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	<b>§</b>	IN THE DISTRICT COURT OF
	<b>§</b>	
EX PARTE	<b>§</b>	
	<b>§</b>	TRAVIS COUNTY, TEXAS
SAN JACINTO	<b>§</b>	98TH
RIVER AUTHORITY	<b>§</b>	90111
	§	TH JUDICIAL DISTRICT

### ORIGINAL PETITION FOR EXPEDITED DECLARATORY JUDGMENT

The San Jacinto River Authority ("SJRA") files this original petition seeking an expedited declaratory judgment pursuant to Chapter 1205 of the Texas Government Code (the "Expedited Declaratory Judgment Act").

### Introduction

- 1. The SJRA brings this action to establish the legality and validity of the fees, rates, and charges it has adopted and seeks to collect from participants in a surface water treatment project vital to protecting groundwater supplies in Montgomery County.
- 2. Montgomery County's rapid growth in recent decades has caused significant declines in the County's groundwater aquifer levels. To address this issue and the problems it presents, and to preserve the County's groundwater resources for future generations, the Texas Legislature created the Lone Star Groundwater Conservation District ("District") in 2001. That same year, Montgomery County voters confirmed the creation of the District with nearly 75% of the vote. In 2003, the District adopted a Management Plan that established a goal of managing groundwater in a sustainable manner and estimated the sustainable yield of the Gulf Coast Aquifer within Montgomery County. The Texas Water Development Board approved the Management Plan, both as initially adopted and as subsequently re-adopted by the District in 2008. In 2006, after expert analysis and community input, the District adopted Phase I of its

groundwater regulations to protect and preserve the County's groundwater resources. In 2008 and 2009, Phase II(A) and (B) regulations were adopted, mandating a 30% reduction in groundwater usage by 2016, to ensure that groundwater pumpage does not exceed the sustainable yield from the Gulf Coast Aquifer, as established in the Management Plan.

- 3. The SJRA—a state agency created by the Texas Legislature in 1937—has been critical in helping the City of Conroe and other significant public and private water users in the County comply with the District's groundwater regulations. Beginning in 2008, the SJRA, Conroe, and dozens of other water users joined together to develop a plan for reducing their groundwater use. In 2010, Conroe and other water users executed contracts with the SJRA, agreeing to achieve compliance with the District's regulations by having the SJRA finance, construct, and operate a water treatment plant on Lake Conroe. The purpose of the project was to provide affordable, treated surface water supplies to replace a portion of the water supply previously sourced from pumping groundwater.
- 4. There are currently 151 water systems in the SJRA's Groundwater Reduction Plan ("GRP"). Those systems are represented by more than 80 separate entities, including Conroe and the SJRA in its capacity as a water user (collectively, the "Participants"). The Participants share the cost of the \$554 million water treatment plant and related pipelines and facilities in the County. The SJRA financed the project by issuing bonds secured by the SJRA's contracts with all Participants, including Conroe (collectively, the "GRP Contracts"). The Texas Water Development Board holds \$439,230,000 in principal amount of the bonds that remain outstanding. The GRP Contracts authorize the SJRA to charge Participants for water, with the revenues used to service the project's bonded indebtedness, fund operations, and maintain and replenish debt and operating reserves, among other purposes. Conroe executed its GRP Contract

with the SJRA in 2010, which (along with two supplemental agreements) the City Council approved and the Mayor signed. Conroe's contributions account for nearly 17% of the project's revenues.

- 5. The SJRA sets its rate according to a rate-making policy adopted with the approval of a committee of Participant representatives established per the GRP Contracts (the "GRP Review Committee"), including Conroe's own representative on that committee. In accordance with that policy, and after more than a year of discussion and study, including multiple notices to all Participants, the GRP Review Committee voted on June 20, 2016, to approve a fiscal year 2017 rate increase, effective September 1, 2016. The GRP Review Committee determined an increase was necessary to service the project's debt and fund operations and reserves, particularly because unusually wet weather since 2015 had decreased local demand for water and program revenues as a result. Based on the GRP Review Committee's recommendation, the SJRA's Board approved the fiscal year 2017 rate on June 23, 2016. A copy of the SJRA's Rate Order is attached as **Exhibit C**.
- 6. Throughout the rate-setting process, Conroe has been a full participant, with an appointed member on the GRP Review Committee, who never objected to the rate increase. Nevertheless, on August 16, 2016, with the new rate set to go into effect in less than two weeks, the Mayor and City Council of Conroe approved a resolution (i) directing City staff not to pay the SJRA's new rate and (ii) requesting that the SJRA indefinitely suspend implementation of the rate. In the Resolution, attached as **Exhibit D**, the City Council challenged the legality and validity of the rate and GRP Contracts, which secure the SJRA's bonded indebtedness and ensure the project's continued operation and viability. Conroe's directive not to pay the rate is contrary to the express terms of its contract with the SJRA and casts a cloud of doubt over the

project, the GRP Contracts, and the revenues essential to paying the costs of the \$554 million project debt, the vast majority of which is held by the State.

7. As authorized by Section 1205.21 of the Expedited Declaratory Judgment Act, the SJRA seeks declaratory relief that will confirm the legality and validity of the rate and the GRP Contracts with the Participants, including Conroe. The SJRA seeks a declaration that (i) it has authority to set rates according to the procedures set forth in the GRP Contracts, (ii) that the new rate and Rate Order are fully in accordance with those procedures, (iii) that the new rate, Rate Order, and GRP Contracts, including the Contract with Conroe, are legal and valid, and (iv) that Conroe's refusal to pay the new rate is illegal and invalid, and that its failure to pay the rate is a breach of its GRP Contract with the SJRA.

### **Parties and Procedure**

- 8. **The SJRA**. The SJRA is a conservation and reclamation district, body politic, and corporate and governmental agency of the State of Texas created under the provisions of Chapter 426, Acts of the 45th Texas Legislature, Regular Session, 1937, as now or hereafter amended, enacted pursuant to the provisions of Section 59 of Article XVI of the Texas Constitution. The SJRA's address is 1577 Dam Site Road, Conroe, Texas 77304.
- 9. **The City of Conroe**. The City of Conroe, Texas is a municipal corporation and home-rule city, principally located in Montgomery County, Texas. The City is an Interested Party as defined below. The City of Conroe may be served with process by serving the Mayor of Conroe, Toby Powell, at 300 West Davis Street, Conroe, Texas 77301.
- 10. **The Attorney General of Texas**. In accordance with Section 1205.042 of the Expedited Declaratory Judgment Act, the Attorney General of Texas must be served with a copy of this petition and the accompanying order at least twenty days before the trial date. The

Attorney General of Texas may be served with citation at the following address: Attorney General of Texas, Price Daniel Sr. Building, Post Office Box 12548, Austin, Texas 78711-2548.

- 11. **Nature of the Proceeding**. This is an *in rem* proceeding. As provided in the Expedited Declaratory Judgment Act, any judgment in this action is binding on all persons who reside in the territory of the SJRA, own property located within the boundaries of the SJRA, or have or claim a right, title, or interest in any property or money to be affected by the public security authorization or the issuance of the bonds (the "Interested Parties"). *See* TEX. GOV'T CODE § 1205.023.
- 12. **Interested Parties**. Subject to the notice requirements imposed by the Expedited Declaratory Judgment Act and as described below, all Interested Parties are parties to this action, and the Court's jurisdiction extends to each of them as though they were individually named and personally served in this action. *See id.* § 1205.044. Any Interested Party may become a named party to this action by filing an answer to this petition on or before the time set for hearing and trial, or thereafter by intervention with leave of court. *See id.* § 1205.062.
- Declaratory Judgment Act requires the Court, upon receipt of this petition, to "immediately issue" an order, in the form of a notice, directed to all Interested Parties, of their right to appear for trial at 10 o'clock, a.m., on the first Monday after the 20th day after the date of the Court's order and to show cause why the prayers of this petition should not be granted and why the public securities and the public security authorizations should not be validated and confirmed. A copy of the proposed order is attached as **Exhibit A** and has been presented separately to the Court. A copy of the Expedited Declaratory Judgment Act is attached as **Exhibit B**.

- 14. **Notice to Interested Parties**. Pursuant to Section 1205.043 of the Expedited Declaratory Judgment Act, the Clerk of the Court is required to publish a "substantial copy of the order" in a "newspaper of general circulation" in Travis County and in the seven counties in the SJRA's territory, which includes Fort Bend, Grimes, Liberty, Montgomery, San Jacinto, Walker, and Waller counties. Such notice shall be published "once in each of two consecutive calendar weeks, with the date of the first publication before the 14th day before the trial date."
- 15. **Jurisdiction and Venue**. This Court has jurisdiction over the subject matter of this action, over all Interested Parties, and over the Attorney General of Texas pursuant to the Expedited Declaratory Judgment Act. Venue is proper in Travis County pursuant to Section 1205.022 of the Expedited Declaratory Judgment Act.
- 16. **Governmental Immunity**. To the extent there exists an issue of governmental immunity in this case, it has been waived.

### **Facts Giving Rise to this Action**

## A. The Lone Star Groundwater Conservation District adopts important groundwater conservation regulations.

- 17. Montgomery County, including Conroe, consumes over 83,000 acre-feet of water per year, and the Texas Water Development Board expects that figure to triple by 2060. Historically, the Gulf Coast Aquifer System has been the only source of water in Montgomery County. In recent decades, the County's rapid development and population growth have surpassed the sustainable yield of the County's aquifers.
- 18. In 2001, to address the County's water crisis, the 77th Texas Legislature created the Lone Star Groundwater Conservation District ("District"). Montgomery County voters overwhelmingly confirmed the creation of the District later that year. The District exists to study and manage Montgomery County's underground aquifers and provide solutions to the problems

associated with declining groundwater levels by regulating groundwater use. In 2003, the District first adopted a Management Plan that established a goal of sustainable groundwater resource management and estimated the sustainable yield of the Gulf Coast Aquifer within Montgomery County at 64,000 acre-feet per year. The Texas Water Development Board approved the Management Plan, both as initially adopted and subsequently re-adopted by the District in 2008. In 2006, recognizing significant and sustained declines in groundwater levels in the County, particularly in Conroe and The Woodlands, the District adopted its Phase I countywide regulations on groundwater use. The regulations were based on a decade of input from stakeholders, established state law, and fact-driven science, and required utilities throughout Montgomery County to convert from groundwater to alternative water supplies in order to reduce groundwater production to sustainable levels. The regulations ensure that Montgomery County citizens will have continuous supplies of groundwater for generations to come.

19. The District's Phase II(A) regulations, adopted in 2008, required groundwater users to document the progress they were making toward compliance by submitting a report to the District. Then, in November 2009, the District adopted its Phase II(B) regulations, mandating a 30% reduction in groundwater usage by 2016 to ensure that groundwater pumpage does not exceed the sustainable yield from the Gulf Coast Aquifer, as established in the Management Plan. Each progressive phase of the District's regulations were adopted unanimously by the District's board of directors, including the member appointed by Conroe.

# B. The SJRA develops a Groundwater Reduction Plan and surface water treatment project to help Montgomery County comply with the District's regulations.

20. The District's mandate required the County to reduce groundwater consumption by 30% by January 1, 2016. To meet the requirements, the SJRA—an agency devoted to developing, conserving, and protecting the water resources of the San Jacinto River basin—took

on the task of developing and proposing the most cost-effective and reliable solution for decreasing Montgomery County's groundwater withdrawals. Created in 1937 by the Texas Legislature, the SJRA is a major river authority in Texas with boundaries that cover all or part of seven counties and the entire San Jacinto River watershed, excluding Harris County. As a governmental entity, the SJRA does not operate for profit and is governed by a seven-member Board of Directors appointed by the Governor.

21. In response to the District's groundwater use regulations, the SJRA developed a Groundwater Reduction Plan (or "GRP") to be implemented on a countywide basis, inviting participation from all public and private water users, including municipalities like Conroe, and the SJRA in its capacity as a water user (collectively, "Participants"). The GRP is a group-based project to share in the costs and benefits of a surface water treatment plant at the Lake Conroe dam, along with transmission pipelines, communications and control facilities, and metering and delivery facilities. Under the GRP, the SJRA would design, construct, and operate the treatment plant and related systems, and finance it by issuing over \$554 million in bonds. The "GRP Contracts" with Participants in the project would secure the bonds. Under those contracts, the Participants' payments to the SJRA for water would be used to pay down the project debt and operate the system, among other uses. By joining together, Participants would greatly reduce the costs of compliance with the District's regulations, while obtaining much better financing terms than would otherwise be available. Surface water provided to certain Participants would replace water previously sourced from the Gulf Coast Aquifer, ensuring compliance by all Participants with the District's regulations. The GRP is a countywide, collaborative solution to the groundwater problem. As former Conroe Mayor Webb K. Melder said in 2009, "This is a countywide problem. This is not a Woodlands problem, Lake Conroe problem or City of Conroe problem. We're all rowing in the same boat. To solve it we must work together."

- 22. To finance the GRP project, the SJRA issued its Special Project Revenue Bonds (GRP Project), Series 2009, in the original aggregate principal amount of \$21,500,000; its Special Project Revenue Bonds (GRP Project), Series 2011, in the original aggregate principal amount of \$83,155,000; its Special Project Revenue Bonds (GRP Project), Series 2011A, in the original aggregate principal amount of \$67,470,000; its Special Project Revenue Bonds (GRP Project), Series 2012, in the original aggregate principal amount of \$175,000,000; Series 2012A, in the original aggregate principal amount of \$165,000,000; its Special Project Revenue Bonds (GRP Project), Series 2013, in the original aggregate principal amount of \$39,850,000; and its Special Project Revenue Bonds (GRP Project), Series 2016, in the original aggregate principal amount of \$2,305,000. Today, there remains outstanding \$520,560,000 in aggregate principal amount of the bonds, of which \$439,230,000 are held by the Texas Water Development Board.
- 23. Construction of the new surface water treatment plant and related facilities began in August 2012, and the system began operating and delivering water to participants in September 2015.

## C. Conroe approves and signs the Contract with the SJRA to participate in the Groundwater Reduction Plan.

24. In 2008, the District required all significant water users to prepare a plan for complying with regulations reducing groundwater use. Most of those water users, including Conroe, chose to join the SJRA's Groundwater Reduction Plan. Today, there are 151 water systems in the SJRA's Groundwater Reduction Plan, represented by over 80 separate entities.

Participants' contracts with the SJRA (collectively, the "GRP Contracts") are based on a form GRP contract.<sup>1</sup>

- 25. Conroe, represented by its attorneys, negotiated its GRP contract with the SJRA over a period of six months.<sup>2</sup> Conroe's attorneys approved and recommended the Contract to the Conroe City Council. The Council approved the Contract, and Conroe Mayor Melder signed the Contract for Groundwater Reduction Planning, Alternative Water Supply, and Related Goods and Services ("Contract"), attached hereto as **Exhibit E**, on April 22, 2010, with an effective date of May 1, 2010.
- 26. The SJRA submitted the GRP Contracts, including the Contract with Conroe, and similar agreements with its municipal utility district customers in The Woodlands to the Attorney General of Texas for approval in connection with each issue of bonds to finance the GRP project. After reviewing the transcript of proceedings and the GRP Contracts submitted for each issue of the bonds, the Attorney General certified that the bonds were valid and binding obligations of the SJRA, secured by the contract revenues, and conformed to all requirements of law. See Exhibit F for a summary of contract documents submitted to the Attorney General for approval, and Exhibit G for the Attorney General's approving opinions. Accordingly, under Section 49.184 of the Texas Water Code, the bonds and the GRP Contracts—including the Contract with Conroe—are "incontestable" by any parties who seek to invalidate or challenge them.
- 27. In the Contract, the parties recognized the creation of the District by the Texas Legislature and the regulations reducing groundwater consumption by Conroe and other water

A copy of the form GRP contract is available online at <a href="http://www.sjra.net/wp-content/uploads/2015/01/GRP-Contract-04192010.pdf">http://www.sjra.net/wp-content/uploads/2015/01/GRP-Contract-04192010.pdf</a>, which the SJRA can provide to the Court upon request.

A copy of the draft GRP contract with Conroe, showing its redline proposed changes, is available online at <a href="http://www.sjra.net/wp-content/uploads/2015/01/Conroe-Comments-to-Contract-Redline-031010.pdf">http://www.sjra.net/wp-content/uploads/2015/01/Conroe-Comments-to-Contract-Redline-031010.pdf</a>.

users in Montgomery County. The parties agreed that it was necessary and appropriate to form a group to achieve compliance with the District's regulations by (1) developing and administering a GRP, (2) financing, constructing, and operating a surface water treatment plant and related facilities, (3) selling and delivering treated surface water to certain participants, and (4) establishing, collecting, and enforcing fees, rates, and charges for treated surface water delivered to participants, "in order to timely and adequately fund the costs associated with the Project" and "achieve and maintain compliance with the GRP . . . . " *Id.* at 3. The Contract provides that the SJRA will implement the GRP so that the SJRA, Conroe, and other entities that contract to join the GRP will achieve compliance with the groundwater reduction regulations imposed by the District. *Id.* at 8. The parties expressly recognized the SJRA's and Conroe's authority to enter into the Contract under the Texas Water Code and Conroe's City Charter. *Id.* at 3.

Accordingly, the parties agreed that the SJRA, among other things, would develop and administer the GRP and finance, design, construct, and operate the surface water treatment facilities. In exchange, Conroe agreed "to pay [the SJRA] certain fees, rates, and charges pursuant to the terms and provisions of this Contract . . . ." *Id.* § 1.04. The GRP Contract requires that the rates shall be "at all times the lowest which are . . . (1) consistent with good management practices by the [SJRA]," "(2) necessary and proper," "(3) consistent with the [SJRA's] statutory and constitutional duties and responsibilities," and "(4) just, reasonable, and nondiscriminatory." *Id.* § 6.04(a). In particular, the rate must be sufficient to achieve compliance with, develop, implement, and enforce the GRP; meet operational and other expenses relating to the project and the GRP; pay the principal and interest on bonds issued in connection with the project and GRP; and establish, accumulate, and replenish operating and debt service reserves, among other purposes. *Id.* § 6.04(d). The Contract also specifically authorizes the SJRA to pledge revenues

from the Participant's payments to the payment of the bonds used to finance the project and the GRP. *Id.* § 8.02. Of the project's outstanding bonded indebtedness, over \$439 million is held by the Texas Water Development Board.

- 29. The Contract also includes important governance mechanisms that allow Participant input into project and rate decision-making. It establishes a six-member GRP Review Committee of Participant representatives, including a representative appointed by the Conroe City Council. Ex. A § 2.06. The members "shall be entitled to vote on all matters before the Review Committee." Id. § 2.06(b). The GRP Review Committee is authorized to make recommendations to the GRP administrator for all important decisions, including decisions relating to fees, rates, and charges. Id. § 2.10(a)(8). Before the SJRA takes any action on rates, it must present all such decisions to the GRP Review Committee for its consideration. Id. § 2.11(b). If the GRP Review Committee rejects a recommendation by the GRP administrator, no decision can be taken on the issue until the matter is presented to the SJRA's Board of Directors. Id. § 2.11(e). If the Board approves the GRP administrator's recommendation despite the GRP Review Committee's rejection, the Board must prepare and deliver to the GRP Review Committee and all Participants a written explanation for the decision. *Id.* In addition, if requested by a majority vote of the GRP Review Committee, the SJRA must engage a third-party review of fees, rates, and charges. Id. § 2.12. In any case, the SJRA agreed to engage an independent rate review at least every five years, to evaluate the rates charged based on anticipated water demand. *Id.* § 6.04(f).
- 30. Because the GRP is a group effort, with continued cooperation by all Participants required to pay the project's bonded indebtedness and ensure the operation of the system, the Contract contains strong protections against breaches by individual Participants. To enforce

Participants' compliance with the GRP and the GRP Contracts, the Contract gives the SJRA the right "to recover from Participant by any lawful means . . . for any losses, damages, claims, expenses, costs, or judgments, including reasonable attorneys fees and court costs incurred by [the SJRA] . . . resulting from . . . Participant's breach or violation of this Contract, the GRP, the Rules, or any laws, rules or regulatory requirements relating to the Participant's System." *Id.* § 4.11.

- 31. In addition, the Contract provides only a limited right for Participants like Conroe to terminate the Contract. The Contract "may not be terminated as a result of a default by either Party." *Id.* § 12.01(c). Further, the Contract "may only be terminated prior to the expiration of the Contract Term by mutual, written agreement of the Parties." *Id.* § 12.02(d). The SJRA "may enter into an agreement with Participant for the termination of this Contract prior to the expiration of the Contract Term, but only upon (i) Participant's agreement therein to pay its prorata share of the Bond or other obligations of [the SJRA] issued or incurred in connection with the Project . . . and (ii) the reasonable determination by the GRP Administrator that such termination will not adversely affect the GRP or the other Participants." *Id.* § 12.02(d).
- 32. These provisions are fundamental to the success of the GRP and compliance with the District's conservation regulations. First, limited termination rights are available because of the way the project has been funded. Because the SJRA pledged revenues from the GRP Contracts with Participants as the source of repayment of bonds issued for the project, the payments of all Participants are necessary to meet the project's debt obligations to the State of Texas and others. If a Participant terminates without paying its share of project costs or refuses to pay the SJRA's established rates for water, the SJRA must raise rates on the remaining Participants, which may not be able to absorb the increase. Second, limited termination rights

were critical to the SJRA obtaining the lowest financing costs available, by ensuring a reliable source of revenue to pay down the debt and lowering its perceived risk of default. That is, limited termination rights ensured that all Participants—including Conroe—obtained the lowest-cost services available. Third, limited termination rights were necessary to attract the largest number of Participants possible, each of which depended on strength in numbers to deal with the District's groundwater regulations in a cost-effective manner.

33. Conroe's pro-rata share of the project costs include approximately \$36 million relating to the surface water treatment plant and \$60 million relating to water distribution pipelines. Further, \$14 million has been spent for improvements to Conroe's water distribution system, paid for by the SJRA and shared, ultimately, by all Participants. Conroe's required payments to the SJRA under the Contract account for nearly 17% of the SJRA's gross revenues from all Participants in the GRP.

## D. After over a year of study and required approvals, the SJRA approves a new GRP rate.

- 34. The SJRA sets it GRP rate based on a comprehensive, independent rate model that ensures that the GRP operates as close to a zero-based or non-profit budget as reasonably possible, including through establishing modest reserve funds to stabilize rates charged to Participants despite variations and swings in annual rainfall. Wet years reduce Participants' demand for water, lowering the SJRA's GRP revenue and ability to pay project debt, fund operations, and maintain and replenish reserves. By establishing reserve funds, the SJRA is able to keep the rate constant for extended periods, by tapping into its reserves when water usage drops.
- 35. All budgets, including the amount of required reserves, are presented to the GRP Review Committee for review and approval, so that GRP Participants fully understand the

project's funding needs. GRP rates are only raised as a last resort, after thoroughly evaluating the budget and considering reductions in expenses and delays in studies and projects. As a result of the SJRA's careful projections of water demand and funding needs, GRP rates matched projections for six of the last seven years.

- 36. Nevertheless, in 2015, the SJRA faced a critical funding shortfall resulting from over two years of significantly below-average water demand in Montgomery County caused in large part by unexpectedly high rainfall amounts, which reduced water demand and GRP revenues. 2015 was the wettest year on record in Texas.<sup>3</sup> To avoid any impacts on the existing GRP rate, the SJRA worked closely with the GRP Review Committee to review, reduce, or delay expenses and projects, while using the existing reserves to make up the shortfall. However, with the SJRA's reserves dwindling, the GRP Review Committee recognized unanimously the necessity of a rate increase. No members of the GRP Review Committee—including Conroe's chosen representative—registered any opposition to the proposed increase. Notice of the proposed amendment to the GRP rates was sent to all GRP Participants in April 2016, and the GRP Review Committee unanimously approved the new rate on June 20, 2016.
- 37. Under the terms of the SJRA's amended rate order, *see* **Exhibit C**, the GRP rate will increase from an average rate of \$2.42 per 1,000 gallons to \$2.60.<sup>4</sup> More than 60% of revenues from these charges are used to fund debt service, with the remainder used to fund operations and contribute to modest project reserves. Even with the new rate, the GRP will only have a three-month average reserve for fiscal year 2017 to cushion against fluctuations in

See Dylan Baddour, 2015 Was Texas' Wettest Year on Record, HOUSTON CHRONICLE, Dec. 29, 2015, available at <a href="http://www.chron.com/news/houston-texas/texas/article/2015-was-Texas-wettest-year-on-record-6725937.php">http://www.chron.com/news/houston-texas/texas/article/2015-was-Texas-wettest-year-on-record-6725937.php</a>.

The \$2.60 fiscal year 2017 rate is an average of the groundwater rate of \$2.50 per 1,000 gallons and the surface water rate of \$2.69 per 1,000 gallons.

demand, well below the six-month target set by the SJRA and approved by the GRP Review Committee. A three-month reserve is not unusual among governmental entities. For example, the City of Conroe itself operates with a *minimum* three-month reserve, and has proposed a five-month reserve for its water and sewer utility in its proposed budget for fiscal year 2017.

## E. Conroe's City Council votes to improperly and unilaterally refuse to pay the new rate.

- 38. Despite Conroe's clear obligations under the Contract and participation in the entire, 18-month process of approving the new rate, it has decided to breach the Contract and refuse to pay the rate, while calling into question the legality and validity of the rate and the GRP Contracts.
- No. 4297-16. See Exhibit D. In the Resolution, the Council falsely accused the District and the SJRA of "work[ing] in combination to promote a false narrative based on bad science to create an alleged 'crisis' in groundwater supply." *Id.* at 2. It accused the SJRA of having a "monopoly" on surface water in Montgomery County, and using the GRP "to 'solve' the alleged 'crisis' by conscripting large volume groundwater users to subsidize the SJRA's otherwise unviable plan to construct a surface water plant on Lake Conroe." *Id.* The Council claimed that Conroe and other large groundwater users were "driven" by the District's regulations and a "false 'crisis' narrative" to join the GRP and enter into GRP contracts. *Id.* It claimed that the new GRP rate collects "substantially more revenue than necessary for operation of the GRP" and "is intended to allow the SJRA to accumulate a cash reserve far in excess of reasonable and customary standards." *Id.*
- 40. The City Council's statements were and are false. Further, the Council ignores its approval of the Contract, which the Mayor signed along with two later supplemental agreements.

The Council ignores Conroe's participation in and representation on the GRP Review Committee, its representative's approval of the SJRA's reserve policies, and its representative's recognition of the budgetary constraints requiring amendment to the rate. It ignores the GRP Review Committee's history in approving the new rate, and ignores that during the entire process leading up to approval of the rate, Conroe did not once object or seek the GRP Review Committee's or the SJRA Board's reconsideration of the proposed rate. It ignores the fact that the fiscal year 2017 rate was set in accordance with the same procedures that resulted in the fiscal year 2016 rate, to which Conroe also never objected and does not challenge. Finally, Conroe's statements and actions mislead its own taxpayers by representing to them that the new rate will increase their water bills. Whereas the SJRA's new average rate is \$2.60, Conroe charges its citizens \$2.95, while incorrectly representing to its citizens in their water bills that this amount is the amount that the SJRA charges to the City. In fact, if Conroe simply reduced what it charges its citizens to reflect the actual costs of the project's services to the City, Conroe taxpayers would see no increase, and potentially even a significant decrease, in their water bills.

41. Despite Conroe's contractual obligations and the facts, the City Council resolved to "refuse payment of the increase in fees, rates or charges" and demanded that "the SJRA indefinitely suspend the implementation of the increase in GRP rates and charges." *Id.* at 3.

### The SJRA's Expedited Declaratory Judgment Claim

- 42. As noted above, the Expedited Declaratory Judgment Act provides public agencies with an efficient method of adjudicating the validity of public securities, public security authorizations, and related matters. The SJRA has brought this action under the Expedited Declaratory Judgment Act in order to obtain a declaratory judgment:
  - (i) that the SJRA is authorized to set rates for Participants pursuant to the procedures set forth in the GRP Contracts;

- (ii) that the SJRA issued its fiscal year 2017 Rate Order, including the setting of its fiscal year 2017 rate, in accordance with the procedures set forth in the GRP Contracts;
- (iii) that the SJRA's fiscal year 2017 rate, Rate Order, and the GRP Contracts, including the Contract with Conroe, are legal and valid, *see* TEX. GOV'T CODE § 1205.021(2); and
- (iv) that Conroe's refusal to pay the fiscal year 2017 rate is illegal and invalid, and its failure to pay is a breach of the GRP Contract.

## Orders Required by the Expedited Declaratory Judgment Act

- 43. The SJRA respectfully prays that this Court follow the procedures set forth in the Expedited Declaratory Judgment Act and further prays:
  - (i) that the Court, upon presentation of this petition, immediately enter and issue the Order in the form and having the terms attached hereto as **Exhibit A**, in accordance with Sections 1205.041 and 1205.042 of the Expedited Declaratory Judgment Act, directed to all Interested Parties and the Attorney General of Texas;
  - (ii) that prior to the date set for hearing and trial, the Clerk of this Court provide the required notice of this proceeding pursuant to Section 1205.043 of the Expedited Declaratory Judgment Act, by publishing a substantial copy of the Order in a newspaper of general circulation in Travis, Fort Bend, Grimes, Liberty, Montgomery, San Jacinto, Walker, and Waller counties, said notice to be so published once in each of two consecutive calendar weeks, with the date of the first publication to be not less than 14 days prior to the date set for the hearing and trial; and
  - (iii) that, pursuant to Section 1205.065 of the Expedited Declaratory Judgment Act, the Court "with the least possible delay" hear and determine each factual and legal question raised by this petition and render judgment.

### **Prayer**

- 44. For the reasons set forth above, the SJRA respectfully prays that this Court, upon trial and final hearing, enter a declaratory judgment as set forth above. The SJRA further prays that the Court, upon trial and final hearing, award the SJRA the following additional relief:
  - (i) a decree, pursuant to Section 1205.151 of the Expedited Declaratory Judgment Act, that the declaratory judgment herein prayed for shall, as to all matters adjudicated, be forever binding and conclusive with respect to the SJRA, the Attorney General of Texas, the Comptroller, the City of Conroe, and all Interested

Parties, irrespective of whether such parties filed an answer or otherwise appeared herein;

- (ii) an order requiring all costs of the SJRA in this case to be taxed against the City of Conroe; and
- (iii) such other and further relief and orders to which the SJRA may show itself justly entitled at law or in equity.

Dated: August 31, 2016 Respectfully submitted,

YETTER COLEMAN LLP

By: /s/ Charles R. Parker

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Attorneys for Plaintiff San Jacinto River Authority

# EXHIBIT A

	No	
	8	IN THE DISTRICT COURT OF
	§	
EX PARTE	§	
	§	TRAVIS COUNTY, TEXAS
SAN JACINTO	§	
RIVER AUTHORITY	§	
	§	TH JUDICIAL DISTRICT

### NOTICE OF PROCEEDINGS AND ORDER

The Court issues the following Notice of Proceedings and Order pursuant to Chapter 1205 of the Texas Government Code.

NOTICE IS HEREBY GIVEN to all persons who (i) reside in the territory of the San Jacinto River Authority (SJRA), (ii) own property located within the boundaries of the SJRA, or (iii) have or claim a right, title, or interest in any property or money to be affected by the proceedings described below, the issuance of the public securities or public security authorizations described below, including all actions or expenditures of funds, taken or made and/or proposed to be taken or made in connection with or affecting the securities described below. For purposes of this Notice of Proceedings and Order, the persons named in section sections (i), (ii), and (iii) above shall be referred to as the **Interest Parties**.

The SJRA is an agency and political subdivision of the State of Texas, being a conservation and reclamation district created and functioning under Article XVI, Section 59, of the Texas Constitution, pursuant to the provisions of Chapter 426, Acts of the 45th Texas Legislature, Regular Session, 1937, as amended (the SJRA Act). The SJRA is authorized by the SJRA Act and the general laws of the State of Texas, including but not limited to Chapter 1371, Texas Government Code, as amended, to issue revenue bonds. The SJRA has issued its Special Project Revenue Bonds (GRP Project), Series 2009, in the original aggregate principal amount of \$21,500,000; its Special Project Revenue Bonds (GRP Project), Series 2011, in the original aggregate principal amount of \$83,155,000; its Special Project Revenue Bonds (GRP Project), Series 2011A, in the original aggregate principal amount of \$67,470,000; its Special Project Revenue Bonds (GRP Project), Series 2012, in the original aggregate principal amount of \$175,000,000; Series 2012A, in the original aggregate principal amount of \$165,000,000; its Special Project Revenue Bonds (GRP Project), Series 2013, in the original aggregate principal amount of \$39,850,000; and its Special Project Revenue Bonds (GRP Project), Series 2016, in the original aggregate principal amount of \$2,305,000 (the **Bonds**), all for the purpose of paying for the costs related to the implementation of a Groundwater Reduction Plan (GRP), including the construction and operation of all facilities comprising the Lake Conroe Surface Water Treatment and Transmission System, the acquisition of lands and rights-of-way and equipment related thereto, and the legal, fiscal and engineering fees in connection therewith, and funding capitalized interest and a debt service reserve fund. The Bonds are payable from, and secured solely by a pledge of and lien on, net revenues derived from fees, rates and charges imposed and

collected by SJRA from water users (**Participants**) that have executed contracts (**GRP Contracts**) to join in the GRP.

The SJRA has filed an <i>in rem</i> action for declaratory judgment (the <b>Petition</b> ) seeking, among other things, a declaration by this Court (a) that the SJRA is authorized to set rates for Participants pursuant to the procedures set forth in the GRP Contracts; (b) that the SJRA issued its fiscal year 2017 Rate Order, including the setting of its fiscal year 2017 rate, in accordance with the procedures set forth in the GRP Contracts; (c) that the SJRA's fiscal year 2017 rate, Rate Order, and the GRP Contracts, including the GRP Contract with the City of Conroe, Texas, are legal and valid; and (d) that said City's refusal to pay the fiscal year 2017 rate is illegal and invalid, and its failure to pay is a breach of the GRP Contract. A full description of the lawsuit and the relief sought is contained in the SJRA's Petition, <i>Ex Parte San Jacinto River Authority</i> , Cause No
IT IS HEREBY ORDERED and Notice is hereby given, that any interested party (any of the Interested Parties described above) may become a named party to these proceedings by pleading to the Petition on or before, and may appear for hearing and trial in the courtroom of the Judicial District Court of Travis County, Texas at 10:00 a.m. on it being the first Monday after the expiration of 20 days from the date this Order is issued. After said date, Interested Parties may become named parties by intervention on leave of court.
IT IS FURTHER ORDERED that, at such hearing and trial, any Interested Parties desiring to do so may appear, and the Attorney General of Texas shall appear, and show cause why the prayers of the Petition of the SJRA filed in this action and generally described above should not be granted and the proceedings and public securities authorizations validated and confirmed as therein prayed. Be on further notice that, at such time, place, and date the Court will proceed to full and final hearing on the merits of all matters and prayers within the Petition of the SJRA.
SO ORDERED.
SIGNED this day of, 2016.
DISTRICT HIDGE PRESIDING

# EXHIBIT B

#### GOVERNMENT CODE

### TITLE 9. PUBLIC SECURITIES

### SUBTITLE A. GENERAL PROVISIONS

### CHAPTER 1205. PUBLIC SECURITY DECLARATORY JUDGMENT ACTIONS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1205.001. DEFINITIONS. In this chapter:

- (1) "Issuer" means an agency, authority, board, body politic, commission, department, district, instrumentality, municipality or other political subdivision, or public corporation of this state. The term includes a state-supported institution of higher education and any other type of political or governmental entity of this state.
- (2) "Public security" means an interest-bearing obligation, including a bond, bond anticipation note, certificate, note, warrant, or other evidence of indebtedness, regardless of whether the obligation is:
  - (A) general or special;
  - (B) negotiable;
  - (C) in bearer or registered form;
  - (D) in temporary or permanent form;
  - (E) issued with interest coupons; or
- (F) to be repaid from taxes, revenue, both taxes and revenue, or in another manner.
- (3) "Public security authorization" means an action or proceeding by an issuer taken, made, or proposed to be taken or made in connection with or affecting a public security.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.002. CONFLICT OR INCONSISTENCY WITH OTHER LAWS. (a) To the extent of a conflict or inconsistency between this chapter and another law, this chapter controls.

(b) This chapter does not prohibit an issuer from applying to the Texas Supreme Court for a writ of mandamus to the attorney general for the approval of a bond, and the court is authorized to issue the writ.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

#### SUBCHAPTER B. DECLARATORY JUDGMENT ACTION

Sec. 1205.021. AUTHORITY TO BRING ACTION. An issuer may bring an action under this chapter to obtain a declaratory judgment as to:

- (1) the authority of the issuer to issue the public securities;
- (2) the legality and validity of each public security authorization relating to the public securities, including if appropriate:
- (A) the election at which the public securities were authorized;
  - (B) the organization or boundaries of the issuer;
  - (C) the imposition of an assessment, a tax, or a tax lien;
  - (D) the execution or proposed execution of a contract;
- (E) the imposition of a rate, fee, charge, or toll or the enforcement of a remedy relating to the imposition of that rate, fee, charge, or toll; and
- (F) the pledge or encumbrance of a tax, revenue, receipts, or property to secure the public securities;
- (3) the legality and validity of each expenditure or proposed expenditure of money relating to the public securities; and
  - (4) the legality and validity of the public securities.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.022. VENUE. An issuer may bring an action under this chapter in a district court of Travis County or of the county in which the issuer has its principal office.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.023. PROCEEDING IN REM; CLASS ACTION. An action under this chapter is:

- (1) a proceeding in rem; and
- (2) a class action binding on all persons who:
  - (A) reside in the territory of the issuer;
- (B) own property located within the boundaries of the issuer;
  - (C) are taxpayers of the issuer; or
- (D) have or claim a right, title, or interest in any property or money to be affected by the public security authorization or the issuance of the public securities.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 3, eff. Sept. 1, 1999.

Sec. 1205.024. PLEADING CONTENTS. The petition in an action under this chapter must briefly set out, by allegation, reference, or exhibit:

- (1) the issuer's authority to issue the public securities;
- (2) the purpose of the public securities;
- (3) the holding and result of any required election;
- (4) a copy of or a pertinent excerpt from each public security authorization, including any essential action or expenditure of money;
- (5) the amount or proposed maximum amount of the public securities;
- (6) the interest rate or rates or the proposed maximum interest rate of the public securities;
- (7) in a suit relating to the validity or organization of an issuer, the authority for and the proceedings relating to the creation of the issuer or a boundary change; and
  - (8) any other pertinent matter.

Added by Acts 1999, 76th Leq., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.025. TIME FOR BRINGING ACTION; PENDENCY OF OTHER PROCEEDINGS. An issuer may bring an action under this chapter:

- (1) concurrently with or after the use of another procedure to obtain a declaratory judgment, approval, or validation;
- (2) before or after the public securities are authorized, issued, or delivered;
- (3) before or after the attorney general approves the public securities; and
- (4) regardless of whether another proceeding is pending in any court relating to a matter to be adjudicated in the suit.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

### SUBCHAPTER C. NOTICE OF DECLARATORY JUDGMENT ACTION

Sec. 1205.041. NOTICE TO INTERESTED PARTIES. (a) The court in which an action under this chapter is brought shall, on receipt of the petition, immediately issue an order, in the form of a notice, directed to all persons who:

(1) reside in the territory of the issuer;

- (2) own property located within the boundaries of the issuer;
- (3) are taxpayers of the issuer; or
- (4) have or claim a right, title, or interest in any property or money to be affected by a public security authorization or the issuance of the public securities.
- (b) The order must, in general terms and without naming them, advise the persons described by Subsection (a) and the attorney general of their right to:
- (1) appear for trial at 10 a.m. on the first Monday after the 20th day after the date of the order; and
- (2) show cause why the petition should not be granted and the public securities or the public security authorization validated and confirmed.
- (c) The order must give a general description of the petition but is not required to contain the entire petition or any exhibit attached to the petition.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 4, eff. Sept. 1, 1999.

- Sec. 1205.042. SERVICE OF NOTICE ON ATTORNEY GENERAL; WAIVER OF SERVICE. (a) A copy of the issuer's petition with all attached exhibits and a copy of the order issued under Section 1205.041(a) shall be served on the attorney general before the 20th day before the trial date.
- (b) The attorney general may waive the service if the attorney general has been provided a certified copy of the petition, order, and a transcript of each pertinent public security authorization relating to the matters described in the petition.

Added by Acts 1999, 76th Leq., ch. 227, Sec. 1, eff. Sept. 1, 1999.

- Sec. 1205.043. PUBLICATION OF NOTICE. (a) The clerk of the court shall give notice by publishing a substantial copy of the order issued under Section 1205.041(a) in a newspaper of general circulation in:
  - (1) Travis County;
  - (2) the county where the issuer has its principal office; and
- (3) if the issuer has defined boundaries, each county in which the issuer has territory.
- (b) The notice shall be published once in each of two consecutive calendar weeks, with the date of the first publication before the 14th day before the trial date.

(c) If the issuer is this state, Subsection (a) (3) does not apply.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.044. EFFECT OF PUBLICATION. The effect of notice given under Sections 1205.041 and 1205.043 is that:

- (1) each person described by Section 1205.041(a) is a party to the action; and
- (2) the court has jurisdiction over each person to the same extent as if that person were individually named and personally served in the action.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 5, eff. Sept. 1, 1999.

### SUBCHAPTER D. TRIAL AND APPEAL PROCEEDINGS

Sec. 1205.061. COURT'S POWER TO ENJOIN OTHER PROCEEDINGS. (a) On the issuer's motion, before or after the trial date set under Section 1205.041, the court may enjoin the commencement, prosecution, or maintenance of any proceeding by any person that contests the validity of:

- (1) any organizational proceeding or boundary change of the issuer;
- (2) public securities that are described in the petition for declaratory judgment action;
- (3) a public security authorization relating to the public securities;
- (4) an action or expenditure of money relating to the public securities, a proposed action or expenditure, or both;
- (5) a tax, assessment, toll, fee, rate, or other charge authorized to be imposed or made for the payment of the public securities or interest on the public securities; or
- (6) a pledge of any revenue, receipt, or property, or an encumbrance on a tax, assessment, toll, fee, rate, or other charge, to secure that payment.
  - (b) The court may:
- (1) order a joint trial on all issues pending in any other proceeding in a court in this state and the consolidation of the proceeding with the action under this chapter; and
- (2) issue necessary or proper orders to effect the consolidation that will avoid unnecessary costs or delays or a multiplicity of

proceedings.

(c) An interlocutory order issued under this section is final and may not be appealed.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.062. ANSWER OR INTERVENTION BY INTERESTED PARTIES. A person described by Section 1205.041(a) may become a named party to an action brought under this chapter by:

- (1) filing an answer with the court at or before the time set for trial under Section 1205.041; or
  - (2) intervening, with leave of court, after the trial date.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.063. DUTIES OF ATTORNEY GENERAL. (a) The attorney general shall examine a petition filed under Section 1205.021, and shall raise appropriate defenses if the attorney general believes that:

- (1) the petition is defective, insufficient, or untrue; or
- (2) the public securities are, or the public security authorization or an expenditure of money relating to the public securities is, or will be invalid or unauthorized.
- (b) If the attorney general does not question the validity of the public securities, the public security authorization, or an expenditure of money relating to the public securities or the security or provisions for the payment of the public securities, the attorney general may:
  - (1) state that belief; and
- (2) on a finding by the court to that effect, be dismissed as a party.

Added by Acts 1999, 76th Leq., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.064. INSPECTION OF RECORDS OF ISSUER. (a) Each record of an issuer relating to the public securities, a public security authorization, or an expenditure of money relating to the public securities is open to inspection at reasonable times to any party to an action under this chapter.

- (b) Each officer, agent, or employee with possession, custody, or control of any book, paper, or record of the issuer shall, on demand of the attorney general:
  - (1) allow examination of the book, paper, or record; and

(2) without cost, provide an authenticated copy that pertains to or may affect the legality of the public securities, public security authorization, or an expenditure of money relating to the public securities.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.065. TRIAL OF ACTION. (a) The court shall with the least possible delay:

- (1) hear and determine each legal or factual question in the declaratory judgment action; and
  - (2) render a final judgment.
- (b) Regardless of the pendency of an appeal from an order entered under Subchapter E, on motion of the issuer, the trial judge shall proceed under Subsection (a).

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.066. COURT COSTS AND OTHER EXPENSES. (a) An issuer that brings an action under this chapter shall pay costs of the action, except as provided by Subsection (b).

(b) The court may require a person other than the attorney general who appears and contests or intervenes in the action to pay all or part of the costs as the court determines equitable and just.

Added by Acts 1999, 76th Leq., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.067. MILEAGE AND TRAVEL EXPENSES OF ATTORNEY GENERAL. (a) If an action under this chapter is brought in a county other than Travis County, the issuer shall pay any mileage or travel expense of the attorney general or an assistant attorney general in the amount this state allows to an official of this state for travel on official business.

- (b) A claim for an expense under Subsection (a):
- (1) must be filed in duplicate with the clerk of the court in which the action is pending; and
  - (2) shall be taxed as a cost against the issuer.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.068. APPEALS. (a) Any party to an action under this chapter may appeal to the appropriate court of appeals:

- (1) an order entered by the trial court under Section 1205.103 or 1205.104; or
  - (2) the judgment rendered by the trial court.
- (b) A party may take a direct appeal to the supreme court as provided by Section 22.001(c).
  - (c) An order or judgment from which an appeal is not taken is final.
- (d) An order or judgment of a court of appeals may be appealed to the supreme court.
- (e) An appeal under this section is governed by the rules of the supreme court for accelerated appeals in civil cases and takes priority over any other matter, other than writs of habeas corpus, pending in the appellate court. The appellate court shall render its final order or judgment with the least possible delay.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 6, eff. Sept. 1, 1999.

Sec. 1205.069. LEGISLATIVE CONTINUANCES. Rule 254, Texas Rules of Civil Procedure, and Section 30.003, Civil Practice and Remedies Code, do not apply to a suit or an appeal under this chapter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

### SUBCHAPTER E. SECURITY FOR ISSUER

Sec. 1205.101. SECURITY AGAINST SUIT. (a) Before the entry of final judgment in an action under this chapter, the issuer may file a motion with the court for an order that any opposing party or intervenor, other than the attorney general, be dismissed unless that person posts a bond with sufficient surety, approved by the court, and payable to the issuer for any damage or cost that may occur because of the delay caused by the continued participation of the opposing party or intervenor in the action if the issuer finally prevails and obtains substantially the judgment requested in its petition.

- (b) On receipt of a motion under Subsection (a), the court shall issue an order directed to the opposing party or intervenor, with a copy of the motion, to be served on the opposing party, the intervenor, or the party's attorney, personally or by registered mail, requiring the opposing party or intervenor to:
- (1) appear at the time and place directed by the court, not sooner than five nor later than 10 days after the date the order is

entered; and

- (2) show cause why the motion should not be granted.
- (c) The court may direct that motions relating to more than one party or intervenor be heard together.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.102. STANDARD FOR GRANTING OF MOTION. The court shall grant an issuer's motion for security under Section 1205.101 unless, at the hearing on the motion, the opposing party or intervenor establishes that the person is entitled to a temporary injunction against the issuance of the public securities.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.103. AMOUNT OF BOND. (a) The court that grants a motion under this subchapter as to a particular opposing party or intervenor shall in the order set the amount of the bond to be posted by that person.

- (b) The bond must be in an amount determined by the court to be sufficient to cover any damage or cost, including an anticipated increase in interest rates or in a construction or financing cost, that may occur because of the delay caused by the continued participation of the opposing party or intervenor in the acts if the issuer finally prevails and obtains substantially the judgment requested in its petition.
- (c) The court may receive evidence at the hearing or during any adjournment relating to the amount of the potential damage or cost.
- (d) The court may allocate the amount of the bond among opposing parties and intervenors according to the extent of their participation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.104. FAILURE TO FILE BOND. (a) The court shall dismiss an opposing party or intervenor who does not file a required bond before the 11th day after the date of the entry of the order setting the amount of the bond.

- (b) A dismissal under this section is a final judgment of the court, unless appealed under Section 1205.068.
- (c) No court has further jurisdiction over any action to the extent that action involves any issue that was or could have been raised in the action under this chapter, other than an issue that may have been raised by an opposing party or intervenor who was not subject to the motion.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.105. APPEAL. (a) An order setting the amount of a bond denying the motion of an issuer for a bond, or dismissing a party for failure to file a bond may be appealed under Section 1205.068.

- (b) An appellate court may:
  - (1) modify an order of a lower court; and
  - (2) enter the modified order as the final order.
- (c) If an appeal is not taken or if the appeal is taken and the order of the lower court is affirmed or affirmed as modified, and the required bond is not posted before the 11th day after the date of the entry of the appropriate order, no court has further jurisdiction over any action to the extent it involves an issue that was or could have been raised in the action under this chapter, other than an issue that may have been raised by an opposing party or intervenor who was not subject to the motion.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

### SUBCHAPTER F. EFFECT OF DECLARATORY JUDGMENT

Sec. 1205.151. EFFECT OF JUDGMENT. (a) This section applies to a final judgment of a district court in an action under this chapter that holds that:

- (1) the issuer had or has the authority on the terms set out in the issuer's petition to:
  - (A) issue the public securities; or
  - (B) take each public security authorization; and
- (2) each public security authorization and expenditure of money relating to the public securities was legal.
- (b) The judgment, as to each adjudicated matter and each matter that could have been raised, is binding and conclusive against:
  - (1) the issuer;
  - (2) the attorney general;
  - (3) the comptroller; and
  - (4) any party to the action, whether:
    - (A) named and served with the notice of the proceedings; or
    - (B) described by Section 1205.041(a).
- (c) The judgment is a permanent injunction against the filing by any person of any proceeding contesting the validity of:

- (1) the public securities, a public security authorization, or an expenditure of money relating to the public securities described in the petition;
- (2) each provision made for the payment of the public securities or of any interest on the public securities; and
- (3) any adjudicated matter and any matter that could have been raised in the action.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1205.152. STATEMENT ON VALIDATED PUBLIC SECURITY. (a) The issuer of a public security validated under this chapter may have written on the public security the following certificate:

"This obligation was validated and confirmed by a judgment entered \_\_\_\_\_\_ (date when the judgment was entered; the court entering the judgment; and the style and number of the declaratory judgment action), which perpetually enjoins the commencement of any suit, action, or proceeding involving the validity of this obligation, or the provision made for the payment of the principal and interest of the obligation."

(b) The clerk, secretary, or other official of the issuer may sign the certificate.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

# EXHIBIT C

## SAN JACINTO RIVER AUTHORITY

RATE ORDER

(GRP PARTICIPANTS)

Order No. 2016-0-01

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#### SAN JACINTO RIVER AUTHORITY

#### RATE ORDER

#### (GRP PARTICIPANTS)

THE STATE OF TEXAS §
COUNTY OF MONTGOMERY 8

#### RECITALS

WHEREAS, the San Jacinto River Authority (the "Authority"), is a conservation and reclamation district, body politic and corporate and a governmental agency of the State of Texas created and operating under the provisions of Chapter 426, Acts of the 45th Texas Legislature, Regular Session, 1937, as amended, enacted pursuant to the provisions of Section 59 of Article XVI of the Texas Constitution (the "Act"); and

WHEREAS, the Authority is authorized by the Act, and the general laws of the State to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend, inside and outside its boundaries, any and all works, improvements, facilities, plants, equipment and appliances necessary to provide a water supply system for serving its needs and/or the needs of its customers; and

WHEREAS, the Authority has entered into certain contracts (the "Customer Contracts") for the financing, construction and operation of the Woodlands Water Supply System (as defined in the Customer Contracts) to serve the conservation and reclamation district customers of the Woodlands Division of the Authority; and

WHEREAS, each of the Customer Contracts has been amended and supplemented by a written addendum, dated as of November 10, 2009 (the "Addenda"), in order to address compliance with groundwater reduction requirements imposed by the Lone Star Groundwater Conservation District (the "Conservation District") and that are applicable to the Authority and the Woodlands Water Supply System; and

WHEREAS, the Authority has entered into contracts (the "GRP Contracts") with certain Large Volume Groundwater Users (as defined in the District Regulatory Plan of the Conservation District) in order to address compliance with groundwater reduction requirements imposed by the Conservation District that are also applicable to the water supply systems of such Large Volume Groundwater Users; and

WHEREAS, the Addenda and the GRP Contracts provide, in pertinent part, that the Authority will: (a) develop, implement, administer and enforce a groundwater reduction plan ("GRP") for the Woodlands Water Supply System and the water supply systems of such other participating Large Volume Groundwater Users (collectively, and inclusive of the Authority, the "Participants"); (b) plan, design, permit, construct, operate, maintain and administer a surface water treatment and transmission system, including all related facilities, improvements, appurtenances, property and interests in property and contract rights needed therefor, and administrative facilities needed in connection therewith (the "Project"); (c) furnish and sell treated surface water from the Project to certain of the Participants, as

feasible and necessary to implement the GRP; (d) assess fees on the pumpage of groundwater wells operated by the Participants; and (e) utilize revenues derived from such treated surface water sales and pumpage fees to finance the Project and the GRP, including the pledge of such revenues to the payment of, and as security for, the bonds or other obligations of the Authority issued or incurred to finance or refinance the Project and the GRP; and

WHEREAS, the Board of Directors of the Authority deems it necessary and proper at this time to establish certain fees, rates and charges applicable to the Participants, as authorized and required under the Addenda and the GRP Contracts, in order to: (a) achieve and maintain compliance with the rules of the Conservation District and the GRP; (b) develop, implement, administer and enforce the GRP; (c) accomplish the purposes of the Addenda and the GRP Contracts, including making available alternative water supplies; (d) recoup certain losses, damages, costs, interest or expenses; (e) purchase, lease, reserve, option or contract for alternative water supplies, by, through or with third parties or the Authority; (f) meet operation and maintenance expenses related to the Project and the GRP; (g) pay certain capital costs, as well as the principal of and interest on certain notes, bonds and/or other obligations issued or incurred, or to be issued or incurred, in connection with the Project, the GRP or the Authority's obligations under the Addenda or the GRP Contracts; (h) satisfy all rate covenants relating to any of such notes, bonds and/or other obligations of the Authority; and (i) establish, accumulate, maintain or replenish one or more operating, debt service, contingency or emergency reserve funds, as deemed reasonably necessary by the Authority;

NOW THEREFORE, BE IT ORDERED BY THE BOARD OF DIRECTORS OF THE SAN JACINTO RIVER AUTHORITY THAT:

#### ARTICLE I

#### FINDINGS; EFFECTIVE DATE; PRIOR RATE ORDER

Section 1.01: Findings. Each of the recitals stated in this Rate Order are hereby adopted as findings of fact of the Board of Directors. All statutory and contractual requirements and conditions have been met for the establishment of fees, rates, and charges under this Rate Order.

Section 1.02: Effective Date; Prior Rate Order. This Order shall be effective as of June 23, 2016 (the "Effective Date"). That certain prior Rate Order adopted by the Authority on August 27, 2015, designated as Order No. 2015-O-02, shall be repealed and superseded hereby in all respects as of the Effective Date.

#### **ARTICLE II**

#### DEFINITIONS; INTERPRETATIONS; REFERENCES

Section 2.01: <u>Definitions</u>. In addition to terms defined elsewhere in this Rate Order, and unless the context requires otherwise, the following terms used in this Rate Order shall have the following meanings and, to the extent applicable, shall serve to supplement terms defined elsewhere in this Rate Order:

"Act" is defined in the recitals hereto and means and includes any amendments to the Act.

"Addenda" is defined in the recitals hereto and means and includes any amendments or supplements to the Addenda.

"Authority" is defined in the recitals hereto and means and includes the legal successors or assigns of the Authority.

"Authority Meters" has the meaning ascribed to such term in the GRP Contracts.

"AWS Well" means any groundwater well operated by any Participant, whether currently in operation or placed into operation hereafter, that produces water qualifying as an "Alternative Water Source" under the Rules.

"AWS Wells" means each and every AWS Well, collectively, whether one or more.

"Conservation District" is defined in the recitals hereto and means and includes the legal successors or assigns of the Conservation District.

"Contract Quantity" has the meaning ascribed to such term in the GRP Contracts.

"Conversion Date" means the date upon a Converted Participant shall begin making payment for Surface Water.

"Converted Participant" means a Participant receiving Surface Water from the Project.

"Converted Participant's Receiving Facilities" means the water plant or other water system facilities at the Point of Delivery where a Converted Participant receives Surface Water from the Project.

"Customer Contracts" is defined in the recitals hereto and means and includes any amendments or supplements to the Customer Contracts.

"Effective Date" is defined in Section 1.02 hereof.

"Fees" means the Pumpage Fee, the Import Fee and the Surface Water Fee, collectively.

"GRP" is defined in the recitals hereto and means and includes any amendments or supplements to the GRP.

"GRP Administrator" has the meaning ascribed to such term in the GRP Contracts.

"GRP Contracts" is defined in the recitals hereto and means and includes any amendments or supplements to the GRP Contracts.

"GRP Drought Contingency Plan" means the Drought Contingency Plan for San Jacinto River Authority GRP Division, adopted by the Board of Directors of the Authority on March 27, 2014, and any amendments or supplements thereto.

"GRP Water Conservation Plan" means the Water Conservation Plan for San Jacinto River Authority GRP Division, adopted by the Board of Directors of the Authority on March 27, 2014, and any amendments or supplements thereto.

"Import Fee" means the fee imposed under Section 3.02(a) hereof.

"Initial-Conversion-Obligation-Adjusted Total Qualifying Demand" or "ICO-Adjusted Total Qualifying Demand" has the meaning ascribed to such term under the Plan and generally means (a) for Total Qualifying Demand of 10 million gallons or greater, 70 percent of the Total Qualifying Demand or 10 million gallons, whichever amount is greater, and (b) for Total Qualifying Demand of less than 10 million gallons, the original Total Qualifying Demand.

"ORS" means the online reporting system offered and maintained by or on behalf of the Authority, currently the "TrueBill" system or any successor system.

"Participant" means any of the Participants, without distinction.

"Participant Meters" has the meaning ascribed to such term in the GRP Contracts.

"Participants" is defined in the recitals hereto and means and includes the Authority, and any Large Volume Groundwater User that executes a GRP Contract with the Authority.

"Payment Commencement Date" has the meaning ascribed to such term in a Participant's GRP Contract with respect to such Participant, or August 1, 2010, with respect to the Authority, if applicable.

"Plan" means the District Regulatory Plan adopted by the Conservation District and includes any amendments, revisions or supplements thereto as may be adopted by the Conservation District on or after the Effective Date.

"Point of Delivery" has the meaning ascribed to such term in the GRP Contracts.

"Project" is defined in the recitals hereto and means and includes any and all extensions, modifications, enlargements or improvements to the Project permitted under the Addenda and the GRP Contracts.

"Pumpage Fee" means the fee imposed under Section 3.01(a) hereof.

"Surface Water Fee" means the fee imposed under Section 3.03 hereof applicable to Surface Water delivered by and through the Project to a Converted Participant.

"Surface Water" means treated surface water delivered by and through the Project (i.e., "Water" as defined under the GRP Contracts).

"Total Qualifying Demand" has the meaning ascribed to such term under the Plan and generally means the final volume of groundwater that a permit holder is authorized under the terms of a permit issued by the Conservation District to produce from Wells in the Gulf Coast Aquifer (Chico, Evangeline and Jasper Aquifers) in calendar year 2009, as determined by the Conservation District in accordance with the Plan

"Well" means any groundwater well operated by any Participant, whether currently in operation or placed into operation hereafter, that is subject to the groundwater reduction requirements set forth in the Plan. Accordingly, such term does not include any AWS Well.

"Wells" means each and every Well, collectively, whether one or more.

Section 2.02: Interpretations. The article, section, subsection and paragraph headings of this Rate Order are included herein for convenience of reference purposes only and shall not constitute a part of this Rate Order or affect its interpretation in any respect. Except where the context otherwise requires, words imparting the singular number shall include the plural and vice versa. References to an entity refer to the legal successors of such entity, and to the board of directors, officers, or other officials of such entity where appropriate.

Section 2.03: References. For the avoidance of doubt, any reference in this Rate Order to a document shall mean such document and all exhibits thereto, as amended or supplemented from time to time.

#### ARTICLE III

#### FEES AND RATES

#### Section 3.01: Pumpage Fee.

- (a) General. Each Participant shall pay a Pumpage Fee of \$2.32 per 1,000 gallons of groundwater pumped from its Wells during each whole or partial calendar month, beginning on the later of the Effective Date or the Payment Commencement Date stated in such Participant's GRP Contract and continuing through August 31, 2016. Thereafter, each Participant shall pay a Pumpage Fee of \$2.50 per 1,000 gallons of groundwater pumped from its Wells during each whole or partial calendar month, beginning on the later of September 1, 2016 or the Payment Commencement Date stated in such Participant's GRP Contract. Such pumpage of groundwater shall be metered by Participant in accordance with Article VIII hereof and reported to the Authority in accordance with Article IV hereof. Payment of the Pumpage Fee shall be remitted to the Authority in accordance with Article V hereof.
- (b) Exception. Notwithstanding paragraph (a) above, no Pumpage Fee shall be due with respect to Wells acquired by Participant that is a municipality if such Wells were formerly owned or operated by a conservation and reclamation district or entity that functioned under a groundwater reduction plan separate from the GRP, and such Participant has notified the Authority in writing that the Wells owned or operated by the district or entity will remain part of the groundwater reduction plan that is separate from the GRP. If a Participant is exempt, in whole or in part, from paying a Pumpage Fee pursuant to the above, then Participant shall submit a statement describing with reasonable detail the basis on such exemption in place of, or along with, payment to the Authority under Article V hereof.

#### Section 3.02: Import Fee.

(a) General. Each Participant shall pay an Import Fee of \$2.32 per 1,000 gallons of water imported by Participant from any person or entity, during each whole or partial calendar month, beginning on the later of the Effective Date or the Payment Commencement Date stated in such

Participant's GRP Contract and continuing through August 31, 2016. Thereafter, each Participant shall pay an Import Fee of \$2.50 per 1,000 gallons of water imported by Participant from any person or entity, during each whole or partial calendar month, beginning on the later of September 1, 2016 or the Payment Commencement Date stated in such Participant's GRP Contract. Such importation of water shall be metered by Participant as in accordance with Article VIII hereof and reported to the Authority in accordance with Article IV hereof. Payment of the Import Fee shall be remitted to the Authority in accordance with Article V hereof.

- (b) Exceptions. Notwithstanding paragraph (b) above, no Import Fee shall be due if -
  - (1) such imported water was supplied to a Participant from another Participant;
- (2) such imported water was derived from the re-use of water (from any source) or wastewater effluent;
- (3) such imported water was derived from water withdrawn from an AWS Well; or
- (4) such importation is necessary due to an emergency impacting the ability of Participant to meet its water demands, the period of importation lasts for less than fifteen (15) consecutive days, and Participant has not imported water during more than thirty (30) days during the current calendar year.

If a Participant is exempt, in whole or in part, from paying an Import Fee pursuant to the above, then Participant shall submit a statement describing with reasonable detail the basis for the exemption along with, or in place of, payment to the Authority under Article V hereof.

Section 3.03: Surface Water Fee. Each Converted Participant shall pay a Surface Water Fee of \$2.51 per 1,000 gallons of Surface Water delivered by and through the Project to the Converted Participant's Receiving Facilities during each whole or partial calendar month, beginning on the Conversion Date and continuing through August 31, 2016. Thereafter, each Converted Participant shall pay a Surface Water Fee of \$2.69 per 1,000 gallons of Surface Water delivered by and through the Project to the Converted Participant's Receiving Facilities during each whole or partial calendar month, beginning on September 1, 2016. Such delivery of Surface Water shall be metered at the Point(s) of Delivery by Authority in accordance with Article VIII hereof and reported to the Converted Participant in accordance with Article IV hereof. Payment of the Surface Water Fee shall be remitted to the Authority in accordance with Article V hereof.

#### ARTICLE IV

#### REPORTING

#### Section 4.01: Self-Reporting.

- (a) Measurement of Groundwater. Each Participant shall be responsible for measuring the amount of groundwater pumped from each of its Wells and/or AWS Wells by reading the Participant Meters on the Payment Commencement Date and on the first day of every month thereafter.
- (b) Measurement of Imported Water. Each Participant shall be responsible for measuring the amount of water imported from any non-Participant by reading the Participant Meters on the Payment Commencement Date and on the first day of every month thereafter. A Participant shall not be responsible for measuring the amount of water imported from another Participant.
- (c) Measurement of Surface Water. The Authority shall be responsible for measuring the amount of Surface Water supplied to each Converted Participant by reading the Authority Meters on the Conversion Date and on the first day of every month thereafter. Such reading shall generally be conducted remotely but from time to time may be conducted by direct reading by the Authority or its agents.
- (d) Other Measurement. In order to monitor Participant water demands, the GRP Administrator may implement reasonable procedures to directly or indirectly measure (1) water imported from another Participant, and (2) water demands met by a Participant with water derived from the re-use of water (from any source) or wastewater effluent. Such procedures shall not require the installation of meters unless such installation is at the cost and expense of the Authority.
- (e) Reporting. Water usage measured by the Participant (even if zero) shall be reported to the Authority by submitting readings through ORS or, if applicable, by submitting readings on a completed reporting form provided by the Authority. Reports must be received by the Authority on or before the 10th day of the first calendar month for which water usage is required to be measured incurred (e.g., water usage measured during June, 2016, must be reported by July 10, 2016, and payment of any associated Fees will be due on August 18, 2016; water usage measured during July, 2016, must be reported by August 10, 2016, and payment of any associated Fees will be due on September 18, 2016; etc.). Surface Water usage measured by the Authority Meters shall be made available by the Authority to the Converted Participant through ORS. The GRP Administrator may provide a form to be submitted to the Authority in writing to supplement reporting through ORS with respect to any category of water usage that is not then supported through the ORS reporting system. In addition, the GRP Administrator will provide a form that may be submitted to the Authority in writing to report usage as an alternative to reporting same through ORS but only upon the request of Participant.

Section 4.02: Failure to Report. In the event a Participant fails or refuses to read its Participant Meters, the Authority shall have the right, but not the obligation, to read the Participant Meters. In the event that a Participant fails or refuses to read its Participant Meters on the Payment Commencement Date, the Authority shall have the right to read the Participant Meters on two or more occasions in order to calculate Participant's average daily usage and, based upon such calculation of average daily usage, to estimate the reading of the Participant Meters as of the Payment Commencement Date. If the Authority is required to read the Participant Meters, such Participant will be charged an inspection

fee of \$250, and any Fees due under Article III hereof shall be calculated based upon the Authority's readings or average daily usage, if necessary, regardless of when the Authority reads the Participant Meters.

Section 4.03: Direct Reading. As provided in the GRP Contracts, the Authority may, by amendment, revision or restatement of this Rate Order, modify or repeal self-reporting procedures applicable to the Participant Meters and require readings by the Authority or its agents.

#### **ARTICLE V**

#### PAYMENT OF FEES

#### Section 5.01: Payment of Fees.

- (a) ORS Reporting. Once all Participant Meter readings have been entered into ORS pursuant to Section 4.01 hereof, each Participant shall print its statement of Fees from the ORS and deliver the statement to the Authority with full payment, on or before the due date specified in Section 5.03 hereof.
- (b) Form Reporting. If a Participant does not report through ORS, or must supplement reporting through ORS, then such Participant shall calculate Fees due the Authority for a given calendar month on the form provided by the GRP Administrator and deliver the completed form to the Authority with full payment, on or before the due date specified in Section 5.03 hereof.

#### Section 5.02: Manner and Method of Payment.

- (a) All Fees due the Authority under Sections 5.01 hereof, and any other fees, rates or charges payable to the Authority under this Rate Order, shall be paid in money which is legal tender in the United States of America. Payments will be accepted only by check or money order made payable to the "San Jacinto River Authority", or by wire transfer according to written wiring instructions provided by the Authority. No cash will be accepted. Written wire instructions are available upon request.
- (b) For purposes of submitting payments, ORS fee statements, reporting forms, or other documents pursuant to this Rate Order, the address of the Authority shall be as set forth below.

San Jacinto River Authority Attn: GRP Administrator GRP Division P.O. Box 329 Conroe, TX 77305

Section 5.03: Due Date. A ORS fee statement or a completed reporting form, and payment of all Fees due under Article III hereof, must be received by the Authority on or before the 18th day of the second calendar month following the whole or partial calendar month for during which such Fees were incurred (e.g., water usage measured during June, 2016, must be reported by July 10, 2016, and payment of any associated Fees will be due on August 18, 2016; water usage measured during July,

2016, must be reported by August 10, 2016, and payment of any associated Fees will be due on September 18, 2016; etc.).

Section 5.04: Self-Remission. Each Participant shall be responsible for remitting payment to the Authority for Fees on or before the due date specified under Section 5.03 hereof. The Authority will not and shall not be obligated to send an invoice or bill to a Participant for Fees unless the Authority, except to the extent that the Authority reads the Participant Meters under Sections 4.02 or 4.03 hereof. In such case, the Fees and any related charges owed by a Participant hereunder shall be specified in a written invoice promptly delivered to such Participant by the Authority. Such invoice shall specify thereon a due date for payment, which due date shall not be less than ten (10) days after the date of the invoice.

#### ARTICLE VI

#### CONSERVATION DISTRICT PERMITTING; OTHER INFORMATION

Section 6.01: Applicability of Conservation District Permitting Requirements. The GRP provides that the Authority will reduce groundwater production from the Gulf Coast Aquifer (Chico, Evangeline and Jasper Aquifers) by certain Participants so that, collectively, all Participants achieve and maintain compliance with the Plan. This will be achieved primarily through the Authority's delivery of Surface Water to the Converted Participants and the consequent reduction in groundwater production from the Wells owned and operated by such Converted Participants. The development of other alternative water supplies (such as groundwater production from AWS Wells and water supplies developed from re-use projects) and the impacts of water conservation may further reduce groundwater production by Participants. Based upon the foregoing, the GRP is a "Joint GRP" as defined in and for all purposes of Phase II(B) of the Plan. The Authority, as administrator of the GRP, and all Participants are subject to the permitting requirements applicable to Joint GRPs under Phase II(B) of the Plan.

Section 6.02: Summary of Permitting Requirements; AWS Wells Excluded. (a) The Conservation District is to provide notice of Well permit renewals to the Authority and to all Participants included in the GRP on an annual basis. Under Phase II(B) of the Plan, the GRP Administrator is obligated to then prepare and provide to the Conservation District, not later than September 1, a schedule (the "Production Schedule") of the amount of groundwater each Participant will be authorized to produce from its Well(s) during the following calendar year. The Production Schedule must demonstrate that the Participants, collectively, will achieve the Initial Conversion Obligation for the aggregated Total Qualifying Demand of all Participants and otherwise meet the Conservation District's groundwater reduction requirements under the Plan. The Conservation District is to review and take action on the Well renewal permit application(s) and the accompanying Production Schedule in accordance with the Plan and the Conservation District's Rules.

(b) Under Phase II(B) of the Plan, the Authority has no right or obligation to process renewal permits for AWS Wells owned, operated or maintained by Participants. Accordingly, each Participant shall be responsible for securing, renewing, and otherwise maintaining permits for the Participant's AWS Wells.

#### Section 6.03: Implementation of Permitting Requirements by GRP Administrator.

- (a) Production Schedule. In order to timely process permit renewals for all Participant Wells included in the GRP, develop the Production Schedule, and otherwise comply with applicable permitting requirements under Phase II(B) of the Plan, the Authority hereby adopts the following procedures.
  - (1) On an annual basis, the GRP Administrator shall determine, in his or her reasonable discretion, the proposed amount of groundwater each Participant will be authorized to produce from its Well(s) during the following calendar year. In making such determination, the GRP Administrator shall for each Participant (i) estimate the Participant's projected water demands for the following calendar year based upon the Participant's historical water demands and projected water demands, as reflected in the Participant's GRP Contract, and based upon the Participant's actual reported production from its Well(s), and (ii) estimate the sources of supply necessary to meet the Participant's projected water demand for the following calendar year, including but not limited to the Participant's ICO-Adjusted Total Qualifying Demand, Surface Water to be delivered to the Participant, if any, and any other alternative water supplies that may be used to supplement or supplant groundwater production from the Participant's Well(s). To the extent that a Participant's projected water demands exceed the Participant's sources of supply, the GRP Administrator shall allocate additional groundwater production from the Gulf Coast Aquifer made available through the GRP to such Participant.
  - (2) Not later than July 1, the GRP Administrator shall provide each Participant with written notice of the proposed amount of groundwater each Participant will be authorized to produce from its Well(s) during the following calendar year. Each Participant shall have the opportunity to submit written comments to same to the GRP Administrator at the address specified in the notice or, if no address is so specified, at the address set forth in Section 5.02(b) hereof. Any comments must be received by the GRP Administrator on or before August 15.
  - (3) The GRP Administrator shall reasonably consider all comments received from the Participant and, in connection therewith, prepare a final Production Schedule for the GRP and all Participants.
  - (4) On or before September 1, the GRP Administrator shall submit the final Production Schedule to the Conservation District for review and approval.
- (b) Renewal Filings. The GRP Administrator shall sign renewal application(s) on behalf of all the Participants and their Wells included in the GRP, and take all other actions necessary to secure the annual renewal of permits for such Wells by the Conservation District. To the extent required by the Conservation District, each Participant shall execute any necessary permit renewal application materials reasonably requested by the GRP Administrator. Unless otherwise extended by the GRP Administrator, such materials shall be provided to the GRP Administrator no later than thirty (30) days following receipt of a written request for same.
- (c) Notice of Renewal. If not otherwise provided by the Conservation District, the GRP Administrator shall provide each Participant with a copy of the renewed permit(s) for the Participant's Wells within thirty (30) days following receipt of same by the Authority.

### Section 6.04: <u>Amendments to Production Schedule and Conservation District Permits; Total Qualifying Demand.</u>

- Request for Amendment of Production Schedule and/or Permit Amount. A Participant (a) may from time to time submit a written request to the GRP Administrator for an increase, or a decrease, of the annual amount of groundwater authorized to be produced from the Participant's Well(s) under the Production Schedule and/or under the Participant's Conservation District permit(s). The GRP Administrator shall consider the request and approve of same if, after giving effect to such request, the GRP Administrator determines that the Participants will achieve the Initial Conversation Obligation for the aggregate Total Qualifying Demand of all Participants. If the request is approved, the GRP Administrator shall notify the Participant in writing and prepare an amendment to the Production Schedule to reflect the approved request. Further, the GRP Administrator shall file and prosecute an application with the Conservation District to reflect the approved request, as and if required by the Conservation District. Each Participant shall execute any necessary amendment application materials reasonably requested by the GRP Administrator to file and prosecute such an amendment. Unless otherwise extended by the GRP Administrator, such materials shall be provided to the GRP Administrator no later than thirty (30) days following receipt of a written request for same. If the request is denied or conditioned, the GRP Administrator shall notify the Participant in writing of the reasons therefor.
- (b) Approval of Production Schedule and/or Permit Amendment by Conservation District. The GRP Administrator shall provide the Participant requesting an amendment to the Production Schedule with written notice of the approval or denial of such request within thirty (30) calendar days thereafter. Notice of approval of a request shall be accompanied by a revised Production Schedule reflecting approved request. Further, if a permit amendment must be approved by the Conservation District to reflect an amendment pursuant to subsection (a), above, the GRP Administrator shall notify the Participant of same within thirty (30) calendar days of approval by the Conservation District and provide the Participant with a copy of the Conservation District approval and the amended permit.
- (c) Adjustment of Permitting Fees. If a request for a permit increase or decrease is approved pursuant to a request made under subsection (a), above, the GRP Administrator shall issue an invoice or credit to the Participant for associated Conservation District perming fees in accordance with Section 6.06 hereof.
- (d) Total Qualifying Demand. In order to ensure that the Total Qualifying Demand of the Participants, collectively, is available for allocation in accordance with the GRP and the Production Schedule, no Participant shall sell, transfer, or otherwise dispose of Total Qualifying Demand without the prior written consent of GRP Administrator, which consent must receive prior approval by the Review Committee and the Authority's Board of Directors.
- Section 6.05: Permits Binding; Penalties and Disincentive Fees. (a) Under Phase II(B) of the Plan, the Conservation District's approval of a Participant's Well permit application and the applicable information in the Production Schedule shall be a condition of the renewed permit and shall be binding upon the Authority, as administrator of the GRP, and upon the Participant.
- (b) If a Participant produces groundwater from its Well(s) in excess of the total authorized production reflected under the Conversation District permit for the Well(s), the Participant shall pay the Authority for any Conservation District disincentive fees or penalties assessed against the GRP as a result. The GRP Administrator shall provide a written invoice to the Participant for any disincentive

fees or penalties due hereunder. Such invoice shall specify thereon a due date for payment, which due date shall not be less than ten (10) days from the date of the invoice. All disincentive fees or penalties invoiced hereunder shall be in addition to, and not in substitution for, any other Fees or amounts owed the Authority.

Section 6.06: Pass-Through of Permitting Fees. (a) Under Phase II(B) of the Plan, the Authority is responsible for payment of all Conservation District permitting fees (including, but not limited to, water use fees, groundwater transport fees, and administrative fees) associated with all Participant Well permits in the GRP. Accordingly, the GRP Administrator shall pass-through such fees to the Participants by providing a written invoice to each Participant, on a quarterly basis, for Conservation District permitting fees due in respect of the Participant's Well permit(s). Such invoice shall specify thereon a due date for payment, which due date shall not be less than sixty (60) calendar days from the date of the invoice.

- (b) If a request for an increase of the annual amount of groundwater authorized to be produced from a Participant's Well(s) is approved pursuant to Section 6.04 hereof, the GRP Administrator shall pass-through any resulting Conservation District permitting fees to the Participant by providing a written invoice for same to the Participant. Such invoice shall specify thereon a due date for payment, which due date shall not be less than sixty (60) days from the date of the invoice, or the date that is ten (10) calendar days before payment is due from the Authority to the Conservation District, whichever occurs first in time. As an alternative to the foregoing, at the option and discretion of the GRP Administrator, the GRP Administrator may add any such Conservation District permitting fees to the next ensuing quarterly invoice provided to the Participant under subsection (a), above.
- (c) If a request for a decrease of the annual amount of groundwater authorized to be produced from a Participant's Well(s) is approved pursuant to Section 6.04 hereof, the GRP Administrator may pass-through a credit for Conservation District fees paid or due with respect to the reduction, subject to the ability of the GRP Administrator to allocate the reduction in pumpage to other Participants requesting an increase in pumpage and to collect additional permitting fees from such other Participants to pass-through the credit. As and if approved, such credit shall be due from and paid by the Authority within sixty (60) days from the date of receipt of such credit from the Conservation District. As an alternative to foregoing, at the option and discretion of the GRP Administrator, the GRP Administrator may apply any such Conservation District credit to the next ensuing quarterly invoice provided to the Participant under subsection (a), above.
- (d) In the event that the amount of groundwater actually produced from the Participants' Wells in a given year is less than the annual amount of groundwater projected to be produced from the Participants' Wells in such year, as shown on the current Production Schedule for such year, the GRP Administrator shall file an application with the Conservation District for a credit of permit fees paid by the GRP. Any credit approved by the Conservation District shall be passed through to the Participants on a pro-rata basis (based on amount of under production) and shall be applied to the next ensuing quarterly invoice provided to the Participant under subsection (a), above; provided, however, a Participant must have actually produced 75% or more of the groundwater authorized to be produced in such year in order to be eligible to receive such credit unless such requirement is waived by the GRP Administrator in his or her sole discretion.

Section 6.07: Notice of Permit Filings. A Participant shall provide the GRP Administrator with a copy of any permit application filed with the Conservation District within ten (10) business days after filing, but only if such filing (1) requests a permit for the installation of a new Well or AWS Well,

(2) relates to the removal, abandonment or closure of an existing Well or AWS Well, (3) requests an increase or decrease in annual groundwater pumpage, or (4) relates to the transfer, assignment or termination of a Conservation District permit held by Participant.

Section 6.08. Other Documents or Information. A Participant shall provide the GRP Administrator with copies of documents or other reasonably available or ascertainable information, data or materials date that, as determined by GRP Administrator, is necessary in connection with the implementation of the GRP. Unless otherwise extended by the GRP Administrator, such documents, information, data or materials shall be submitted to the GRP Administrator no later than thirty (30) days following receipt of a written request for same.

#### **ARTICLE VII**

#### LATE FEES; INTEREST CHARGES; COLLECTIONS

Section 7.01: Late Fees. Fees due under Article III hereof shall be increased by 5% if not paid on or before the due date specified under Section 5.03 hereof. Amounts due under Article VI hereof shall be increased by 5% if not paid on or before the due date specified on an invoice therefor. Any other amounts due under this Rate Order shall be increased by 5% if not paid on or before the due date specified on an invoice therefor.

Section 7.02: Interest Charges. Overdue amounts (including applicable late fees) shall accrue interest at 12% per annum (i.e., 1% per month) for each whole or partial calendar month such payment is past due.

Section 7.03: Invoice for Late Fees and Interest Charges. The Authority will provide a written invoice to a Participant for any late fees or interest charges due under Section 7.01 and/or 7.02 hereof. Such invoice shall specify thereon a due date for payment, which due date shall not be less than ten (10) days from the date of the invoice.

Section 7.04: Collection Costs. If the Authority is required to incur costs to collect an overdue account, all such costs, including reasonable attorney's fees, court costs and expenses, shall be paid by the delinquent Participant, and the Authority shall be entitled to collect such costs in any suit for collection of a delinquent account.

#### ARTICLE VIII

#### METERING AND CALIBRATION

Section 8.01: Maintenance and Testing of Meters. The provisions of Section 5.03 of the GRP Contracts, relative to the maintenance, testing and calibration of Participant Meters and Authority Meters, are incorporated herein for all purposes. The provisions of Section 5.05 of the GRP Contracts, relative to the resolution of disputes concerning tests of Participant Meters and/or Authority Meters, are incorporated herein for all purposes.

In the event that Participant fails or refuses to test and calibrate the Participant Meters in accordance with such provisions of the GRP Contracts, the Authority shall have the right, but not the

obligation, to test and calibrate the Participant Meters. If the Authority so tests and calibrates the Participant Meters, such Participant will be charged a fee of \$250 plus the Authority's actual and direct expenses for such testing and calibration. Such fee shall be specified in a written invoice promptly delivered to such Participant by the Authority, and the invoice shall specify thereon a due date for payment, which due date shall be less than then (10) days after the date of the invoice.

Section 8.02: Audits. The Authority shall have the right to audit the readings from Participant Meters by examining the books and records of a Participant, reading such Participant Meters, or by any other means and methods prescribed by the Authority.

Section 8.03: Right to Enter Land. The Authority and its representatives shall have the right to enter upon the land of a Participant, at any reasonable time in order to audit the readings of the Participant Meters, to read Participant Meters in the event a Participant has failed or refused to do so, to directly read any Authority Meters, or to perform testing and calibration of the Participant Meters in the event Participant has failed or refused to do so.

<u>Section 8.04</u>: <u>Adjustments</u>. The provisions of Section 5.04 of the GRP Contract, relative to the adjustment of pumpage measured by inaccurate Participant Meters and/or Authority Meters, are incorporated herein for all purposes.

#### ARTICLE IX

#### CONVERSION TO SURFACE WATER

Section 9.01: Terms of Service. Surface Water shall be provided by the Authority and received and used by a Converted Participant in accordance with the terms and conditions set forth in the GRP Contract. Without limiting the foregoing, the Authority specifically incorporates by reference the following provisions of the GRP Contracts: Section 4.09 (Contract Quantity, relating to force majeure, penalties for failure to take the Contract Quantity, and use of groundwater wells and other sources of supply to meet demands); Section 4.10 (Warranties Regarding Water); Section 4.12 (Passing of Title to Water; Re-use); Section 10.02 (Delivery Limitations); and Section 12.03 (Continuation of Service).

Section 9.02: Failure to Take Contract Quantity. If a Participant fails or refuses to timely connect to the Project in accordance with Section 4.07 of the GRP Contracts, or if a Converted Participant has connected to the Project and fails or refuses to at least take the Contract Quantity designated by the GRP Administrator, the GRP Administrator may impose penalties under Section 11.03 hereof.

#### ARTICLE X

#### DROUGHT CONTINGENCY AND WATER CONSERVATION

Section 10.01: Updating and Submittal of Plans. In accordance with Section 3.05 of the GRP Contracts, all Participants must adopt and enforce a water conservation plan (see 30 T.A.C. §§ 288.1-288.7), as well as a drought contingency plan (see 30 T.A.C. §§ 288.20-288.22), that meets the minimum requirements adopted by the Authority under the GRP Water Conservation Plan and the GRP Drought Contingency Plan. Unless otherwise extended by the GRP Administrator, such plans shall be submitted to the GRP Administrator no later than thirty (30) days following receipt of a written request for same.

Section 10.02: Drought Management Surcharge. The goal of the GRP Drought Contingency Plan is to reduce the total water demand of all Participants by targeted percentages in response to various stages of drought or due to emergency conditions. Accordingly, the GRP Administrator may impose a surcharge on water usage to enforce the GRP Drought Contingency Plan during any whole or partial calendar month in which Stages 2 through 4 of the GRP Drought Contingency Plan has been triggered, or during any Emergency Water Supply Condition under the GRP Drought Contingency Plan. The surcharge on Fees shall only apply to the extent that Participant's actual water usage (as determined by the Authority based upon reporting information submitted pursuant to Article IV hereof) exceeds targeted water usage (as calculated pursuant to Section 3.6 of Drought Contingency Plan and reduced by the applicable percentage). The surcharge on Fees shall be calculated based upon the maximum civil penalty rate that may be imposed by the Conservation District on Large Volume Groundwater Users that are not part of a GRP under the Plan (currently \$4.00 per 1,000, which is subject to increase hereafter) unless a lesser rate is determined to be sufficient to achieve compliance by the GRP Administrator. The surcharge shall be in addition to any other Fees or other amounts due to the Authority.

#### ARTICLE XI

#### PENALTIES; RECOVERY; VIOLATION OF RATE ORDER

Section 11.01: Generally Applicable Penalties.

- (a) Reporting. A Participant shall be subject to penalties for failure or refusal to report water usage to the Authority in accordance with Section 4.01 hereof.
- (b) Calibration. A Participant shall be subject to penalties for failure or refusal to timely calibrate its Participant Meters in accordance with Section 8.01 hereof and/or the GRP Contracts.
- (c) Access to Meters. A Participant shall be subject to penalties for failure or refusal to provide timely access to any Participant Meters or Authority Meters in accordance with Section 8.03 hereof and/or the GRP Contracts.
- (d) Documents. A Participant shall be subject to penalties for failure or refusal to timely provide the GRP Administrator with documents, information, data or materials requested under this Rate Order.

- (e) Water Conservation and Drought Contingency Plans. A Participant shall be subject to penalties for failure or refusal to
  - (1) timely submit the Participant's water conservation plan or drought contingency plan to the Authority in accordance with Section 10.01 hereof and/or the GRP Contracts;
  - (2) include provisions in the Participant's water conservation plan or drought contingency plan that meet minimum criteria established by the Authority in accordance with the GRP Contract; or
  - (3) implement or enforce the Participant's water conservation plan or drought contingency plan.
- (f) Bond Sale Documents. If the Authority provides Participant with a written request that certain documentation be executed and returned to the Authority pursuant to Section 8.02 and/or Section 8.03 of the GRP Contracts, then Participant shall be subject to penalties when
  - (1) the written request was delivered to Participant in accordance with the notice provisions of Section 13.03 of the GRP Contracts;
    - (2) the documentation was provided simultaneously with the written request; and
  - (3) the Participant does not execute and return the documentation to the Authority on or before the later of (i) the deadline specified in the written request, or (ii) the 30th day following receipt of the written request by Participant.
- Section 11.02: Imposition of Penalty; Penalty Amount. The GRP Administrator shall be authorized to impose a penalty if permitted under Section 11.01 hereof or any other provision of this Rate Order. The penalty amount shall be determined at the discretion of the GRP Administrator, taking into consideration the relative water demands of such Participant compared to the demands of all Participants; provided, however, the penalty shall not exceed \$2,500 per day per violation.

#### Section 11.03: Additional Penalties Related to Conversion to Surface Water.

- (a) Connection to Project. A Participant shall be subject to penalties for failure or refusal to timely connect to the Project as and if required under Section 4.04 of the GRP Contract.
- (b) Contract Quantity. A Converted Participant shall be subject to penalties for failure or refusal to at least take the applicable Contract Quantity of Surface Water from the Project on a monthly basis.
- (c) Imposition of Penalty; Penalty Amount. The GRP Administrator shall be authorized to impose a penalty if permitted under subsection (a) or (b), above. The penalty amount shall be determined on a monthly or other periodic basis by multiplying the Contract Quantity of Surface Water that was not taken from the Project (whether through a failure to connect to the Project under subsection (a) or as a result of a failure to at least take the Contract Quantity) by the maximum civil penalty rate that may be imposed by the Conservation District on Large Volume Groundwater Users that are not part of a GRP under the Plan (currently \$4.00 per 1,000, which is subject to increase hereafter) unless a lesser rate is determined to be sufficient to achieve compliance by the GRP Administrator.

Section 11.04: Invoice for Penalties. The GRP Administrator shall provide a written invoice to the Participant for any penalty imposed under this Article. Such invoice shall specify thereon a due date for payment, which due date shall not be less than ten (10) days from the date of the invoice. All penalties imposed under this Article shall be in addition to, and not in substitution for, any other Fees or amounts owed the Authority.

Section 11.05: Appeal of Penalty. A Participant that has been invoiced a penalty under this Article may appeal the penalty to the GRP Administrator. The final decision of the GRP Administrator shall be subject to further review by the Board of Directors of the Authority as specified in Section 9.03(f) of the GRP Contracts.

Section 11.06: Recovery. In addition to the payment of any Fees, penalties, surcharges or other amounts under this Rate Order, the Authority has and reserves the right under Section 4.11 of the GRP Contracts the right to recover from a Participant by any lawful means, including intervention in legal proceedings of a Participant, for any losses, damages, claims, expenses, costs, or judgments, including reasonable attorneys fees and court costs incurred by the Authority, and interest not to exceed the interest rate permitted by Section 2251.025, Texas Government Code, as amended.

Section 11.07: Violation of Rate Order. The adoption of this Rate Order is authorized by the Addenda and by the GRP Contracts and, therefore, any violation of this Rate Order shall be deemed a breach of such contracts. This Rate Order is also intended to set forth, in part, the rules and regulations of the Authority applicable to the GRP and the Project. The Authority is authorized to adopt rules and regulations under Section 10f of the Act and, therefore, any violation of this Rate Order shall be deemed a violation of such rules and regulations. The Authority may exercise any remedy specified under the Addenda or the GRP Contracts, or otherwise available in law or equity to the Authority, where a violation of this Rate Order occurs or is threatened to occur. The right to exercise any such remedy under the Addenda or the GRP Contracts shall not be deemed to be waived by the exercise of any remedies specified herein, specifically including but not limited to the imposition of penalties, which remedies shall be cumulative.

#### ARTICLE XII

#### **MISCELLANEOUS**

Section 12.01: Conflict with Addenda or GRP Contracts. In the event that any provision of this Rate Order is in conflict with any provision of the Addenda or the GRP Contracts, the terms and provisions of this Rate Order shall control unless the Addenda or GRP Contracts specifically provide otherwise.

Section 12.02: Future Amendments. As determined necessary by the Authority, the Authority reserves the right to amend from time to time: (1) the rates, charges and fees contained in this Rate Order; and (2) any other terms and provisions of this Rate Order.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

#### PASSED AND APPROVED on June 23, 2016.

President, Board of Directors

ATTEST:

Secretary, Board of Directors

(SEAL)

#### CERTIFICATE

THE STATE OF TEXAS	8
	§
COUNTY OF MONTGOMERY	§

- I, the undersigned General Manager of the San Jacinto River Authority (the "Authority"), hereby certify as follows:
- 1. That I am the duly qualified and acting General Manager of the Authority, and that as such, I have custody of the minutes and records of the Authority.
- 2. That the Board of Directors of the Authority convened in Regular Session on June 23, 2016, at the regular meeting place thereof, and the roll was called of the duly constituted officers and members of the Board of Directors, to-wit:

Lloyd B. Tisdale	President
Fred Koetting	Vice President
John Eckstrum	Secretary
Michael Bleier	Treasurer
James Alexander	Director
Ronald Anderson	Director
Gary Renola	Director

and all of said persons were present, except Director(s) Belex, thus constituting a quorum, whereupon, among other business, the following was transacted at such meeting: a written

#### RATE ORDER

(GRP PARTICIPANTS)

Order No. 2016-0-01

was duly introduced for the consideration of the Board of Directors. It was then duly moved and seconded that such Order be adopted and, after due discussion, such motion, carrying with it the adoption of such Order, prevailed and carried by the following vote:

AYES: 6 NOES: 8

3. That a true and correct copy of such Order adopted at such meeting is attached to and follows this certificate; that such Order has been duly recorded in the minutes of the Board of Directors for such meeting; that the persons named in the above and foregoing Paragraph 2. were the duly chosen, qualified and acting officers and members of the Board of Directors as indicated therein, that each was duly and sufficiently notified officially and personally, in advance, of the time, place and purpose of such meeting, and that such Order would be introduced and considered for adoption at such meeting, and that each consented in advance, to the holding of such meeting for such purpose; that the

canvassing of the officers and members of the Board of Directors present at and absent from such meeting and of the votes of each on such motion, as set forth in the above and foregoing Paragraph 2., is true and correct; that such meeting was open to the public as required by law; and that sufficient and timely notice of the hour, date, place and subject of such meeting was given and posted as required by Chapter 551, Texas Government Code, as amended.

SIGNED AND SEALED the 23 day of June, 2016.

(SEAL)

## EXHIBIT D

#### CERTIFICATE FOR RESOLUTION

I.

On the 16th day of August, 2016, the City Council of the City of Conroe, Texas, consisting of the following qualified members, to-wit: **Toby Powell, Mayor; Duke Coon, Mayor Pro Tem; Council Members Guy Martin, Gil Snider, Seth Gibson and Duane Ham**, did convene in public session in the Council Chambers of the City Hall at 300 West Davis in Conroe, Texas. The roll being first called, a quorum was established, all members being present. The Meeting was open to the public and public notice of the time, place and purpose of the Meeting was given, all as required by Chapter 551, Texas Government Code.

II.

WHEREUPON, AMONG OTHER BUSINESS transacted, the Council considered adoption of the following written Resolution, to-wit:

#### RESOLUTION NO. 4297-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CONROE, TEXAS, REFUSING TO PAY A PROPOSED INCREASE IN SJRA FEES, RATES AND CHARGES; CALLING UPON THE SAN JACINTO RIVER AUTHORITY TO INDEFINITELY SUSPEND IMPLEMENTATION OF THE PROPOSED INCREASE; PROVIDING FOR EFFECTIVE DATE OTHER RELATED MATTERS

III.

Upon motion of Council Member Ham, seconded by Council Member Gibson, all members present voted for adoption of the Resolution. A majority of those Council Members present having voted for adoption, the presiding officer declared the Resolution passed and adopted.

IV.

A true, full and correct copy of the Resolution adopted at the Meeting is attached to and follows this Certificate.

SIGNED AND SEALED this 16th day of August, 2016.

SOCO M. GORION, City Secretary

#### **RESOLUTION NO. 4297-16**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CONROE, TEXAS, REFUSING TO PAY A PROPOSED INCREASE IN SJRA FEES, RATES AND CHARGES; CALLING UPON THE SAN JACINTO RIVER AUTHORITY TO INDEFINITELY SUSPEND IMPLEMENTATION OF THE PROPOSED INCREASE; PROVIDING FOR EFFECTIVE DATE OTHER RELATED MATTERS

\* \* \* \* \* \* \* \*

WHEREAS, the Lone Star Groundwater Conservation District (the "Lone Star District") and the San Jacinto River Authority ("SJRA") have worked in combination to promote a false narrative based on bad science to create an alleged "crisis" in groundwater supply when in fact hundreds of thousands of acre feet of usable groundwater is readily and economically available to satisfy the present and future needs of Montgomery County and the City of Conroe; and

WHEREAS, this "crisis" became the vehicle by which the SJRA, holding a monopoly on the only significant alternative to groundwater in Montgomery County, proposed its Groundwater Reduction Plan ("GRP") to "solve" the alleged "crisis" by conscripting large volume groundwater users to subsidize the SJRA's otherwise unviable plan to construct a surface water plant on Lake Conroe; and

WHEREAS, driven by the Lone Star District regulations, numerous large volume groundwater users acting in good faith based on the false "crisis" narrative, joined the SJRA GRP and entered into the GRP Contract whereby the SJRA agreed to keep the City of Conroe and other similar GRP participants in compliance with the rules and regulations of the Lone Star District; and

WHEREAS, pursuant to section 6.02 of the GRP Contract and as consideration for such services the SJRA is authorized to establish fees, rates and charges which at all times *shall be the lowest which are consistent with good management practices and are just, reasonable and nondiscriminatory* and that are otherwise necessary and proper under the GRP Contract and are consistent with the SJRA's statutory and constitutional responsibilities; and

WHEREAS, by its rate order 2016-0-01 dated June 23, 2016 the SJRA ordered a substantial increase in the rates and charges applicable to participants in the SJRA GRP; and

WHEREAS, according to the SJRA's own budget presentations the proposed rates are designed to collect substantially more revenue than necessary for operation of the GRP and the increase is intended to allow the SJRA to accumulate a cash reserve far in excess of reasonable and customary standards; and

WHEREAS, the proposed rates are neither low nor just and it is increasingly apparent that the GRP Contract is the disastrous product of a rigged system in which a few, powerful,

unelected members of the Lone Star District and SJRA boards of directors exercise control over the citizens of Conroe and Montgomery County without being accountable to those citizens or subject to any meaningful oversight:

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CONROE, TEXAS:

Section 1. It is outrageous that the SJRA proposes to increase GRP rates in order to balloon its bank account at a time when many families and small businesses struggle to make ends meet. The City of Conroe refuses to subject its rate payers to the additional burden of the proposed increase. The City Council directs that the City of Conroe continue to pay, under duress, GRP fees at the rates presently in effect until further order of the City Council and that the City refuse payment of the increase in fees, rates or charges.

Section 2. The City Council demands that the SJRA indefinitely suspend the implementation of the increase in GRP rates and charges.

Section 3. Pursuant to Texas Government Code Chapter 552, the Texas Public Information Act, the City Council demands that the SJRA provide to the City of Conroe copies of all reports, studies, tabulations of data, evaluations, or recommendations requested, used or considered in any way by the SJRA for the purpose of setting the GRP fees, rates and charges or adopting any rate order under the GRP contract including, but not limited to the rate order adopted on June 23, 2016, together will all letters, memorandum, emails, text messages or other communications in any form to or from any member of the SJRA staff or members of its governing body concerning the establishment or setting of the GRP fees, rates and charges.

Section 4. This resolution shall be effective immediately upon adoption.

PASSED AND APPROVED this 16th day of August, 2016.

TOBY POWELL, Mayor

APPROVED AS TO FORM:

ATTEST:

MARCUS L. WINBERRY, City Attorney

SOCO M. GORJON, City Secretary

# EXHIBIT E

CONTRACT
FOR GROUNDWATER REDUCTION PLANNING,
ALTERNATIVE WATER SUPPLY, AND
RELATED GOODS AND SERVICES
BY AND BETWEEN
THE SAN JACINTO RIVER AUTHORITY AND
THE CITY OF CONROE, TEXAS

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# CONTRACT FOR GROUNDWATER REDUCTION PLANNING, ALTERNATIVE WATER SUPPLY, AND RELATED GOODS AND SERVICES BY AND BETWEEN THE SAN JACINTO RIVER AUTHORITY AND THE CITY OF CONROE, TEXAS

THIS CONTRACT FOR GROUNDWATER REDUCTION PLANNING, ALTERNATIVE WATER SUPPLY, AND RELATED GOODS AND SERVICES ("Contract") is made and entered into as of May 1, 2010, by and between the SAN JACINTO RIVER AUTHORITY ("Authority"), a conservation and reclamation district, body politic and corporate and a governmental agency of the State of Texas created and operating under the provisions of Chapter 426, Acts of the 45th Texas Legislature, Regular Session, 1937, as now or hereafter amended (the "Act"), enacted pursuant to the provisions of Section 59 of Article XVI of the Texas Constitution, and THE CITY OF CONROE, TEXAS ("Participant"), a municipal corporation and home-rule city, principally located in Montgomery County, Texas.

#### <u>W I T N E S S E T H:</u>

#### RECITALS

**WHEREAS,** the Lone Star Groundwater Conservation District (the "Conservation District") was created by the Texas Legislature to conserve and protect the groundwater aquifers beneath Montgomery County and, in that regard, the Conservation District has established a District Regulatory Plan (the "Plan") to reduce groundwater production from certain aquifers located within Montgomery County by its establishment of regulatory deadlines subject to enforcement; and

**WHEREAS,** the Authority provides wholesale water service to the territory shown on **Exhibit A** hereto through the Authority's pumpage of groundwater from wells operated pursuant to various permits issued by the Conservation District; and

**WHEREAS,** Participant provides wholesale and/or retail water service to the territory shown on **Exhibit B** hereto through Participant's pumpage of groundwater from wells operated pursuant to permits issued by the Conservation District listed and described on **Exhibit C** hereto; and

**WHEREAS**, the Authority and Participant are each a non-exempt large volume groundwater user subject to the Conservation District's groundwater reduction requirements under the Plan ("Regulated User"); and

**WHEREAS**, the Plan requires each Regulated User to submit to the Conservation District a groundwater reduction plan which sets forth, among other items, (a) a source for water

supply, or water conservation methods in certain circumstances, that will effect a reduction in the Regulated User's groundwater pumpage sufficient to meet the Conservation District's groundwater reduction requirements, (b) evidence, if and as necessary, that a current or proposed water supplier to the Regulated User has sufficient alternative water supplies and/or rights to effect the Regulated User's required reduction in groundwater pumpage under the Plan based on the Regulated User's present and projected total water demands, (c) a preliminary engineering feasibility report of the proposed facilities to be designed, permitted, constructed, operated, maintained, and administered in order for the Regulated User to meet the first phase of the Conservation District's groundwater reduction requirements; and (d) conceptual plans of the proposed facilities to be constructed in order for the Regulated User to meet the second and any subsequent phases of the Conservation District's groundwater reduction requirements; and

WHEREAS, the Plan allows two or more Regulated Users to (a) enter into contractual agreements to share costs or cooperate in ways that achieve orderly reductions in total groundwater usage and conversions to alternative water supplies, and/or (b) join with other Regulated Users for the purpose of reducing groundwater withdrawals and achieving orderly compliance with the Conservation District's groundwater reduction requirements; and

WHEREAS, the Authority has developed supplies of surface water that, when taken together with groundwater withdrawals to be permitted by the Conservation District under the Plan, are reasonably believed to be adequate to satisfy the present and projected total water demands of Montgomery County for the planning period extending through 2045, as established by the Conservation District under the Plan, and may hereafter further develop supplies of surface water in accordance with certain procedures set forth herein that, when taken together with groundwater withdrawals to be permitted by the Conservation District under the Plan, are adequate to satisfy the present and projected total water demands of Montgomery County through the Contract Term; and

**WHEREAS,** the Authority has heretofore prepared and submitted to the Conservation District a Water Resources Assessment Plan (the "<u>WRAP</u>") which preliminarily addressed many of the items to be included in a groundwater reduction plan sufficient to meet the Conservation District's requirements; and

WHEREAS, as set forth in the WRAP, a number of Regulated Users and the Authority have preliminarily developed a preliminary, collective solution in response to the Conservation District's groundwater reduction requirements whereby a surface water treatment and transmission system (the "Project") is proposed to be designed, permitted, constructed, operated, maintained, and administered by the Authority in order to provide phased treatment, transmission and delivery of the Authority's surface water supplies to certain Regulated Users serving densely populated areas of Montgomery County, for blending with the groundwater supplies of such Regulated Users, so that other Regulated Users may continue to pump groundwater; and

**WHEREAS,** the Authority and Participant deem it necessary and appropriate at this time to enter into a contract setting forth the terms and conditions under which the Authority, Participant, and any other Regulated User that executes a written agreement in a form substantially similar hereto (collectively, the "Participants"), will form a group to achieve overall

compliance with the Plan in an efficient and cost effective manner, similar in concept to the proposal in the WRAP, but subject to the further terms and conditions set forth herein, by and through the Authority's provision of certain goods and services to Participants, including: (a) the development and administration of a groundwater reduction plan ("GRP") by the Authority that includes all Participants, (b) the design, permitting, construction, operation, maintenance, and administration of the Project and related facilities, improvements, appurtenances, property, and interests in property by the Authority, (c) the sale of treated surface water by the Authority to certain Participants and, to the extent necessary and feasible, the development by the Authority of additional surface water supplies, (d) the delivery of treated surface water to certain Participants through the Project, (e) the administration of the GRP and the Project by the Authority in a manner that will over-convert certain Participants to treated surface water supplies (but not necessarily eliminate the need for groundwater usage by such Participants under certain conditions), such that other Participants and future Participants may continue to develop, produce, and utilize groundwater, (f) the financing by the Authority of design, permitting, construction, and other costs related to the Project, (g) the establishment and administration of the Project and of rules, regulations, policies, and procedures relating to the development, implementation, operation, maintenance, and enforcement of the Project and the GRP ("Rules"), and (h) the establishment, collection, enforcement, and application of fees, rates, and charges for treated surface water delivered to certain Participants through the Project, groundwater pumped by Participants, breach or violation of this Contract or any similar Participant contract, or any Rule, in order to timely and adequately fund the costs associated with the Project, and achieve and maintain compliance with the GRP and the groundwater reduction requirements under the Plan; and

**WHEREAS,** the Authority is authorized to enter into this Contract pursuant to the Act and Sections 49.068(b) and 49.213 of the Texas Water Code; and

**WHEREAS,** Participant is authorized to enter into this Contract pursuant to its City Charter and Section 49.068(b) of the Texas Water Code.

#### **AGREEMENT**

**NOW, THEREFORE**, for and in consideration of the premises and of the mutual covenants and agreements herein contained, and the goods and services to be provided and rendered by the Authority hereunder, and the payments to be made by the Authority and Participant hereunder, the Authority and Participant do mutually agree as follows:

#### **ARTICLE I**

Definitions; Interpretations; Consideration

<u>Section 1.01</u>: <u>Definitions</u>. In addition to terms defined elsewhere in this Contract, and unless the context requires otherwise, the following terms used in this Contract have the meanings set forth below and, to the extent applicable, supplement terms defined elsewhere in this Contract:

- (a) "Applicable Interest Rate" means the highest net effective interest rate, as defined by Section 1204.005, Texas Government Code, on any outstanding issue or series of Bonds of the Authority sold in a public offering to finance or maintain all or any portion of the Project, or if none, an interest rate calculated by the Authority equal to one percent (1%) above the highest average interest rate reported by the Daily Bond Buyer in its weekly "20 Bond Index" during the one-month period preceding the date of such calculation.
  - (b) "Alternative Strategies" is defined in Section 2.02 hereof.
- (c) "<u>Authority</u>" is defined in the Recitals hereto and means and includes the legal successors or assigns of the Authority.
  - (d) "Authority Meters" is defined in Section 5.02 hereof.
  - (e) "Bonds" is defined in Section 8.01 hereof.
- (f) "Conservation District" is defined in the Recitals hereto and means and includes the legal successors or assigns of the Conservation District.
- (g) "Contract" is defined in the Recitals hereto and means and includes any supplements or amendments to this Contract.
  - (h) "Contract Term" is defined in Section 12.01 hereof.
  - (i) "Contract Quantity" is defined in Section 4.09 hereof.
- (j) "<u>Days</u>" means calendar days and not business days, unless otherwise expressly provided in this Contract.
  - (k) "Effective Date" means the date first written above.
- (l) "Emergency Condition" means a condition that poses an unacceptable risk of a serious health hazard, an unreasonable risk of economic loss to the Project or GRP, or an unreasonable risk that Conservation District deadlines under the Plan will not be time met, and which requires immediate action.
- (m) "GRP" is defined in the Recitals hereto and means and includes the groundwater reduction plan to be developed, filed, and amended as necessary, by the Authority pursuant to Article II hereof, and administered by the Authority hereunder, including any supplements, revisions, or amendments to the GRP.
- (n) "GRP Administrator" means the General Manager of the Authority, or his or her designee, including any Deputy General Manager or other staff member of the Authority, a representative of an independent engineering firm engaged by the Authority to act as "Program Manager," or any other public or private entity or person who may hereafter by delegation from the Authority exercise the functions of the GRP Administrator.

- (o) <u>"Houston Contract"</u> means that certain Water Supply Contract between the City of Houston, Texas, and the Authority, effective as of October 16, 2009.
  - (p) "Measuring Equipment" is defined in Section 4.06(a)(2) hereof.
  - (q) "On-Site Facilities" is defined in Section 4.06(a) hereof.
- (r) "Participant" is defined in the Recitals hereto and means and includes the legal successors or assigns of Participant.
  - (s) "Participant Meters" is defined in Section 4.06(a)(1) hereof.
- (t) "Participants" is defined in the Recitals hereto and means and includes the Authority, Participant, and any other Regulated User that enters into and remains subject to a written agreement with the Authority in a form substantially similar to this Contract.
- (u) "Participant's System" means all Wells, pipelines, storage facilities, and other facilities comprising Participant's water supply and distribution system.
- (v) "Participant System Site" means the water plant site, or water plant sites, upon which the facilities of Participant's System for receiving Water are principally located.
  - (w) "Party" means either the Authority or Participant.
  - (x) "Parties" means both the Authority and Participant.
  - (y) "Payment Commencement Date" means August 1, 2010.
- (z) "<u>Plan</u>" is defined in the Recitals hereto and means and includes any amendments, revisions or supplements thereto as may be adopted by the Conservation District on or after the Effective Date.
- (aa) "Point of Delivery" for Participant means the point or points (i.e., the downstream flange of the Authority Meter(s)) where Water from the Project is delivered to Participant's System.
- (bb) "Private Well Owner" means a Participant that is a water supply corporation, private entity (including one that generates electricity, manufactures goods, or owns or operates a golf course), or an investor owned utility.
- (cc) "Project" is defined in the Recitals hereto and means and includes the entire project to be developed by the Authority pursuant to this Contract to divert, treat, and supply potable water (whether derived from surface water, groundwater, or other sources) to the Point of Delivery, including all land, rights-of-way, easements, contract rights, plants, pipelines, machinery, equipment, appurtenances, and related tangible and intangible properties comprising same, and any water rights and related raw water facilities and conveyances acquired or

constructed for the benefit of the Participants with Project revenues pursuant to Section 9.01(b) hereof, save and except (i) On-Site Facilities; (ii) any surface water diversion, treatment, storage, pumping, transmission, transportation, or delivery facilities and equipment heretofore or hereafter developed, acquired, or constructed by the Authority out of revenues or resources other than Project revenues, unless otherwise intended for the benefit of the Participants pursuant to Section 9.01(b) hereof, and any related water rights, water supply contracts, or similar permits, certificates, or rights to divert, store, or appropriate surface water; (iii) all or any part of any water supply systems or facilities (whether or not physically connected to the Project) designed, permitted, financed, constructed, purchased, or otherwise acquired by the Authority, or by any customer of The Woodlands Division of the Authority, or the successors or assigns of any such customer, without the use of Project revenues (other than with respect to any On-Site Facilities), for producing, transporting, treating, and distributing water within or for providing service to the Authority's service area shown on Exhibit A hereto, as such Authority service area may be expanded, reduced, or otherwise modified from time to time, together with such improvements, extensions, enlargements, replacements, additions, modifications, or betterments thereto now or hereafter designed, permitted, constructed, purchased, or otherwise acquired by the Authority, and including all or any part of any such water supply system or systems from which water supply services are or will be furnished or made available to such Authority service area; and (iv) all works, facilities, improvements, interests in property, plants, equipment, contract rights, water rights, permits, and other assets and properties of the Authority needed for and used in connection with the conservation, storage, diversion, appropriation, use, transportation, distribution, treatment, or delivery of water, under or pursuant to the rights, powers, and authority granted under or evidenced by Certificate of Adjudication Nos. 10-4963, 10-4964, and 08-4279, and Water Permit Nos. 5271, 5807, 5808, and 5809, as amended, issued by the TCEQ, or its predecessor, as same may be now or hereafter amended, including, without limitation, any such permits and certificates relating to the Authority's undivided interest in and to the Lake Conroe Dam and Reservoir, located on the West Fork of the San Jacinto River near the City of Conroe, Texas, the Authority's Highlands Reservoir, located in southeast Harris County near the unincorporated community of Highlands, Texas, the Authority's Canal System, extending from Lake Houston to and beyond Highlands Reservoir in southeast Harris County, and all related pump stations, pipelines, canals, siphons and storage, control, diversion, measurement, distribution, and delivery facilities and all improvements, extensions, enlargements, replacements, additions or betterments thereto now existing or hereafter purchased, constructed or acquired by the Authority, or under or pursuant to any further or additional water rights, certificates, or permits hereafter acquired by the Authority, other than through the use of Project revenues.

(dd) "Rate Order" means the prevailing order or resolution duly adopted by the Board of Directors of the Authority, to the extent not contrary to, inconsistent with, or prohibited by the terms and provisions of this Contract, which sets forth (i) the groundwater pumpage fee established for purposes of Section 6.02(1) hereof and any related provisions of this Contract, and (ii) the rate for Water for purposes of Section 6.02(2) hereof and any related provisions of this Contract, and (iii) any other charges permitted to be established, charged, collected, or enforced hereunder.

- (ee) "Regulated User" is defined in the Recitals hereto and means and includes any public or private entity or person that is or becomes subject to the Plan on or after the Effective Date
- (ff) "Review Committee" means the committee to be organized and established pursuant to Section 2.06 hereof.
- (gg) "Rules" is defined in the Recitals hereto and means and includes any rules, regulations, policies, or procedures deemed necessary and proper and duly adopted by the Board of Directors of the Authority for or relating to the development, implementation, operation, maintenance, or enforcement of the Project and the GRP, to the extent not contrary to, inconsistent with, or prohibited by the terms and provisions of this Contract, and all related amendments, revisions or supplements thereto.
- (hh) "<u>TCEQ</u>" means the Texas Commission on Environmental Quality and includes any board, agency, commission, or department of the State of Texas succeeding to the principal duties and responsibilities of the TCEQ.
  - (ii) "Water" means treated surface water delivered through the Project.
- (jj) "<u>Well</u>" means any current or future groundwater well operated by Participant, whether currently in operation or, at Participant's discretion, placed into operation hereafter, and specifically including each groundwater well identified under <u>Exhibit C</u>, that is subject to the Conservation District's groundwater reduction requirements under the Plan.
  - (kk) "Wells" means each and every Well, collectively, whether one or more.
- <u>Section 1.02</u>: <u>Titles, Headings, and Exhibits</u>. (a) The titles, heading, and captions appearing in the articles of this Contract and following each numbered section of this Contract are inserted and included solely for convenience and shall never be considered or given any effect in construing this Contract, or any provision hereof, or in connection with the duties, obligations, or liabilities of the respective Parties hereto or in ascertaining intent, if any questions of intent should arise.
- (b) The exhibits attached hereto are incorporated as part of this Contract for all purposes.
- <u>Section 1.03</u>: <u>Interpretation of Contract</u>. (a) This Contract and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Contract.
- (b) Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and *vice versa*, and words of the singular number shall be construed to include correlative words of the plural number and *vice versa*. The word "include", and any of its derivatives, shall be interpreted as

language of example and not of limitation, and shall be deemed to be followed by the words "without limitation", unless otherwise expressly provided herein.

(c) The Parties agree that this Contract shall not be construed in favor of or against a Party on the basis that the Party did or did not author this Contract.

Section 1.04: Nature and Sufficiency of Consideration. By and through the execution of this Contract, the Authority agrees to provide certain goods and services to Participant, including: (a) the development and administration of a GRP that includes Participant, (b) the design, permitting, construction, operation, maintenance, and administration of the Project and related facilities, improvements, appurtenances, property, and interests in property by the Authority, as necessary to implement the GRP and thereby benefit Participant, (c) the sale of treated surface water by the Authority to certain Participants, as necessary to implement the GRP and thereby benefit Participant, (d) the administration of the GRP and the Project by the Authority, (e) the financing by the Authority of design, permitting, construction, and other costs related to the Project, (f) the establishment and administration of the Project, the GRP, and the Rules, and (g) the establishment, collection, enforcement, and application of fees, rates, and The Authority acknowledges that an essential element of the consideration for Participant to enter into this Contract is that the Authority will adopt, implement and enforce the GRP in good faith and with due diligence for the purpose and objective of achieving and maintaining compliance with the Plan. In consideration of the foregoing, Participant agrees to pay the Authority certain fees, rates, and charges pursuant to the terms and provisions of this Contact, including Article VI hereof. The Parties acknowledge the sufficiency of such consideration.

## **ARTICLE II**

Groundwater Reduction Plan; Review Committee

Section 2.01: Purposes of GRP. The purpose of the GRP is to set forth the general plan of the Authority to reduce groundwater withdrawals by certain Participants so that, collectively, all Participants will achieve and maintain compliance with the Conservation District's groundwater reduction requirements under the Plan, including information regarding (a) the Authority's development and procurement of all necessary contractual rights and agreements needed to reduce the groundwater withdrawals of the Participants, (b) the design, permitting, construction, operation, and maintenance of infrastructure necessary to reduce the groundwater withdrawals of the Participants, (c) the land, easements, rights-of-way, and other interests in real property needed in connection with such infrastructure, (d) any permits or regulatory authorizations required under federal, state, or local laws, and (e) the manner and methods by which the Authority proposes to finance the foregoing.

Section 2.02: Development of the GRP. (a) The Authority shall develop a single GRP for all Participants. In general, the intent of the Participants is that the GRP will be based upon the Project such that the Authority will design, permit, construct, own, operate, maintain, and administer certain infrastructure, in phases, that will withdraw raw surface water from Lake Conroe, and other sources that may be developed if necessary, for treatment and transmission to

certain Participants. As provided in this Contract, such Participants will be required by the Authority to utilize surface water and groundwater resources in a manner that will allow other Participants and new Participants to continue to develop and utilize groundwater resources and minimize the costs to all Participants to comply with the Conservation District's groundwater reduction requirements under the Plan. Further, the intent of the Participants is that the GRP will provide for an amount of surface water to be utilized by certain Participants that will be sufficient to allow for the continued development and use of groundwater resources by all Participants, including those utilizing surface water, in a manner that, to the greatest extent practicable, is unimpeded by the requirements of the Plan.

- (b) In order to equitably distribute the costs of compliance among the Participants, all Participants will pay certain fees to the Authority for their groundwater usage, and those Participants that will be served by the Project will additionally pay the Authority the prevailing rate for Water. As provided in this Contract, the Authority's fees, rates, and charges will be established so that Participants are neither benefited nor penalized for being required to take Water from the Project, or for relying solely upon groundwater resources to meet their demands. The Authority's determination as to which Participants will receive Water will be made based upon factors (i) through (v) described in Section 4.02(a).
- (c) The Authority reserves the right to include strategies in the GRP, in addition to the Project, that are reasonably determined by the Authority to be beneficial to all Participants, for the reduction in groundwater usage and compliance with the Conservation District's groundwater reduction requirements under the Plan, which strategies (collectively, "Alternative Strategies") may include (i) the re-use of treated wastewater effluent for beneficial purposes that would otherwise require the use of groundwater supplies, (ii) the sale of raw or untreated surface water for beneficial uses that would otherwise require the use of groundwater supplies, (iii) incentives to conserve water usage or implement water re-use, or (iv) other projects that confer a benefit to all Participants such that equity requires that the costs of same be shared among all Participants. The Parties acknowledge that this Contract is not intended, and shall not be deemed or construed, to authorize or permit the Authority to require Participant to undertake any Alternative Strategies nor to require Participant to take any water from the Authority other than Water. The Authority reserves the right to contract with Regulated Users and/or Participants relative to the implementation of Alternative Strategies for such purposes. If implemented by the Authority, Alternative Strategies shall be made available to all Participants, as reasonably practicable, on a uniform basis.
- (d) The GRP Administrator shall make available (in digital format) one or more drafts of the proposed GRP for review by Participant. Participant agrees to review each draft and promptly provide any comments it may have to the GRP Administrator.
- (e) The Authority may amend the proposed GRP, as it reasonably determines necessary or appropriate, to respond to comments it may receive from Participant, other Participants, the Conservation District or any state, federal, or other regulatory authority having jurisdiction, and it shall thereafter distribute (in digital format) the proposed GRP, as and if amended, to all Participants.

Section 2.03: Filing and Certification of the GRP. The Authority will use good faith and due diligence to (i) timely file a Declaration of Intent regarding the proposed GRP with the Conservation District, and Participant shall be included in such Declaration of Intent; (ii) timely file the proposed GRP for certification by the Conservation District to secure compliance with the Plan for the benefit of the Participants; and (iii) timely obtain approvals of the GRP in the time periods required by the Conservation District during the Contract Term so that the Participants, collectively, at all times during the Contract Term remain in compliance with the Plan and the groundwater reduction requirements imposed by the Conservation District. Upon certification of the GRP, the GRP Administrator shall provide written notice of same to the Participants and, if applicable, advise the Participants of any revisions to the GRP that were required in order to obtain such certification. The GRP Administrator shall provide a copy (in digital format) of the GRP, as certified, to the Participants if GRP Administrator determines that the latest copy provided under Section 2.02 hereof has been materially revised in order to obtain certification from the Conservation District.

Section 2.04: Amendment of the GRP. After certification of the GRP by the Conservation District, the Authority may amend the GRP only after providing all Participants with written notice of the proposed amendments, an explanation of the purpose of the proposed amendments, and a reasonable opportunity for the Participants to review and comment on the proposed amendments. The Authority may proceed with the proposed amendments, or may make modifications to same as it reasonably determines necessary or appropriate to respond to comments it may receive from Participant, other Participants, the Conservation District, or any state, federal, or other regulatory authority having jurisdiction, and it shall thereafter distribute (in digital format) the proposed GRP, as amended, to all Participants. If required, the Authority shall file the amended GRP with the Conservation District and seek certification of such amended GRP. Upon certification of the amended GRP, the GRP Administrator shall provide written notice of same to the Participants and, if applicable, advise the Participants of any revisions to the GRP that were required in order to obtain such certification. The GRP Administrator shall provide a copy (in digital format) of the amended GRP, as certified, to the Participants if the GRP Administrator determines that the latest copy provided under Sections 2.02, 2.03, or this Section 2.04, has been materially revised in order to obtain certification from the Conservation District.

<u>Section 2.05</u>: <u>Implementation and Enforcement of GRP</u>. The Authority covenants and agrees that it will diligently implement and enforce the GRP with the purpose that all Participants achieve and maintain compliance with the requirements of the Plan in a cost effective manner.

<u>Section 2.06</u>: <u>Review Committee</u>. (a) The GRP Administrator shall organize a Review Committee consisting of six (6) members for the purpose of advising the Authority as to the matters set forth in Section 2.10 hereof. The Review Committee shall be composed of the following:

(1) one member appointed by the Board of Trustees of The Woodlands Joint Powers Agency, or its successor;

- one member appointed by the City Council representing the City of Conroe;
- one member appointed pursuant to Section 2.07 hereof by Participants that are municipalities, exclusive of the City of Conroe;
- one member appointed pursuant to Section 2.07 hereof by Participants that are conservation and reclamation districts, other than members of The Woodlands Joint Powers Agency, or its successor, which are located primarily to the west of Interstate Highway 45;
- one member appointed pursuant to Section 2.07 hereof by Participants that are conservation and reclamation districts, other than members of The Woodlands Joint Powers Agency, or its successor, which are located primarily to the east of Interstate Highway 45; and
- one member appointed by the Conservation District who is an employee, director, or officer of a Private Well Owner.
- (b) The members of the Review Committee shall be entitled to vote on all matters before the Review Committee. If the City of Conroe is not a Participant at the time the Review Committee is first organized, then the member to be appointed by the City Council for the City of Conroe shall be replaced by an at-large member appointed by the Conservation District. If the City of Conroe subsequently becomes a Participant, such at-large member shall be removed and replaced by a member appointed by the City of Conroe to serve for the remainder of the removed member's term.
- (c) The Review Committee shall be constituted and organized by the GRP Administrator as soon as reasonably practicable. The Review Committee may be constituted and organized prior to the appointment of members pursuant to the provisions of Section 2.07 hereof, but no official actions of the Review Committee shall be taken or recognized prior to the initial appointment of the three (3) members identified in subdivisions (3) through (5) of subsection (a) hereof. In order to conduct the initial appointment of the members identified in subdivisions (3) through (5) of subsection (a) in an expedited fashion, the GRP Administrator is authorized to modify the dates described in Section 2.07 hereof.
- <u>Section 2.07</u>: <u>Appointment of Certain Review Committee Members by Vote.</u> (a) The three (3) members identified in subdivisions (3) through (5) of Section 2.06(a) hereof shall be initially appointed, reappointed, or replaced pursuant to the provisions of this section.
- (b) For each class of Participants to be represented by the Review Committee members identified in subdivisions (3) through (5) of Section 2.06(a) hereof, the GRP Administrator shall first determine the Participants comprising such class, and shall thereafter determine the number of votes each Participant within each such class may cast. The number of votes for a Participant is determined by dividing the total volume of water used by such Participant during the calendar year preceding the year in which the Review Committee member

is to be appointed, by the total volume of water used by all Participants within such Participant's class, multiplying that quotient by 100, and rounding that result to the nearest one-tenth. For purposes hereof, the GRP Administrator shall determine the amount of water used. The GRP Administrator shall provide the presiding officer of each Participant with written notice of the number of votes that may be cast by the governing body of such Participant.

- (c) Pursuant to reasonable procedures established by the GRP Administrator, the governing body of a Participant by resolution may nominate one candidate for membership on the Review Committee representing such Participant's class. A Participant shall submit the name of its candidate, if any, to the GRP Administrator by July 1. If, by July 1, only one candidate's name is submitted by all Participants of the same class for such member position, the Review Committee may declare the unopposed candidate elected and may cancel the appointment procedures generally required by this section for that position. If more than one candidate's name is submitted for a position, before August 1, the GRP Administrator shall prepare a ballot listing all of the candidates for such position and shall provide copies to the presiding officer of the Participants of the class appointing such member.
- (d) An individual may not be listed as a candidate on the ballot for more than one position. If a candidate is nominated for more than one position, the candidate must choose to be on the ballot for only one position.
- (e) The governing body of each Participant shall cast its votes by resolution submitted to the GRP Administrator before November 1. In casting its ballot, the governing body of each Participant may vote for only one candidate on the ballot. For each member position being appointed, the GRP Administrator shall count the votes, and the Review Committee shall thereafter declare appointed the candidate who received the greatest number of votes for each member position. The GRP Administrator shall submit the results before December 1 to the governing body of each Participant.
- (f) The GRP Administrator shall adopt all necessary procedural rules consistent with the provisions of this section.
- <u>Section 2.08</u>: <u>Terms of Office; Removal; Vacancies</u>. (a) Members of the Review Committee shall serve staggered four-year terms. At the organizational meeting of the Review Committee, the members shall draw lots to select three (3) members that shall each initially serve a two-year term, and the remaining members shall each initially serve a four-year term. Members of the Review Committee may be reappointed without limitation.
- (b) A member of the Review Committee may not be removed or recalled before the expiration of such member's term.
- (c) A vacancy created by the death, incapacity, or resignation of a member of the Review Committee shall be filled by the appointing entity, entities, or person for the remaining term of such member, but if such member was appointed pursuant to the provisions of Section 2.07 hereof, the Review Committee shall promptly take all actions necessary to fill such vacancy

using the general procedures set forth in Section 2.07 hereof. In such event, the Review Committee is authorized to modify the dates described in Section 2.07 hereof.

Section 2.09: Compensation and Qualification. No member of the Review Committee may, while serving on the Review Committee, also serve on the governing body of the Conservation District or the Authority or be an employee of the Conservation District or the Authority. No member of the Review Committee shall receive compensation from the Authority for their service, nor shall membership on the Review Committee constitute a civil office of emolument. A member who is an employee of a Participant may be compensated by such Participant. A member who serves on the governing body of a Participant may be compensated by such Participant. Members of the Review Committee may: (i) be appointed without regard to the common law doctrines of conflict of interest or incompatibility of official duties; and/or (ii), be members of any governing bodies of any Participants, or employees thereof, except as provided in this Section 2.09.

<u>Section 2.10</u>: <u>Activities of Review Committee</u>. (a) The Review Committee shall be authorized to make recommendations to the GRP Administrator regarding the following matters pertaining to the GRP or the Project:

- (1) conducting a review of (i) the initially proposed GRP, (ii) the then-current GRP not more frequently than annually, and (iii) any proposed amendments to the then-current GRP, including routing of the Project;
- (2) the development of (i) policies regarding the implementation of Alternative Strategies, (ii) minimum standards for water conservation plans pursuant to Section 3.05 hereof, and (iii) minimum standards for drought contingency plans pursuant to Section 3.05 hereof;
- (3) requests from Participants to make connections to the Project under Section 4.04 hereof;
- (4) proposed mandatory connections to the Project under Section 4.05 hereof;
- (5) requests from Participants to increase the Contract Quantity specified by the GRP Administrator under Section 4.09(b) hereof;
- (6) participating in progress reviews with respect to Project infrastructure at the preliminary design and final design stages and making related recommendations to the GRP Administrator;
- (7) the construction, maintenance, and operation of the Project;
- (8) fees, rates, or charges adopted or to be adopted by the Authority under the Rate Order or pursuant to this Contract;

- (9) the annual budget to be adopted by the Authority, pursuant to Section 9.03(a)(1)(i) hereof, and any amendments thereto;
- (10) the terms of the Bonds pertaining to the Project or the GRP that are to be issued by the Authority;
- (11) breaking a tie in the selection of a mediator, as provided in Section 11.03 hereof; and
- other matters pertaining to the GRP and its implementation that the GRP Administrator and/or the Authority may request from time to time;

provided, however, that the Review Committee shall not be authorized to review or make recommendations regarding (i) the hiring, engagement, compensation, supervision, management, discipline, discharge, or termination of any employees or third-party consultants, or contractors not directly performing services related to the Project and/or the GRP, (ii) the organizational structure of the Authority and the general and administrative services provided by the Authority in connection with the Project and/or the GRP, including accounting procedures or cost allocation methods utilized by the Authority, except to the extent that the costs for the Authority's general and administrative services are a component of the fees, rates, or charges adopted or to be adopted by the Authority under the Rate Order, or are a component of the annual budget to be adopted pursuant to Section 9.03(a)(1)(i) hereof, or (iii) the acquisition of real property or interests in real property in connection with the Project. Nothing herein shall be deemed or construed to limit the Review Committee's consideration, discussions or recommendations to the GRP Administrator regarding any other matters pertaining the GRP or the Project that are not listed in items (1) through (12) above; provided, however, that any recommendations on such other matters shall not be subject to or serve to initiate the procedures described in Section 2.11 hereof.

- (b) The Review Committee shall adopt procedures not inconsistent with the provisions of this Contract applicable to the conduct of meetings and the procedures and the activities of the Review Committee. If any member should be absent at a meeting of the Review Committee, or in the event of a failure to appoint a member or a vacancy of a member on the Review Committee, a majority of the members of the Review Committee present shall be sufficient and required for any vote to be effective or to transact business except as provided in Section 2.12 hereof.
- (c) The Review Committee shall be subject to the requirements of Chapters 551 (Open Meetings Act) and 552 (Public Information Act) of the Texas Government Code.
- (d) The GRP Administrator shall provide necessary administrative support for the Review Committee including notices for meetings, meeting facilities, and clerical assistance for meeting notes, minutes, correspondence, and filing. The Authority shall provide the Review Committee with prompt access to, and a reasonable number of copies of, records, reports, and data pertaining to the Project, the GRP, and/or any fees, rates, and charges imposed or to be

imposed under this Contract which are not proprietary, confidential, or otherwise exempted from disclosure under Chapter 552, Texas Government Code.

- (e) The Authority shall, as an expense of the GRP, maintain directors and officers liability insurance coverage with a responsible insurance company or companies for the benefit of the members of the Review Committee in an amount not less than the amount of insurance provided for members of the Board of Directors of the Authority. To the extent allowed by such insurance coverage, the Authority shall defend and indemnify the members of the Review Committee for any losses, damages, claims, expenses, costs, or judgments, including reasonable attorneys fee and court costs, incurred by any of them as a result of or in connection with their good faith discharge of their duties on the Review Committee. All reasonable costs and expenses of the Review Committee shall be costs of the GRP and will be paid directly by the Authority.
- <u>Section 2.11</u>: <u>Coordination with Review Committee.</u> (a) Recommendations of the Review Committee made to the GRP Administrator or Board of Directors of the Authority are advisory only and shall not be binding upon the GRP Administrator and/or the Authority.
- (b) Except in the event of an Emergency Condition, as reasonably determined by the GRP Administrator, the GRP Administrator and Authority, prior to taking any action on any matter identified in Section 2.10(a)(1) through (12) hereof, shall present the matter to the Review Committee, according to the procedure set forth herein, to review and comment on the matter. In the event of an Emergency Condition, the GRP Administrator or Authority may take any reasonable action deemed appropriate by them without first presenting the matter to the Review Committee. In such event, the GRP Administrator shall notify the Review Committee members in writing of the nature of the Emergency Condition and the action taken by the Authority related thereto within three (3) days after the action is taken.
- The Review Committee shall meet no more often than once per month on a date (c) that is at least one week prior to the regular monthly meeting of the Board of Directors of the Authority for that month, at which time the Review Committee will conduct its business, including considering recommendations made by the GRP Administrator or making recommendations to the GRP Administrator for presentation to the Board of Directors of the Authority. The Review Committee may, upon formal request to and approval by the GRP Administrator, meet less often than once per month. At least one week prior to each Review Committee meeting, the GRP Administrator shall: (i) provide the Review Committee with written recommendations of the GRP Administrator regarding any matters on which the GRP Administrator or the Authority intend to take action during that month; (ii) make available reasonably necessary information, records, data, and reports to enable the Review Committee to analyze same or to analyze any recommendations made or to be made by the Review Committee; and (iii) identify any recommended actions which, if not approved or rejected by the Review Committee at such meeting, are likely to result in an Emergency Condition and the reasons therefor.
- (d) If the Review Committee approves the GRP Administrator's recommendation, the matter then goes before the GRP Administrator or the Board of Directors of the Authority, as

appropriate, for action. If the Review Committee is unable or unwilling to approve or reject the GRP Administrator's recommendation, the Review Committee may request additional information, records, data, or reports to aid its evaluation, and will consider the matter again at its next monthly meeting. If the Review Committee then approves the GRP Administrator's recommendation, or is still unable or unwilling to approve or reject the GRP Administrator's recommendation, the matter then goes before the GRP Administrator or the Board of Directors of the Authority, as appropriate, for action. Notwithstanding the foregoing, the Review Committee may not defer to its next monthly meeting any action regarding the award of a construction contract, the payment of construction contract pay requests, or the issuance of change orders to construction contracts. If the GRP Administrator approves a recommendation of the Review Committee made pursuant to Section 2.10(a) hereof, the matter then goes before the GRP Administrator or the Board of Directors of the Authority, as appropriate, for final action.

If the Review Committee rejects the recommendation of the GRP Administrator, or makes its own a recommendation that is rejected by the GRP Administrator, the Board of Directors of the Authority shall reasonably consider as soon as practicable, but not later than thirty (30) days thereafter, the Review Committee's rejection or its recommendation, as appropriate. The Board of Directors of the Authority shall be obligated to give reasonable consideration to all recommendations received from the Review Committee. If the Board of Directors of the Authority rejects a recommendation of the Review Committee, approves a recommendation of the GRP Administrator that was rejected by the Review Committee, or overrules a recommendation of the GRP Administrator that was approved by the Review Committee, the Board of Directors of the Authority shall prepare and deliver a written explanation to the members of the Review Committee and the reasons for the action of the Board of Directors of the Authority within fifteen (15) days of the date the Board of Directors of the Authority makes a final determination; and (ii) provide such written explanation to all Participants within the 15-day period by regular mail or by e-mail (if available), or by posting same within said 15-day period on the Authority's website. In no event is the GRP Administrator authorized to take action contrary to a recommendation of the Review Committee made pursuant to Section 2.10(a) hereof unless the GRP Administrator has submitted the matter to the Board of Directors of the Authority and the Board of Directors of the Authority has rejected the Review Committee's recommendation pursuant to this subsection (e).

Section 2.12: Review of Fees, Rates, and Charges. If requested by resolution or other written instrument adopted by an affirmative vote of a majority (but not less than three (3) members) of the Review Committee, the Board of Directors of the Authority shall engage an independent rate analyst to review and prepare a report regarding the fees, rates and charges adopted or to be adopted by the Authority pursuant to this Contract; provided, however, that such review shall not (i) be undertaken more frequently than annually, or (ii) unless authorized in writing by the Authority, encompass a review of the adopted and published rates of the Authority for the sale or reservation of raw water.

## **ARTICLE III**

Participant's Permits and Water Demands; Co-Permitting; Conversion Credits; Water Conservation

- <u>Section 3.01</u>: <u>Participant's Permits, Contracts, and Service Area</u>. (a) Participant represents that all of Participant's current Well permits issued by the Conservation District, and any applications pending with the Conservation District, are listed and described in <u>Exhibit C</u> attached hereto.
- (b) Upon request by the GRP Administrator, Participant shall timely provide the Authority a copy of any contract entered into by Participant whereby (i) Participant has the right to purchase water from another person or entity that is not a Participant, including emergency water supply contracts; or (ii) Participant has the obligation to sell or deliver water or capacity in Participant's System to another person or entity, whether a Participant or a non-Participant.
- Exhibit B depicts the geographic area served by Participant with reasonable accuracy, including any geographic area currently served under any contract entered into by Participant whereby Participant has the obligation to sell or deliver water (except for emergency water supply) or capacity in Participant's System to another person or entity, whether a Participant or a non-Participant. Participant shall amend such service area map, pursuant to the procedures set forth in Section 4.13 hereof, as necessary to keep such service area map accurate throughout the Contract Term.
- <u>Section 3.02</u>: <u>Participant's Historical Use and Demand Projections</u>. (a) Participant represents that the annual amount of groundwater that has been pumped from each of its Wells for each of the past five years is as set forth in the table attached hereto as <u>Exhibit D</u>.
- (b) Participant represents that its good faith projections of its total water demands through the year 2045 are set forth in the table attached hereto as **Exhibit E**. Participant agrees and acknowledges that such projections make reasonable allowance for any water that (i) Participant may purchase from another person or entity, and (ii) Participant has the obligation to sell or deliver to another person or entity. The Authority understands and agrees that such projections are merely estimates based on assumptions that will likely change over time and Participant does not warrant the accuracy thereof. Participant shall provide the Authority updated projections from time to time upon request by the GRP Administrator, or as Participant deems necessary from time to time in the absence of such a request by the GRP Administrator, and the GRP Administrator shall periodically review such updated projections for the purpose of establishing revisions to the Contract Quantity and/or the GRP as provided herein.
- <u>Section 3.03</u>: <u>Co-Permitting</u>. Participant agrees to allow co-permitting of its Wells if co-permitting is required by the Plan or any other rules or regulations of the Conservation District. If co-permitting is undertaken by the Authority, the GRP Administrator shall prepare and submit co-permitting documents, if and as required, to the Conservation District, including renewal documentation, and the costs therefor shall be considered a cost of the Project.

Participant agrees to provide the GRP Administrator such data and information as may be necessary for the Authority to prepare and file such documents. The GRP Administrator shall provide a copy of the co-permit and any renewals to Participant. Notwithstanding any co-permitting pursuant to the foregoing, Participant shall maintain ownership of its Wells and operational responsibility therefor, and, subject to the terms of this Contract, the right to pump groundwater therefrom in accordance with such co-permit. In the event the Conservation District adopts rules or regulations requiring consolidated Well permits, the Authority shall develop policies and procedures to accomplish same in coordination with the Review Committee and by providing Participants the ability to review and comment upon such policies and procedures.

Section 3.04: Conversion Credits. Participant agrees that to the extent it earns any surface water conversion credits, groundwater reduction credits, or similar credits, as and if offered and issued by the Conservation District, that directly result from the delivery of Water to Participant or directly result from an Alternative Strategy project funded with Project revenues, such credits shall be transferred to the Authority for the benefit of all Participants at no cost. Notwithstanding any provision of this Contract, any Alternative Strategies, or brackish groundwater production pursuant to Section 6.04(j) hereof, implemented or constructed by Participant without use of Project revenues, which result in surface water conversion credits, groundwater reduction credits, or similar credits, as and if offered and issued by the Conservation District, are not required to be transferred to the Authority hereunder and may be used, transferred, or otherwise disposed of by Participant in Participant's sole discretion. The Authority reserves the right to revise or update Participant's projected groundwater requirements under the GRP from time to time, including revisions or updates necessary to address Participant's modifications to its service area, Participant's groundwater conservation efforts, or Participant's implementation of Alternative Strategies or brackish groundwater production pursuant to Section 6.04(i). In no event shall the Authority be obligated to make payment to Participant to so revise or update Participant's projected groundwater requirements under the GRP.

Section 3.05: Water Conservation; Drought Contingency. Participant agrees to adopt and enforce a water conservation plan meeting the applicable minimum requirements of the Conservation District and the TCEQ (30 T.A.C. §§ 288.1-288.7, or any successor rules), as well as a drought contingency plan meeting the applicable minimum requirements of the Conservation District and the TCEQ (30 T.A.C. §§ 288.20-288.22, or any successor rules). Participant may, but shall not be obligated, to include provisions in such plans that exceed or are more stringent than the minimum requirements described in the preceding sentence. Such plans must be completed and filed with the GRP Administrator at such times as may be reasonably required by the GRP Administrator, without regard to whether Participant will connect to the Project. In addition, after review by the Review Committee, the Authority may require Participant to adopt and enforce minimum requirements adopted by the Authority for such water conservation plans and drought contingency plans but only if: (i) such minimum requirements apply on an equal and uniform basis to all Participants and to all entities located in whole or in part in Montgomery County to which the Authority supplies wholesale groundwater or Water; and (ii) the Authority has the legal right to impose such minimum requirements on all such entities to which the Authority supplies wholesale groundwater or Water.

## **ARTICLE IV**

The Project; Connection to the Project; On-Site Facilities; Quantity and Quality of Water

Section 4.01: Development of the Project; Title to Project. As between the Parties, the Authority shall be responsible for the design, permitting, financing, construction, operation, and maintenance of the Project, and shall have sole and exclusive title to the Project at all times. The Authority agrees that it will follow applicable laws, rules, and procedures in letting contracts for the construction and delivery of the Project. Unless Participant, at its discretion, agrees otherwise by separate instrument, in no event shall the Authority be allowed to: (i) use Participant's System to transport, store, pump, or pressurize Water (or any other type of water) delivered, or to be delivered, by the Authority; or (ii) require Participant to deliver Water (or any other type of water) to any person or entity.

Section 4.02: Design, Permitting, and Construction of the Project. (a) The Project shall be designed, permitted, and constructed, in phases, to achieve and maintain compliance with the various groundwater reduction requirements and deadlines of the Plan and to further the purposes of the GRP, as described in Section 2.01 hereof. In order to achieve compliance with the Plan in an efficient and cost effective manner, the Project may be designed, permitted, and constructed in such a manner that Water is supplied only to certain Participants, but in sufficient quantities to achieve overall compliance among all Participants. The design, permitting, and construction of the Project, as well as any determination as to which Participants may or shall connect to the Project under Sections 4.04 and 4.05 hereof, shall be undertaken in a manner that, to the extent practicable, gives consideration to (i) minimizing the overall costs of the Project, (ii) equalizing the costs for Participants to provide retail water services, including investment in groundwater facilities, (iii) avoiding conferring a special benefit or imposing a special burden on any particular Participant, group of Participants, or portion of Montgomery County, based upon proximity to, or the geographic location of, the Project, (iv) the need for Water due to thencurrent or anticipated water quality or quantity difficulties in groundwater supplies, and (v) any other factors deemed appropriate by the Authority and/or the GRP Administrator consistent with the objectives of the GRP. Notwithstanding the foregoing, the Authority reserves the right to reasonably determine to design, permit, and construct the Project in such a manner that Water is supplied to Participants with current or anticipated groundwater quality or quantity issues, even if other designs could achieve overall compliance with the Plan at a lower cost. Nothing herein shall be deemed or construed to permit or require the Authority to utilize GRP or Project funds for extensions, enlargements, improvements, repairs, modifications, or replacements to Participant's System, other than with respect to On-Site Facilities or as reasonably determined necessary by the GRP Administrator to deliver the Contract Quantity. A conceptual drawing of the Project is attached hereto as **Exhibit F** for informational purposes only. In a manner consistent with this Contract, the Project is subject to revision by the Authority, in whole or in part, at any time, and **Exhibit F** hereto shall not be construed to obligate the Authority to design, permit, construct, operate, or maintain the Project in accordance with same.

- To the extent that all or any portion of the Project will be constructed within or across property, road rights-of-way, or public utility easements owned, controlled or administered by Participant, or easements filed of record in favor of Participant, the Authority shall, prior to commencement of construction, submit plans therefor to Participant for review and approval, which approval shall not be unreasonably withheld or subjected to unreasonable review standards. Participant agrees that comments to such plans shall be provided to the Authority within thirty (30) days following submittal, or within ten (10) days following any resubmittal. After completion of construction of such portion of the Project, the Authority shall promptly notify the Participant of such completion, provide the Participant with record drawings of such portion of the Project, and request the inspection and approval by the Participant of any such portion of the Project, which approval will not be unreasonably withheld or delayed. In addition, the Authority shall comply with all of Participant's generally applicable requirements regarding construction, operation, or maintenance within Participant's jurisdiction, including building permit and traffic control requirements. If and to the extent Participant has jurisdiction with respect to the review or approval of plans, or the issuance of permits, related to the design, permitting, or construction of any other portion of the Project, no such plan review or approval or permits shall be required; provided, however, that the Authority shall nevertheless (i) consult with Participant prior to the commencement of construction of such other portion of the Project, and (ii) provide Participant with record drawings with respect to such other portion of the Project promptly following the completion of construction of same.
- If the Authority or its contractors or employees damage any streets, buildings, lights, trees, landscaping, irrigation lines, water lines, sanitary sewer lines, storm sewer lines, tanks, canals, or other facilities or structures owned, controlled, or operated by Participant (the "Participant Facilities"), then the Authority, as a Project cost and expense, will be responsible for the repair or replacement of the damaged Participant Facilities as nearly as practicable their prior condition, and the Authority shall immediately notify Participant of such damage. Such cost and expense shall be considered a Project cost and will be a responsibility of the separate operating division to be created and established pursuant to Section 9.03(a)(1) hereof, and not an obligation or responsibility of any other operating division of the Authority. The Authority will require its construction contractors to likewise be responsible for such costs and to maintain adequate liability insurance to cover such costs, but Participant shall (in addition to all other available remedies) have recourse against the Authority, as herein provided, and need not seek recourse from such contractors. The damaged Participant Facilities will be repaired or replaced by Participant or, if authorized by Participant, by the Authority's contractors or employees. If the Authority, or its contractors, shall make written request to Participant to locate and mark underground Participant Facilities prior to commencement of construction and Participant shall fail or refuse to accurately do so within five (5) business days of receipt of said request, then, to the extent any damage to Participant Facilities was caused as a result of such failure or refusal, no recourse shall be had against the Authority or its contractors under this subsection.

<u>Section 4.03</u>: <u>Easements</u>; <u>Right-of-Way</u>. (a) All easements affecting real property owned by Participant which are reasonably required by the Authority in connection with the Project shall be granted by Participant to the Authority, in a form substantially the same as that attached hereto as <u>Exhibit G</u>, unless otherwise approved in writing by the GRP Administrator, within forty-five (45) days after receipt of a written request therefor and without cost to the

Authority. The Authority agrees to confine any such required easement to a location reasonably acceptable to Participant and to use reasonable diligence to minimize impact of the easement and the Authority's use of the easement upon Participant's facilities and operations. Any relocation or modification of Participant's facilities within the easements to accommodate the Project shall be at the cost and expense of the Authority, borne as a Project cost, and the plans and specifications for same shall be subject to Participant's review and approval pursuant to the provisions of Section 4.02(b) hereof. Contemporaneous with its delivery of any such easements, Participant shall provide the Authority with the written consent, in a form acceptable to the GRP Administrator, of any lienholders having an interest in the property affected by such easements. Except as provided in this Section 4.03, the Authority shall obtain all other interests in property reasonably required for the Project.

Participant agrees and acknowledges that pursuant to Section 49.220, Texas Water Code, the Authority is authorized to use rights-of-way within, along, under, and across all public, state, county, city, town or village roads, highways, and rights-of-way and other public rights-of-way. Consistent with such statutory rights, Participant hereby confirms and grants the Authority the non-exclusive right to use any and all public rights-of-way within Participant's jurisdiction and subject to Participant's administration deemed necessary by the Authority for the construction, operation, and maintenance of the Project, or any portion thereof, subject only to (i) approval of plans therefor by Participant pursuant to the provisions of Section 4.02(b) hereof; and (ii) the obligation of the Authority to (1) restore such rights-of-way as nearly and as soon as practicable to their previous condition after such construction, operation, or maintenance is completed; provided, however, that unless otherwise permitted by Participant, the Authority will replace only the portions of the roadways that have been disturbed by construction, operation, or maintenance of the Project, in lieu of merely patching portions of such roadways; (2) relocate such Project facilities, if required, as a Project cost and expense; (3) make reasonable efforts to acquire and place the waterlines within easements from landowners adjacent to the roadway so as to minimize the disturbance to roadways; and (4) make reasonable efforts to utilize ditches, canals, and nearby pipeline or power-line easements as a route for waterlines instead of roadways. In consideration of the public benefit and other services, benefits, and good and valuable consideration provided to Participant under this Contract, the fees to be charged the Authority in respect of the foregoing are hereby established at \$1 per calendar year for so long as services are being provided by the Authority to Participant hereunder. The right-of-way agreement set forth in this Section 4.03(b) shall be for the maximum lawful term; provided, however, that if such term is less than the duration of the services to be provided hereunder, the Authority may renew and extend this right-of-way agreement by written notice to Participant for such additional terms as may be necessary to include the duration of such services.

Section 4.04: Non-Mandatory Connection to Project. Participant may submit a written request that the Authority supply Water from the Project at an earlier date than the projected date on or by which Participant would otherwise be required to connect to the Project under Section 4.05 hereof. The Authority may approve or deny any such request, in whole or in part, or upon terms and conditions it reasonably deems favorable and appropriate and consistent with the purposes of the GRP and the obligations of the Authority to all Participants, and shall enter into a written supplemental agreement with Participant if such request is approved in whole, in part, or subject to further terms and conditions. The agreement shall specify the respective financial,

legal, and engineering responsibilities of the Parties relative to any necessary facility design, permitting, and construction, including additions or modifications to the Project, and shall establish minimum quantities and maximum flow rates for Water to be so provided, in addition to any other matters the Parties may address therein.

- Section 4.05: Mandatory Connection to Project. (a) The GRP Administrator shall decide when, if ever, Participant must connect to the Project; provided, however, the GRP Administrator shall not, without Participant's consent, require Participant to take Water prior to September 1, 2014. The Authority's determination in the preceding sentence will be made based upon factors (i) through (v) described in Section 4.02(a) hereof.
- When the GRP Administrator determines that Participant must connect to the Project, the GRP Administrator will consult with Participant regarding (i) the Contract Quantity the Participant must take from the Project, (ii) the Participant System Site where such Contract Quantity will be delivered by the Project, (iii) the conditions and standards applicable to the connection of Participant's System to the Project, (iv) the preliminary routing of any Project facilities to be constructed to deliver the Contract Quantity to Participant, and (v) a preliminary estimate of dates relative to the completion of construction of any Project facilities necessary to deliver the Contract Quantity to Participant. After due consideration of any comments provided by Participant as part of such consultation, the GRP Administrator will provide Participant written notice specifying therein the Contract Quantity, the Point of Delivery, and the conditions and the standards applicable to the connection of Participant's System to the Project; provided, however, that no such notice shall take effect prior to March 1, 2013, regardless of the date of receipt of such notice. Participant shall connect to the Project at the specified Point of Delivery in accordance with such conditions and standards, and shall obtain all necessary approvals by the Authority under Section 4.07 hereof, within 18 months after the later of March 1, 2013, or the date of receipt of such notice. The Project shall be designed, permitted, and constructed in a manner such that the Point of Delivery shall be located upon the Participant System Site and within an easement to be conveyed pursuant to Section 4.03 hereof. The Authority reserves the right to enter into agreements with Participant to supplement this Contract, if and as the Authority deems circumstances so require, in order to make firm commitments to Participant regarding the Contract Quantity Participant must take from the Project, the particular Participant System Site where such Contract Quantity will be delivered, and other details related to the delivery of Water to the Participant System Site.
- (c) The Authority may not impose or collect a capital impact fee, capital recovery fee, tap fee, or any other fee of a similar kind or character, against or from a Participant required to connect to the Project under this Section 4.05.
- <u>Section 4.06</u>: <u>On-Site Facilities</u>. (a) Unless otherwise provided by separate written agreement between the Parties, Participant shall install the following facilities ("<u>On-Site Facilities</u>") at the Participant System Site that will receive Water (or with respect to measuring equipment for imported water or for disinfection treatment equipment, at the location described below):

- (1) measuring equipment at the Participant System Site properly sized and able to measure the amount of groundwater withdrawn from Participant's Wells, and measuring equipment at the location of importation properly sized to measure the amount of water imported by Participant, all within the accuracy tolerances specified in Section 5.03 hereof ("Participant Meters");
- (2) monitoring equipment on Participant's ground storage tank, Wells, booster pumps, and any other receiving facilities designated by the GRP Administrator ("Monitoring Equipment");
- (3) air gap to prevent backflow located at Participant's ground storage tank, configured such that Water enters the top of the ground storage tank and there are no connections on the water transmission main between the Point of Delivery and the ground storage tank;
- (4) additional storage, if reasonably determined by the GRP Administrator to be necessary to accommodate the delivery of Water to Participant;
- (5) flow restriction equipment;
- (6) disinfection treatment equipment at all Participant water plant sites; and
- (7) electrical equipment of a kind, character, and nature, as reasonably specified by the GRP Administrator in order to supply electricity to such portion of the Project that serves Participant and is located on the Participant System Site.
- Notwithstanding anything to the contrary in this Contract (i) in light of the cost to the Project and minimal benefit associated with installing Participant Meters for measuring water imported from another Participant, Participants are not required to install such meters; (ii) Participant Meters for measuring water imported from a non-Participant shall be installed and placed in service by Participant no later than six (6) months after the Effective Date, except to the extent such requirement is waived by the GRP Administrator with respect to emergency water supply only; and (iii) except as provided in the preceding clauses (i) and (ii) with respect to Participant Meters for measuring the importation of water, all other Participant Meters shall be installed and placed in service by Participant no later than sixty (60) days from the Effective Date. Specifications for the Participant Meters and the location for all points of measurement of groundwater withdrawal from Participant's Wells, or imported by Participant, must be approved in writing by the GRP Administrator, which approval will not be unreasonably withheld or delayed; provided, however, that the GRP Administrator may by written agreement allow Participant up to six (6) months from the Effective Date to install and place in service such Participant Meters meeting the GRP Administrator's specifications at all required points of measurement upon terms and conditions specified therein. Such agreement shall include terms and conditions, not inconsistent with this Contract, related to Participant's calculation of the amount of groundwater withdrawn from its Wells, or imported, for purposes of making payment

of applicable fees, rates, and charges to the Authority under this Contract. After inspection and approval of the Participant Meters and the Monitoring Equipment pursuant to Section 4.07(a) hereof, the Authority shall have the right to cause Participant to replace, upgrade, or otherwise modify such Participant Meters and/or Monitoring Equipment at any time upon written request, it being understood that metering and monitoring equipment and related data collection methods may advance over time such that the operations and administration of the Project may be enhanced thereby; provided, however, that Participant's direct cost and expense for same shall be timely reimbursed by the Authority and treated as an expense of the Project.

(c) Participant shall own, operate, and maintain the On-Site Facilities at no cost and expense to the Authority. Design, permitting, construction, and other initial capital costs associated with On-Site Facilities and incurred by Participant shall be reimbursable by the Authority to the extent and upon the conditions set forth in Section 4.08 hereof.

Section 4.07: Milestones; Approvals; Inspections of Participant's System. (a) In order to ensure that On-Site Facilities are timely completed if Participant is to connect to the Project under Section 4.05(a) hereof, the GRP Administrator shall be authorized to adopt reasonable milestones concerning the dates by which (i) preliminary planning of the On-Site Facilities shall be completed, (ii) necessary permit applications for the On-Site Facilities shall be filed, (iii) financing or funds for the On-Site Facilities shall be secured, (iv) final design drawings for the On-Site Facilities shall be submitted to the GRP Administrator for review and approval, (v) construction of the On-Site Facilities shall be commenced and completed, (vi) completed On-Site Facilities shall be inspected and approved by the GRP Administrator, (vii) the connection of the Project to the On-Site Facilities shall be made and tested, and (viii) any other relevant milestones established by the GRP Administrator consistent with the GRP, shall be met. Such milestones may be established with respect to all On-Site Facilities or with respect to any component thereof. The Rules, the Rate Order, or any separate written order of the Authority may establish penalties for failure to timely meet such milestones, if deemed reasonably necessary and proper by the Authority; provided, however, that such penalties shall not be imposed to the extent that the Authority causes or contributes to Participant's failure to timely meet such milestones.

specifications established by the GRP Administrator, Participant must obtain written approval by the GRP Administrator of the plans and specifications for any On-Site Facilities prior to commencement of construction. The GRP Administrator's approval will not be unreasonably withheld or subjected to unreasonable review standards. The GRP Administrator shall be obligated to review and provide comments on design plans and specifications within thirty (30) days following submittal, or within ten (10) days following any re-submittal. After completion of construction of the On-Site Facilities, Participant shall notify the GRP Administrator of such completion, provide the GRP Administrator with record drawings of the On-Site Facilities, and request the inspection and approval by the GRP Administrator of any such On-Site Facilities, which approval shall not be unreasonably delayed and shall be given if the On-Site Facilities (or applicable portion thereof) have been constructed substantially in accordance with the plans and specifications reviewed and approved under Section 4.07(b) hereof. The GRP Administrator

may approve On-Site Facilities constructed or installed prior to the Effective Date if such facilities reasonably conform to the GRP Administrator's requirements.

- (c) Participant shall be in breach of this Contract if it fails to connect to the Project by the time set forth in the notice provided under Section 4.05(b) hereof, including the failure to construct On-Site Facilities in a manner that reasonably complies with the requirements of the GRP Administrator and to obtain timely approval of same by the GRP Administrator. The Authority shall not be construed to be in breach of this Contact for refusing to approve On-Site Facilities that have not been constructed substantially in accordance with plans and specifications for same reviewed and approved under Section 4.07(b) hereof.
- If Participant has connected to the Project, or has received a notice to connect to the Project from the GRP Administrator under Section 4.05 hereof, it is specifically understood and agreed that in order to protect the Project, Participant's System shall be designed, permitted, constructed, operated, and maintained to comply with the rules promulgated by the TCEQ, the Rules of the Authority, and the requirements of the GRP Administrator regarding backflow prevention and cross connections. The Authority shall have the right to conduct inspections from time to time to determine that no violation of these requirements exists in Participant's System which would or might adversely affect the Project, and to the extent an easement providing a right of ingress and egress therefor has not been conveyed to the Authority in accordance with the provisions of Section 4.03 hereof, the Authority shall have the right of ingress and egress in, upon, under, and over any and all land, easements and rights-of-way of Participant upon which are constructed any facilities of the Project or Participant's System during the Contract Term. Should a condition in violation of these requirements be discovered, Participant shall promptly cure same. Failure to promptly cure such a violation shall be cause for the Authority, based on its reasonable determination, to (i) immediately discontinue providing Water to Participant, or (ii) cure such violation and charge Participant its actual costs of such cure.
- (e) In no event shall review or approval by the GRP Administrator or the Authority be required with respect to components of Participant's System other than the On-Site Facilities.

Section 4.08: Reimbursement for On-Site Facilities. The Authority agrees to reimburse reasonable and necessary legal, permitting, engineering, and other costs incurred by Participant to design, construct, and complete On-Site Facilities, subject to the provisions of this section. The Authority will not reimburse Participant for costs not specifically associated with On-Site Facilities, such as replacement of aged or worn equipment, maintenance/painting of existing equipment or piping, or work related to other components of Participant's System other than the On-Site Facilities, unless the GRP Administrator reasonably determines that reimbursement of such costs is cost effective and beneficial to the Participants in achieving or maintaining compliance with the Plan. In connection with the GRP Administrator's review of Participant's plans and specifications for On-Site Facilities pursuant to Section 4.07(b) hereof, the GRP Administrator shall advise Participant if any of the proposed work and related facilities, improvements, repairs, modifications, or replacements are not subject to reimbursement by the Authority under the foregoing limitations. Participant agrees that it will follow the procedures generally applicable to Participant in letting a contract for the construction of On-Site Facilities,

or if none are applicable, the procedures generally applicable to the Authority in letting construction contracts. Within a reasonable time after the date the GRP Administrator approves the completion of such On-Site Facilities pursuant to Section 4.07(b) hereof, but not more than one (1) year after such date, the Authority shall reimburse Participant for eligible costs incurred by Participant to design, construct, and complete such approved On-Site Facilities; provided, however, that reimbursable legal, engineering, and other non-construction costs shall not exceed thirty percent (30%) of the total construction costs for the On-Site Facilities unless specifically agreed to by the GRP Administrator. The Authority may adopt Rules not inconsistent with this section to provide further details for such reimbursement procedures and standards.

Section 4.09: Contract Quantity. (a) If Participant is required to connect to the Project under Section 4.05 hereof, then Participant shall take Water at the Point of Delivery in accordance with the requirements of this Contract and when directed by written notice from the GRP Administrator, but, unless Participant consents otherwise, not before September 1, 2014. The GRP Administrator shall determine and notify Participant in writing as to the maximum amount of Water that Participant can receive from the Project, and the minimum amount of Water that Participant must take from the Project, on a daily, hourly, peak or instantaneous basis (said minimum amount being referred to herein as the "Contract Quantity", as same may be amended from time to time), based on the capacity of the Project and the requirements of the GRP; provided, however, that Participant shall not be required to take Water from the Project at any Participant System Site in excess of an amount equal to ninety percent (90%) of the average daily amount of groundwater (except for any brackish groundwater produced pursuant to Section 6.04(j) hereof) supplied from any such site during the low-demand period preceding the date of calculation of the Contract Quantity. For such purposes, the "low-demand period" shall be the period of three (3) consecutive calendar months in the two preceding calendar years during which the least amount of water was supplied from such site under normal operating conditions.

- (b) The Contract Quantity may be increased by the GRP Administrator from time to time, subject to the foregoing parameters, but the Contract Quantity shall not be reduced by the GRP Administrator without the written consent of Participant. In connection with the increase of the Contract Quantity, the GRP Administrator may reasonably determine that additional On-Site Facilities must be designed, permitted and constructed by Participant, including additional storage capacity to receive the increased Contract Quantity. The GRP Administrator shall provide the Participant with a reasonable amount of time to design, permit and construct any such additional On-Site Facilities. The provisions of Sections 4.07 and 4.08 hereof shall generally apply to such additional On-Site Facilities. Participant may submit a written request to the GRP Administrator for an increase in the Contract Quantity. The Authority may approve or deny any such request, in whole or in part, or upon terms and conditions it reasonably deems favorable and appropriate and consistent with the purposes of the GRP and the obligations of the Authority to all Participants.
- (c) If Participant connects to the Project, then Participant is not guaranteed hereunder any specific quantity of Water due to a *force majeure* event (as defined in Section 10.01(b) hereof) when the Project's or the Authority's supply is interrupted, limited or insufficient, or when the Project's or the Authority's equipment may become inoperative due to mechanical failure, breakage, failure of power supply, or scheduled maintenance and repairs, nor is

Participant guaranteed that Water will be supplied at a specified pressure under any circumstances. The Authority shall provide Participant notice of such scheduled maintenance and repairs at least ten (10) full business days in advance, which notice must specify the anticipated duration of such maintenance and repairs.

- (d) The Authority shall be authorized to adopt and enforce penalties under the Rate Order, or under separate written order, for Participant's failure to so take the Contract Quantity.
- (e) It is the intent of the Parties that the Contract Quantity shall be taken in quantities and/or at rates of flow specified by the GRP Administrator pursuant to this Section 4.09 and that, as between the Parties, the Participant shall be solely responsible for meeting any and all water demands in excess of such amounts and/or rates of flow with conservation, storage, groundwater supplies, or other sources of supply, and, subject to any other terms and conditions set forth in this Contract, Participant is hereby authorized and permitted to take such actions as may be necessary or convenient to discharge such responsibilities. Participant, and not Authority, has the right and responsibility to finance, design, construct, operate, and maintain some or all of its Wells such that Participant may adequately supply water for its purposes, over and above the Contract Quantity or when the Authority is not obligated to provide the Contract Quantity to Participant under the terms of this Contract. Further, Participant, and not Authority, shall be responsible to determine when, if ever, to take one or more of its Wells out of operation.
- (f) THIS CONTRACT IS INTENDED ONLY TO ENSURE PARTICIPANT'S COMPLIANCE WITH THE PLAN, AND UNLESS AND UNTIL PARTICIPANT CONNECTS TO THE PROJECT UNDER SECTION 4.04 OR 4.05 HEREOF, THIS CONTRACT SHALL NOT BE DEEMED OR CONSTRUED AS A GUARANTEE OR ASSURANCE TO PARTICIPANT OF A SPECIFIC QUANTITY OF WATER FROM THE AUTHORITY, THE PROJECT, OR ANY OTHER SOURCE, EXCEPT AND TO THE EXTENT EXPRESSLY PROVIDED HEREIN. THE AUTHORITY, ACCORDING TO ITS REASONABLE DETERMINATION UNDER THIS CONTRACT, SHALL DECIDE THE DATE, IF EVER, UPON WHICH THE AUTHORITY SHALL COMMENCE SUPPLY OF WATER TO PARTICIPANT FOR THE PURPOSE OF IMPLEMENTING THE GRP.

Section 4.10: Warranties Regarding Water. (a) IF PARTICIPANT IS PERMITTED OR REQUIRED TO CONNECT TO THE PROJECT UNDER SECTIONS 4.04 OR 4.05 HEREOF, THEN, AFTER SUCH CONNECTION IS MADE, AND SUBJECT TO THE REMAINING PROVISIONS OF THIS SECTION 4.10, THE AUTHORITY SHALL PROVIDE PARTICIPANT WITH WATER AT THE DESIGNATED POINT OF DELIVERY IN AN AMOUNT AT LEAST EQUAL TO THE CONTRACT QUANTITY AND OF A QUALITY THAT MEETS ALL APPLICABLE TEXAS AND FEDERAL REGULATIONS REGARDING WATER QUALITY, INCLUDING THE SAFE DRINKING WATER ACT. FURTHER, IF PARTICIPANT IS PERMITTED OR REQUIRED TO CONNECT TO THE PROJECT UNDER SECTIONS 4.04 OR 4.05 HEREOF, THEN THE AUTHORITY SHALL PROVIDE THE PARTICIPANT WITH ALL INFORMATION CONCERNING THE QUALITY OF SUCH WATER AS MAY BE REQUIRED TO BE DISCLOSED UNDER APPLICABLE TEXAS AND FEDERAL REGULATIONS, AND SUCH FURTHER INFORMATION REGARDING

THE QUALITY OR CHARACTER OF WATER AS THE AUTHORITY MAY HAVE AND THE PARTICIPANT MAY REQUEST FROM TIME TO TIME.

- (b) EXCEPT AS PROVIDED IN THIS SECTION 4.10, THE AUTHORITY MAKES NO WARRANTY, EXPRESSED OR IMPLIED, REGARDING THE QUALITY, QUANTITY, OR DELIVERY PRESSURE OF TREATED WATER FROM THE PROJECT, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- (c) THE PARTICIPANT HEREBY RELEASES AND DISCHARGES THE AUTHORITY FROM ANY AND ALL FINES, DEMANDS, JUDGMENTS, LIABILITIES, OR CLAIMS OR CAUSES OF ACTION ARISING BY REASON OF OR IN CONNECTION WITH THE DELIVERY OF WATER WHICH MEETS THE REQUIREMENTS OF THIS SECTION 4.10.
- Section 4.11: Recovery from Participant. In addition to all other available rights and remedies, the Authority shall have and reserves the right to recover from Participant by any lawful means, including intervention in legal proceedings of Participant, for any losses, damages, claims, expenses, costs, or judgments, including reasonable attorneys fees and court costs incurred by the Authority, and interest not to exceed the interest rate permitted by Section 2251.025, Texas Government Code, resulting directly or indirectly from (a) Participant's breach or violation of this Contract, the GRP, the Rules, or any laws, rules or regulatory requirements relating to Participant's System, (b) improper or inadequate design, construction, permitting, or operation of Participant's System, (c) improper or inadequate design, construction, permitting, or operation of Participant's On-Site Facilities, or (d) claims by third parties, including customers of Participant's System, resulting, in whole or in part, from the negligence, gross negligence, breach of contract, or willful acts or omissions of Participant; provided, however, the Authority shall not so recover from Participant for such losses, damages, claims, expenses, costs, or judgments as were caused, in whole or in part, by the acts or omissions of the Authority. As further set forth in Section 9.02 hereof, the provisions of this Section 4.11 apply to the Authority in its capacity as a Participant with respect to the Woodlands Division of the Authority.
- Section 4.12: Passing of Title to Water; Re-use. (a) Except as otherwise provided herein, if Water is supplied to Participant under Section 4.04 or 4.05 hereof, then title to and possession and control of such Water shall remain with the Authority until it passes through the Point of Delivery, whereupon title to and possession and control of such Water shall pass from the Authority to Participant at the Point of Delivery. After title to such Water has passed to Participant at the Point of Delivery, Participant shall be responsible for storage, security, treatment, retreatment, disinfection, pressurization, distribution, and all other actions necessary to make use of such Water for Participant's purposes.
- (b) Notwithstanding subsection (a) above, but subject to any limitations contained in any water rights permit or certificate, imposed by applicable laws, rules or regulations, or applicable under the Houston Contract or any future agreement between the Authority and a third party for the acquisition of water or water rights for the supply of water for the GRP or to be delivered through the Project, the Authority hereby consents to the direct re-use of Water by

Participant; provided, however, that (i) unless specifically approved in writing by the Authority, any reduction in water demand of Participant resulting from such re-use of Water shall not serve to reduce the Contract Quantity, and (ii) the provisions of Section 3.04 hereof shall be applicable to such re-used Water. The Authority agrees that, other than as may be included in any future agreement between the Authority and a third party for the acquisition of water or water rights for the supply of water for the GRP or to be delivered through the Project, it will not impose limitations on the re-use of Water (or any other type of water) by Participant which are more restrictive than such limitations as may be applicable under the Houston Contract.

- (c) Notwithstanding subsection (a) above, Water shall be subject to indirect re-use by Participant but only with the prior written consent of the Authority, which consent shall be given subject to the limitations and conditions in subsection (b) above and Section 3.04 hereof, and upon such terms and conditions as the Authority reasonably deems appropriate to ensure that such re-use:
  - (1) does not negatively impact the GRP or any particular Participant as a result;
  - (2) does not adversely impact the Authority's storage, diversion, or other water rights; and
  - (3) complies with applicable laws, rules and regulations of all governmental bodies with jurisdiction, and is subject and subordinate to any future changes in such laws, rules or regulations.

The Authority reserves the right to enter into additional agreements with a Participant whereby the Authority agrees to contribute Project funds to defray such Participant's costs of a re-use project, but only where the Authority determines that such use of Project funds would be cost effective and beneficial to the Participants as an Alternative Strategy.

- (d) To the extent that the Authority or Participant utilizes, sells, or otherwise makes or has contracted for the beneficial re-use of its treated wastewater effluent as of the effective date of the Houston Contract, the continued beneficial re-use of such effluent shall be permitted for the purposes, to the extent, and on the terms existing as of the effective date of the Houston Contract, notwithstanding that a portion of such effluent may thereafter be derived from Water. After the Effective Date, any such re-use of effluent derived from Water shall require the consent of the Authority, if required under subsection (c) above, and Participant shall be responsible for (i) making appropriate provisions in any contracts for the sale of such effluent to the effect that supply may be limited if the Participant connects to the Project, and (ii) securing the Authority's consent, if Authority consent is required under subsection (c) above, before making investments in re-use projects to address the potential that Participant may connect to the Project in the future and, as a result, be limited in the amount of effluent that is available for re-use.
- (e) In order for the Authority to secure rights for the indirect re-use of Water that has been used by Participant, the Authority, and/or other Participants, Participant agrees to provide the Authority such documents and information and to execute such approvals related to Participant's use of Water and/or the discharge of wastewater effluent by Participant derived

from Water as may be reasonably required by the Authority for such purposes. Participant hereby waives any objection or right of protest to the Authority's permit applications for such purposes. No provision of this Contract or the Rate Order shall give the Authority a separate right to regulate or control the quality of the wastewater effluent discharged by Participant; provided, however, the Authority reserves all rights under applicable laws, rules, or regulations to contest the quality of such wastewater effluent discharges.

- (f) Notwithstanding any other provision of this Contract, the Authority shall not charge any import fees, or any other fees, rates or charges, to Participant in connection with or due to Participant's re-use of Water, water, or treated wastewater effluent allowed by this Contract, regardless of whether Participant implements such re-use individually or collectively with other Participants or non-Participants.
- (g) Subject to the provisions of Section 3.04 hereof, the provisions of this section are not applicable to the direct or indirect re-use of water by Participant from any source other than the Project.
- (h) For purposes of determining, for a given period of time, the amount of wastewater effluent of Participant that is derived from Water, the total amount of Participant's wastewater effluent during such time period will be multiplied by a fraction, the numerator of which is the total amount of Water taken by Participant during such time period and the denominator of which is the sum of Participant's total amount of water usage from all sources (including Water) during such time period.
- Section 4.13: Service Area Expansion; Re-Sale. (a) Participant may expand its service area shown in **Exhibit B** at its sole discretion without obtaining the prior approval of the Authority. Within sixty (60) days after Participant so expands its service area, Participant shall provide the GRP Administrator written notice of same and shall include therewith (i) a revised service area map, signed and sealed by a professional engineer, which shall function to replace any prior **Exhibit B** to this Contract without the need for further amendments or supplements hereto, (ii) revisions to Participant's water demand projections, if any, that result from such expansion, and (iii) such other information as may be reasonably requested by the GRP Administrator in order to determine the effect of such expansion on the GRP and the need, if any, to amend the GRP as a result.
- Participant's service area shown in **Exhibit B**, as same may be amended from time to time by Participant under subsection (a) hereof. Without Participant's consent, the Authority will not provide retail water service to any person or entity located within Participant's service area shown in **Exhibit B**, as same may be amended from time to time by Participant under subsection (a) hereof. No provision of this Contract shall be construed to require Participant to obtain the Authority's consent for the sale of Water outside of Participant's service area shown in **Exhibit B**, as same may be amended from time to time by Participant under subsection (a) hereof, if the sale of the Water is done on an emergency basis or done pursuant to a written agreement entered into by Participant prior to the Effective Date regarding the sale of potable Water (or any other form of potable water). No provision of this Contract shall be construed to require Participant to

obtain the Authority's consent for the sale of re-used Water inside or outside of Participant's service area shown in **Exhibit B**, as same may be amended from time to time by Participant under subsection (a) hereof, if such re-use of Water is not prohibited by Section 4.12 hereof and any Authority consent has been provided, if applicable and required by Section 4.12 hereof.

In the event Participant is a municipality and acquires Wells formerly owned or operated by another Regulated User, the following shall apply. If Participant's acquisition of the Wells occurs due to its dissolution of a conservation and reclamation district that entered into a contract with the Authority similar to this Contract, then Participant will assume the rights and obligations of such contract as provided by state law without any action required from the Authority. If Participant's acquisition of the Wells occurs due to its acquisition of Wells owned or operated by an entity other than such a district that entered into a contract with the Authority similar to this Contract, then Participant, as part of its acquisition of the Wells, will obtain such entity's assignment of the contract, and the Authority hereby consents to such assignment and no action from the Authority is required. If the Wells acquired by Participant were formerly owned or operated by a conservation and reclamation district or entity other than such a district that functioned under a groundwater reduction plan separate from the GRP, then Participant, at its option, may: (i) notify the Authority that the Wells owned or operated by the district or entity have become part of the GRP and are subject to the terms of this Contract, provided, however, no import fee, equalization fee, or any other type of catch-up fee shall be charged to Participant, and the same groundwater pumpage fee charged to other Participants shall be charged to Participant commencing the day after Participant provides such notice to the Authority, or (ii) notify the Authority that the Wells owned or operated by the district or entity will remain part of the groundwater reduction plan that is separate from the GRP, and in that event, the Authority will not charge Participant any fees or charges associated with the pumpage or importation of water from such Wells, and the Authority will in no way penalize or charge Participant any charges for owning or operating such Wells or participating in a groundwater reduction plan that is separate from the GRP. In any such event, Participant shall comply with the provisions of subsection (a) hereof.

#### ARTICLE V

## Metering

Section 5.01: General. The quantity of groundwater withdrawn from Participant's Wells, and the quantity of water imported by Participant from a non-Participant, shall be measured by the Participant Meters. If Participant has connected to the Project, or has received a notice to connect to the Project from the GRP Administrator under Section 4.05 hereof, then Water delivered through the Point of Delivery shall be measured by Authority Meters installed by the Authority pursuant to this Article V. The Participant Meters and Authority Meters shall be maintained and tested by the Parties as provided in this Article V. To the extent Participant loses Water as a result of any malfunction of Project facilities or other acts or omissions of the Authority, Participant shall not be required to pay fees, rates, or charges established under Section 6.02(2) with respect to such lost Water.

Section 5.02: Installation of Authority Meters. As an expense of the Project, the Authority shall design, permit, construct, operate, and maintain, at any appropriate measuring points that may be identified by the GRP Administrator (which may require the conveyance of an easement from Participant to the Authority pursuant to Section 4.03 hereof), such measuring equipment with related meters, totalizers, vaults, lines, and voice or data transmission devices (including towers or antennae), and recording devices of a type specified by the GRP Administrator for measuring and recording the quantity of Water delivered through the Point of Delivery within the accuracy tolerances specified in Section 5.03 hereof ("Authority Meters"). Authority Meters shall be considered part of the Project for all purposes.

Section 5.03: Maintenance and Testing of Meters. (a) Participant shall maintain the Participant Meters, at no expense to the Authority, unless otherwise specifically provided in this Article V, within the accuracy tolerances specified in this Section 5.03 by periodic tests. Participant shall conduct such tests at least once every 12 months and shall notify the Authority at least 48 hours (but not less than two (2) full business days) in advance of the time and location at which tests are to be made. If the Authority requests an additional test earlier than 12 months after any such test, then Participant shall make the test, and the Authority will provide Participant with a credit towards any fees, rates, or charges then payable by Participant to the Authority in an amount equal to Participant's cost to perform such test, unless the test reveals that any such Participant Meters register more than one hundred and two percent (102%) or less than ninety-seven percent (97%) of the correct flow amount for a given rate of flow. The Authority shall have the right to be present and to witness any test performed by Participant.

(b) The Authority shall maintain Authority Meters within the accuracy tolerances specified in this Section 5.03 by periodic tests. The Authority shall conduct such tests at least once every 12 months and shall notify Participant at least 48 hours (but not less than two (2) full business days) in advance of the time and location at which tests are to be made. If Participant requests an additional test earlier than 12 months after any such test, then the Authority shall make the test and charge Participant an amount equal to the Authority's cost to perform such test, unless the test reveals that any such Authority Meter registers more than one hundred and two percent (102%) or less than ninety-seven percent (97%) of the correct flow amount for a given rate of flow. Participant shall have the right to be present and to witness any test performed by the Authority.

Section 5.04: Billing Adjustments for Inaccurate Meters. (a) Should a test of the Participant Meters show that same registers either more than one hundred and two percent (102%) or less than ninety-seven percent (97%) of the groundwater withdrawn from Participant's Wells, or imported by Participant from any source, for a given rate of flow, the total quantity of groundwater measured by the inaccurate Participant Meter shall be deemed to be the "average daily amount," as measured by such Participant Meter when in working order, and Participant shall calibrate such Participant Meter to the manufacturer's specifications (in the case of Venturi meters), or to the American Water Works Association specifications (for all other types of meters) for the given rate of flow, or shall replace such Participant Meter with an accurate Participant Meter that has been tested by Participant before being placed in service.

- (b) Should a test of the Authority Meters show that same register either more than one hundred and two percent (102%) or less than ninety-seven percent (97%) of the Water delivered for a given rate of flow, the total quantity of Water withdrawn or delivered through the inaccurate Authority Meter shall be deemed to be the "average daily amount," as measured by such Authority Meter when in working order, and the Authority shall calibrate such Authority Meter to the manufacturer's specifications (in the case of Venturi meters), or to the American Water Works Association specifications (for all other types of meters) for the given rate of flow, or shall replace such Authority Meter with an accurate Authority Meter that has been tested by the Authority before being placed in service.
- (c) Any billing adjustment under this Section 5.04 shall be for a period extending back to the time when the inaccuracy began, if such time is ascertainable. If such time is not ascertainable, (i) an adjustment with respect to groundwater withdrawn from Participant's Well, or imported by Participant from any source shall be based on the average daily amount, as described above, for a period extending back to the last test of the inaccurate Participant Meter, or 120 days, whichever is shorter, (ii) an adjustment with respect to Water shall be based on readings from Participant's check meters, if installed pursuant to Section 5.06 hereof and if operating within the tolerances described above, for a period extending back to the last test of the inaccurate Authority Meter, or 120 days, whichever is shorter, or (iii) an adjustment with respect to Water shall be based on the average daily amount, as described above, for a period extending back to the last test of the inaccurate Authority Meter, or 120 days, whichever is shorter, in the event that Participant has not installed check meters pursuant to Section 5.06 hereof or if such check meters are not operating within the tolerances described above.
- (d) As used in this Section 5.04, the expression "given rate of flow" means one of the following specified or selected by the GRP Administrator for each calibration or test:
  - (1) the total quantity of water passing through the Participant Meter or the Authority Meter, as applicable, during the preceding period (usually a calendar month) as reflected by the totalizer, converted to gallons per minute;
  - (2) high, low, and intermediate rates of flow in the flow range, as reflected by the flow recording devices;
  - (3) the applicable minimum monthly quantity converted to gallons per minute; or
  - (4) AWWA-specified test flow rates for that size and type of meter.

Section 5.05: Disputes as to Testing. In the event of a dispute between Participant and the Authority as to the accuracy of the testing equipment used to conduct an accuracy test of the Participant Meters or the Authority Meters, an independent check may be mutually agreed upon between Participant and the GRP Administrator, to be conducted by an independent measuring equipment company suitable to both Participant and the GRP Administrator. The cost of such test shall be at requesting Party's sole expense. The GRP Administrator may accept the test

results of the independent measuring equipment company, but is not required to do so unless the refusal to accept such results would be unreasonable.

<u>Section 5.06</u>: <u>Check Meters</u>. Participant may install, at its own cost and expense, such check meters downstream of Authority Meters as it deems appropriate, and subject to reasonable safety and security requirements of Participant, the Authority shall have the right of ingress and egress to such check meters during all reasonable hours; provided, however, that billing computations shall be on the basis of the results of Authority Meters described above unless Authority Meters are not operating within required tolerances.

<u>Section 5.07</u>: <u>Rate Order Provisions</u>. Reasonable provisions and procedures related to the periodic testing of meters, the audit of meters, and the adjustment of readings of inaccurate meters may be adopted by the Authority from time to time and included in the Rate Order to supplement the provisions or procedures set forth in this Contract, so long as such provisions and procedures are not contrary to, inconsistent with, or prohibited by the terms and provisions of this Contract.

## **ARTICLE VI**

# Fees, Rates and Charges

<u>Section 6.01</u>: <u>Payment Commencement Date</u>. (a) Except as hereinafter provided, fees, rates, and charges for the goods and services provided by the Authority to Participant under this Contract shall begin to accrue as of the Payment Commencement Date.

(b) If Participant executes this Contract after the Payment Commencement Date, then the Participant shall pay an equalization fee on the Effective Date which equals (i) the entire amount of the payments that Participant would have made from and after the Payment Commencement Date under the requirements of this Contract and the Rate Order, plus interest thereon compounded annually at the Applicable Interest Rate, and (ii) the Authority's actual or estimated increased costs incurred in connection with the development and implementation of the GRP and the design and permitting of the Project, plus interest thereon compounded annually at the Applicable Interest Rate, as calculated by the GRP Administrator, that would have been avoided if this Contract had been executed by Participant on or before the Payment Commencement Date, all as reasonably determined by the GRP Administrator.

<u>Section 6.02</u>: <u>Monthly Fees and Rates</u>. The fees and rates due from Participant for each whole or partial calendar month, as appropriate, from and after the Payment Commencement Date shall be calculated as follows:

(1) For all groundwater pumpage by Participant, Participant shall pay an amount determined by the formula:

 $P \times Q$ , where:

**P** is the prevailing fee for groundwater pumpage, per thousand gallons, adopted by the Authority in its Rate Order; and

Q is the quantity of groundwater pumped by Participant, in thousands of gallons, during the calendar month.

(2) In addition to any groundwater pumpage fees due under subdivision (1), for Water delivered to Participant by the Authority after the date on which Participant connects to the Project, Participant shall pay an amount determined by the formula:

# $W \times Q$ , where:

**W** is the prevailing rate, per thousand gallons, adopted by the Authority in its Rate Order for Water delivered by the Project; and

Q is the quantity of Water taken by Participant, in thousands of gallons, during the calendar month.

Section 6.03: Charges. (a) The Authority is hereby authorized to impose reasonable charges under the Rate Order, or other written order of the Authority, necessary for the recovery of damages, losses, delay costs, litigation fees, interest not to exceed the interest rate permitted by Section 2251.025, Texas Government Code, or other costs or expenses, incurred by the Authority, including reasonable attorneys fees, court or administrative agency fees, or judgments, resulting, directly or indirectly from a Participant's breach or violation of this Contract, the GRP, the Rate Order, the Rules, the rules of all regulatory and permitting authorities with jurisdiction, or any other applicable rules, laws, or regulatory requirements, or any losses, damages, costs, interest, or expenses incurred by the Authority resulting, directly or indirectly, from the Authority's acts or omissions under this Contract, except as otherwise provided in Section 11.01 hereof.

- (b) In addition to any charges under subsection (a) above, in the event Participant (i) fails to make the required connection to the Project under Section 4.05 hereof, (ii) takes more groundwater than is authorized under the GRP, or (iii) takes or omits to take any action required hereunder, or under the GRP, the Rate Order, or other written order of the Authority, the Rules, or other applicable rules, laws, or regulatory requirements, which results in any fee, fine, penalty, charge, judgment, or assessment to or against the Authority, then Participant shall reimburse the Authority, together with interest not to exceed the interest rate permitted by Section 2251.025, Texas Government Code, and reasonable collection costs and fees, upon written demand by the Authority and/or the GRP Administrator.
- (c) In the event Participant is in substantial compliance with this Contract and related Rules, and the Conservation District nonetheless imposes or seeks to impose fines or administrative penalties against Participant for failure to comply with the Conservation District's groundwater reduction requirements under the Plan, then Authority shall, out of GRP funds, defend and hold harmless Participant against such fines or administrative penalties, including

making payment of such fines or penalties directly to the Conservation District on behalf of Participant.

Section 6.04: Rate Order. (a) The Authority has heretofore adopted a Rate Order that establishes fees, rates, and charges applicable to the Participants and, throughout the Contract Term, the Authority shall maintain such Rate Order in force and effect in accordance with the provisions of this Section 6.04. The Rate Order may include reasonable classifications of Participants for the purposes of applying fees, rates, and charges as deemed reasonably necessary by the Authority to implement and enforce the GRP and discharge its obligations under this Contract. The fees, rates, and charges adopted under the Rate Order shall be at all times the lowest which are:

- (1) consistent with good management practices by the Authority;
- (2) necessary and proper under subsection (d) and compliant with subsections (b), (c), and (e);
- (3) consistent with the Authority's statutory and constitutional duties and responsibilities; and
- (4) just, reasonable, and nondiscriminatory.
- (b) The Rate Order shall be amended from time to time to specify the prevailing pumpage fee for purposes of Section 6.02(1) hereof such that, as nearly as practicable in the Authority's reasonable determination (i) the Participants are neither benefitted nor penalized for utilizing groundwater from Wells, and (ii) reasonable allowance is made for the Participants' costs of operating and maintaining their Wells (exclusive of any costs of depreciation, debt service, or similar charges in respect of the design, permitting, construction, reconstruction, rehabilitation, or redevelopment of such Wells). The prevailing pumpage fee for purposes of Section 6.02(1) hereof shall be equal and uniform among all classes of Participants that pump groundwater.
- (c) Prior to placing the Project in service, and at all times after the Project is placed in service, the Rate Order shall be amended from time to time to specify the Authority's prevailing rate for Water delivered to Participants for purposes of Section 6.02(2) hereof such that, as nearly as practicable in the Authority's reasonable determination (i) the Participants are neither benefitted nor penalized for being required to take Water from the Project under the GRP, and (ii) reasonable allowance is made for Participants' costs of operating and maintaining On-Site Facilities, as well as operating and maintaining their Wells (exclusive of any costs of depreciation, debt service, or similar charges in respect of the design, permitting, construction, reconstruction, rehabilitation, or redevelopment of such On-Site Facilities or Wells). The prevailing rate for Water for purposes of Section 6.02(2) hereof shall be equal and uniform among all classes of Participants that receive Water.

- (d) In its Rate Order, or any separate written order, the Authority shall adopt such fees, rates, and charges, including those identified in Sections 6.02 and 6.03 hereof, that are sufficient to:
  - (1) achieve and maintain compliance with the Plan, the Rules, and the GRP;
  - (2) develop, implement, or enforce the GRP;
  - (3) accomplish the purposes of this Contract and the GRP;
  - (4) recoup any unrecovered losses, damages, costs, or expenses incurred by the Authority, together with interest thereon at a rate not to exceed the interest rate permitted by Section 2251.025, Texas Government Code, resulting, directly or indirectly, from Participant's breach or violation of this Contract or other Participants' breach of similar contracts, the GRP, the Rules, the rules of all regulatory and permitting authorities with jurisdiction, or any other applicable rules, laws or regulatory requirements, or any losses, damages, costs, interest, or expenses incurred by the Authority resulting, directly or indirectly, from its acts or omissions under this Contract, except as otherwise provided in Section 11.01 hereof;
  - (5) recoup (i) the reasonable costs incurred by the Authority in connection with the discharge of its obligations under Section 9.03(a) hereof, and (ii) any actual costs incurred by the Authority that are associated with the development of the WRAP (except to the extent Authority has already received funds for the WRAP), the GRP, or the Project, or that otherwise specifically pertain to the subject matter of this Contract;
  - (6) purchase, lease, reserve, option, or contract for alternative water supplies by, through, or with third parties or the Authority for the benefit of the Project and the GRP;
  - (7) meet administrative, operation, maintenance, repair, and replacement expenses relating to the Project and the GRP;
  - (8) pay the principal of, interest on, and redemption prices or costs of any Bonds or other obligations of the Authority issued or incurred, or to be issued or incurred, in connection with the Project or the GRP, pursuant to Article VIII;
  - (9) satisfy all rate covenants relating to any such Bonds or other obligations of the Authority relating to the Project or the GRP;
  - (10) establish, accumulate, maintain, or replenish one or more operating, debt service, contingency, or emergency reserve funds relating to the Project or the GRP, as deemed reasonably necessary by the Authority;

- (11) offset impacts to GRP and/or Project revenues or expenses related to or arising out of the effects of water conservation, drought contingency, or environmental quality measures or programs of the Authority or others; and
- offset any other costs or expenses, of a like or different nature, resulting from changes in applicable laws, rules, or regulatory requirements or from altered or unforeseen events or circumstances.
- (e) The fees, rates, and charges of the Authority shall at all times be established and imposed in order to equitably apportion the costs of the implementation of the GRP among the Participants, as nearly as practicable on a uniform basis, such that no special advantage or disadvantage is realized by any of the Participants because of proximity or access to the Project, other alternative water supplies of the Authority, geographical location, the time of inclusion within the GRP, the nature or extent of a Participant's water demands, or the source of water supply to a Participant.
- (f) The fees, rates, and charges imposed by the Authority under the Rate Order shall be reviewed and adjusted from time to time (but not less frequently than annually) by the Authority in order to ensure that they are not in excess of the needs of the Project and the GRP. The Authority further agrees that it shall, not more often than every five (5) years, engage an independent rate analyst to review and prepare a written report regarding the fees charged by the Authority to reserve raw water for the benefit of the Participants and the rates at which such raw water has been or may be sold by the Authority for use in connection with the Project.
- (g) The Authority agrees that except as specifically provided in Section 9.01(h)(1) with respect to sales of excess water and in subsections (a) and (b) of Section 9.03, the fees, rates, and charges imposed by the Authority under the Rate Order, or imposed in any other manner by this Contract, shall be used for the Project and GRP and not for any other purpose of the Authority.
- (h) The adoption of the current Rate Order prior to the Effective Date is hereby acknowledged by Participant; provided, however, the Authority shall not adopt, implement, or enforce any provision of the Rate Order that is contrary to, inconsistent with, or prohibited by the terms and provisions of this Contract. To the extent any provision of the current Rate Order is contrary to, inconsistent with, or prohibited by this Contract, the Authority will amend the Rate Order so that it conforms to this Contract. On and after the Effective Date, the Authority shall comply with all applicable legal requirements relative to providing public notice of the amendment of the Rate Order, or any separate written order or any amendment thereto adopted pursuant to this Contract, including duly posting agendas for meetings of the Board of Directors of the Authority under the Texas Open Meetings Act, and in certain circumstances, publication of notice under other applicable laws of the State of Texas. In addition, the Authority shall use commercially reasonable efforts to provide Participants with written notice at least forty-five (45) days prior to the consideration by the Board of Directors of the Authority of the adoption of any amendment to the Rate Order, or any separate written order, or any amendment thereto

adopted pursuant to this Contract. Failure of the Authority to provide, or of Participant to receive, such notice shall not affect the validity of any action taken by the Board of Directors of the Authority with respect to the Rate Order, or any separate written order adopted pursuant to this Contract, or any amendments thereto.

- (i) The Authority shall never be authorized or permitted to impose fees, rates, or charges on any water imported by Participant: (i) from another Participant, or (ii) from a non-Participant in the event that Participant has connected to the Project under Sections 4.04 or 4.05 hereof and the Authority is unable to deliver Water to Participant due to a *force majeure* event or when the Project's or the Authority's equipment may become inoperative as further described in Section 4.09(c) or in the event the Authority otherwise fails to deliver Water to which Participant is entitled under this Contract. The Authority may impose such fees, rates, and charges on water imported by a Participant from a non-Participant as would otherwise be applicable to groundwater pumped from such Participant's Wells; provided, however, that the Authority shall not impose fees, rates, or charges on water imported by Participant from a non-Participant if (i) such importation is necessary due to an emergency impacting the ability of Participant's System to meet its water demands, (ii) such period of importation lasts for less than fifteen (15) consecutive days, and (iii) Participant has not imported water during more than thirty (30) days during the current calendar year.
- (j) Notwithstanding any other provision of this Contract, if the Conservation District allows brackish groundwater to be considered an "alternate water source" similar to surface water or treated wastewater effluent, then: (i) the Participant may, at its sole cost, develop and acquire, individually or collectively with other Participants or non-Participants, brackish groundwater supplies for its use, provided however, unless specifically approved in writing by the Authority, any reduction in water demand of Participant resulting from brackish groundwater production shall not serve to reduce the Contract Quantity, (ii) the Authority shall not charge any import fees or groundwater pumpage fees, or any other fees, rates or charges, to Participant in connection with or due to such brackish groundwater production, and (iii) the provisions of Section 3.04 shall apply to such brackish groundwater use.
- Section 6.05: Self-Reporting and Payment of Pumpage Fee. (a) Participant shall be responsible for reading the Participant Meters at the end of each month, beginning on the Payment Commencement Date. Such measurement shall be reported to the Authority on a reporting form duly adopted under the Rate Order. Participant shall remit payment of applicable pumpage fees along with the completed pumpage form to the Authority using the manner and method of payment specified under the Rate Order. The due date for remitting such payment and such completed pumpage form shall be not less than forty-five (45) days from the last of day of the reporting period; provided, however, the Rate Order may provide for the acceleration of such due date in the event Participant is past due with respect to any other fees, rates, or charges due the Authority under this Contract, but such acceleration shall not provide Participant less than ten (10) days for remitting such payment and such completed pumpage form.
- (b) In the event Participant fails or refuses to read the Participant Meters, the Authority shall have the right to enter upon the land of Participant at any reasonable time in order to read the Participant Meters. If the Authority is required to read the Participant Meters,

Participant will be charged a service fee for such reading, and the pumpage fee due under Section 6.02(1) hereof shall be calculated based on the Authority's readings, regardless of when the Authority reads the Participant Meters. In the event the Participant Meters have not been timely installed by Participant pursuant to Section 4.06 hereof, or inspected and approved by the GRP Administrator pursuant to Section 4.07 hereof, the GRP Administrator shall be authorized to calculate Participant's groundwater usage from the Payment Commencement Date through the date the Participant Meters are approved by the GRP Administrator based upon Participant's "average daily amount" of usage. In either event, the Authority shall invoice Participant for the pumpage fee due under Section 6.02(1) hereof, and any related service fees. The manner and method of payment of such invoice shall be as specified under the Rate Order. The due date for remitting payment shall be not less than forty-five (45) days from the date of such invoice; provided, however, the Rate Order may provide for the acceleration of such due date in the event Participant is past due with respect to any other fees, rates, or charges due the Authority under this Contract, but such acceleration shall not provide Participant less than ten (10) days for remitting such payment.

- (c) The Authority shall have the right to audit the measurements submitted by Participant by reading the Participant Meters. The Authority and its representatives shall have the authority to enter upon the land of Participant at any reasonable time in order to audit the readings of the Participant Meters reported to the Authority.
- (d) The Authority reserves the right to directly read, whether by entering upon a Participant System Site or by remote reading through transmission of data from such sites, the Participant Meters and to discontinue the self-reporting process established under this Section 6.05 upon written notice provided to Participant at least thirty (30) days in advance of same. In such case, the Authority shall adopt reasonable amendments to the Rate Order specifying the manner and method by which the Authority shall provide Participant an invoice for Water delivered, as well as the acceptable time, place and methods of payment of such invoice, interest on past due payments not exceed the interest rate permitted by Section 2251.025, Texas Government Code.

Section 6.06: Invoicing and Payment of Water Rate. If Participant connects to the Project pursuant to Sections 4.04 or 4.05 hereof, the Authority shall read the appropriate Authority Meters and record or calculate the amount of Water taken by Participant on a monthly basis and invoice Participant therefor. The manner and method of payment of such invoice shall be as specified under the Rate Order. The due date for remitting payment shall be not less than forty-five (45) days from the date of such invoice; provided, however, the Rate Order may provide for the acceleration of such due date in the event Participant is past due with respect to any fees, rates, or charges due the Authority under this Contract, but such acceleration shall not provide Participant less than ten (10) days for remitting such payment.

Section 6.07: Payment of Charges. Any other charges due to the Authority from Participant hereunder shall be set forth in reasonable detail in a written invoice from the Authority to Participant. Such invoice shall provide therein a due date for remitting payment in respect of any such charges established in accordance with Section 2251.021 Texas Government Code, as well as the acceptable manner and method of payment.

Section 6.08: Failure to Pay when Due; Early Payment Discount. (a) Should Participant fail to tender payment of any amount when due from Participant, interest thereon shall accrue as may be provided in this Section 6.08. In the event Participant fails to timely tender payment of any amount by the appropriate due date, and such failure continues for thirty (30) days thereafter, then the Authority may take any and all actions allowed by law as described in Article XI hereof. The Rate Order may (i) require the payment of interest on any late or unpaid fees, rates, and/or charges due to the Authority at a rate or rates that specified therein provided that same shall not exceed the interest rate permitted by Section 2251.025, Texas Government Code, as amended, and (ii) impose lawful penalties or administrative charges for the failure to completely or timely make payments to the Authority, but such penalties or charges shall not begin to accrue until at least three (3) business days after Authority has notified Participant in writing that Authority intends to impose same.

(b) The Authority reserves the right to implement discounts under the Rate Order for the payment of fees, rates, and charges prior to the dates same are otherwise due and payable under the terms specified hereinabove.

#### ARTICLE VII

Gifts, Grants and Special Projects

Section 7.01: Gifts and Grants. Unless otherwise prohibited by law, the Authority may accept, in its own name and/or on behalf of Participant, any one of more of the Participants, or any class of Participants, gifts, grants, gratuities, advances, and secured, non-recourse loans in any form from any source, including the United States, the State of Texas, any agency or instrumentality of same, or any other person, and may make and enter into contracts, agreements and covenants which the Authority considers necessary and proper in connection with the acceptance of such gifts, grants, gratuities, advances, or loans. The Authority agrees that it shall make use of the proceeds of same only for the intended beneficiary or beneficiaries, and in connection therewith, may make adjustments to its fees, rates, and charges, under the Rate Order or otherwise, to such beneficiary or beneficiaries. In the event such gifts, grants, gratuities, advances, and secured, non-recourse loans benefit the Project or the GRP, they shall be credited to the benefit of the GRP and the Participants.

Section 7.02: Special Projects; Assessments. (a) The Authority may undertake improvement projects or services that confer a special benefit on all or a defined part of the service area of one or more Participants, including water delivery systems or facilities or water supplies for recreational, environmental, aesthetic, or other non-consumptive uses, whether or not same are connected to or made a part of the Project, but only pursuant to a separate written agreement between the Authority and such Participants specifying the respective financial, legal, and engineering responsibilities of the Authority and the Participants relative to such project or services.

(b) Unless otherwise agreed to in writing by the Authority and the Participants specially benefitted by any such improvement project or services undertaken pursuant to

subsection (a), such benefitted Participants shall pay periodic assessments to the Authority, calculated on a basis that is mutually agreeable to the Authority and such Participants, in amounts sufficient to meet all costs for such improvement project or services and continuing in effect for the period required to fully and timely pay for such improvement project or services or any bonds, notes, or other obligations issued or incurred by the Authority to finance such improvement project or services.

(c) All costs associated with any improvement project or services undertaken by the Authority and one or more Participants pursuant to this Section 7.02 shall be separately accounted for by the Authority, and such costs shall not be considered Project costs or included in the Authority's adoption of fees, rates, or charges generally applicable to all Participants under Article VI.

Section 7.03: Other Reimbursement to Participant. Upon request from Participant and recommendation of the Review Committee, the Authority may, but is not obligated to, reimburse Participant for all or part of Participant's reasonable costs and expenses actually incurred in connection with this Contract, the Project, or the GRP, out of Project revenues, upon terms and conditions approved by the Board of Directors of the Authority. The foregoing provision shall not be deemed or construed to supersede any other express provision in this Contract requiring the Authority to reimburse Participant for all or part of Participant's costs and expenses incurred in connection with this Contract, the Project, or the GRP (including, without limitation, reimbursement for On-Site Facilities pursuant to Section 4.08 hereof), and shall be in addition to any other such provision.

## **ARTICLE VIII**

Bonds; Pledge of Revenues

Section 8.01: Bonds. (a) In order to finance or refinance the development of the GRP and the design, permitting, construction, operations, maintenance, or administration of the Project, the Authority may issue, sell, and deliver from time to time, as deemed necessary and appropriate, its notes, bonds, and other obligations ("Bonds"), in one or more issues or series, with such Bonds to bear interest, to be in such form and denomination, to be transferable and subject to exchange, replacement or refunding, and to mature in such installments or at such times, as may be provided in the documents or proceedings authorizing the issuance of such Bonds and permitted by the Act or by the general law of the State of Texas.

- (b) The Bonds of the Authority, as to both principal and interest, shall be and remain obligations solely of the Authority, payable from the sources and secured in the manner provided therein, and shall never be deemed or construed to be obligations of Participant, except to the extent of Participant's obligations to make payments to the Authority hereunder.
- (c) The Authority shall not issue Bonds secured by a mortgage or deed of trust lien on the Project or any portion thereof, except where such mortgage or deed of trust lien is (i) permitted by the Act, and (ii) created in favor of, or conveyed to, the United States, the State of Texas, or any agencies, dependants, boards, commissions, or other such governmental entities, in

connection with the application, securing, closing, or other transaction of loans, gifts, or grants necessary and proper in connection with the Authority's financing of the Project.

Section 8.02: Pledge of Revenues. The Authority is specifically authorized hereby to pledge, create one or more liens on, or assign all or any portion of the payments to be made by Participant hereunder, together with similar payments from other Participants, to the payment of and security for the Bonds issued by the Authority in order to finance or refinance the development of the GRP and/or the design, permitting, construction, operation, maintenance, or administration of the Project.

Section 8.03: Certificates; Other Documents and Showings. Participant agrees to assist and cooperate with the Authority, to the extent reasonably determined necessary by the Authority, in the preparation, authorization, execution, and/or delivery of certificates, documents, information, or showings, reasonably necessary in connection with the sale, issuance, and delivery of its Bonds as authorized under this Article VIII. All costs and expenses related to such certificates, documents, information, or showings, with the exception of any of Participant's legal, engineering, or other consultant or employee costs and expenses, shall be borne by the Authority as a Project cost, and Participant shall assume no separate liability therefor.

Section 8.04: Disclosure Obligations. Participant agrees to assist and cooperate with the Authority, to the extent reasonably determined necessary by the Authority, in complying with any and all present and future valid laws, orders, rules, and regulations of the United States of America, the State of Texas, or any other regulatory body having jurisdiction, related to any obligation of the Authority to disclose financial information in connection with the sale, issuance, and delivery of its Bonds as authorized under this Article VIII, including the making of disclosures required under Rule 15c2-12 of the United States Securities and Exchange Commission. All costs and expenses related to such compliance, with the exception of any of Participant's legal, engineering, or other consultant or employee costs and expenses, shall be borne by the Authority as a Project cost, and Participant shall assume no separate liability therefor.

## **ARTICLE IX**

## Special Covenants

Section 9.01: The Authority as Water Supplier. (a) For so long as the Authority receives payment therefor from the separate operating division to be created and established pursuant to Section 9.03(a)(1) hereof of its rate and generally applicable fees adopted from time to time by the Board of Directors of the Authority for large volume raw water customers of the Authority for holding, leasing, reserving, optioning, or contracting for raw water ("reservation fees") derived from water rights owned by the Authority as of the Effective Date, the Authority agrees, directly or through one or more of its operating divisions, to make available and sell to such separate operating division, as needed, for the use and benefit of the GRP and the Participants, all of the available and uncommitted supplies of raw water owned by the Authority from the permitted and actual yield of Lake Conroe, at a rate equal to the prevailing and generally applicable rate for large volume raw water customers of the Authority for raw water derived

from any water rights owned by the Authority as of the Effective Date ("System Rate"). Such System Rate shall be determined, and may be revised or adjusted from time to time by the Board of Directors of the Authority, on a Modified Cash Basis, as defined and provided in subsection (e) below.

- (b) Within the limits of engineering and economic feasibility and responsible planning, as determined in its sole judgment and discretion, the Authority agrees to use reasonable diligence and good faith efforts to locate, identify, develop, purchase, hold, lease, reserve, option, or contract for additional water supplies, over and above the water supplies available from the permitted and actual yield of Lake Conroe, necessary to supply the Project so that the GRP may be successfully implemented throughout the Contract Term, and the Authority may, but shall not be obligated to:
  - (1) utilize its own funds to do so; or
  - (2) utilize Project revenues to do so;

provided, however, the Authority shall be obligated to use Project revenues for such purposes if the Authority has (i) not utilized, and has officially determined not to utilize, its own funds to do so, and (ii) been requested in writing by the Review Committee to do so.

- (c) For so long as the Authority receives payment therefor from the separate operating division to be created and established pursuant to Section 9.03(a)(1) hereof of its rate and any applicable reservation fees, the Authority agrees, directly or through one or more of its operating divisions, to sell and make available to such separate operating division, as needed, for the use and benefit of the GRP and the Participants, water from all other additional sources or supplies acquired or contracted by the Authority with Project revenues pursuant to subsection (b), above, plus water obtained by the Authority under the Houston Contract, at a rate equal to the Authority's actual costs for locating, identifying, developing, purchasing, holding, leasing, reserving, optioning, or contracting for such additional water supplies.
- (d) With respect to any additional sources of water supplies or other projects, programs, systems, facilities, or services acquired, contracted, or undertaken by the Authority after the Effective Date with funds other than Project revenues, the Authority may, in its sole discretion, but shall not be obligated, to: (i) offer for sale to such separate operating division, for the use and benefit of the GRP and the Participants, all or such portions of such additional water supplies, (ii) establish separate rates for the sale of such additional water supplies using any methodology, including or excluding the Modified Cash Basis described in subsection (e) below, and/or (iii) incorporate, all or any portion of such additional water supplies or projects, programs, systems, facilities or services, and/or all or any portion of the costs and expenses of same, into the System Rate described in subsection (a) above, but using the Modified Cash Basis described in subsection (e) below.
- (e) "Modified Cash Basis", as used in this section, means a rate or rates which, when applied to the projected sales of raw surface water during a given budget period from the Authority's raw water system and any water rights owned by the Authority as of the Effective

Date, and any additional water supplies as may be incorporated therein, as provided in subsection (d) above, are sufficient in the reasonable discretion of the Board of Directors of the Authority to generate revenues adequate to pay or accrue the following costs and expenses, without return on investment or loss to the Authority: (i) the direct and indirect operating and maintenance expenses of or related or allocated to such system; (ii) the direct and indirect general and administrative expenses of the Authority related or allocated to such system; (iii) capital improvements to such system; (iv) debt service on any bonds, notes, or other obligations of the Authority issued for the benefit of such system, and any reasonably required reserve and replenishment fund obligations related to any such debt issuance; (v) reserves for, among other purposes, capital improvements, working capital and emergencies; (vi) depreciation on improvements, facilities, or other infrastructure and related appurtenances comprising such system; (vii) reserves to allow the Authority to locate, identify, develop, permit, or acquire the use or ownership of additional water supplies for any corporate purpose of the Authority; (viii) reserves and allowances for research and development of any project, program, system, facility, or service consistent with the Authority's powers, duties, responsibilities, or purposes; (ix) impacts to revenues or expenses related to or arising out of the effects of water conservation, drought contingency, or environmental quality measures or programs of the Authority or others; (x) awards, settlements, judgments, court and litigation costs, fines, permits, assessments, or other contingent liabilities; and (xi) any other costs or expenses, of a like or different nature, resulting from changes in applicable laws, rules, or regulatory requirements or from altered or unforeseen events or circumstances. Such rates may be established so as to apply to reasonable classifications of customers of the Authority's raw water system; provided, however, that except as provided in subsection (d) above, such rates shall not be based during the Contract Term on costs and expenses of particular components of such system or on geographic area(s) served by defined portions of such system.

- (f) The Authority will not utilize the Project to provide Water to any person or entity that is not a Participant or that is outside of Montgomery County, except as necessary to serve Participants with contiguous service areas located, in part, outside of Montgomery County.
- The Authority agrees that it will not enter into any new or additional contracts for the sale of Water to Participants, or require or permit the connection of additional Participants to the Project under Sections 4.04 and 4.05 hereof, to such an extent or for such quantities as, in the Authority's sound discretion, and on the basis of the then current requirements of the Plan, the projected demands of the Participants, the condition of the Project, the water supplies available to the Project from the permitted and actual yield of Lake Conroe or from additional water supplies secured for the benefit of the GRP and the Participants through the use of the Project revenues as provided in subsection (b) (collectively, "GRP Water"), and related conditions, would impair the Authority's ability to deliver Water to Participant at the Contract Quantity during the Contract Term. Additionally, and except for any amendment, renewal, extension, replacement or modification of a contract between the Authority and a third party in effect as of the Effective Date for the sale of surface water from Lake Conroe on a non-interruptible basis, and except as permitted by subsection (h)(1) of this Section 9.01, the Authority covenants that it will not hereafter enter into any new or additional contracts for the sale of GRP Water that would cause the then-current GRP Water to be inadequate to satisfy the then-current projected surface water needs of the GRP and Project to comply with the Plan during the Contract Term.

- (h) As provided herein, Project revenues may be used by the Authority to pay reservation fees for GRP Water and other additional water supplies. To the extent that any fees, rates, charges, gifts, grants, or assessments collected by the Authority from the Participants are used to pay reservation fees to the Authority, or one or more of its other operating divisions, for GRP Water, or other additional water supplies of the Authority as may be sold or reserved for the benefit of the GRP and the Participants pursuant to subsection (d) above, the first and prior use of such water supplies shall be for the benefit of the Participants; provided, however, that:
  - (1) nothing in this Contract shall be deemed or construed to limit the right and power of the Authority, or one or more of its other operating divisions, to sell, option, or reserve such portions of such water supplies as, in the sound judgment of the Authority, are surplus to the needs of the Participants, on a temporary, seasonal, periodic, or permanent basis, to other persons, so long as any net income or revenues from such sale, optioning, or reservation are first used to reimburse the Participants for any reservation fees or actual costs, expenses, or carrying costs and interest paid by or on behalf of the Participants for such water supplies;
  - unless and until fees, rates, charges, gifts, grants, or assessments collected by the Authority from the Participants are used to pay or reimburse the Authority, or one or more of its operating divisions, for the costs of identifying, locating, developing, permitting, holding, purchasing, leasing, reserving, optioning, or contracting for a specifically identified, additional, or prospective additional water supply, and except as provided in the subsection (b), above, the Authority shall have no fiduciary or other responsibility to the Participants with regard to such additional water supply;
  - (3) should the Authority determine to pursue developing, holding, purchasing, leasing, reserving, optioning, or contracting for any such additional water supply for any of its corporate purposes using its own funds, whether directly or by and through any of its operating divisions, Participant specifically agrees that same shall not constitute a breach of any fiduciary or other responsibility of the Authority and hereby waives all claims at law or in equity against the Authority related to or arising out of same;
  - (4) nothing in this Contract shall be deemed or construed to obligate the Authority to sell, reserve, option, hold, or make available for the Participants or for Project purposes all or any portion of its water supplies or rights existing on the Effective Date hereof, other than from the permitted and actual yield of Lake Conroe, after deducting such amounts therefrom as may now or hereafter be reserved by the Authority to its existing customers on the Effective Date that are served on a non-interruptible basis from such permitted yield of Lake Conroe; and

- (5) nothing in this Contract shall be deemed or construed as a representation or warranty by the Authority that (i) the permitted and actual yield of Lake Conroe, as same may be adjusted from time to time by changes in laws, rules, regulatory requirements, environmental restrictions, judicial or administrative rulings, physical characteristics or levels, or other circumstances beyond the control of the Authority, will be sufficient to meet all of the demands of Participant or the Participants, as same may be revised from time to time throughout the Contract Term, or (ii) the Authority will be successful in securing additional water supplies.
- (i) In addition to all other remedies available to Participant, if the Authority is not able to acquire additional water supplies necessary for all Participants to achieve and maintain compliance with the Plan during the Contract Term, then: (i) without losing its right to receive the Contract Quantity at the rate for Water established under this Contract, Participant shall have the right, but not the obligation, to import water from any source without being subject to any fees, rates, or charges for said importation of water that may be imposed under this Contract or the Rate Order, and (ii) Participant shall have the right, but not the obligation, to establish its own groundwater reduction plan to comply with the Plan to the limited extent necessary to address such inability to acquire additional water supplies, but Participant shall remain obligated to pay the groundwater pumpage fee established under this Contract for the pumpage from its Wells and to pay for Water as and if delivered by the Project.
- (j) The Authority reserves the right to sell water, at any time and at its sole discretion, from any source other than GRP Water.
- Section 9.02: The Authority as Participant. The Authority, in its capacity as a Participant, shall have the same rights and privileges and the same duties and obligations as all Participants, including the obligation of a Participant to make full and timely payment of all amounts of the same kind and character as are chargeable to the Authority as a Participant under Article VI hereof. All amounts so paid by the Authority shall be deposited into the same fund to which similar payments by other Participants are deposited.
- <u>Section 9.03</u>: <u>The Authority as GRP Administrator</u>. (a) To facilitate the implementation of the GRP and the discharge of the Authority's obligations under this Contract, the Authority shall, subject to the conditions and limitations herein:
  - (1) establish and maintain a separate operating division of the Authority with (i) a separate, annual budget that encompasses the annual revenues and expenses of the GRP, the Project, this Contract and contracts with the Participants that are substantially similar to this Contract, and (ii) separate books of account that shall be audited annually;
  - (2) contract for, lease, or purchase, for the benefit of such separate operating division, the GRP Water and such other properties, services, land, equipment, and facilities, including administrative and management services and facilities, from the Authority, or one or more other operating

- divisions of the Authority, or from other persons, as may be deemed necessary and proper by the Authority to perform its obligations hereunder; and
- (3) allocate to such separate operating division a proportional share of the direct and indirect costs of the Authority's general and administrative, managerial, accounting, legal, fiscal, clerical, human resources, risk management, support services, and technical services related to the performance by the Authority of its obligations hereunder.
- (b) Such separate operating division of the Authority shall be operated for the exclusive benefit of the Participants, and not for the use or benefit of any water user other than the Participants, without profit or loss to such separate operating division, such that, except as provided in Section 9.01(h)(1) hereof with respect to sales of excess water, and as otherwise provided in subsections (a) and (b) of this Section 9.03 and Section 11.01, the assets, income, responsibilities, liabilities, and debts of the separate operating division are not a charge against, an obligation or responsibility of, or an asset of or income source to any other operating division of the Authority. Nothing in this subsection shall be deemed or construed to limit or restrict the right and power of the Authority, or one or more of its other operating divisions, to:
  - (1) prepare, maintain, audit, or report its financial position on a consolidated basis with one or more other operating divisions of the Authority;
  - (2) use the revenues from the sale of GRP Water for other corporate purposes of the Authority;
  - (3) sell raw water to such separate operating division from the Authority, or one or more other operating divisions of the Authority, from any source other than GRP Water, at the System Rate, including applicable reservation fees, or with the approval of the Review Committee, at the generally prevailing and applicable rates for large volume purchases of raw water adopted by the Authority from time to time, including applicable reservation fees, for water from such other sources, and to use the revenues therefrom for other corporate purposes of the Authority;
  - (4) allocate and charge to such separate operating division reservation fees for such portion of the GRP Water as is owned by the Authority on the Effective Date, based on the generally prevailing and applicable reservations fees adopted from time to time by the Authority, and to use the revenues therefrom for other corporate purposes of the Authority;
  - (5) allocate and charge to such separate operating division the actual costs, including reservation fees, incurred by the Authority for holding, purchasing, leasing, reserving, optioning, or contracting for the portion of the GRP Water obtained by the Authority under the Houston Contract, or

- for other water supplies acquired or contracted by the Authority with Project revenues for the benefit of such separate operating division; or
- (6) recover or be reimbursed the actual and reasonable costs described in subsection (a) or for any other actual and reasonable costs incurred by the Authority prior to the establishment of such separate operating division that are associated with the development of the WRAP (except to the extent the Authority has already received funds for the WRAP), the GRP, or the Project, or that otherwise specifically pertain to the subject matter of this Contract.
- (c) The creation of such separate operating division of the Authority, and the administration of the GRP, the Project, or this Contract by such separate operating division, shall not be construed as an assignment of this Contract by the Authority.
- (d) The Parties agree and acknowledge that economies of scale generally benefit all Participants with respect to the implementation of the GRP and the sharing of Project costs. Accordingly, except as otherwise provided in Section 9.01(g) hereof, the Authority agrees to offer all Regulated Users the opportunity to participate in the GRP on terms and conditions that are similar, in all material respects, to this Contract. In addition, if the Authority at any time provides another Participant terms, conditions or benefits that are related to the Project or the GRP and that are more favorable than those provided to the Participant pursuant to this Contract, then the Authority will offer the same terms, conditions and benefits to Participant, which Participant may, at its option, accept or deny; provided, however, the foregoing shall not apply with respect to terms, conditions, or benefits related to (i) a Participant's request for non-mandatory connection to the Project under Section 4.04 hereof that has been considered by the Review Committee, or (ii) a Participant's request for an increase in Contract Quantity under Section 4.09(b) hereof that has been considered by the Review Committee.
- (e) The Authority agrees to provide Participant with access to records, reports, and data, pertaining to the Project and/or the GRP, and applicable fees, rates, and charges under this Contract, to the same extent as provided in Section 2.10 hereof with respect to the Review Committee. The Authority agrees that the annual audit of the separate operating division created pursuant to this Section shall be made available by the Authority in digital format by posting same on the Authority's website. The Authority shall cause all meeting agendas of the Review Committee to be posted on the Authority's website at least three (3) business days prior to each such meeting. The Authority shall cause all meeting agendas of the Board of Directors of the Authority that in any way pertain to the GRP, the Project, or this Contract to be posted on the Authority's website at least (3) business days prior to each such meeting.
- (f) In addition to any other rights and remedies provided for under this Contract, a Participant shall have the right to appeal a final decision of the GRP Administrator to the Board of Directors of the Authority. Notice of an appeal describing the nature of the appeal must be provided to the General Manager of the Authority within ninety (90) days of the date of such final decision. The Board of Directors of the Authority shall consider such appeal as soon as practicable, but not later than sixty (60) days following the receipt of such appeal by the General

Manager. The Board of Directors of the Authority shall fairly consider such appeal and issue a final, written decision and an explanation therefor not later than thirty (30) days following the conclusion of the appeal proceedings. The Authority may, but shall not be obligated to, stay or suspend any such final decision or related actions pertaining to the GRP, the Project, this Contract, and/or the Participant pending such final, written decision. A Participant's failure to appeal shall not be construed to limit or impede, or serve as a precondition to the exercise of, its legal or equitable rights against the Authority.

- (g) At all times during the Contract Term, the Authority covenants that it shall maintain the following insurance coverages:
  - (1) Workers Compensation and Employer's Liability Insurance in form and substance equal to the minimum statutory requirements;
  - (2) Commercial General Liability Insurance (bodily injury and property damage) on an occurrence basis with a combined single limit of not less than \$1,000,000;
  - (3) Commercial Automobile Liability Insurance, including bodily injury and property damage, on an occurrence basis with a combined single limit of not less than \$1,000,000; and
  - (4) Excess Liability Insurance on an occurrence basis with a minimum of \$5,000,000 limit of liability per occurrence.

All such policies shall be open to inspection by Participant and its representatives during regular business hours. In the event of any loss or damage related to the Authority's acts or omissions under this Contract that is recoverable from the Participants hereunder, the Authority covenants that it will look first to proceeds of the insurance policies covering such loss or damage, if and to the extent such policies afford coverage therefor, before seeking to recover such loss or damage from the Participants as a whole through the rates, fees, and charges imposed under this Contract pursuant to Article VI hereof. In the event that such loss or damage was caused, in whole or in part, from the acts or omissions of particular Participants, the foregoing shall not limit the ability of the Authority to (i) first seek recovery from one or more of such particular Participants to the extent allowed under Section 4.11 hereof, or (ii) impose a charge against one or more of such particular Participants to the extent allowed under Section 6.03 hereof. The costs of such insurance shall be considered a cost of the Project and the GRP and reflected (or a share of the cost therefor allocated) in the budget adopted pursuant to subsection (a)(1)(i).

(h) The Authority covenants that it will at all times keep insured such parts of the Project as may be usual and customary with a responsible insurance company or companies against risks, accidents, or casualties for which, and to the extent, carrying such insurance is the usual and customary practice of political subdivisions of the State of Texas operating similar projects in similar locations and under similar circumstances; provided, however, that at any time while any contactor engaged in construction of all or any portion of the Project shall be fully responsible therefor and required by the contract documents to provide adequate insurance, the

Authority shall not be required to carry such insurance with respect to such portion of the Project. All such policies maintained by the Authority, or any certificates of insurance provided by a contractor engaged by the Authority, shall be open to inspection by Participant and its representatives during regular business hours. In the event of any loss or damage, the Authority covenants that to the extent feasible and practicable, it will reconstruct, restore, or repair the destroyed or damaged portion of the Project and will apply the proceeds of the insurance policies covering such loss or damage solely for that purpose. The Authority covenants that it will begin such reconstruction, reservation, or repair within a reasonable time under the circumstances after such loss or damage occurs and will continue to pursue completion of same as expeditiously as possible and will pay, or cause to be paid, all costs and expenses in connection therewith out of such insurance proceeds to the extent available. Any insurance proceeds remaining after the completion of and payment for any such reconstruction, restoration, or repair shall first be deposited to the credit of the interest and sinking fund created or to be created in respect of any Bonds issued to acquire such parts of the Project, and thereafter, equitably distributed, along with any insurance proceeds attributable to such parts of the Project acquired with Project revenues, among the Participants by deposit to the credit of the fund designated by the Authority for the deposit of fees, rates, and charges received from the Participants pursuant to this Contract, or as otherwise reasonably determined by the Authority for the benefit and credit of the Participants. Any deficiency in insurance proceeds to pay for any such reconstruction, restoration, or repairs shall be deemed an operations and maintenance expense of the Project payable from the fund designated by the Authority for the deposit of fees, rates, and charges received from the Participants pursuant to this Contract, except to the extent that the Authority reasonably determines same to be a capital expense payable from any other funds legally available for such purposes. If it is not feasible or practicable for the Project to be reconstructed, restored, or repaired, such insurance proceeds shall be applied first to the payment of any outstanding Bonds, notes, obligations, expenses, or liabilities of the Project or the Authority hereunder, and thereafter shall be equitably distributed among the Participants by deposit to the credit of the fund designated by the Authority for the deposit of fees, rates, and charges received from the Participants pursuant to this Contract, or as otherwise directed by the Authority for the benefit and credit of the Participants.

- (i) To the extent that the Project or any portion thereof shall be taken by condemnation or eminent domain proceedings, any awards or compensation received representing damages for the portion of the Project so taken shall, upon receipt by the Authority, and to the extent feasible and practicable, be applied in the same manner as described in the foregoing subsection (g) relating to insurance proceeds.
- (j) The Authority covenants that the properties constituting the Project will not be sold or otherwise disposed of in a third-party transaction resulting in the receipt by the Authority of cash or other compensation, except for a portion or component of the Project comprised of real or personal property reasonably determined as surplus or otherwise immaterial to the Project and disposed of in the ordinary course of business as permitted by the Act or the general laws of the State of Texas. Any such cash or compensation received by the Authority shall first be deposited to the credit of the interest and sinking fund created or to be created in respect of the Bonds, and thereafter shall be equitably distributed among the Participants by deposit to the credit of the fund designated by the Authority for the deposit of fees, rates, and charges received

from the Participants pursuant to this Contract, or as otherwise reasonably determined by the Authority for the benefit and credit of the Participants, if and as authorized and permitted by any written order, resolution authorizing the issuance of any Bonds, the proceeds of which are used to acquire such properties, and/or by the Act or the general laws of the State of Texas.

(k) To the extent the Authority is allowed to enter Participant's land under the terms of this Contract or otherwise by law, the Authority's employees or agents shall observe Participant's reasonable rules and regulations concerning safety, internal security, and fire protection, shall provide advance notice to Participant of their presence, except in the event of an emergency, and shall exhibit proper credentials.

Section 9.04: Amendments to Contract. This Contract may be amended or otherwise modified only by a written agreement (i) between the Parties, which amendment may be of a general or specific nature, or (ii) by Participants representing an aggregate total water usage among all Participants during the prior calendar year of not less than eighty-five percent (85%) of such total water usage, which amendment shall be executed by the Authority and such Participants, and shall be generally applicable to all similarly situated Participants.

Section 9.05: Legislative Action. Participant understands and acknowledges that amendments may occur from time to time to the Act, including amendments that could grant the Authority the power to impose a fee for groundwater pumpage and a fee for sale of Water consistent with the terms of this Contract. The Authority reserves the right to seek amendments to the Act. Any legal powers of the Authority, whether established by current statute or otherwise, shall be exercised in a manner not inconsistent with all terms, limitations, and conditions set forth in this Contract.

Section 9.06: Contract Costs as Operations and Maintenance Expense of Participant. The Parties acknowledge and agree that among the facilities, goods, and services to be provided to Participant hereunder is the receipt of Water through the Project upon connection of Participant to the Project and that, except as otherwise provided herein, Participant will receive treated surface water only from the Authority and not from any other source. Pursuant to the authority of Section 791.026, Texas Government Code, Participant acknowledges and agrees that all payments to be made by Participant to the Authority hereunder shall constitute and be deemed and considered an operating expense of Participant's System. Participant recognizes its duty to, and covenants and agrees that at all times it will, establish and maintain, and from time to time adjust, the rates, fees, and charges for its services to customers of Participant's System to the end that the revenues and funds received from such rates, fees, and charges, and any other lawfully available funds, will be sufficient at all times to pay any amount due or to become due from Participant under this Contract.

Section 9.07: Temporary Right of Termination. Either Party may terminate this Contract for any reason and be relieved of any and all obligations hereunder by providing written notice to such effect to the other Party on or before July 15, 2010, at 5:00 p.m. (Houston, Texas time), if, on July 1, 2010, at 5:00 p.m. (Houston, Texas time), the aggregate total groundwater usage (including the Authority's groundwater usage) during calendar year 2009 of all Participants that have executed and delivered a contract to the Authority, in substantially the

same form as this Contract, is less than sixty percent (60%) of the aggregate total groundwater usage of all Regulated Users during calendar year 2009, according to the official records of the Conservation District.

#### ARTICLE X

# *Performance by the Parties*

Section 10.01: *Force majeure*. (a) In the event either Party is rendered unable, wholly or in part, by *force majeure*, to carry out any of its obligations under this Contract, other than the payment of money, it is agreed that on such Party's giving written notice and full particulars of such *force majeure* to the other Party as soon as practicable after occurrence of the cause relied upon, then the obligations of the Party giving such notice, to the extent they are affected by *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, but for no longer period. Such cause shall as far as possible be remedied with all reasonable dispatch.

(b) The term "force majeure", as used herein, shall include, but not be limited to, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of government and people, governmental, regulatory, judicial, or administrative restraint or order, explosions, breakage or damage to machinery, a Well, On-Site Facilities, equipment, pipelines or canals, sudden shortage, sudden insufficiency, failure, interruptions, or curtailment of water or energy supply, and any other inabilities of either Party, whether similar to those enumerated or otherwise, and not within the control of the Party claiming such inability, and which by the exercise of due diligence and care such Party could not have avoided. It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the Party having the difficulty, and the above requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of the opposing party when such course is inadvisable in the discretion of the Party having the difficulty.

Section 10.02: Delivery Limitations. If Participant connects to the Project, then Participant is not guaranteed hereunder any specific quantity of Water due to an event of *force majeure* whenever the Project's or the Authority's water supply is interrupted, limited or insufficient, or when the Project's or the Authority's equipment may become inoperative due to mechanical failure, breakage, failure of power supply, or scheduled maintenance and repairs, nor is Participant guaranteed that Water will be supplied at a specified pressure under any circumstances. The Authority shall provide Participant notice of such scheduled maintenance and repairs at least ten (10) full business days in advance and which notice must specify the anticipated duration of such maintenance and repairs. The Authority is in no case to be held to any liability for failure to furnish any specific pressure of treated water, except that the Authority will comply with Section 4.10 hereof. Further, Participant agrees that any representations to third parties regarding connection to the Project in order to address water quality or quantity

issues shall not be binding upon the Authority unless approved by the GRP Administrator in writing.

### **ARTICLE XI**

# Default and Remedies

Section 11.01: Liability of the Authority. (a) Participant shall have and reserves the right to recover from the Authority, including by intervention in any legal proceedings of Authority, for any losses, damages, claims, expenses, costs, or judgments, including reasonable attorneys fees and court costs, incurred by Participant due to any act or omission of the Authority that does not constitute gross negligence or willful misconduct by the Authority and that results directly or indirectly from (i) damage described under Section 4.02(c) hereof, (ii) any act or omission relating to the Authority's performance under this Contract, including any breach or violation of this Contract or any laws, rules, or regulatory requirements relating to the Plan, the GRP, or the Project, (iii) improper or inadequate design, construction, permitting, or operation of the Project, or (iv) claims by third parties, including customers of the Project. Any damages or remedies available to Participant pursuant to this subsection (a) shall be a Project cost and a responsibility, liability, and debt of the separate operating division to be created and established pursuant to Section 9.03(a)(1) hereof, and not a responsibility, liability, or debt of any other operating division of the Authority.

- Participant shall have and reserves the right to recover from Authority, including by intervention in any legal proceedings of Authority, for any losses, damages, claims, expenses, costs, or judgments, including reasonable attorneys fees and court costs, incurred by Participant due to any act or omission of the Authority that constitutes gross negligence or willful misconduct and that results directly or indirectly from (i) damage described under Section 4.02(c) hereof, (ii) any act or omission relating to the Authority's performance under this Contract, including any breach or violation of this Contract or any laws, rules, or regulatory requirements relating to the Plan, the GRP, or the Project, (iii) improper or inadequate design, construction, permitting, or operation of the Project, or (iv) claims by third parties, including customers of the Project. Any damages or remedies available to Participant pursuant to this subsection (b) shall not be a Project cost and shall be the responsibility, liability, and debt of the Authority, and not of any such separate operating division created and established pursuant to Section 9.03(a)(1) hereof, the Participants, the Project, Project revenues, or the GRP. In any event, the Authority shall not include in the fees, rates, and charges imposed on Participant any losses, damages, interest, expenses, or costs incurred by the Authority that result directly or indirectly from the gross negligence or willful misconduct of the Authority relative to the aforesaid items (i) through (iv) of this subsection.
- (c) Nothing in this Section 11.01 shall be construed to limit the Authority's duties and obligations under Section 9.02 hereof.
- (d) Neither the provisions of this Section 11.01, nor the waiver of governmental immunity under Section 11.05 hereof, shall be deemed, construed, or considered as (i) a waiver of governmental immunity by the Authority with respect to any third party, (ii) establishing a

particular standard of care with respect to any third party, (iii) waiving any other rights, privileges, remedies, or defenses available to the Authority, at law or in equity, with respect to any third party, or (iv) except as provided in Section 4.02(c) hereof, waiving any rights, privileges, remedies, or defenses for the acts or omissions of any independent contractor of the Authority. All such rights, privileges, remedies, and defenses are hereby reserved by the Authority in all respects. Neither the provisions of this Section 11.01, nor the waiver of governmental immunity under Section 11.05 hereof, shall be deemed, construed, or considered as (i) a waiver of governmental immunity by the Participant with respect to any third party, (ii) establishing a particular standard of care with respect to any third party, or (iii) waiving any other rights, privileges, remedies, or defenses available to the Participant, at law or in equity, with respect to any third party. All such rights, privileges, remedies, and defenses are hereby reserved by the Participant in all respects.

(e) To the extent applicable and permitted by law, each Party shall have available at all times the rights of mandamus and specific performance against the other Party.

Section 11.02: Default and Remedies. (a) Default shall occur in the event either Party (i) fails to timely pay any fees, rates, charges, or other amounts due hereunder ("Payment Default"), or (ii) fails to perform or is in breach or violation of any of its other obligations hereunder ("Performance Default"). In the event of a Payment Default, notice of such default and the time for institution of proceedings for collection of any amounts due shall be given and conducted in the manner provided in this Contract, the applicable provisions of the Rate Order, any other order of the Authority relating thereto, and applicable law. In the event of a Performance Default, the non-defaulting Party shall give the defaulting Party written notice describing such default and demanding cure of such default.

- (b) Should a Performance Default not be fully cured within a reasonable time, but not more than sixty (60) days after notice of default has been given to the defaulting Party, or should the defaulting Party deny or dispute such default, the Parties agree to submit such dispute to non-binding mediation in accordance with the provisions of Section 11.03 hereof; provided, however, that either Party may seek injunctive relief, and only injunctive relief, prior to such mediation in order to preserve the *status quo* or to prevent irreparable harm; provided, however, a Party may commence litigation if same could be barred within sixty (60) days by an applicable law or statute of limitations.
- (c) Upon conclusion of mediation proceedings or in the event of failure by a defaulting party to mediate timely and in good faith, then except as provided in Section 11.04 hereof, the non-defaulting Party may pursue any and all remedies existing at law and in equity from any court, agency, or other entity with jurisdiction over the subject matter at such time.

Section 11.03: Mediation. (a) The Party seeking to initiate mediation (the "Initiating Party") shall give written notice to the other Party describing in general terms the nature of the dispute and the Initiating Party's claim for relief and identifying one or more individuals with authority to settle the dispute on the Initiating Party's behalf. The Party receiving such notice (the "Responding Party") shall have thirty (30) days within which to designate by written notice

to the Initiating Party one or more individuals with authority to settle the dispute on such Party's behalf. The individuals so designated shall be known as the "Authorized Individuals."

- (b) The Authorized Individuals shall be entitled to make such investigation of the dispute as they deem appropriate, but agree to meet promptly, and in no event later than thirty (30) days from the date of the Initiating Party's written notice, to discuss resolution of the dispute. The Authorized Individuals shall meet at such times and places and with such frequency as they may agree. If the dispute has not been resolved within thirty (30) days from the date of their initial meeting, the Parties shall cease direct negotiations and shall submit the dispute to mediation in accordance with the procedure set forth below.
- (c) The Authorized Individuals shall have five (5) business days from the date they cease direct negotiations to submit to each other a written list of not less than three (3) acceptable qualified mediators not affiliated with either of the Parties. Such list shall rank the mediators in numerical order of preference (e.g., "1" being the highest rank, "3" being the lowest rank). All mediator candidates must satisfy the qualification standards of Texas law, as prescribed under Section 154.052, Texas Civil Practice and Remedies Code. Within five (5) days from the date of receipt of such list, the Authorized Individuals shall rank the mediators submitted by the other Party in numerical order of preference and exchange such rankings. If one or more names are on both lists, the highest ranking person which appears on both lists shall be designated as the mediator. If no name is on both lists, the person receiving the highest combined ranking shall be designated as the mediator. If such mediator is not available to serve, the Parties shall proceed to contact the mediator who was next highest in combined ranking until they are able to select a mediator. In the event of a tie based on such combined ranking, the Review Committee shall break the tie. If a tie cannot be broken by the Review Committee within five (5) days after submission of the Review Committee, mediation shall be concluded.
- (d) In consultation with the mediator selected, the Parties shall promptly designate a mutually convenient time and place for the mediation, and unless circumstances require otherwise, such time is to be not later than fifteen (15) days after selection of the mediator.
- (e) In the event either Party has substantial need for information in the possession of the other Party in order to prepare for the mediation, the Parties shall attempt in good faith to agree on procedures for the expeditious exchange of such information, with the assistance of the mediator if required.
- (f) At least seven (7) days prior to the first scheduled session of the mediation, each Party shall deliver to the mediator and to the other Party a concise written summary of its views on the matter in dispute, and such other matters required by the mediator.
- (g) In the mediation, each Party shall be represented by an Authorized Individual and may be represented by counsel. In addition, each Party may, with permission of the mediator, have in attendance such additional persons as are needed to respond to questions, contribute information, and participate in the negotiations.

- (h) The mediator shall determine the format for the meetings, designed to assure that both the mediator and the Authorized Individuals have an opportunity to hear an oral presentation of each Party's views on the matter in dispute, and that the Authorized Individuals attempt to negotiate a resolution of the matter in dispute, with or without the assistance of counsel or others, but with the assistance of the mediator. To this end, the mediator is authorized to conduct both joint meetings and separate caucuses with the Parties. The mediation session shall be private. The mediator will keep confidential all information learned in private caucus with any Party unless specifically authorized by such Party to make disclosure of the information to the other Party. The Parties commit to participate in the proceedings in good faith with the intention of resolving the dispute, if at all possible.
- (i) The Parties agree to participate in the mediation procedure to its conclusion. The mediation shall be concluded by (i) failure to timely select a mediator, (ii) the execution of a settlement agreement by the Parties, (iii) a declaration of the mediator that the mediation is terminated, or (iv) a written declaration of a non-defaulting Party to the effect that the mediation process is terminated due to failure of the defaulting Party to mediate timely or in good faith, or at the conclusion of one or more mediation sessions lasting a total of not less than eight (8) hours. If a Party withdraws from the mediation by either refusing to participate or terminating mediation before one of the foregoing conditions are satisfied, then such Party shall be liable for all attorney fees and related costs arising from all subsequent litigation of the matter in dispute. If the mediation is terminated without a resolution of the dispute, any Party may commence legal proceedings in addition to any injunctive relief previously sought.
- (j) The fees and expenses of the mediator shall be shared equally by the Parties. The foregoing shall not limit the ability of the Authority to treat such costs, including reasonable attorneys and other fees and costs, as a cost of administration and enforcement of the GRP, except in an instance of gross negligence or willful misconduct on the part of the Authority.
- Mediation hereunder is a compromise negotiation for purposes of the federal and (k) state rules of Evidence and constitutes privileged communication under Texas law. Except to the extent required by law, the entire mediation process is intended to be confidential, and no stenographic, visual, or audio record shall be made. All conduct, statements, promises, offers, views, and opinions, whether oral or written, made in the course of the mediation by any Party or by an Authorized Individual, or by their agents, employees, representatives, or other invitees, and by the mediator are confidential and shall, in addition and where appropriate, be deemed to be Such conduct, statements, promises, offers, views, and opinions shall not be discoverable or admissible for any purposes, including impeachment, in any litigation or other proceeding involving the Parties, and shall not be disclosed to anyone not an Authorized Individual or an agent, employee, expert, witness, or representative of any of the Parties; provided, however, that evidence otherwise discoverable or admissible is not excluded from discovery or admission as a result of its use in the mediation. The mediator shall be disqualified as a witness, consultant, expert or counsel of any Party with respect to the dispute and any related matters in any subsequent litigation.

<u>Section 11.04</u>: <u>Termination Not a Remedy</u>. The Parties agree that termination of this Contract in the event of a default shall not be a remedy available to the Parties; provided,

however, that nothing herein shall be deemed or construed to prevent (i) the Authority from suspending or curtailing the delivery of Water to Participant in the event of a Payment Default or Performance Default hereunder that is continuing without cure beyond the time period for cure provided herein; (ii) the Participant from exercising self help under Section 9.01(i) hereof; or (iii) the Participant from terminating this Contract pursuant to Sections 9.07 or 12.02(d) hereof.

Section 11.05: Waiver of Governmental Immunity. The Authority and Participant agree that this Contract constitutes an agreement for the provision of goods and services and is subject to the provisions of the Subchapter I, Chapter 271, Texas Local Government Code, as amended, and any successor statute. In accordance with Sections 271.152 and 271.153 thereof, and as between the Parties, the Parties hereby waive and acknowledge waiver of all constitutional, statutory, or common law rights to sovereign or governmental immunity from liability or suit and expressly consent to be sued and to be liable to the limited extent necessary for a Party to enforce this Contract against the other Party.

Section 11.06: Costs. If either Party prevails in any judicial, administrative, or other legal proceedings against the other Party brought under or arising out of this Contract, such prevailing Party shall additionally be entitled to recover court and administrative agency costs and reasonable and necessary attorney fees from the non-prevailing Party to such proceedings. Notwithstanding the foregoing, attorneys fees and costs associated with an administrative hearing pursuant to Texas Water Code Chapters 11, 12, or 13 are recoverable against the non-prevailing Party only in accordance with an order of the TCEQ.

<u>Section 11.07</u>: <u>Enforcement</u>. The General Manager of the Authority, or any Deputy General Manager of the Authority designated by the General Manager, shall have the right to declare the existence of an event of default and/or enforce all legal rights and obligations under this Contract without further authorization by the Board of Directors of the Authority.

<u>Section 11.08</u>: <u>Choice of Law; Venue</u>. This Contract shall be governed by the laws of the State of Texas, and venue shall be in a court of competent jurisdiction located in Montgomery County, Texas.

Section 11.09: No Additional Waiver Implied. The failure of either Party hereto to insist, in any one or more instances, upon performance of any of the terms, covenants, or conditions of this Contract shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition by the other Party hereto, but the obligation of such other Party with respect to such future performance shall continue in full force and effect.

#### ARTICLE XII

#### Term

Section 12.01: Contract Term. This Contract shall be in force and effect from and after the Effective Date and shall expire on the later of (i) December 31, 2089, or (ii) the date of retirement of all of the Authority's then outstanding Bonds and discharge of any remaining obligations of the Authority incurred under or pursuant to this Contract (the "Contract Term"), so

as to afford the Authority a reasonable time period to conclude its affairs related to this Contract. Any and all obligations of Participant to make payments to the Authority, to the extent such obligations were incurred prior to termination of this Contract, shall survive any expiration or termination of this Contract.

<u>Section 12.02</u>: <u>Termination</u>. (a) Either Party may terminate this Contract after July 1, 2010, and until 5:00 p.m. on July 15, 2010, as provided in Section 9.07 hereof.

- (b) The Parties acknowledge that a material consideration of the Authority in entering into this Contract is that Participant does not have, and will not have, during the Contract Term, original jurisdiction under Chapter 13, Texas Water Code, or any similar law, rule or regulation currently in effect or hereafter enacted or adopted, over the raw water rates or reservation fees established by the Authority from time to time ("Original Jurisdiction"). Accordingly, in the event of a change in any such law, rule, or regulation that would provide Participant Original Jurisdiction, and the initiation of proceedings by Participant or the taking of any similar overt action by Participant to assert Original Jurisdiction, the Authority shall have the right, but not the obligation, to terminate this Contract; provided, however, that prior to such termination, the Authority will give Participant written notice of the Authority's intent to terminate and give Participant a reasonable opportunity to cease such proceedings or such similar overt action. If Participant promptly ceases such proceedings or such similar overt action, then the Authority shall not terminate this Contract.
  - (c) This Contract may not be terminated as a result of a default by either Party.
- (d) Except as provided above in this section, or in this subsection, this Contract may only be terminated prior to the expiration of the Contract Term by mutual, written agreement of the Parties. The Authority may enter into an agreement with Participant for the termination of this Contract prior to the expiration of the Contract Term, but only upon (i) Participant's agreement therein to pay its pro-rata share of the Bonds or other obligations of the Authority issued or incurred in connection with the Project or the GRP pursuant to Article VIII hereof, which pro-rata share must be determined by the GRP Administrator, presented to the Review Committee for recommendations, and approved by the Board of Directors of the Authority; and (ii) the reasonable determination by the GRP Administrator that such termination will not adversely affect the GRP or the other Participants.

Section 12.03: Continuation of Service. If Participant has connected to the Project, or has been provided a notice to connect to the Project under Section 4.05 hereof, the Authority agrees to continue to provide Water to Participant after the expiration of the Contract Term, but not after termination of this Contract (except for termination pursuant to Section 13.02(a) hereof), in quantities and on terms and conditions substantially similar to those set forth in this Contract, and at rates then payable by similarly situated customers of the Authority, for so long as the Authority has available sufficient water supplies from GRP Water to do so. This Section 12.03 shall survive the expiration of the Contract Term or the termination of this Contract pursuant to Section 13.02(a) hereof, but not the termination of this Contract for any other reason.

#### **ARTICLE XIII**

#### Miscellaneous Provisions

Section 13.01: Contract Subject to Laws and Regulations. This Contract shall be subject to all present and future valid and applicable laws, orders, rules, and regulations of the United States of America, the State of Texas, or any regulatory body having jurisdiction. The Authority shall not adopt, implement, or enforce any provision of its Rate Order, Rules, regulations, or any written order of the Authority that is contrary to, inconsistent with, or prohibited by the terms and provisions of this Contract. The Authority will not exercise its legal or statutory powers, as either of same may be amended hereafter, in a manner that is contrary to, inconsistent with, or prohibited by the terms and provisions of this Contract.

Section 13.02: Severability and Reformation. (a) If any provision of this Contract or any like provision of a substantially similar contract with any other Participant(s), other than the right of termination by the Authority pursuant to Section 12.02(b) hereof or any like provision of a substantially similar contract with any other Participant(s), is held by a final and non-appealable decision of a court of competent jurisdiction to be unenforceable or violative of laws, orders, rules, or regulations of the United States of America, the State of Texas, or any regulatory body having jurisdiction, all other parts hereof remain enforceable unless the result materially prejudices either Party. In the event of such a determination with respect to Section 12.02(b) hereof or any like provision of a substantially similar contract with any other Participant(s), and in the event that any Participant (other than the Authority) should before, contemporaneously with, or after such determination acquire Original Jurisdiction, then this Contract is automatically terminated as of the effective date of the later of such events, but Section 12.03 hereof shall survive such termination (i) for a reasonable period of time to permit the Parties and other Participants to mutually agree upon a reformation of this Contract and the other Participant contracts, or (ii) until a Participant or former Participant shall initiate proceedings or take any similar overt action to assert Original Jurisdiction.

(b) Except as provided in subsection (a) above, where any procedure hereunder may be held by a court of competent jurisdiction to be unenforceable or violative of any State or Federal statutory or constitutional provision, including Article XI, Section 7 of the Texas Constitution, the Parties shall have the power by resolution, and the obligation, to adopt and promulgate reasonable and necessary alternative procedures which will conform thereto, and the Parties agree that they would have entered into this Contract without regard to such unenforceability or violative procedure.

<u>Section 13.03</u>: <u>Notices</u>. (a) Until the Authority is otherwise notified in writing by Participant, the address of Participant is and shall remain as follows:

Director of Public Works P.O. Box 3066 Conroe, Texas 77305

Telefax: (936) 522-3898

E-mail: dtowery@cityofconroe.org

Until Participant is otherwise notified in writing by the Authority, the addresses of the GRP Administrator and the Authority are and shall remain as follows:

General Manager/GRP Administrator San Jacinto River Authority 1577 Dam Site Road Conroe, Texas 77304 Telefax: (936) 588-3043

E-mail: legalnotices@sjra.net

- (b) All written notices required or permitted to be given under this Contract from one Party to the other shall be given (i) by telefax or e-mail to the other Party at the telefax number or e-mail address set forth above, with a hard copy of same mailed within forty-eight (48) hours by certified mail (return receipt requested), with proper postage affixed thereto and addressed to the other Party at the address set forth above, or at such other address as the other Party may designate by written notice, or (ii) by the mailing of same by certified mail (return receipt requested), with proper postage affixed thereto and addressed to the other Party at the address set forth above or at such other address as the other Party may designate by written notice. Notice by telefax or e-mail shall be effective upon actual receipt. Notice by certified mail shall be effective when actually received, as reflected on the corresponding return receipt.
- Section 13.04: Approvals; Execution by General Manager. (a) Unless otherwise expressly provided for herein, any consent or approval of the Parties shall be evidenced by an order or resolution duly adopted by the governing body of the Party, or an appropriate certificate executed by a person, firm, or entity previously authorized to determine and give such approval or consent on behalf of the Party pursuant to an ordinance, resolution, or other appropriate instrument adopted by the governing body or managing authority of such Party.
- (b) Notwithstanding the above, the Board of Directors of the Authority has duly authorized the execution of this Contract by the General Manager of the Authority, and any approvals or consents required under this Contract may be given by the General Manager or the GRP Administrator, unless otherwise expressly provided herein.
- <u>Section 13.05</u>: <u>Parties in Interest</u>. This Contract shall be for the sole and exclusive benefit of Participant and the Authority, and shall not be construed to confer any rights upon any other person, including, without limitation, any customer of Participant's System.
- Section 13.06: Assignments. This Contract shall bind and benefit the respective Parties and their legal successors, but shall not otherwise be generally assignable, in whole or in part, by either Party without first obtaining the written consent of the other. This provision against assignment shall not apply in the event of an assignment by operation of law resulting from merger, acquisition, or consolidation, or a municipality succeeding to the assets and liabilities of Participant, in which case this Contract shall remain in full force and effect and the succeeding person shall be entitled to the benefits and shall assume and be bound by the obligations of Participant hereunder.

<u>Section 13.07</u>: <u>Reservation of Rights</u>. All rights, powers, privileges, and authority of the Parties not governed, restricted, or affected by the express terms and provisions of this Contract shall be and are hereby reserved by the Parties and may be exercised and enforced from time to time and as often as may be deemed necessary and proper by the Parties.

<u>Section 13.08</u>: <u>Merger</u>. This Contract contains all the agreements made between the Parties relative to the subject matters addressed hereinabove.

<u>Section 13.09</u>: <u>Authority to Enter Into Contract.</u> Each Party represents and warrants to the other Party that it is authorized to enter into this Contract by the Constitution and laws of the State of Texas.

[SIGNATURES COMMENCE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto to have signed this Contract in multiple copies, each of which shall be deemed to be an original, but all of which shall constitute but one and the same contract, as of the Effective Date.

# SAN JACINTO RIVER AUTHORITY

Reed Eichelberger, P.F. General Manager

Date: 4-22-10

CITY OF CONROE, TEXAS

9.22.10

Webb K. Melder

Mayor

Date:

Jerry S. McGuire

Date: 4/22/10

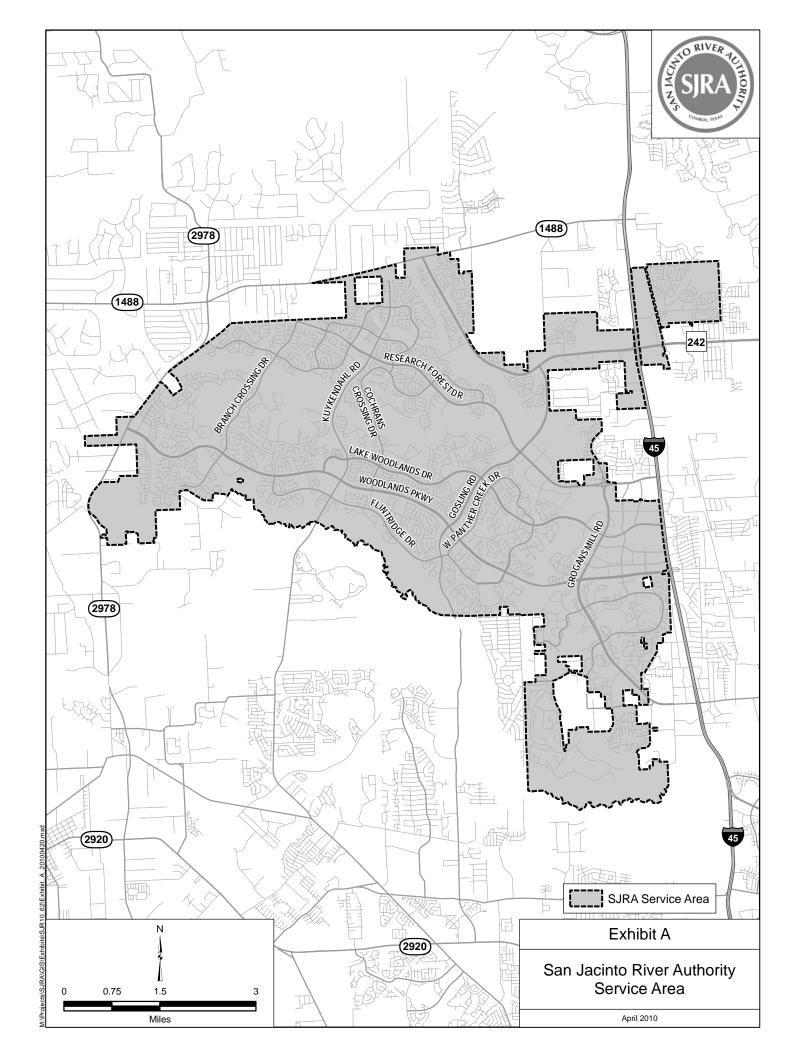
Attest:

Marla I. Porter, City Secretary

[SEAL]

# Exhibit A

[The Authority's Service Area]



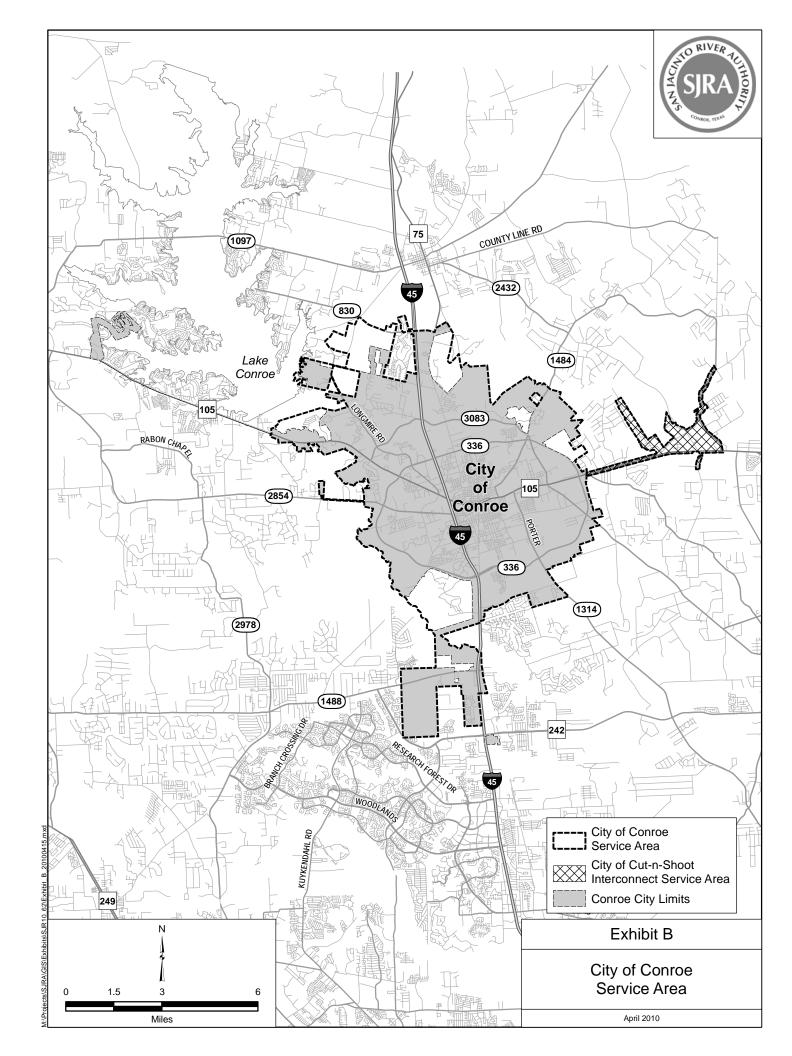




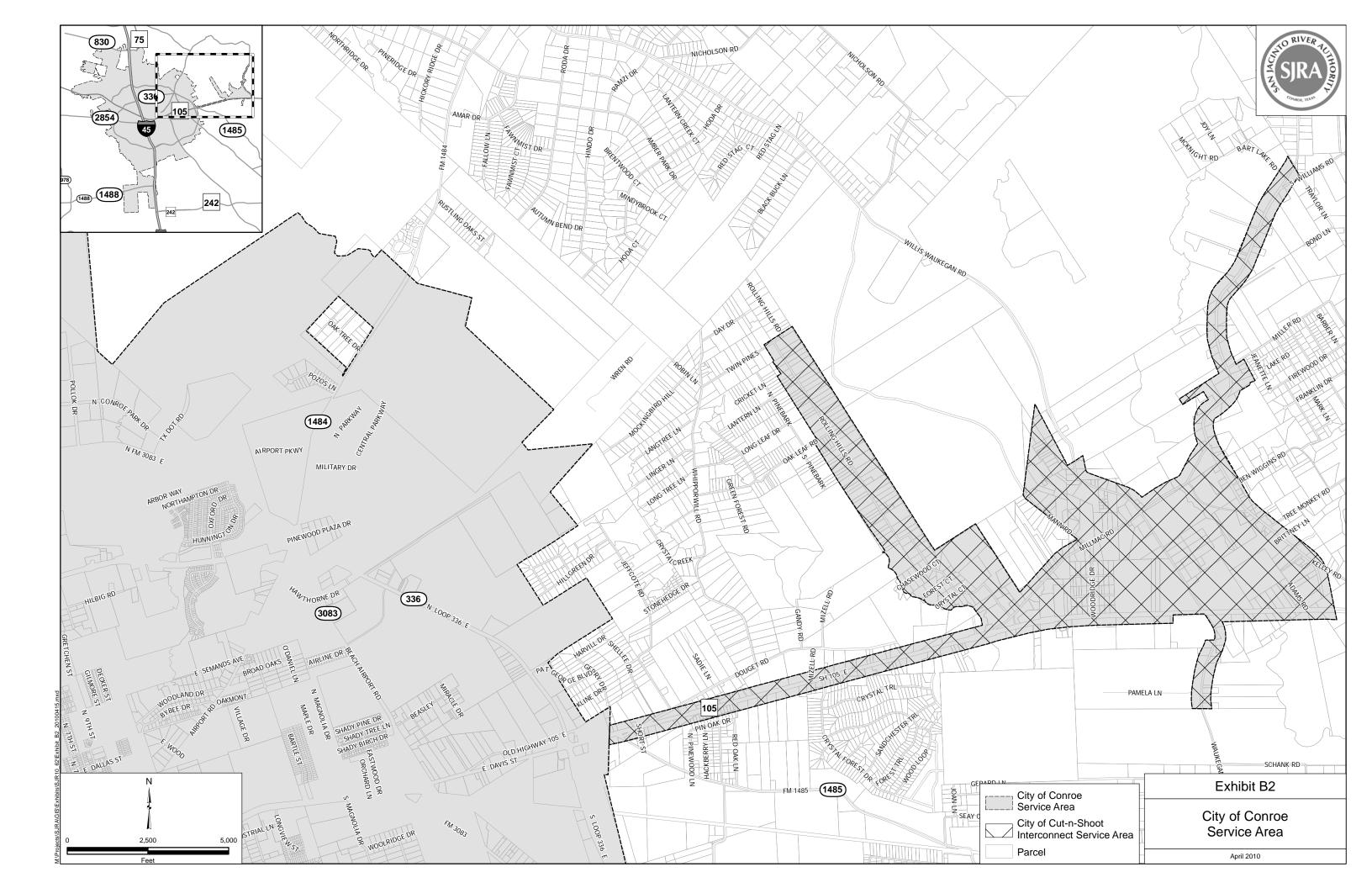


# Exhibit B

[Participant's Service Area]













# Exhibit C

[Participant's Well Permits]

# Permit Renewal Application

Lone Star Groundwater Conservation District

PO Box 2467, Conroe, Texas 77305

Phone: (936) 494-3436 Metro: (936) 441-3437 Fax: (936) 494-3438

E-mail: info@lonestargcd.org Website: www

Website: www.lonestargcd.org

District Use Only:

Date Received:

Received By: \_

□ No

Applicant Information:

City of Conroe Parks Department

Attn: Lauren Arnold P. O. Box 3066 Conroe, TX 77305

(936) 522-3842 (936) 522-3844

<u>Note</u>: The name, addresses, and numbers shown above are the only ones kept on file. Please make sure they are correct.

Return Renewal Application Prior to: Oct. 31, 2009

(60 days prior to the date of expiration of current permit)

<u>Note</u>: Applications must be <u>RECEIVED</u> by the Lone Star GCD no later than the date listed above. Failure to timely submit the application may be grounds for denial of renewal and loss of permit.

District Permit No

OP-09020301

Fee Received: 12 Yes

Type of Permit: Operating Permit

Current Permit Term: 01/01/2009 to 12/31/2009

Permit Renewal Term: 01/01/2010 to 12/31/2010

Authorized Type of Use: Irrigation

Total Number of Wells Permitted Under This Permit: 1

Total Authorized Withdrawal: 1,267,200 Gallons

Other Permit Numbers Covered by Aggregation:

This is the application for renewal of your water well permit. To complete the application, please use the following checklist:

- (1) Review information provided by the District. If incorrect, mark a line through the incorrect information and PRINT in the correct information. Use additional sheets as necessary.
- (2) Fill in ALL blanks or mark N/A (not applicable).
- (3) Return this renewal application for the upcoming year so that it is RECEIVED by the District on or before October 31, 2009.

The approval of this permit renewal application authorizes the applicant to annually use groundwater in accordance with the terms and conditions of the original or amended permit granted to the applicant. If an applicant wishes to change the authorized amount or type of use of groundwater in any way under the permit, the applicant must submit a **Permit Amendment Application**.

Are all water wells associated with this permit renewal application metered in accordance with Rule 11.1 of the Lone Star GCD's
Rules? Yes Do Explain

<u>Note</u>: Upon receipt of the completed and signed renewal application, permittee will be invoiced for 2010 water use fees. Annual water use fees are due on the 1<sup>st</sup> day of January 2010. Payment of the entire annual permit fee must be received by the Lone Star GCD or a quarterly payment plan must be approved by the District before the permit renewal will be issued by the District. Permittees whose annual permit fee is \$500.00 or less are required to pay the entire fee annually.

#### CERTIFICATION

The above statements and information are true and correct to the best of my knowledge.

This application submitted by (please print) Lawren Arnold

Phone: 9310.527.3843

Date: 10-5-09

Signature House Unde

#### For District Use Only

Approved (in accordance with terms and conditions included in prior permit, information included in renewal application, and subject to District Rules).

 Denied (contact District for reason for denial and options available to applicant)

er Date

Kathy Jones, General Manager

## Permit Renewal Application

Lone Star Groundwater Conservation District

PO Box 2467, Conroe, Texas 77305

Phone: (936) 494-3436 Metro: (936) 441-3437 Fax: (936) 494-3438

E-mail: info@lonestargcd.org Website: www.lonestargcd.org

District Use Only:

Date Received: 15 15 17 29

Fee Received: 14 es | No | 12 29

#### Applicant Information:

T & W Water Services (Southwind Ridge)

Attn: Ron Payne P. O. Box 2927 Conroe, TX 77305

(281) 367-9566 (936) 441-5691

<u>Note</u>: The name, addresses, and numbers shown above are the only ones kept on file. Please make sure they are correct.

## Return Renewal Application Prior to: Oct. 31, 2009

(60 days prior to the date of expiration of current permit)

<u>Note</u>: Applications must be <u>RECEIVED</u> by the Lone Star GCD no later than the date listed above. Failure to timely submit the application may be grounds for denial of renewal and loss of permit.

District Permit No.

OP-07092808A

Type of Permit: Operating Permit

Current Permit Term: 01/01/2008 to 12/31/2009

Permit Renewal Term: 01/01/2010 to 12/31/2010

Authorized Type of Use: Public Supply (PWS)

Total Number of Wells Permitted Under This Permit: 1

Total Authorized Withdrawal: 13,750,000 Gallons

Other Permit Numbers Covered by Aggregation:

This is the application for renewal of your water well permit. To complete the application, please use the following checklist:

- (1) Review information provided by the District. If incorrect, mark a line through the incorrect information and PRINT in the correct information. Use additional sheets as necessary.
- (2) Fill in ALL blanks or mark N/A (not applicable).
- (3) Return this renewal application for the upcoming year so that it is RECEIVED by the District on or before October 31, 2009.

The approval of this permit renewal application authorizes the applicant to annually use groundwater in accordance with the terms and conditions of the original or amended permit granted to the applicant. If an applicant wishes to change the authorized amount or type of use of groundwater in any way under the permit, the applicant must submit a **Permit Amendment Application**.

	ne completed and signed renewal application, permittee will be invoiced for 2010 water use fees. Annual
GCD or a quarterly payr	n the 1 <sup>st</sup> day of January 2010. Payment of the entire annual permit fee must be received by the Lone Starment plan must be approved by the District before the permit renewal will be issued by the District.  I permit fee is \$500.00 or less are required to pay the entire fee annually.
	CERTIFICATION
The	above statements and information are true and correct to the best of my knowledge.

The above statements and information are true and correct to the best of my knowledge.			
This application submitted by (please print)	RON PAYNE	Phone: 281-367-9566	
Signature Augus	-	Date: 10/23/2009	

#### For District Use Only

- Approved (in accordance with terms and conditions included in prior permit, information included in renewal application, and subject to District Rules).
- ☐ Denied (contact District for reason for denial and options available to applicant)

1-8-10

Kathy Jones. General Manager

Date

## Permit Renewal Application

Lone Star Groundwater Conservation District

PO Box 2467, Conroe, Texas 77305

Metro: (936) 441-3437 Fax: (936) 494 34380 Phone: (936) 494-3436

E-mail: info@lonestargcd.org Website: www.lonestargcd.org

**District Use Only:** Date Received: Received By:

n 7 2009

e Received: Ma

□ No

Applicant Information:

City of Conroe Attn: Troy Toland P.O. Box 3066 Conroe, TX 77305

(936) 522-3870 (936) 522-3141

Note: The name, addresses, and numbers shown above are the only ones kept on file. Please make sure they are correct.

> Return Renewal Application Prior to: Oct. 31, 2009

(60 days prior to the date of expiration of current permit)

Note: Applications must be **RECEIVED** by the Lone Star GCD no later than the date listed above. Failure to timely submit the application may be grounds for denial of renewal and loss of permit.

District Permit No.

OP02-0001C

Type of Permit: Operating Permit

Current Permit Term: 01/01/2008 to 12/31/2009

Permit Renewal Term: 01/01/2010 to 12/31/2010

Authorized Type of Use: Public Supply (PWS)

Total Number of Wells Permitted Under This Permit: 6

Total Authorized Withdrawal: 562.800.000 Gallons

Other Permit Numbers Covered by Aggregation: HUP038

with 11 wells and 2,709,400,000 gallons

This is the application for renewal of your water well permit. To complete the application, please use the following checklist:

- (1) Review information provided by the District. If incorrect, mark a line through the incorrect information and PRINT in the correct information. Use additional sheets as necessary.
- (2) Fill in ALL blanks or mark N/A (not applicable).
- (3) Return this renewal application for the upcoming year so that it is RECEIVED by the District on or before October 31, 2009.

The approval of this permit renewal application authorizes the applicant to annually use groundwater in accordance with the terms and conditions of the original or amended permit granted to the applicant. If an applicant wishes to change the authorized amount or type of use of groundwater in any way under the permit, the applicant must submit a Permit Amendment Application.

Are all water wells associated with this permit renewal application metered in accordance with Rule 11.1 of the Lone Star GCD	's
Rules? Ves 🗆 No Explain	-
Note: Upon receipt of the completed and signed renewal application permittee will be invoiced for 2010 water use fees. Apply	ıal

Note: Upon receipt of the completed and signed renewal application, permittee will be invoiced for 2010 water use fees. Annual water use fees are due on the 1st day of January 2010. Payment of the entire annual permit fee must be received by the Lone Star GCD or a quarterly payment plan must be approved by the District before the permit renewal will be issued by the District. Permittees whose annual permit fee is \$500.00 or less are required to pay the entire fee annually.

#### **CERTIFICATION**

The above statements and information are true and correct to the best of my knowledge.

This application submitted by (please print) Dean Toweny

#### For District Use Only

Approved (in accordance with terms and conditions included in prior permit, information included in renewal application, and subject to District Rules).

□ Denied (contact District for reason for denial and options available to applicant)

Kathy Jones, General Manager

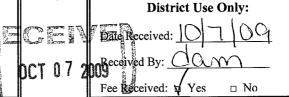
## Permit Renewal Application

## Lone Star Groundwater Conservation District

PO Box 2467, Conroe, Texas 77305

Phone: (936) 494-3436 Metro: (936) 441-3437 Fax: (936) 494-3438

E-mail: info@lonestargcd.org Website: www.lonestargcd.org



**Applicant Information:** 

City of Conroe

Attn: Dean Towery

P.O. Box 3066

Conroe, TX 77305

(936) 522-3885

<u>Note</u>: The name, addresses, and numbers shown above are the only ones kept on file. Please make sure they are correct.

## Return Renewal Application Prior to: Oct. 31, 2009

(60 days prior to the date of expiration of current permit)

<u>Note</u>: Applications must be <u>RECEIVED</u> by the Lone Star GCD no later than the date listed above. Failure to timely submit the application may be grounds for denial of renewal and loss of permit.

District Permit No.

**HUP038** 

Type of Permit: Historic Use Permit

Current Permit Term: 01/01/2009 to 12/31/2009

Permit Renewal Term: 01/01/2010 to 12/31/2010

Authorized Type of Use: Public Supply (PWS)

Total Number of Wells Permitted Under This Permit: 10

Total Authorized Withdrawal: 2,709,400,000 Gallons

Other Permit Numbers Covered by Aggregation:

This is the application for renewal of your water well permit. To complete the application, please use the following checklist:

- (1) Review information provided by the District. If incorrect, mark a line through the incorrect information and PRINT in the correct information. Use additional sheets as necessary.
- (2) Fill in ALL blanks or mark N/A (not applicable).
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Are all water wells associated with this permit renewal application metered in accordance with Rule 11.1 of the Lone Star GCD	's
Rules? 🗹 Yes 🗆 No Explain	

<u>Note</u>: Upon receipt of the completed and signed renewal application, permittee will be invoiced for 2010 water use fees. Annual water use fees are due on the 1<sup>st</sup> day of January 2010. Payment of the entire annual permit fee must be received by the Lone Star GCD or a quarterly payment plan must be approved by the District before the permit renewal will be issued by the District. Permittees whose annual permit fee is \$500.00 or less are required to pay the entire fee annually.

#### CERTIFICATION

The above statements and information are true and correct to the best of my knowledge.

This application submitted by (please print)

Signature

Denv Toweng

Phone: 936-522-3896

Date: 10-5-09

For District Use Only

Approved (in accordance with terms and conditions included in prior permit, information included in renewal application, and subject to District Rules).

☐ Denied (contact District for reason for denial and options available to applicant)

Date 109

Kathy Jones. General Manager

## Exhibit D

[Participant's Historical Use]

## Exhibit D City of Conroe Historical Use

	Reported Pumpage <sup>(1)</sup>		
Year	Gallons / Year	MGD	
2002	2,455,700,000	6.73	
2003	2,583,600,000	7.08	
2004	2,477,000,000	6.79	
2005	2,918,400,000	8.00	
2006	3,031,700,000	8.31	
2007	2,741,700,000	7.51	
2008	3,265,376,000	8.95	
2009	3,235,734,000	8.87	

## Notes

(1) Latest Available Pump Data as Furnished by Lone Star Groundwater Conservation District

## Exhibit E

[Participant's Projected Future Demands]

## Exhibit E City of Conroe Projected Future Demands

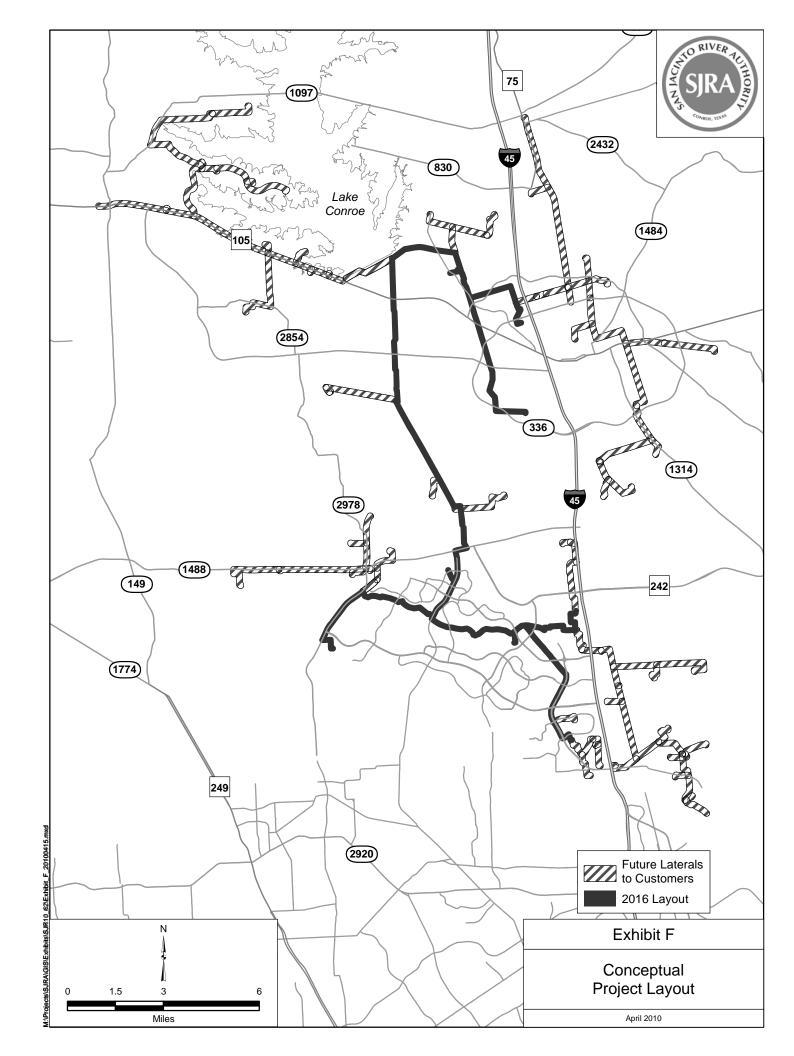
Year	MGD <sup>(1)</sup>
2015	9.72
2025	11.94
2035	14.16
2045	16.39

## Notes

(1) Appendix B, SJRA Joint WRAP Part II 2010, provided by Brown & Gay Engineers, Inc.

## Exhibit F

[Conceptual Drawing of the Project]



## Exhibit G

[Form of Easement]

## WATER LINE [, METER] AND ACCESS EASEMENT

THE STATE OF TEXAS	§	ALL DEDGONG D		
COUNTY OF MONTGOMERY	§ KNOW §	ALL PERSONS E	BY THESE PRESENTS:	
THAT		, a		
("Grantor"), whose address is			, for a	and
in consideration of the sum of T consideration to Grantor in hand p				
a body politic and corporate and a				
the provisions of Article XVI, Sec	-	•	_	
Road, Conroe, Texas, 77304, the r				
confessed, has GRANTED, SOL	D, and CONV	/EYED, and by the	hese presents does GRAI	NT,
SELL, and CONVEY, unto Grant	ee a perpetual	right-of-way and e	easement (the "Easement"	) to
lay, construct, alter, maintain, insp	pect, operate, so	ervice, repair, repl	ace, relocate, change the	size
of, protect, patrol, and remove or	e or more pip	belines for the tran	sportation of water, toget	ther
with appurtenances thereto and ed	uipment ancill	lary to the operation	on thereof, including, but	not
limited to, laterals, taps, fittings,	valves, regula	ators, meters, elec	trical equipment and con	trol
panel facilities, vaults, cathodic pr	otection equip	ment and above-gr	ound cathodic protection	test
stations, markers, air valve asseml	olies, service m	nanholes, air vent	pipes (not to exceed sever	nty-
two inches (72") in height, measur	ed from final g	grade after construc	ction), and protective bolla	ards
(such pipeline(s), appurtenances, a	nd ancillary eq	quipment being ref	erred to herein collectively	y as
the "Facilities"), subject to the terr	ns and provision	ons hereinafter set	forth, in, over, under, acre	oss,
and through that certain tract or p	arcel of land b	being more particu	larly described by metes	and
bounds on Exhibit 1 (the "Easem	ent Tract"), at	ttached hereto and	I incorporated herein by	this
reference for all purposes, out of t	hat certain	acre tract of	land described in that cert	tain
recorde	d in the Off	ficial Public Rec	cords of Real Property	of
Montgomery County, Texas, under	Clerk's File N	Vo(1	the "Site").	

Grantee shall have access across, along, under, over and upon the Easement Tract to engage in all activities as may be necessary, requisite, convenient, or appropriate to effectuate the purpose for which this Easement is granted. Grantee's rights shall include, without limitation, the right to clear and remove trees, growth, shrubbery, and other improvements from within the Easement Tract, the right to bring and operate such equipment thereupon as may be necessary or appropriate to effectuate the purpose for which the Easement is granted, and the right of ingress, egress, and regress onto and across the Site for any purposes for which this Easement is granted, all at Grantee's sole expense. Grantee's access to the Site shall occur by use

Please contact the GRP Administrator and inquire if there is particular easement, water line, project or other project identification information to be included here.

of a dual-lock system under which Grantor's representatives access the Site through use of one of said locks and Grantee's representatives access the Site through use of the other of said locks; provided, however, that if in connection with any of Grantee's activities, Grantee removes any of Grantor's permanent fencing around the Site, then Grantee shall erect and maintain, at Grantee's sole expense, temporary fencing until Grantee reinstalls such permanent fencing.

In connection with Grantee's control panel and other components of the Facilities, Grantee may install, own and maintain sensor equipment at, on, or about Grantor's ground storage tank (or other water plant facilities) located on the Site and electrical and control connections by conduit pipe (or other means) connecting such sensor equipment to any other portion of the Facilities (collectively, the "Sensor Line and Equipment"). Grantee shall, at Grantee's sole expense, restore the surface of the Easement Tract and any other portion of the surface of the Site, if disturbed by Grantee, as nearly as possible to the prior condition.

Grantee, and not Grantor, shall be responsible to own, operate and maintain the Sensor Line and Equipment and the other Facilities installed by Grantee (collectively, "Grantee's Facilities"). Grantor, and not Grantee, shall be responsible to own, operate and maintain all other equipment, facilities, tank(s), building(s), materials, well(s) and/or structures on the Site (collectively, "Grantor's Facilities"). In the event Grantee damages Grantor's Facilities, Grantee will be responsible for the reasonable costs to repair or replace same. In the event Grantor damages Grantee's Facilities, Grantor will be responsible for the reasonable costs to repair or replace same. In the event of any such damage, the party who committed the damage shall immediately notify the other party of such damage.

This Easement is non-exclusive. It is expressly provided that Grantor reserves unto itself, its successors, substitutes and assigns, all other rights in and to the Easement Tract which do not unreasonably interfere with or prevent the use of the Easement herein granted and conveyed to Grantee, except for the construction of fences (other than perimeter fencing around the Site which may encroach upon the Easement Tract), houses, buildings and above-ground structures or improvements, which Grantor shall not be entitled to construct on or across the Easement Tract without Grantee's prior written consent, which consent shall not be unreasonably withheld provided that the installation of same will not interfere with or prevent the use of the Easement herein granted and conveyed to Grantee for the purposes intended. Further, Grantor shall not cause the installation of underground lines, utilities or like facilities within the Easement Tract without the prior written consent of Grantee, which consent shall not be unreasonably withheld, provided that in no event shall the installation of such facilities unreasonably interfere with or prevent the use of the Easement herein granted and conveyed to Grantee for the purposes intended. Grantor shall submit plans and specifications for the installation of underground lines, utilities or like facilities within the Easement Tract to Grantee at the above address for review and approval. After receipt of said plans and specifications by Grantee, Grantee shall have forty five (45) days following submittal, or ten (10) days following any re-submittal, to review and approve or reject same in writing. If Grantee rejects the plans and specifications so submitted, Grantee shall identify the reasons for such rejection in writing to Grantor. Grantor shall not cause, and Grantee, at Grantor's expense, shall have the right to prevent or remove any obstruction of the Easement Tract that interferes with or prevents the use of the Easement herein granted and conveyed to Grantee. Notwithstanding any other provision of this Easement document, Grantor shall not be required to remove, and Grantor is authorized to maintain, operate, replace and repair any waterline(s) and facilities that Grantor currently has located within the Easement Tract; provided, however, Grantor shall not hereafter install any additional waterline(s) or facilities within the Easement Tract without first obtaining written consent from Grantee in the manner prescribed in this paragraph. With respect to the foregoing, any action to be taken by Grantee may be taken by any duly authorized representative of Grantee, including but not limited to Grantee's general manager, deputy general manager(s), engineers or attorneys.

The terms and provisions of the preceding paragraph shall be deemed to be restrictive covenants encumbering and running with the land covered by the Easement Tract and shall be binding upon Grantor and all persons or entities claiming title (or any interest in title) by, through, or under Grantor, and their respective successors and assigns. In particular, and without limiting the generality of the foregoing, each successive purchaser of, or successive right holder (including, without limitation, easement right holder) within, the land covered by the Easement Tract, upon purchase thereof or acquisition of right therein, is bound by the requirements of the preceding paragraph.

This conveyance is further made subject to any and all restrictions, covenants, easements, rights-of-way, encumbrances and mineral or royalty reservations or interests affecting the property and appearing of record in the Official Public Records of Real Property of Montgomery County, Texas, to the extent that said items and matters are in effect and validly enforceable against the Easement granted herein.

TO HAVE AND TO HOLD the above described Easement, together with all and singular the rights and appurtenances thereto in anywise belonging, including all necessary rights of ingress, egress, and regress, unto Grantee, its successors and assigns, forever; and Grantor does hereby bind Grantor and Grantor's successors, substitutes and assigns to WARRANT AND FOREVER DEFEND, all and singular, the Easement unto Grantee, and its successors, substitutes and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Grantor, but not otherwise, subject to all of the terms, conditions, provisions and limitations hereinabove set forth and provided.

Grantee, acting herein by and through the undersigned, pursuant to the authority granted at a meeting duly and lawfully called and convened, joins in the execution hereof for purposes of evidencing its acceptance of this Easement and its agreement on behalf of itself, its successors and assigns, with all of the terms, conditions, and covenants herein set out.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

EXECUTED this day of	, 20	
	By:	
	Name:	
	Title:	
THE STATE OF §		
THE STATE OF		
	edged before me on this day of , the	
·		
	- <u></u> -	
	Notary Public in and for the State of	
(SEAL)	State 01	

ACCEPTED this day of	
	SAN JACINTO RIVER AUTHORITY
	By:
	Name:
	Title:
THE STATE OF TEXAS	
COUNTY OF MONTGOMERY	§ §
This instrument was acknown	owledged before me on this day of
20, by	, asof the San Jacinto
River Authority, on behalf of the S	San Jacinto River Authority.
	Notony Dublic in and for
	Notary Public in and for the State of T E X A S
(SEAL)	

## Exhibit 1

[Description of the Easement Tract]

# EXHIBIT F

## I. GRP Contracts Submitted to Texas Attorney General

<u>Participant</u>	Submitted with Bond Series
1404 Blaketree, L.P.	2011
Algonquin Water Resources of Texas, LLC	2011
Aqua Texas Inc.	2011
Archdiocese of Galveston-Houston	2016
C & R Water Supply, Inc.	2011
Cape Malibu Water Supply Corporation	2011
City of Conroe	2011
City of Cut and Shoot	2011
City of Magnolia	2011
City of Oak Ridge North	2011
City of Splendora	2011
City of Willis	2011
City of Woodbranch Village	2011
Clovercreek Municipal Utility District	2011
Conroe Independent School District	2011
Conroe Resort Utilities LLC	2011
Consumers Water Inc.	2011
Corinthian Point Municipal Utility District No. 2	2011
CWE Utilities, L.L.C	2011A
Del Lago Estates Water Supply Corporation	2011
Diamondhead Water Supply Corporation	2011
Domestic Water Company	2011
E S Water Utility Consolidators Inc	2011
East Montgomery County Municipal Utility District No. 3	2011
East Montgomery County Municipal Utility District No. 7	2016
Everett Square Inc.	2011
Far Hills Utility District	2011
Gallant GP, LLC	2011
HMW Special Utility District	2011
Johnston's Utilities, Inc.	2011
Keenan Water Supply Corp.	2011
Kings Manor Municipal Utility District	2011
Lake Bonanza Water Supply Corporation	2011
Lake Conroe Hills Municipal Utility District	2011
Lake South Water Supply Corporation	2011

Lakeland Section Four Civic Club	2011
Lazy River Improvement District	2011
Maverick Tube Corporation	2016
Monarch Utilities I, L.P.	2011
Montgomery County Fresh Water Supply District No. 6	2011
Montgomery County Municipal Utility District No. 15	2011
Montgomery County Municipal Utility District No. 16	2011
Montgomery County Municipal Utility District No. 19	2011
Montgomery County Municipal Utility District No. 24	2011
Montgomery County Municipal Utility District No. 83	2011
Montgomery County Municipal Utility District No. 89	2011
Montgomery County Municipal Utility District No. 94	2011
Montgomery County Municipal Utility District No. 99	2011
Montgomery County Municipal Utility District No. 105	2016
Montgomery County Municipal Utility District No. 112	2011
Montgomery County Municipal Utility District No. 119	2011
Montgomery County Municipal Utility District No. 137	2016
Montgomery County Municipal Utility District No. 139	2016
Montgomery County Utility District No. 2	2011
Montgomery County Water Control and Improvement District No. 1	2011
MSEC Enterprises, Inc.	2011
New Caney Municipal Utility District	2011
Northwest Water Systems, Inc.	2011
Northwoods Water Supply Corporation	2011
Patton Village Water Co., Inc	2011
Pinehurst-Decker Prairie Water Supply Corporation	2011
Point Aquarius Municipal Utility District	2011
Quadvest, L.P.	2011
Ranch Utilities, L.P.	2011
Rayford Road Municipal Utility District	2011
Richard Clark Enterprises, L.L.C.	2011
Roman Forest Consolidated Municipal Utility District	2011
San Jo Utilities, Inc.	2011
Southern Montgomery County Municipal Utility District	2011
Spring Creek Utility District	2011
T&I Taylor, Inc.	2011
T & W Water Services Company	2011
Texas National Municipal Utility District	2011
Texas-American Water Company	2011
Walnut Cove Water Supply Corporation	2011
Weldon W. Alders	2011

Westwood North Water Supply	2011
White Oak Utilities, Inc.	2011
White Oak Water Supply Corporation	2011
Woodland Oaks Utility, L.P.	2011
Woodtrace Municipal Utility District No. 1	2016

## II. Assignments of GRP Contracts Previously Submitted to Texas Attorney General

Assignor / Assignee District	Submitted with Bond Series
1404 Blaketree, L.P. / Blaketree Municipal Utility District No. 1	2016
East Montgomery County Municipal Utility District No. 7 / East	2016
Montgomery County Municipal Utility District No. 5	
Northwest Water Systems, Inc. / Nerro Supply Investors, LLC	2016

## III. Customer Contracts and Addenda Submitted to Texas Attorney General

Customer District	Submitted with Bond Series
Montgomery County Municipal Utility District No. 6	2009
Montgomery County Municipal Utility District No. 7	2009
Montgomery County Municipal Utility District No. 36	2009
Montgomery County Municipal Utility District No. 39	2009
Montgomery County Municipal Utility District No. 40	2009
Montgomery County Municipal Utility District No. 46	2009
Montgomery County Municipal Utility District No. 47	2009
Montgomery County Municipal Utility District No. 60	2009
Montgomery County Municipal Utility District No. 67	2009
The Woodlands Metro Center Municipal Utility District	2009
The Woodlands Municipal Utility District No. 2	2011
Harris-Montgomery County Municipal Utility District No. 386	2011

# EXHIBIT G



November 16, 2009

THIS IS TO CERTIFY that San Jacinto River Authority (the "Issuer") has submitted to me San Jacinto River Authority Special Project Revenue Bonds, (GRP Project), Series 2009 (the "Bonds") in the aggregate principal amount of \$21,500,000 for approval. The Bonds are dated November 1, 2009, numbered IR-, followed by the last two digits of the year in which such Initial Bonds are scheduled to mature (IR-17 through IR-28), and were authorized by a Resolution of the Issuer passed on October 14, 2009 (the "Resolution").

I have examined the law and such certified proceedings and other papers as I deem necessary to render this opinion.

As to questions of fact material to my opinion, I have relied upon representations of the Issuer contained in the certified proceedings and other certifications of public officials furnished to me without undertaking to verify the same by independent investigation.

I express no opinion relating to the official statement or any other offering material relating to the Bonds.

Based on my examination, I am of the opinion, as of the date hereof and under existing law, as follows (capitalized terms, except as herein defined, have the meanings given to them in the Resolution):

- (1) The Bonds have been issued in accordance with law and are valid and binding special obligations of the Issuer.
- (2) The Bonds are payable solely from and secured by a lien on and pledge of the Pledged Revenues as provided in the Resolution.
- (3) The owner of the Bonds shall never have the right to demand payment of the Bonds from any funds raised or to be raised by taxation.

San Jacinto River Authority Special Project Revenue Bonds (GRP Project) Series 2009 - \$21,500,000

- Page 2 -

Therefore, the Bonds are approved.

Attorney General of the State of Texas

No. 49840 Book No. 2009-D MA

#### OF THE STATE OF TEXAS

I, SUSAN COMBS, Comptroller of Public Accounts of the State of Texas, do hereby certify that the attachment is a true and correct copy of the opinion of the Attorney General approving the:

San Jacinto River Authority Special Project Revenue Bonds, (GRP Project), Series 2009

numbered IR-17/IR-28, of the denomination of \$ various, dated November 1, 2009, as authorized by issuer, interest various percent, under and by authority of which said bonds/certificates were registered electronically in the office of the Comptroller, on the 16th day of November 2009, under Registration Number 76242.

Given under my hand and seal of office, at Austin, Texas, the <u>16th day of November 2009</u>.

SUSAN COMBS
Comptroller of Public Accounts

of the State of Texas





June 14, 2011

THIS IS TO CERTIFY that San Jacinto River Authority (the "Issuer") has submitted to me San Jacinto River Authority Special Project Revenue Bonds, (GRP Project), Series 2011 (the "Bonds") in the aggregate principal amount of \$83,155,000 for approval. The Bonds are dated June 1, 2011, numbered IR-, followed by the last two digits of the year in which such Bonds are scheduled to mature (IR-14 through IR-21, IR-22A, IR-22B, IR-23A, IR-23B, IR-24 through IR-25, IR-27, IR-32 and IR-37), and were authorized by a Resolution of the Issuer passed on April 28, 2011 (the "Resolution"). The record of proceedings submitted with the Bonds included the Resolution and a Pricing Certificate dated May 18, 2011.

I have examined the law and such certified proceedings and other papers as I deem necessary to render this opinion.

As to questions of fact material to my opinion, I have relied upon representations of the Issuer contained in the certified proceedings and other certifications of public officials furnished to me without undertaking to verify the same by independent investigation.

I express no opinion relating to the official statement or any other offering material relating to the Bonds.

Based on my examination, I am of the opinion, as of the date hereof and under existing law, as follows (capitalized terms, except as herein defined, have the meanings given to them in the Resolution):

- (1) The Bonds have been issued in accordance with law and are valid and binding special obligations of the Issuer.
- (2) The Bonds are payable from and secured by a lien on and pledge of the Pledged Revenues.
- (3) The owner of the Bonds shall never have the right to demand payment of the Bonds from any funds raised or to be raised by taxation.
- (4) The proceedings conform to the requirements of law.

San Jacinto River Authority Special Project Revenue Bonds (GRP Project), Series 2011 - \$83,155,000

- Page 2 -

Therefore, the Bonds are approved and, pursuant to the provisions of chapter 1371 of the Government code, the proceedings are approved.

No. 52187 Book No. 2011-C MA Attorney General of the State of Texas

## OF THE STATE OF TEXAS

I, SUSAN COMBS, Comptroller of Public Accounts of the State of Texas, do hereby certify that the attachment is a true and correct copy of the opinion of the Attorney General approving the:

San Jacinto River Authority Special Project Revenue Bonds, (GRP Project), Series 2011 and certain related documents, (the "Proceedings")

the bond is numbered IR-14 through IR-21, IR-22A, IR-22B, IR-23A, IR-23B, IR-24 through IR-25, IR-27, IR-32 and IR-37, of the denomination of \$ various, dated June 1, 2011, as authorized by issuer, interest various percent, under and by authority of which said bonds/certificates and Proceedings were registered electronically in the office of the Comptroller, on the 14th day of June 2011, under Registration Number 78578.

Given under my hand and seal of office, at Austin, Texas, the <u>14th day of June 2011</u>.

SUSAN COMBS Comptroller of Public Accounts of the State of Texas





December 6, 2011

THIS IS TO CERTIFY that the San Jacinto River Authority (the "Issuer") has submitted to me <u>San Jacinto River Authority Special Project Revenue Bonds (GRP Project)</u>, <u>Series 2011A (the "Bonds")</u> in the aggregate principal amount of \$67,470,000 for approval. The Bonds are dated December 1, 2011, numbered IR-13 through IR-35 (consecutively), and were authorized by a Resolution of the Issuer passed on November 10, 2011 (the "Resolution").

I have examined the law and such certified proceedings and other papers as I deem necessary to render this opinion.

As to questions of fact material to my opinion, I have relied upon representations of the Issuer contained in the certified proceedings and other certifications of public officials furnished to me without undertaking to verify the same by independent investigation.

I express no opinion relating to any official statement or any other offering material relating to the Bonds.

Based on my examination, I am of the opinion, as of the date hereof and under existing law, as follows (capitalized terms, except as herein defined, have the meanings given to them in the Resolution):

- (1) The Bonds have been issued in accordance with law and are valid and binding limited obligations of the Issuer.
- (2) The Bonds are payable solely from and secured by a lien on and pledge of the Pledged Revenues.
- (3) The owner of the Bonds shall never have the right to demand payment of the Bond from any funds raised or to be raised by taxation.

Therefore, the Bonds are approved.

Attorney General of the State of Texa

No. 52949 Book No. 2011-D GAW

#### OF THE STATE OF TEXAS

I, SUSAN COMBS, Comptroller of Public Accounts of the State of Texas, do hereby certify that the attachment is a true and correct copy of the opinion of the Attorney General approving the:

San Jacinto River Authority Special Project Revenue Bonds, (GRP Project), Series 2011A

numbered <u>IR-13/IR-35</u>, of the denomination of \$ <u>various</u>, dated <u>December 1</u>, <u>2011</u>, as authorized by issuer, interest <u>various</u> percent, under and by authority of which said bonds/certificates were registered electronically in the office of the Comptroller, on the <u>6th day of December</u>, <u>2011</u>, under Registration Number <u>79355</u>.

Given under my hand and seal of office, at Austin, Texas, the 6th day of December, 2011.

SUSAN COMBS
Comptroller of Public Accounts
of the State of Texas

#### OF THE STATE OF TEXAS

I, <u>Melissa Mora</u>, Bond Clerk X Assistant Bond Clerk in the office of the Comptroller of the State of Texas, do hereby certify that, acting under the direction and authority of the Comptroller on the 6th day of December, 2011, I signed the name of the Comptroller to the certificate of registration endorsed upon the:

San Jacinto River Authority Special Project Revenue Bonds, (GRP Project), Series 2011A,

numbered <u>IR-13/IR-35</u>, dated <u>December 1, 2011</u>, and that in signing the certificate of registration I used the following signature:

- 19 ware Correct

IN WITNESS WHEREOF I have executed this certificate this the 6th day of December, 2011.

I, Susan Combs, Comptroller of Public Accounts of the State of Texas, certify that the person who has signed the above certificate was duly designated and appointed by me under authority vested in me by Chapter 403, Subchapter H, Government Code, with authority to sign my name to all certificates of registration, and/or cancellation of bonds required by law to be registered and/or cancelled by me, and was acting as such on the date first mentioned in this certificate, and that the bonds/certificates described in this certificate have been duly registered in the office of the Comptroller, under Registration Number 79355.

GIVEN under my hand and seal of office at Austin, Texas, this the <u>6th day of December</u>, <u>2011</u>.

Susan Combs
Comptroller of Public Accounts
of the State of Texas





June 1, 2012

THIS IS TO CERTIFY that the San Jacinto River Authority (the "Issuer"), has submitted to me San Jacinto River Authority Special Project Revenue Bonds, (GRP Project) Series 2012 (the "Bonds"), in the aggregate principal amount of \$175,000,000, for approval. The Bonds are dated June 1, 2012, numbered IR-13 through IR-37, and were authorized by a Resolution of the Issuer passed on April 26, 2012 (the "Resolution").

I have examined the law and such certified proceedings and other papers as I deem necessary to render this opinion.

As to questions of fact material to my opinion, I have relied upon representations of the Issuer contained in the certified proceedings and other certifications of public officials furnished to me without undertaking to verify the same by independent investigation.

I express no opinion relating to the official statement or any other offering material relating to the Bonds.

Based on my examination, I am of the opinion, as of the date hereof and under existing law, as follows (capitalized terms, except as herein defined, have the meanings given to them in the Resolution):

- (1) The Bonds have been issued in accordance with law and are valid and binding special limited obligations of the Issuer.
- (2) The Bonds are payable from and secured by a lien on and pledge of the Pledged Revenues, as provided in the Resolution.
- (3) The owner of the Bonds shall never have the right to demand payment of the Bonds, or the interest thereon, from any funds raised or to be raised by taxation.

Therefore, the Bonds are approved.

No. 53744 BooK No. 2012-B ICH Attorney General of the State of Texas

#### OF THE STATE OF TEXAS

I, SUSAN COMBS, Comptroller of Public Accounts of the State of Texas, do hereby certify that the attachment is a true and correct copy of the opinion of the Attorney General approving the:

San Jacinto River Authority Special Project Revenue Bonds, (GRP Project)
Series 2012

numbered IR-13/IR-37, of the denomination of \$ various, dated June 1, 2012, as authorized by issuer, interest various percent, under and by authority of which said bonds/certificates were registered electronically in the office of the Comptroller, on the 1st day of June, 2012, under Registration Number 80166.

Given under my hand and seal of office, at Austin, Texas, the <u>1st day of</u> June, 2012.

SUSAN COMBS Comptroller of Public Accounts of the State of Texas



November 13, 2012

THIS IS TO CERTIFY that the San Jacinto River Authority (the "Issuer"), has submitted the <u>San Jacinto River Authority Special Project Revenue Bonds (GRP Project)</u>, <u>Series 2012A</u> (the "Bonds"), in the aggregate principal amount of \$165,000,000, for approval. The Bonds are dated November 1, 2012, numbered IR-13 through IR-40, and were authorized by a Resolution of the Issuer passed on October 11, 2012 (the "Resolution").

The Office of the Attorney General has examined the law and such certified proceedings and other papers as we deem necessary to render this opinion.

As to questions of fact material to our opinion, we have relied upon representations of the Issuer contained in the certified proceedings and other certifications of public officials furnished to us without undertaking to verify the same by independent investigation.

We express no opinion relating to the official statement or any other offering material relating to the Bonds.

Based on our examination, we are of the opinion, as of the date hereof and under existing law, as follows (capitalized terms, except as herein defined, have the meanings given to them in the Resolution):

- (1) The Bonds have been issued in accordance with law and are valid and binding special limited obligations of the Issuer.
- (2) The Bonds are payable from and secured by a lien on and pledge of the Pledged Revenues.
- (3) The owner of the Bonds shall never have the right to demand payment of the Bonds, or the interest thereon, from any funds raised or to be raised by taxation.

Therefore, the Bonds are approved.

Attorney General of the State of Texas

No. 54535 Book No. 2012-D OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF TEXAS

I, GREG ABBOTT, Attorney General for the State of Texas, do hereby authorize the employees of the Public Finance Division of the Office of the Attorney General to affix a digital image of my signature, in my capacity as Attorney General, to the opinions issued by this office approving the issuance of public securities by the various public agencies, non-profit corporations, districts, entities, bodies politic or corporate, or political subdivisions of this State as required by law, the opinions approving those contracts designated by the Legislature as requiring the approval of the Attorney General, and the obligations, proceedings and credit agreements required by law to be approved by the Attorney General. The authorized digital image of my signature is attached as Exhibit A and is hereby adopted as my own for the purposes set forth herein. This supercedes any prior signature authorizations for the same purpose.

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The authority granted herein is to be exercised on those occasions when I am unavailable to personally sign said opinions, and upon the condition that the opinions to which the digital image signature is affixed have been approved by an authorized Assistant Attorney General following the completion of the Public Finance Division's review of the transcripts of proceedings to which the opinions relate.

Given under my hand and seal of office at Austin, Texas, this the \_\_\_\_\_\_ day of January, 2009.

GREG APBOTT

Attorney General of the State of Texas

## OF THE STATE OF TEXAS

I, SUSAN COMBS, Comptroller of Public Accounts of the State of Texas, do hereby certify that the attachment is a true and correct copy of the opinion of the Attorney General approving the:

San Jacinto River Authority Special Project Revenue Bonds (GRP Project), Series 2012A

numbered <u>IR-13/IR-40</u>, of the denomination of \$ <u>various</u>, dated <u>November 1</u>, <u>2012</u>, as authorized by issuer, interest <u>various</u> percent, under and by authority of which said bonds/certificates were registered electronically in the office of the Comptroller, on the <u>13th day of November 2012</u>, under Registration Number <u>80953</u>.

Given under my hand and seal of office, at Austin, Texas, the <u>13th day of</u> November 2012.

SUSAN COMBS
Comptroller of Public Accounts
of the State of Texas



September 18, 2013

THIS IS TO CERTIFY that the San Jacinto River Authority (the "Issuer"), has submitted the San Jacinto River Authority Special Project Revenue Bonds (GRP Project), Series 2013 (the "Bonds"), in the aggregate principal amount of \$39,850,000, for approval. The Bonds are dated September 1, 2013, numbered IR-14 through IR-40, and were authorized by a Resolution of the Issuer passed on August 22, 2013 (the "Resolution").

The Office of the Attorney General has examined the law and such certified proceedings and other papers as we deem necessary to render this opinion.

As to questions of fact material to our opinion, we have relied upon representations of the Issuer contained in the certified proceedings and other certifications of public officials furnished to us without undertaking to verify the same by independent investigation.

We express no opinion relating to the official statement or any other offering material relating to the Bonds.

Based on our examination, we are of the opinion, as of the date hereof and under existing law, as follows (capitalized terms, except as herein defined, have the meanings given to them in the Resolution):

- (1) The Bonds have been issued in accordance with law and are valid and binding special limited obligations of the Issuer.
- (2) The Bonds are payable from and secured by a lien on and pledge of the Pledged Revenues.
- (3) The owner of the Bonds shall never have the right to demand payment of the Bonds, or the interest thereon, from any funds raised or to be raised by taxation.

Therefore, the Bonds are approved.

Attorney General of the State of Texas

No. 56022 Book No. 2013-C

\*See attached Signature Authorization

I, GREG ABBOTT, Attorney General for the State of Texas, do hereby authorize the employees of the Public Finance Division of the Office of the Attorney General to affix a digital image of my signature, in my capacity as Attorney General, to the opinions issued by this office approving the issuance of public securities by the various public agencies, non-profit corporations, districts, entities, bodies politic or corporate, or political subdivisions of this State as required by law, the opinions approving those contracts designated by the Legislature as requiring the approval of the Attorney General, and the obligations, proceedings and credit agreements required by law to be approved by the Attorney General. The authorized digital image of my signature is attached as Exhibit A and is hereby adopted as my own for the purposes set forth herein. This supercedes any prior signature authorizations for the same purpose.

The authority granted herein is to be exercised on those occasions when I am unavailable to personally sign said opinions, and upon the condition that the opinions to which the digital image signature is affixed have been approved by an authorized Assistant Attorney General following the completion of the Public Finance Division's review of the transcripts of proceedings to which the opinions relate.

GREG ABBOTT

Attorney General of the State of Texas

#### OF THE STATE OF TEXAS

I, SUSAN COMBS, Comptroller of Public Accounts of the State of Texas, do hereby certify that the attachment is a true and correct copy of the opinion of the Attorney General approving the:

San Jacinto River Authority Special Project Revenue Bonds (GRP Project), Series 2013

numbered IR-14/IR-40, of the denomination of \$ various, dated September 1, 2013, as authorized by issuer, interest various percent, under and by authority of which said bonds/certificates were registered electronically in the office of the Comptroller, on the 18th day of September 2013, under Registration Number 82432.

Given under my hand and seal of office, at Austin, Texas, the <u>18th day of</u> September 2013.

SUSAN COMBS
Comptroller of Public Accounts
of the State of Texas





June 17, 2016

THIS IS TO CERTIFY that San Jacinto River Authority (the "Issuer") has submitted the <u>San Jacinto River Authority Special Project Revenue Bonds (GRP Project)</u>, <u>Series 2016</u> (the "Bonds"), in the aggregate principal amount of \$2,305,000, for approval. The Bonds are dated June 1, 2016, numbered IR-16 through IR-21, IR-23, IR-25, IR-29, IR-33, IR-37 and IR-41, and were authorized by Resolution No. 2016-R-06 of the Issuer passed on April 28, 2016 (the "Resolution"). The record of proceedings submitted with the Bond included the Resolution and the Pricing Certificate relating to the Bond.

The Office of the Attorney General has examined the law and such certified proceedings and other papers as we deem necessary to render this opinion.

As to questions of fact material to our opinion, we have relied upon representations of the Issuer contained in the certified proceedings and other certifications of public officials furnished to us without undertaking to verify the same by independent investigation.

We express no opinion relating to the official statement or any other offering material relating to the Bonds.

Based on our examination, we are of the opinion, as of the date hereof and under existing law, as follows (capitalized terms, except as herein defined, have the meanings given to them in the Resolution):

- (1) The Bonds have been issued in accordance with law and are valid and binding special limited obligations of the Issuer.
- (2) The Bonds are payable from and secured by a lien on and pledge of the Pledged Revenues.
- (3) The owner of the Bonds shall never have the right to demand payment of the Bonds, or the interest thereon, from any funds raised or to be raised by taxation.
- (4) The proceedings conform to the requirements of law.

Therefore, the Bonds are approved, and pursuant to Chapter 1371 of the Government Code, the proceedings are approved.

Attorney General of the State of Texas

No. 61046 Book No. 2016-B JCH

<sup>\*</sup>See attached Signature Authorization

I, KEN PAXTON, Attorney General for the State of Texas, do hereby authorize the employees of the Public Finance Division of the Office of the Attorney General to affix a digital image of my signature, in my capacity as Attorney General, to the opinions issued by this office approving the issuance of public securities by the various public agencies, non-profit corporations, district, entities, bodies politic or corporate, or political subdivisions of this State as required by law, the opinions approving those contracts designated by the Legislature as requiring the approval of the Attorney General, and the obligations, proceedings and credit agreements required by law to be approved by the Attorney General. The authorized digital image of my signature is attached as Exhibit A and is hereby adopted as my own for the purposes set forth herein. This supersedes any prior signature authorizations for the same purpose.

The authority granted herein is to be exercised on those occasions when I am unavailable to personally sign said opinions, and upon the condition that the opinions to which the digital image signature is affixed have been approved by an authorized Assistant Attorney General following the completion of the Public Finance Division's review of the transcripts of proceedings to which the opinions relate.

Given under my hand and seal of office at Austin, Texas, this the 51/2 day of January, 2015.

KEN PAXTON

Attorney General of the State of Texas

#### OF THE STATE OF TEXAS

I, GLENN HEGAR, Comptroller of Public Accounts of the State of Texas, do hereby certify that the attachment is a true and correct copy of the opinion of the Attorney General approving the:

San Jacinto River Authority Special Project Revenue Bonds (GRP Project), Series 2016 and the "Proceedings"

the bonds are numbered <u>IR-16/IR-21;IR-23;IR-25;IR-29;IR-33;IR-37</u> and <u>IR-41</u>, of the denomination of \$ various, dated <u>June 1, 2016</u>, as authorized by issuer, interest <u>various</u> percent, under and by authority of which said bonds/certificates and Proceedings were registered electronically in the office of the Comptroller, on the <u>17th day of June 2016</u>, under Registration Number <u>87225</u>.

Given under my hand and seal of office, at Austin, Texas, the <u>17th day of June 2016</u>.

GLENN HEGAR
Comptroller of Public Accounts
of the State of Texas