager of Red River Authority, who is the sponsoring witness for the responses.

**RESPONSES**

**Staff 1-1** Provide documents demonstrating that the violations noted by the Texas Commission on Environmental Quality (TCEQ) have been addressed.

Referencing Application, Part F, Question 18, Staff notes Red River's stated intention to enter into a contract with the City of Vernon to provide treated water to Northside Water Supply Corporation and Red River in order to address the nitrate issues. Therefore, the violations for nitrate do not need to be addressed in this request for information.

If you have any questions regarding the violations please contact TCEQ's Public Drinking Water section at (512) 239-4691 or the TCEQ regional office.

**Response:** Red River Authority plans to construct the following improvements to the Northside System and to its Hinds Wildcat System in order to address the TCEQ and EPA violations:

**Hinds Wildcat System Improvements:**

- Metering Facility (at City of Vernon)
- 8" PVC Transmission Line (approx. 22,000 L.F.)
- Pump Station:

8

- Ground Storage Tank (approx. 60,000 gal.)
- Pressure Tank (3,000 gallon)
- 2-High Service Pumps
- 2-Transmission Pumps
- Disinfection
- Metering

**Northside System Improvements:**

- Metering Facility (@ Hinds Wildcat Pump Station)
- 6" PVC Transmission Line (approx. 31,000 L.F.)
- Pump Station:
  - Ground Storage Tank (approx. 35,000 gal.)
  - Pressure Tank (3,000 gallon)
  - 2-High Service Pumps
  - Disinfection
  - Metering


Once completed, these improvements will transfer treated water purchased from the City of Vernon to the new Hinds Wildcat Pump Station. This pump station will then provide/transfer water to the Hinds Wildcat distribution system and to the new Northside Pump Station.

**Staff 1-2** Reference Application, Part F, Question 20. Provide a copy of the current raw water purchase agreement with the City of Vernon.

**Response:** Red River Authority currently purchases water from the City of Vernon pursuant to the attached Water Supply Contract marked "Current Contract." Red River Authority is in the process of negotiating and finalizing a new Water Supply Contract with the City of Vernon that will replace the Current Contract and will include the Northside System. Attached is the most recent draft of that proposed contract marked "Proposed Contract." The parties plan to execute the final new contract with the City of Vernon upon consummation of Red River Authority's acquisition of the Northside System.


Respectfully submitted,

**SHERRILL & GIBSON, PLLC**

  
\_\_\_\_\_  
D. Todd Davenport  
State Bar No. 24031988  
3711 Maplewood Ave., Suite 200  
Wichita Falls, Texas 76308  
(940) 264-4400  
(940) 264-4401  
tdavenport@sgpllc.law

**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on March 23, 2018, in accordance with 16 TAC §22.74.

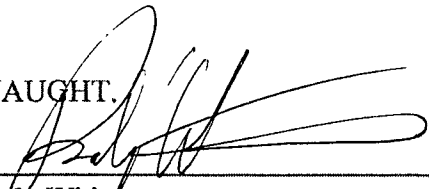
  
\_\_\_\_\_  
D. Todd Davenport

VERIFICATION

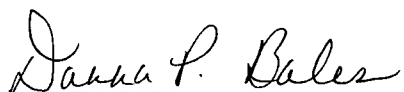
STATE OF TEXAS       §  
                                  §  
COUNTY OF WICHITA   §

BEFORE ME, the undersigned authority, on this date personally appeared Randy Whiteman, General Manager of Red River Authority of Texas, who after being by me duly sworn, states on his oath, deposed and stated that he is duly competent and qualified to make this Verification from his own personal knowledge, information, and belief, and that he has read the foregoing answers and the averments thereof are true and correct and within his personal knowledge, information, and belief.

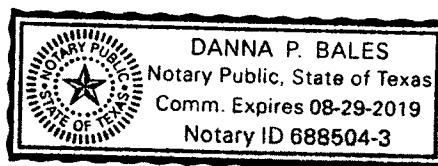
FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
Randy Whiteman

Sworn to and subscribed before me this 22<sup>nd</sup> day of March, 2018, by Randy Whiteman.

  
\_\_\_\_\_  
Notary Public in and for the State of Texas

My commission expires:



## CURRENT CONTRACT

### WATER SUPPLY CONTRACT

This water supply contract is effective March 31, 2014 (the **Effective Date**), and is between the CITY OF VERNON, TEXAS (**Vernon**) and the RED RIVER AUTHORITY OF TEXAS (**Red River**).

#### RECITALS

- A. Red River is organized and established under the provisions of the laws of the State of Texas.
- B. Red River operates a water supply and distribution system serving water users within the Wilbarger County areas generally known as:
  - Lockett/Western Lane Community (**Lockett/Western Lane**)
  - Hinds Community (**Hinds**), which includes the Wilbarger County Airport (**Airport**) and the City of Vernon Transfer Station (**Transfer Station**)
  - Box Community (**Box**), which includes the AEP Oklahoma Power Station (**Power Station**)
- C. Vernon provides raw water from its water supply system to Red River for distribution to Hinds and treated water from its water supply system to Red River for distribution to Lockett/Western Lane and Box.
- D. Vernon now wants to be Red River's exclusive supplier of water in Wilbarger County and ensure that Wilbarger County water remains in Wilbarger County for the use of its residents.
- E. This agreement replaces all prior agreements between the parties, including the Water Purchase Agreement dated December 17, 2002, and its subsequent amendment.
- F. Red River represents to Vernon that the Lockett/Western Lane, Box, and Hinds systems are currently in compliance with state law and regulatory provisions applicable to public water supply systems.

The parties therefore agree as follows:

1. **Water Supply.** Vernon agrees to sell and Red River agrees to purchase raw and treated water from Vernon's water supply system.
  - (a) Vernon will be Red River's exclusive source and supplier of water in Wilbarger County during the term of this agreement. Except as provided in Section 1(b) below, Red River will not purchase, develop, contract for, or otherwise acquire water from any other source or supplier in Wilbarger County during the term of this agreement.
  - (b) If Vernon is unable or unwilling to supply Red River with enough water to meet the needs of Red River's Wilbarger County customers (as stated in Section 2 below) then Vernon will notify Red River in writing within 30 days following Red River's written

## CURRENT CONTRACT

notice of the need for additional water. In such event, Red River may supplement the water supply to those customers with water acquired from any other water source in accordance with state law, including the acquisition of underground water rights in Wilbarger County if approved by the Wilbarger County Commissioners Court.

**2. Connections, Flow Rate, and Pressure.** Vernon will allow Red River to connect its systems to the Vernon water supply system as follows:

**(a) Lockett/Western Lane**

- (1) The connection points will be on the existing Vernon 6-inch water main (I) at the intersection of Center Drive and Cottonwood Lane, and (II) near the intersection of Foster Road and Center Drive.
- (2) Treated water will be supplied at the connection points under Vernon's normal operating conditions and normal distribution pressure. Vernon will supply water to the connection points at a flow rate as required by the TCEQ Rules and Regulations, specifically Texas Administrative Code Title 30, § 290.45(f).

**(b) Box**

- (1) The connection point will be on the existing Vernon 6-inch water main at U.S. Highway 287 and FM 1949.
- (2) Treated water will be supplied at the connection point under Vernon's normal operating conditions and normal distribution pressure. Vernon will supply the connection point with a flow rate as required by the TCEQ Rules and Regulations, specifically Texas Administrative Code Title 30, § 290.45(f).
- (3) Subject to the provisions of Section 1(b), any increase in the amount of water to be supplied to the Power Station after the Effective Date must be approved by the Vernon City Commission.

**(c) Hinds**

- (1) The connection point will be on an existing Vernon 21-inch water main near the Airport.
- (2) Raw water will be supplied at the connections point under Vernon's normal operating conditions and at the line pressure between Vernon and the Odell-Winston well field (approximately 20 P.S.I. during maximum flow rate). Vernon will supply water to the connection points at a flow rate not less than 0.6 GPM per end user meter.
- (3) If requested by Red River, Vernon will add a tap and meter to provide treated water to Hinds.

## CURRENT CONTRACT

- (d) After the Effective Date, Red River will confer with Vernon regarding (I) the size and location of any new connection points to Vernon's raw or treated water lines, and (II) any proposed changes to the size or location of any existing connection points. The parties must make reasonable efforts, undertaken diligently and in good faith, to reach a compromise in the event of any disagreement regarding the size or location of connection points. In the event the parties are unable to agree on the exact size or location of connection points, the connection points will be sized and located in the manner that Vernon deems will have the least negative impact on its ability to supply water to Red River under this agreement, subject to the provisions of Section 1(b) if Red River cannot, in its sole judgment, provide adequate service using the connection point location and size approved by Vernon.
- (e) Red River shall endeavor to provide Vernon advance notice of significant additional demands for new meters or new service areas and must provide at least 30 days' notice if 15 or more meters are to be added to the system at one time.
- (f) Red River may service new areas in Wilbarger County by giving Vernon notice of the need for such service. In such event, if the new service area is in Vernon's ETJ, Vernon will have the first option to provide water service to the new areas. Vernon may exercise its option by notifying Red River in writing of its intent to provide the new service within 60 days of receiving Red River's notice. Otherwise, Red River may service the new areas and Vernon will supply water to the new connection points under Vernon's normal operating conditions and normal distribution pressure. Vernon will supply water to the new connection points at a flow as required by the TCEQ Rules and Regulations, specifically Texas Administrative Code Title 30, § 290.45(f).
- (g) Vernon already provides and will continue to provide pressure for existing portions of the Box and Lockett/Western Lane systems. Red River, at its expense, is solely responsible for distributing and pressurizing the water from the connection points to its customers' meters for all other service areas. Red River will construct, at its own expense, necessary transmission and storage facilities to prevent the effect of abnormal demands that would cause the residual static pressure in Vernon's treated water line to fall below 35 P.S.I. at the connection points.
- (h) Red River will bear the expense of connecting any new service areas to Vernon's water supply system.

### **3. Meters and Rates.**

- (a) Vernon will furnish, install, operate, and maintain all necessary metering equipment at each connection point. Vernon will bill Red River for the expenses of installation, operation, maintenance, and testing, and Red River will pay the expenses on demand.
- (b) Vernon will read the meters by the first business day of each month (excluding holidays). The parties will each have access to read meters daily, if they so desire. Vernon will provide Red River with an itemized statement of the amount of water supplied and sold to Red River during the preceding month and the resulting charges. Red River will pay the statement within 30 days after it is received.



## CURRENT CONTRACT

- (c) Metering equipment will be calibrated when requested but not more frequently than once every twelve months. A meter registering not more than two percent (2%) above or below the test result of the rated capacity of the meter will be deemed accurate. The previous reading of any meter disclosed by tests to be inaccurate will be corrected for the twelve months preceding such test in accordance with the percentage of inaccuracy found by such test and existing records. Unless otherwise agreed in writing, if any meter fails to register for any period, the amount of water supplied and sold during such period will be deemed to be the amount of water supplied and sold in the corresponding period immediately prior to the failure based on existing records.
- (d) Charges for raw and treated water will be determined by ordinance of the Vernon City Commission, subject to review by the Public Utility Commission of Texas pursuant to applicable statutory and regulatory provisions. Vernon will give Red River 30 days' notice of any rate increase to be considered by its city commission and document the basis for the anticipated increase.

### 4. Water Use.

- (a) Water supplied under this agreement is to be used only for normal residential and municipal purposes, and for commercial purposes (i) where a business exists solely to support residential and commercial activities in its immediate vicinity, and is of a nature related to retail convenience, local commercial, or local industrial service; (ii) to supply the Power Station with potable water; and (iii) to supply the Transfer Station or Airport.
- (b) Unless otherwise agreed in writing, water supplied under this agreement will not be used for agricultural irrigation; commercial cattle feed lots; oil or gas operations; or any other process or manufacturing concern that uses water in other than normal residential or commercial quantities.
- (c) Red River is expressly prohibited from exporting, selling, or allowing the use of Vernon water outside of Wilbarger County, except Red River may use the water supplied under this agreement to service any water system outside of Wilbarger County that has a significant part (25% or more) of the customer (end-user) meters located in Wilbarger County.
- (d) Red River is expressly prohibited from selling water supplied under this agreement to any third party for resale by that third party.

### 5. City of Vernon.

- (a) Red River is not required to furnish water to any Vernon resident. If Vernon extends its city limits to include Red River service areas, Red River will continue to provide service to these areas.
- (b) If Vernon elects to provide water service to any such areas, Vernon will purchase all Red River facilities, including distribution lines, meters, pump stations, etc., located in and serving the area at an appraised market value.

## CURRENT CONTRACT

### **6. Water Supply Shortages.**

- (a) The parties acknowledge and understand that Vernon owes its primary obligation and duty to the citizens of Vernon. Although the number of meters is not limited by this agreement, Vernon may place reasonable limitations on the water supplied under this agreement in accordance with Vernon's Water Conservation and Drought Contingency Plan in effect at the time.
- (b) In the event that the supply of water available to Vernon is diminished over an extended period of time or due to events beyond the parties' control so that it becomes necessary to ration the water sold to Vernon residents, the amount of water supplied to Red River under this agreement will be reduced or diminished in the same ratio or proportion as the supply to Vernon residents is reduced or diminished.
- (c) If there is a shortage in a water supply covered by a water conservation plan prepared in compliance with the Texas Commission on Environmental Quality or Texas Water Development Board rules results from drought, accident, or other cause, Vernon will divide the water to be distributed among all water users on a pro rata basis.

### **7. Term and Termination.**

- (a) This contract will be valid for a term of twenty (20) years from the Effective Date (the Term).
- (b) At the expiration of the Term, this contract will be automatically renewed and the Term will be extended for an additional 5 years unless either party terminates future extensions in writing not less than 180 days prior to the end of the Term.
- (c) This agreement may be terminated as follows:
  - (1) At the expiration of the Term, if either party cancels future automatic extensions;
  - (2) At any time, by agreement of the parties upon such terms and conditions as the parties may agree;
  - (3) Due to federal or state agency action pursuant to Section 10(d) below; or
  - (4) Due to breach of this agreement pursuant to Section 8 below.

- 8. Default and Remedies.** In the event either party breaches any provision of this agreement, then the nonbreaching party must deliver written notice to the breaching party specifying the breach and the requirements for compliance. If the breach has not been completely cured or if the breaching party has not commenced to cure the breach, in good faith, by diligently and continuously pursuing the correction, removal, or abatement of the nonperformance by using commercially reasonable best efforts within 60 days after receiving the written notice, the nonbreaching party may terminate the contract and pursue all available legal and equitable remedies.

## CURRENT CONTRACT

9. **Force Majeure.** Notwithstanding anything herein to the contrary, neither party hereto shall be under any liability or be deemed in default with respect to its obligations under this Agreement for any failure to perform or for delay in performing such party's obligations hereunder (except for the obligation to pay money) where such failure or delay is due to force majeure, while and to the extent that such performance is prevented by such cause. The term force majeure means acts of God, fire, storm, flood, war, terrorist activity, riots, sabotage, drought, lack of availability of water due to sedimentation, low inflows of water to, or lack of water supply in the System, strikes or other differences with labor (whether or not within the power of the parties to settle same), decrees or orders of the courts or other governmental authority, or other similar or dissimilar causes not within the reasonable control of such party and not due to negligence of such party. Each party shall use due diligence to resume performance of any obligation suspended by force majeure at the earliest practicable time.

**10. Compliance with Applicable Laws.**

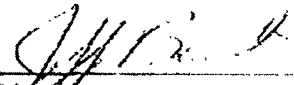
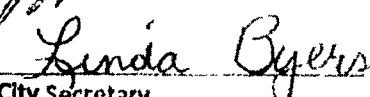
- (a) This agreement is subject to such rules, regulations, and laws as may be applicable to similar agreements in the State of Texas and the parties will collaborate in obtaining such permits, certificates or the like, as may be required to comply therewith.
- (b) Red River will operate and maintain an approved treatment plant and water distribution systems in accordance with the standards of the Texas Commission on Environmental Quality (or successor organizations) and in compliance with Texas Health and Safety Code, Section 341, Subchapter C. As this contract involves the sale of water to be used to serve domestic customers, Red River will operate its water treatment process and distribution system in accordance with current state and federal regulations regarding treatment and provision of water to consumers.
- (c) Vernon will have the right to suspend delivery of water to Red River for non-compliance only if the non-compliance constitutes a safety and/or health hazard. Vernon will not suspend the delivery of water without first notifying Red River in writing of such non-compliance and affording Red River a reasonable opportunity to correct such non-compliance. In no event will Vernon suspend delivery of water to any portion of Red River's system not necessary in isolating the location of such non-compliance.
- (d) Notwithstanding any other provisions of this agreement, if any federal or state governmental agency passes, issues, interprets, or promulgates any law, rule, regulation, standard or interpretation at any time while this agreement is in effect that prohibits, restricts, limits or in any way materially adversely affects either party's rights or obligations hereunder, either party may give the other party notice of intent to amend this agreement to the satisfaction of the noticing party, to compensate for such prohibition, restriction, limitation, or change. If the parties do not or cannot mutually agree to amend this agreement in writing within 30 days after the notice is given, then either party may elect to terminate this agreement without further liability to the other party, provided, however, that if the implementation of any such law, rule, regulations, standard, or interpretation is stayed on account of any administrative appeal or any suit filed in a court of competent jurisdiction, the right to amend or terminate as set forth above will be stayed during the period of such stay.

## CURRENT CONTRACT

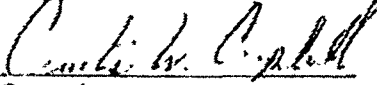
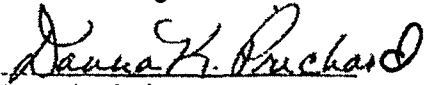
11. **Limitation on Liability.** Neither party will be held responsible or liable for the proper functioning of the other party's water treatment and distribution system and will hold each other harmless and immune from any and all damages, suits, etc., which may occur as a result of the design, operation, or maintenance of their respective water treatment and distribution systems.
12. **Assignability.** Red River may not assign this agreement without Vernon's written approval, except Red River may assign or mortgage this lease to the United States of America acting through the Farmers Home Administration. However, in the event of any occurrence rendering Red River Incapable of performing under this contract. Any successor of Red River, whether the result of legal process, assignment, or otherwise, will succeed to the rights and obligations of Red River under this agreement.
13. **Severability.** If a court finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding will not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision will be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it will be stricken and all other provisions of this Agreement in all other respects will remain valid and enforceable.
14. **Amendment and Modification.** The parties may amend or modify this agreement at any time by a writing signed by both parties that specifically identifies the amendment or modification.
15. **Entire Agreement.** This Agreement contains the parties' entire agreement on the subject matter provided for herein. This Agreement replaces any earlier agreements or understandings, whether written or oral, and there are no contemporaneous written or oral agreements that have not been fully expressed herein.
16. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will constitute the same document.

The parties hereto, acting under their respective governing bodies, sign and enter into this agreement on the Effective Date.

CITY OF VERNON, TEXAS

  
\_\_\_\_\_  
Mayor  
  
\_\_\_\_\_  
City Secretary

RED RIVER AUTHORITY OF TEXAS

  
\_\_\_\_\_  
General Manager  
  
\_\_\_\_\_  
Executive Assistant

## PROPOSED CONTRACT

### WATER SUPPLY CONTRACT

This water supply contract is effective \_\_\_\_\_ (the Effective Date), and is between the CITY OF VERNON, TEXAS (Vernon) and the RED RIVER AUTHORITY OF TEXAS (Red River).

#### RECITALS

- A. Red River is organized and established under the provisions of the laws of the State of Texas.
- B. Red River operates a water supply and distribution system serving water users within the Wilbarger County areas generally known as:

Lockett/Western Lane Community (Lockett/Western Lane)

Hinds Community (Hinds), which includes the Wilbarger County Airport (Airport) and the City of Vernon Transfer Station (Transfer Station)

Box Community (Box), which includes the AEP Oklahoma Power Station (Power Station)

Northside Community (Northside)

- C. Vernon provides raw water from its water supply system to Red River for distribution to Hinds and Northside, and treated water from its water supply system to Red River for distribution to Lockett/Western Lane and Box. All water supplied will be treated water after Red River completes its pipeline from the City of Vernon's Booster Plant to Hinds and Northside.
- D. Vernon now wants to be Red River's exclusive supplier of water in Wilbarger County and ensure that Wilbarger County water remains in Wilbarger County for the use of its residents.
- E. This agreement replaces all prior agreements between the parties, including the Water Purchase Agreement dated December 17, 2002, and its subsequent amendment.
- F. Red River represents to Vernon that the Lockett/Western Lane, Box, Northside, and Hinds systems are currently in compliance with state law and regulatory provisions applicable to public water supply systems except for nitrate issues which Red River is in the process of resolving.

The parties therefore agree as follows:

1. **Water Supply.** Vernon agrees to sell and Red River agrees to purchase raw and treated water from Vernon's water supply system.

## **PROPOSED CONTRACT**

- (2) Water will be supplied at the connections point under Vernon's normal operating conditions and at the line pressure between Vernon and the Odell-Winston well field (approximately 20 P.S.I. during maximum flow rate). Vernon will supply water to the connection points at a flow rate not less than 0.6 GPM per end user meter.
  - (3) If requested by Red River, Vernon will add a tap and meter to provide treated water to Hinds.
- (d) **Northside**
  - (1) Raw water Connection Point will be existing Vernon 21 inch water main near FM 924 and CR 101. Treated water will be at the Booster Station on Sullivan Street.
  - (2) Water will be supplied at the connection point under Vernon's normal operating conditions and at the line pressure between Vernon and the Odell-Winston well field (approximately 20 P.S.I. during maximum flow rate). Vernon will supply water to the connection points at a flow rate not less than 0.6 GPM per end user meter.
- (e) After the Effective Date, Red River will confer with Vernon regarding (i) the size and location of any new connection points to Vernon's raw or treated water lines, and (ii) any proposed changes to the size or location of any existing connection points. The parties must make reasonable efforts, undertaken diligently and in good faith, to reach a compromise in the event of any disagreement regarding the size or location of connection points. In the event the parties are unable to agree on the exact size or location of connection points, the connection points will be sized and located in the manner that Vernon deems will have the least negative impact on its ability to supply water to Red River under this agreement, subject to the provisions of Section 1 (b) if Red River cannot, in its sole judgment, provide adequate service using the connection point location and size approved by Vernon.
- (f) Red River shall endeavor to provide Vernon advance notice of significant additional demands for new meters or new service areas and must provide at least 30 days' notice if 15 or more meters are to be added to the system at one time.
- (g) Red River may service new areas in Willbarger County by giving Vernon notice of the need for such service. In such event, if the new service area is in Vernon's ETJ, Vernon will have the first option to provide water service to the new areas. Vernon may exercise its option by notifying Red River in writing of its intent to provide the new service within 60 days of receiving Red River's notice. Otherwise, Red River may service the new areas and Vernon will supply water to the new connection points under Vernon's normal operating conditions and normal distribution pressure. Vernon will supply water to the new connection points at a flow as required by the TCEQ Rules and Regulations, specifically Texas Administrative Code Title 30, § 290.45(f).
- (h) Vernon already provides and will continue to provide pressure for existing portions of the Box and Lockett/Western Lane systems. Red River, at its expense, is solely responsible for distributing and pressurizing the water from the connection points to its customers' meters for all other service areas. Red River will construct, at its own expense, necessary transmission and storage facilities to prevent the effect of abnormal

## **PROPOSED CONTRACT**

demands that would cause the residual static pressure in Vernon's treated water line to fall below 35 P.S.I. at the connection points.

- (l) Red River will bear the expense of connecting any new service areas to Vernon's water supply system.

### **3. Meters and Rates.**

- (a) Vernon will furnish, install, operate, and maintain all necessary metering equipment at each connection point. Vernon will bill Red River for the expenses of installation, operation, maintenance, and testing, and Red River will pay the expenses on demand.
- (b) Vernon will read the meters by the first business day of each month (excluding holidays). The parties will each have access to read meters daily, if they so desire. Vernon will provide Red River with an itemized statement of the amount of water supplied and sold to Red River during the preceding month and the resulting charges. Red River will pay the statement within 30 days after it is received.
- (c) Metering equipment will be calibrated when requested but not more frequently than once every twelve months. A meter registering not more than two percent (2%) above or below the test result of the rated capacity of the meter will be deemed accurate. The previous reading of any meter disclosed by tests to be inaccurate will be corrected for the twelve months preceding such test in accordance with the percentage of inaccuracy found by such test and existing records. Unless otherwise agreed in writing, if any meter fails to register for any period, the amount of water supplied and sold during such period will be deemed to be the amount of water supplied and sold in the corresponding period immediately prior to the failure based on existing records.
- (d) Charges for raw and treated water will be determined by ordinance of the Vernon City Commission, subject to review by the Public Utility Commission of Texas pursuant to applicable statutory and regulatory provisions. Vernon will give Red River 30 days' notice of any rate increase to be considered by its city commission and document the basis for the anticipated increase.

### **4. Water Use.**

- (a) Water supplied under this agreement is to be used only for normal residential and municipal purposes, and for commercial purposes (i) where a business exists solely to support residential and commercial activities in its immediate vicinity, and is of a nature related to retail convenience, local commercial, or local industrial service; (ii) to supply the Power Station with potable water; and (iii) to supply the Transfer Station or Airport.
- (b) Unless otherwise agreed in writing, water supplied under this agreement will not be used for agricultural irrigation; commercial cattle feed lots; oil or gas operations; or any other process or manufacturing concern that uses water in other than normal residential or commercial quantities.
- (c) Red River is expressly prohibited from exporting, selling, or allowing the use of Vernon water outside of Wilbarger County, except Red River may use the water supplied under this agreement to service any water system outside of Wilbarger County that has a

## **PROPOSED CONTRACT**

significant part (25% or more) of the customer (end-user) meters located in Wilbarger County.

- (d) Red River is expressly prohibited from selling water supplied under this agreement to any third party for resale by that third party.

### **5. City of Vernon.**

- (a) Red River is not required to furnish water to any Vernon resident. If Vernon extends its city limits to include Red River service areas, Red River will continue to provide service to these areas.
- (b) If Vernon elects to provide water service to any such areas, subject to and conditional upon Vernon and Red River's mutual agreement as to terms and such agreement shall not be unreasonably withheld by either party to this Water Supply Contract, Vernon will purchase all Red River facilities, including distribution lines, meters, pump stations, etc., located in and serving the area at an appraised market value, provided that any such agreement will not include any pump stations, etc. that also service other areas that Red River will continue to service.

### **6. Water Supply Shortages.**

- (a) The parties acknowledge and understand that Vernon owes its primary obligation and duty to the citizens of Vernon. Although the number of meters is not limited by this agreement, Vernon may place reasonable limitations on the water supplied under this agreement in accordance with Vernon's Water Conservation and Drought Contingency Plan in effect at the time.
- (b) In the event that the supply of water available to Vernon is diminished over an extended period of time or due to events beyond the parties' control so that it becomes necessary to ration the water sold to Vernon residents, the amount of water supplied to Red River under this agreement will be reduced or diminished in the same ratio or proportion as the supply to Vernon residents is reduced or diminished.
- (c) If there is a shortage in a water supply covered by a water conservation plan prepared in compliance with the Texas Commission on Environmental Quality or Texas Water Development Board rules results from drought, accident, or other cause, Vernon will divide the water to be distributed among all water users on a pro rata basis.

### **7. Term and Termination.**

- (a) This contract will be valid for a term of twenty (20) years from the Effective Date (the Term).
- (b) At the expiration of the Term, this contract will be automatically renewed and the Term will be extended for an additional 5 years unless either party terminates future extensions in writing not less than 80 days prior to the end of the Term.
- (c) This agreement may be terminated as follows:



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- (1) At the expiration of the Term, if either party cancels future automatic extensions;
- (2) At any time, by agreement of the parties upon such terms and conditions as the parties may agree;
- (3) Due to federal or state agency action pursuant to Section 10(d) below; or
- (4) Due to breach of this agreement pursuant to Section 8 below.

**8. Default and Remedies.** In the event either party breaches any provision of this agreement, then the nonbreaching party must deliver written notice to the breaching party specifying the breach and the requirements for compliance. If the breach has not been completely cured or if the breaching party has not commenced to cure the breach, in good faith, by diligently and continuously pursuing the correction, removal, or abatement of the nonperformance by using commercially reasonable best efforts within 60 days after receiving the written notice, the nonbreaching party may terminate the contract and pursue all available legal and equitable remedies.

**9. Force Majeure.** Notwithstanding anything herein to the contrary, neither party hereto shall be under any liability or be deemed in default with respect to its obligations under this Agreement for any failure to perform or for delay in performing such party's obligations hereunder (except for the obligation to pay money) where such failure or delay is due to force majeure, while and to the extent that such performance is prevented by such cause. The term force majeure means acts of God, fire, storm, flood, war, terrorist activity, riots, sabotage, drought, lack of availability of water due to sedimentation, low inflows of water to, or lack of water supply in the System, strikes or other differences with labor (whether or not within the power of the parties to settle same), decrees or orders of the courts or other governmental authority, or other similar or dissimilar causes not within the reasonable control of such party and not due to negligence of such party. Each party shall use due diligence to resume performance of any obligation suspended by force majeure at the earliest practicable time.

**10. Compliance with Applicable Laws.**

- (a) This agreement is subject to such rules, regulations, and laws as may be applicable to similar agreements in the State of Texas and the parties will collaborate in obtaining such permits, certificates or the like, as may be required to comply therewith.
- (b) Red River will operate and maintain an approved treatment plant and water distribution systems in accordance with the standards of the Texas Commission on Environmental Quality (or successor organizations) and in compliance with Texas Health and Safety Code, Section 341, Subchapter C. As this contract involves the sale of water to be used to serve domestic customers, Red River will operate its water treatment process and distribution system in accordance with current state and federal regulations regarding treatment and provision of water to consumers.
- (c) Vernon will have the right to suspend delivery of water to Red River for non-compliance only if the non-compliance constitutes a safety and/or health hazard. Vernon will not suspend the delivery of water without first notifying Red River in writing of such non-compliance and affording Red River a reasonable opportunity to correct such non-compliance. In no event will Vernon suspend delivery of water to any portion of Red

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River's system not necessary in isolating the location of such non-compliance.

- (d) Notwithstanding any other provisions of this agreement, if any federal or state governmental agency passes, issues, interprets, or promulgates any law, rule, regulation, standard or interpretation at any time while this agreement is in effect that prohibits, restricts, limits or in any way materially adversely affects either party's rights or obligations hereunder, either party may give the other party notice of intent to amend this agreement to the satisfaction of the noticing party, to compensate for such prohibition, restriction, limitation, or change. If the parties do not or cannot mutually agree to amend this agreement in writing within 30 days after the notice is given, then either party may elect to terminate this agreement without further liability to the other party, provided, however, that if the implementation of any such law, rule, regulations, standard, or interpretation is stayed on account of any administrative appeal or any suit filed in a court of competent jurisdiction, the right to amend or terminate as set forth above will be stayed during the period of such stay.

- 11. Limitation on Liability.** Neither party will be held responsible or liable for the proper functioning of the other party's water treatment and distribution system and will hold each other harmless and immune from any and all damages, suits, etc., which may occur as a result of the design, operation, or maintenance of their respective water treatment and distribution systems.
- 12. Assignability.** Either party may not assign this agreement without the other party's written approval, except Red River may assign or mortgage this lease to the United States of America acting through the Farmers Home Administration. However, in the event of any occurrence rendering Red River incapable of performing under this contract. Any successor of Red River, whether the result of legal process, assignment, or otherwise, will succeed to the rights and obligations of Red River under this agreement.
- 13. Severability.** If a court finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding will not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision will be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it will be stricken and all other provisions of this Agreement in all other respects will remain valid and enforceable.
- 14. Amendment and Modification.** The parties may amend or modify this agreement at any time by a writing signed by both parties that specifically identifies the amendment or modification.
- 15. Entire Agreement.** This Agreement contains the parties' entire agreement on the subject matter provided for herein. This Agreement replaces any earlier agreements or understandings, whether written or oral, and there are no contemporaneous written or oral agreements that have not been fully expressed herein.
- 16. Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will constitute the same document.

The parties hereto, acting under their respective governing bodies, sign and enter into this agreement on the Effective Date.

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CITY OF VERNON

RED RIVER AUTHORITY OF TEXAS

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Mayor

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General Manager

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City Secretary

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Executive Assistant