

**INSTRUCTIONS TO LARGE VOLUME GROUNDWATER USERS
FOR EXECUTION OF THE
SAN JACINTO RIVER AUTHORITY'S GRP CONTRACT**

1. The attached document is a "form contract" presented for your review and consideration. Once you have had an opportunity to review the form contract, there are a number of steps required to prepare the final GRP Contract for execution.
 - a. Footnotes are inserted throughout the document describing specific information that is needed to complete the contract, or explaining certain language to be used for certain classes of LVGUs. Each LVGU will need to provide the applicable information that is responsive to each footnote.
 - b. Exhibits to be attached to the final GRP Contract require certain information be submitted by the LVGU, such as a description of the LVGU's service area, copies of well permits, and records of historic and projected water demand.
 - c. A written ordinance, resolution, or other appropriate documentation is required to establish approval of the final GRP Contract and proper authority for the individual executing the GRP Contract.
 - d. LVGUs wishing to execute a GRP Contract will need to provide the requested information to SJRA for preparation of a final, executable contract.
2. A GRP Stakeholder Meeting will be held at 3:00 p.m. on Thursday, January 14th, at the Lone Star Convention & Expo Center. At this meeting, LVGUs and other interested persons can receive additional information about the Authority's proposed surface water program and GRP Contract, including further explanation of how to complete and execute the contract.
3. In order for the Authority to prepare the joint Notice of Intent required to be provided to the Lone Star Groundwater Conservation District by June 1, 2010, the Authority must receive final, executed GRP Contracts from LVGUs by May 1, 2010.

Grey shading = form item to be completed

**CONTRACT
FOR GROUNDWATER REDUCTION PLANNING,
ALTERNATIVE WATER SUPPLY, AND
RELATED GOODS AND SERVICES
BY AND BETWEEN
THE SAN JACINTO RIVER AUTHORITY AND
[PARTICIPANT]**

* * *

THIS CONTRACT FOR GROUNDWATER REDUCTION PLANNING, ALTERNATIVE WATER SUPPLY, AND RELATED GOODS AND SERVICES ("Contract") is made and entered into as of _____, _____,¹ 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 **[Participant]**, [insert information regarding participant]² ("Participant").

W I T N E S S E T H:

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; 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

¹ Date the Contract as of "June 1, 2010," for Participants that are Regulated Users as of such time. For new Regulated Users, the Contract should generally be dated the first day of the month following the date of the Conservation District permit(s) issued to a Participant making them a Regulated User.

² Specify the type of entity. For example:

Municipality = "a municipal corporation and [home-rule city], principally located in Montgomery County, Texas"

MUD = "a conservation and reclamation district, body politic and corporate and a governmental agency of the State of Texas created under the provisions of Section 59 of Article XVI of the Texas Constitution, and operating pursuant to Chapters 49 and 54, Texas Water Code, principally located in Montgomery County, Texas"

Public Utility = "Texas corporation [and a nonprofit water supply corporation operating under Chapter 67, Texas Water Code]"

WHEREAS, Participant provides [wholesale][and][retail]³ water service to the territory shown on **Exhibit B** hereto through Participant's pumpage of groundwater from wells operated pursuant to [the] permit[s] 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, and may hereafter further develop, 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

WHEREAS, the Authority has heretofore prepared and submitted to the Conservation District a Water Resources Assessment Plan (the "WRAP") 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,

³ If Participant is the producer and consumer of the water (e.g., an industrial user, or a golf course), this recital should be revised appropriately.

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]⁴[Section] 49.213 of the Texas Water Code; and

WHEREAS, Participant is authorized to enter into this Contract pursuant to [its City Charter and]⁴[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:

⁴ Use only in a contract with a home-rule municipality.

ARTICLE I

Definitions; Interpretations; Consideration

Section 1.01: Definitions. 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) "Authority" is defined in the Recitals hereto and means and includes the legal successors or assigns of the Authority.

(c) "Conservation District" is defined in the Recitals hereto and means and includes the legal successors or assigns of the Conservation District.

(d) "Contract" is defined in the Recitals hereto and means and includes any supplements or amendments to this Contract.

(e) "Days" means calendar days and not business days, unless otherwise expressly provided in this Contract.

(f) "Effective Date" means the date first written above.

(g) "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.

(h) "GRP Area" means the geographic area covered by the GRP.

(i) "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.

(j) "Houston Contract" means that certain Water Supply Contract between the City of Houston, Texas, and the Authority, effective as of October 16, 2009.

(k) "Participant" is defined in the Recitals hereto and means and includes the legal successors or assigns of Participant.

(l) "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.

(m) "Participant's System" means all Wells, pipelines, storage facilities, and other facilities comprising Participant's water supply and distribution system.

(n) "Participant System Site(s)" means the water plant site, or water plant sites, upon which the facilities of Participant's System for receiving Water are principally located.

(o) "Party" means either the Authority or Participant.

(p) "Parties" means both the Authority and Participant.

(q) "Payment Commencement Date" means [August 1, 2009] [add 60 days to the date of the Conservation District permit(s) issued to a Participant making them a Regulated User, then use the first day of the subsequent month – e.g., permit issued January 15, 2011 > March 16 > "April 1, 2011" would be inserted here]⁵.

(r) "Plan" 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.

(s) "Point of Delivery" for Participant means the point or points (i.e., the downstream flange(s) of the Authority Meters) where Water from the Project is delivered to Participant's System.

(t) "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, and appurtenances, and related tangible and intangible properties comprising same, 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 required for the benefit of the Participants pursuant to Section 9.01(c) 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

⁵ Use "August 1, 2010", for a Participant that is a Regulated User as of such date; otherwise, use second option and calculate the date certain. Note, "August 1, 2010" is intended to be 60 days after due date for filing Declaration of Intent required under the Conservation District rules.

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 and 10-4964, 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.

(u) "Rate Order" means the prevailing order(s) or resolution(s) duly adopted by the Authority's Board of Directors which set(s) forth (i) the groundwater pumpage fee established for purposes of Section 6.02(a)(1) hereof and any related provisions of this Contract, and (ii) the rate for Water for purposes of Section 6.02(a)(2) hereof and any related provisions of this Contract, and (iii) any other charges to be established, charged, collected, or enforced hereunder.

(v) "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.

(w) "Review Committee" means the committee to be organized and established pursuant to Section 2.06 hereof.

(x) "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 or

prohibited by the terms and provisions of this Contract, and all related amendments, revisions or supplements thereto.

(y) "TCEQ" 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.

(z) "Water" means treated surface water delivered through the Project.

(aa) "Well" means any groundwater well operated by Participant, whether currently in operation or placed into operation hereafter, and specifically including each groundwater well identified under Exhibit C, that is subject to the Conservation District's groundwater reduction requirements under the Plan.

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

Section 1.02: Titles, Headings, and Exhibits. (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.

Section 1.03: Interpretation of Contract. (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) In determining whether an act or omission of the Authority hereunder constitutes a breach or violation hereof, or constitutes negligence, gross negligence, or willful misconduct, reliance in good faith on the advice or opinion(s) of experienced counsel or upon any good faith application or interpretation of the provisions of this Contract shall be an absolute defense of the Authority.

(d) 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 authorize 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 charges. In consideration of the foregoing, Participant agrees to pay the Authority certain fees, rates, and charges, the sufficiency of which are hereby acknowledged by the Parties, pursuant to the terms and provisions of this Contract, including Article VI hereof.

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 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 the benefit to all Participants, the capital investment of the Participants in water supply infrastructure, and without regard to a particular Participant's proximity to the Project.

(c) The Authority reserves the right to include strategies in the GRP, in addition to the Project, that are deemed by the Authority in its sound discretion 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, or (iii) 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. The Authority reserves the right to contract with Regulated Users and/or Participants relative to the implementation of Alternative Strategies for such purposes.

(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 deemed necessary or appropriate in the Authority's sole discretion, 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 shall file the proposed GRP for certification by the Conservation District to secure compliance with the Plan for the benefit of the Participants. 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 the 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 amendment(s), an explanation of the purpose of the proposed

amendment(s), and a reasonable opportunity for the Participants to review and comment on the proposed amendment(s). The Authority may proceed with the proposed amendment(s), or may make modifications to same as deemed necessary or appropriate in the Authority's sole discretion 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.

Section 2.05: Implementation and Enforcement of GRP. 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.

Section 2.06: Review Committee. (a) The GRP Administrator shall organize a Review Committee consisting of eight (8) 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:

Non-Voting Members

- (1) the President of the Board of Directors of the Authority, or his or her designee;
- (2) one member appointed by the Board of Directors of the Conservation District;

Voting Members

- (3) one member appointed by the Board of Trustees of The Woodlands Joint Powers Agency, or its successor;
- (4) one member appointed by the City Council representing the City of Conroe;
- (5) one member appointed pursuant to Section 2.07 hereof by Participants that are municipalities, exclusive of the City of Conroe;
- (6) 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;

- (7) 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
- (8) one member appointed by the GRP Administrator representing all other Participants not otherwise represented by the voting members of the Review Committee set forth hereinabove.

(b) The members identified in subdivisions (1) and (2) of subsection (a) hereof shall not be entitled to vote on matters before the Review Committee. The remaining members 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 voting member appointed by the GRP Administrator. 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 (5) through (7) of subsection (a) hereof.

Section 2.07: Appointment of Certain Review Committee Members by Vote. (a) The three (3) members identified in subdivisions (5) through (7) 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 (5) through (7) 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 appropriate water usage. 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 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 July 15, 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 September 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 September 15 to the governing body of each Participant.

(f) The Review Committee may adopt all necessary procedural rules consistent with the provisions of this section. With respect to the initial appointment of members under this section, the actions otherwise to be taken by the Review Committee shall be taken by the GRP Administrator.

Section 2.08: Terms of Office; Removal; Vacancies. (a) Voting members of the Review Committee shall serve staggered four-year terms. At the organizational meeting of the Review Committee, the voting members shall draw lots to select three (3) voting members that shall each initially serve a two-year term, and the remaining voting members shall each initially serve a four-year term. Voting members of the Review Committee may be reappointed without limitation.

(b) A voting member of the Review Committee may not be removed or recalled before the expiration of such member's term. The non-voting members of the Review Committee serve at the pleasure of the appointing authority and may be removed and/or replaced by such authority at any time.

(c) A vacancy created by the death, incapacity, or resignation of a an appointed 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.

Section 2.09: Compensation. No member of the Review Committee (other than the President of the Board of Directors of the Authority, or his or her designee, and the GRP

Administrator, or his or her designee) shall receive compensation from the Authority for their service, nor shall membership on the Review Committee constitute a civil office of emolument. Members of the Review Committee may be appointed without regard to the common law doctrines of conflict of interest or incompatibility of official duties.

Section 2.10: Activities of Review Committee. (a) The Review Committee shall be charged with the following:

- (1) conducting an annual review of the GRP and making recommendations regarding same to the GRP Administrator and, if appropriate, to the Authority;
- (2) making recommendations to the GRP Administrator regarding requests from Participants to make connections to the Project under Section 4.04 hereof;
- (3) making recommendations to the GRP Administrator regarding proposed mandatory connections to the Project under Section 4.05 hereof;
- (4) making recommendations to the GRP Administrator regarding requests from Participants to modify the terms of the Contract Quantity specified by the GRP Administrator under Section 4.09(a) hereof;
- (5) 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;
- (6) making recommendations to the GRP Administrator regarding the construction, maintenance, and operation of the Project; and the selection and engagement of contractors and third-party consultants in such regard;
- (7) reviewing and making recommendations to the GRP Administrator regarding fees, rates, or charges adopted or to be adopted by the Authority under the Rate Order or pursuant to other provisions of this Contract;
- (8) breaking a tie in the selection of a mediator, as provided in Section 11.02 hereof; and
- (9) making such other recommendations to the GRP Administrator regarding the GRP and any subsequent amendments and their implementation as the GRP Administrator and/or the Authority may request from time to time.

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 employees or third-party consultants or contractors not directly performing services related to the Project and/or the GRP, or (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 such services are a component of fees, rates, or charges adopted or to be adopted by the Authority under the Rate Order.

(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 voting member should be absent at a meeting of the Review Committee, or in the event of a failure to appoint a voting member or a vacancy of a voting member on the Review Committee, a majority of the voting members of the Review Committee present shall be sufficient for any vote or to transact business.

(c) The Review Committee shall be subject to the requirements of Chapters 551 (Open Meetings Act) and 552 (Open Records 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.

Section 2.11: Coordination with Review Committee. (a) Recommendations of the Review Committee made to the GRP Administrator are advisory only and shall not be binding upon the GRP Administrator and/or the Authority. The GRP Administrator shall be obligated to give reasonable consideration to recommendations received from the Review Committee, and shall prepare and deliver a written explanation to the members of the Review Committee with respect to recommendations not accepted by the GRP Administrator, and the reasons therefor, within fifteen (15) days of the date the GRP Administrator makes a final determination. The Review Committee may appeal such final determination to the Board of Directors of the Authority within thirty (30) days of the date of delivery of the GRP Administrator's written explanation by notice of appeal provided in writing to the General Manager of the Authority. The Board of Directors of the Authority shall consider the appeal as soon as practicable, but not later than sixty (60) days following the receipt of such notice to the General Manager. The Board of Directors shall consider such appeal on the merits presented and issue a final, written decision and an explanation therefor not later than thirty (30) days following the conclusion of the appeal proceedings.

(b) If requested by resolution or other written instrument approved by a majority of the voting members of the Review Committee, the Board of Directors of the Authority shall

engage an independent rate analyst to review the fees, rates and charges adopted by the Authority pursuant to this Contract; provided, however, that such review shall not (i) be undertaken more frequently than annually, or (ii) 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

Section 3.01: Participant's Permits and Applications. Participant represents that all of Participant's current Well permits issued by the Conservation District, and any applications pending with the Conservation District, and the terms and conditions under which Participant may import groundwater into its service area, are listed and described in **Exhibit C** attached hereto.⁶

Section 3.02: Participant's Historical Use and Demand Projections. (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 **Exhibit D**.

(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 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.

Section 3.03: Co-Permitting. 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. Notwithstanding any co-permitting pursuant to the foregoing, Participant shall maintain ownership of its Wells and operational responsibility therefor.

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 or indirectly result from the delivery of Water to Participant, such credits shall be transferred to the Authority for the benefit of all Participants at no cost. Except as otherwise provided in Section 4.12 hereof, any actions of Participant which result in surface water conversion credits, groundwater reduction credits, or

⁶ The Authority requires copies of interconnect agreements, etc. so GRP Administrator can understand how Participant may import water and if same needs to be metered.

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.

Section 3.05: Water Conservation; Drought Contingency. Participant agrees to adopt and enforce a water conservation plan meeting the applicable minimum requirements of any federal, state, or other regulatory authority, including the Authority, 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 any federal, state, or other regulatory authority, including the Authority, the Conservation District, and the TCEQ (30 T.A.C. §§ 288.20-288.22, or any successor rules). Such plans must be completed and filed with the GRP Administrator at such time(s) as may be required by the GRP Administrator, without regard to whether Participant will connect to the Project.

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.

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 to only a portion of the GRP Area, 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) firstly, minimizing the overall costs of the Project, (ii) secondly, equalizing the costs for Participants to provide retail water services, including investment in groundwater facilities, (iii) thirdly, the need to avoid 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, and (iv) lastly, any other factors deemed appropriate by the Authority and/or the GRP Administrator. Notwithstanding the foregoing, the Authority reserves the right and discretion 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. A conceptual drawing of the Project is attached hereto as **Exhibit F** for informational purposes only. 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.

(b) 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 all or any portion of the Project, such jurisdiction and review shall be limited, as hereinafter provided. To the extent that all or any portion of the Project will be constructed within or across property owned by Participant, road rights-of-way subject to Participant's jurisdiction, or easements filed of record in favor of Participant, the Authority shall submit plans therefor to Participant for review and approval, which approval shall not be unreasonably withheld. Participant agrees that comments to such plans shall be limited in scope to the portion(s) of the Project to be constructed within or across such property, rights-of-way, or easements, and any comments from such review shall be provided to the Authority within thirty (30) days following submittal, or within ten (10) days following any re-submittal.

(c) 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 HAS THE SOLE DISCRETION UNDER THIS CONTRACT TO DETERMINE THE DATE, IF EVER, UPON WHICH THE AUTHORITY SHALL SUPPLY WATER TO PARTICIPANT FOR THE PURPOSE OF IMPLEMENTING THE GRP.

Section 4.03: Easements[; Franchise]⁷. 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 **Exhibit G**, 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 use reasonable efforts to confine any required easements to locations acceptable to Participant and to minimize the impact of the easement and the Authority's use of the easement on Participant's facilities and operations. 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. [The Authority is hereby granted the right of franchise 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 (a) approval of plans therefor by Participant pursuant to the provisions of Section 4.02(b) hereof, (b) the obligation of the Authority to restore such rights-of-way as nearly and as soon as practicable to their previous condition after such construction, operation, or maintenance is completed, and (c) the right of Participant to cause the Authority to relocate such facilities upon written request, at Participant's cost and expense. Notwithstanding any charter or ordinance provisions to the contrary, any and all related franchise fees in respect of the foregoing are

⁷ Include if Participant on a municipality or otherwise has franchise rights.

hereby established at \$1 per calendar year for so long as services are being provided by the Authority to Participant hereunder, and this Section 4.03(c) shall be deemed and construed as a franchise agreement between the Authority and Participant 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 franchise agreement by written notice to Participant for such additional term(s) as may be necessary to include the duration of such services.]⁷

Section 4.04: Discretionary 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 deems favorable and appropriate and consistent with the purposes of the GRP and the obligations of the Authority to all Participants, in its sole discretion, 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 require Participant to take Water prior to September 1, 2014. In making such decision, the GRP Administrator shall give primary consideration to the purposes of the GRP and the Participants currently planned to receive Water under the GRP, and the GRP Administrator shall not otherwise be obligated to consider the relative proximity of Participant to the Project.

(b) 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(s) 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(s) 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(s) where such Contract Quantity will be delivered, and other details related to the delivery of Water to Participant System Site(s).

(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.

Section 4.06: On-Site Facilities. (a) Participant shall install the following facilities at the Participant System Site(s) that will receive Water ("On-Site Facilities"):

- (1) measuring equipment properly sized and able to measure the amount of groundwater withdrawn from Participant's Wells, or imported by Participant, within the accuracy tolerances specified in Section 5.03 hereof ("Participant Meter(s)");
- (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 back flow 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 deemed necessary by the GRP Administrator in his or her sound discretion, to accommodate the delivery of the Contract Quantity of Water;
- (5) flow restriction equipment;
- (6) chloramine treatment equipment; and
- (7) electrical equipment of a kind, character, and nature, and installed at such location(s), as specified by the GRP Administrator in order to supply electricity to such portion of the Project as may be located on, or in the immediate vicinity of, the Participant System Site(s).

(b) Notwithstanding anything to the contrary in this Contract, the Participant Meter(s) shall be installed and placed in service by Participant no later than sixty (60) days from the Effective Date. Specifications for the Participant Meter(s) 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; 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 Meter(s) 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 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 Meter(s) 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 Meter(s) 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 milestones concerning the date(s) 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, in his or her sound discretion, 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 necessary and proper by the Authority in its sound discretion; 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.

(b) In order to ensure that On-Site Facilities comply with applicable requirements and specifications established by the GRP Administrator, Participant must obtain written approval by the GRP Administrator of the design of any On-Site Facilities prior to commencement of construction. 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. The GRP Administrator may approve On-Site Facilities constructed or installed prior to the Effective Date if such facilities substantially 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 for any reason, including the failure to construct On-Site Facilities in a manner that 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 Contract for refusing to approve On-Site Facilities that do not meet the requirements of the GRP Administrator.

(d) 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 therefore 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, at its discretion, to (i) immediately discontinue providing Water to Participant, or (ii) cure such violation and charge Participant its actual costs of such cure.

(e) Except as expressly provided herein, this Contract shall not be construed to require review or approval by the GRP Administrator or the Authority 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 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 public bidding procedures generally applicable to the Authority in letting a contract for the construction of On-Site

Facilities. Within a reasonable time after the date the GRP Administrator approves 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 not before September 1, 2014. The GRP Administrator shall determine and notify Participant in writing as to the maximum amount of Water that Participant will 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 (the "Contract Quantity"), 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(s) in excess of an amount equal to ninety percent (90%) of the average daily amount of water supplied from any such site(s) during the low-demand period for the calendar year 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 preceding calendar year during which the least amount of water was supplied from such site(s) under normal operating conditions. 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. Participant shall be responsible for making any adjustments to the facilities or operational procedures in respect of Participant's System that may be necessary such that Participant is capable of taking the Contract Quantity at all times, other than during a *force majeure* event (as defined in Section 10.01(b) hereof) or during planned maintenance for which Participant has provided the GRP Administrator notice of same at least 48 hours (but not less than 2 full business days) in advance and which notice must specify the anticipated duration of such maintenance. 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.

(b) 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. Participant shall finance, construct, operate, and maintain its Wells and shall maintain operational responsibility therefor such that Participant may adequately supply water for its purposes, over and above the Contract Quantity or when the Authority is unable or not obligated to provide the Contract Quantity to Participant.

(c) THE AUTHORITY MAY DETERMINE, IN ITS SOLE DISCRETION, THE DATE, IF EVER, UPON WHICH THE AUTHORITY SHALL SUPPLY WATER TO PARTICIPANT FOR THE PURPOSE OF COMPLIANCE WITH THE PLAN AND 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 HEREOF, 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.

(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. The Authority shall have and reserve 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 attorneys fee and court costs, resulting directly or indirectly from (a) Participant's breach or violation of this Contract, the GRP, the Rules, the Plan, or any laws, rules or regulatory requirements relating to Participant's System, (b) the design, construction, permitting, or operation of Participant's System, (c) the 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 negligent, gross, negligent or willful acts or omissions of Participant.

Section 4.12: Passing of Title to Water; Re-use; Re-sale. (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 permit, certificate, or agreement between the Authority and a third party for water 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.

(c) Notwithstanding subsection (a) above, Water shall not be subject to indirect re-use by Participant without the written consent of the Authority, and then only upon terms and conditions the Authority deems favorable and appropriate and subject to the limitations and conditions in subsection (b) above and Section 3.04 hereof, it being understood that:

- (1) such re-use may represent a component of the GRP and, therefore, the Authority must maintain control over same in order to effectively implement the GRP;
- (2) such re-use may adversely impact the Authority's storage, diversion, or other water rights; and
- (3) changes in applicable laws, and applicable rules and regulations of governmental bodies with jurisdiction, may impact such re-use.

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 Participant utilizes, sells, or otherwise makes or has contracted for the beneficial re-use of Participant's treated wastewater effluent as of the Effective Date, the Authority consents to the continued beneficial use of such effluent for the purposes, to the extent, and on the terms existing as of the Effective Date, notwithstanding that a portion of such effluent may thereafter be derived from Water if Participant connects to the Project under Sections 4.04 of 4.05 hereof. 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 contract(s) 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 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 permit rights for the direct or indirect re-use of Water 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 required by the Authority for such purposes. Participant hereby waives any objection or right of protest to the Authority's permit application(s) for such purposes.

(f) Except as expressly provided herein, but 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.

(g) Participant may not sell or resell Water or re-used Water outside of Participant's service area shown in **Exhibit B**.

ARTICLE V

Metering

Section 5.01: General. The quantity of groundwater withdrawn from Participant's Wells, or imported by Participant, shall be measured by the Participant Meter(s). 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 the Authority Meter(s) installed by the Authority pursuant to this Article V. the Participant Meter(s) and Authority Meter(s) shall be maintained and tested by the Parties as provided in this Article V.

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 Meter(s)", whether one or more). Authority Meter(s) shall be considered part of the Project for all purposes.

Section 5.03: Maintenance and Testing of Meters. (a) Participant shall maintain the Participant Meter(s), 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 within the 12 months of 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 Meter(s) register(s) 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 Meter(s) 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 within 12 months of 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(s) register(s) 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 Meter(s) show that same register(s) 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(s) shall be deemed to be the "average daily amount," as measured by such Participant Meter(s) when in working order, and Participant shall calibrate such Participant Meter(s) 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(s) with accurate Participant Meter(s) that have been tested by Participant before being placed in service.

(b) Should a test of the Authority Meter(s) show that same register(s) 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(s) shall be deemed to be the "average daily amount," as measured by such Authority Meter(s) when in working order, and the Authority shall calibrate such Authority Meter(s) 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(s) with accurate Authority Meter(s) that have 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(s), or 120 days, whichever is shorter, in the event that Participant has not installed check meters or if such check meters are not operating within the tolerances described above, (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(s), 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(s), 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(s) or the Authority Meter(s), 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 Meter(s) or the Authority Meter(s), 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.

Section 5.06: Check Meters. Participant may install, at its own cost and expense, such check meters downstream of Authority Meter(s) 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 Meter(s) described above unless Authority Meter(s) are not operating within required tolerances.

Section 5.07: Rate Order Provisions. 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 or prohibited by the terms and provisions of this Contract.

ARTICLE VI

Fees, Rates and Charges

Section 6.01: Payment Commencement Date. (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 determined by the GRP Administrator in his or her sole discretion.

Section 6.02: Monthly Fees and Rates. (a) 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 Contract Quantity, or such greater quantity of Water as may be taken by Participant, in thousands of gallons, during the calendar month.

Section 6.03: Charges. (a) The Authority is hereby authorized to impose charges under the Rate Order, or other written order of the Authority, necessary for the recovery of damages, losses, delay costs, litigation fees, interest, or other costs or expenses, including attorneys fees, court or administrative agency fees, or judgments, resulting, directly or indirectly from a 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 the importation of water by Participant, or any losses, damages, costs, interest,

or expenses incurred by the Authority resulting, directly or indirectly, from the Authority's performance or failure of performance under this Contract, except in an instance of gross negligence or willful misconduct on the part of the Authority.

(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 4.04 hereof, (ii) takes more groundwater than is permitted by the Conservation District or 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 at the Applicable Interest Rate and collection costs and fees, upon written demand by the Authority and/or the GRP Administrator.

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 necessary by the Authority in its sound discretion, 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);
- (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 establish the prevailing pumpage fee for purposes of Section 6.02(a)(1) hereof such that, as nearly as practicable in the Authority's sound discretion (i) 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).

(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(a)(2) hereof such that, as nearly as practicable in the Authority's sound discretion, (i) 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).

(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) recoup any losses, damages, costs, interest, or expenses resulting, directly or indirectly, from any breach or violation of this Contract, the GRP, the Rules, the rules of all regulatory and permitting authorities with jurisdiction, or any other applicable rules, laws or regulatory requirements, by a Participant, or any losses, damages, costs, interest, or expenses incurred by the Authority resulting, directly or indirectly, from its performance under this Contract, except in an instance of gross negligence or willful misconduct on the part of the Authority;
- (4) accomplish the purposes of this Contract and the GRP;
- (5) 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;
- (6) meet administrative, operation, maintenance, repair, and replacement expenses relating to the Project and the GRP;
- (7) 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;
- (8) satisfy all rate covenants relating to any Bonds or other obligations of the Authority relating to the Project or the GRP; and
- (9) 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 necessary by the Authority in its sound discretion.

(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 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 engage an independent rate analyst to review the fees, rates, and charges adopted by the Authority pursuant to this Contract; provided, however, that (i) the Authority shall not be obligated to do so if such an analysis has been performed within the previous five (5) years, whether such prior analysis was initiated by the Authority or undertaken at the request of the Review Committee pursuant to Section 2.11(b) hereof, and (ii) the Authority may, but shall not be obligated to, undertake an analysis of the fees charged by the Authority to reserve raw water for the benefit of the Participants, or the rate(s) at which such raw water has been or may be sold by the Authority for use in connection with the Project. The Authority agrees that except as otherwise expressly provided in this Contract, 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 purposes described in this Contract and not for any other corporate purpose of the Authority.

(g) The adoption of the current Rate Order prior to the Effective Date is hereby acknowledged by Participant. 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 Authority's Board of Directors 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 ten (10) days prior to the consideration by the Authority's Board of Directors 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 amendment(s) thereto.

(h) The Authority shall never be authorized or permitted to impose fees, rates, or charges on any water imported by Participant from another Participant. 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.

Section 6.05: Self-Reporting and Payment of Pumpage Fee. (a) Participant shall be responsible for reading the Participant Meter(s) 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 thirty (30) 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 Meter(s), the Authority shall have the right to enter upon the land of Participant at any reasonable time in order to read the Participant Meter(s). If the Authority is required to read the Participant Meter(s), Participant will be charged a service fee for such reading, and the pumpage fee due under Section 6.02(a)(1) hereof shall be calculated based on the Authority's readings, regardless of when the Authority reads the Participant Meter(s). In the event the Participant Meter(s) 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 Meter(s) 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(a)(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 thirty (30) 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 Meter(s). 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 Meter(s) reported to the Authority.

(d) The Authority reserves the right to directly read, whether by entering upon a Participant System Site(s) or by remote reading through transmission of data from such site(s), the Participant Meter(s) 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 appropriate 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, and related provisions for late penalties, interest on past due payments, and other pertinent matters.

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 Meter(s) 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 thirty (30) 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.

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 the due date for remitting payment in respect of any such charges, as well as the acceptable manner and method of payment.

Section 6.08: Failure to Pay when Due. Should Participant fail to tender payment of any amount when due, interest thereon shall accrue as may be provided in the Rate Order. 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.

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.

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 Projects costs or included in the Authority's adoption of fees, rates, or charges generally applicable to all Participants under Article VI.

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 deemed 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 deemed 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) The Authority agrees that it will not enter into a 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, and related conditions, would impair the Authority's ability to deliver Water to Participant at the Contract Quantity during the Contract Term.

(b) The Authority will not utilize the Project to provide Water outside of Montgomery County, except as permitted by subsection (d) hereof, or as necessary to serve Participants with contiguous service areas located, in part, outside of Montgomery County.

(c) 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, indentify, develop, purchase, hold, lease, reserve, option, or contract for alternative water supplies, in addition to 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, it shall be obligated to do so if the Authority has (i) not utilized and has officially determined not to utilize its own revenues to do so, and (ii) been requested in writing by the Review Committee to do so.

(d) Project revenues shall be used by the Authority to hold, purchase, lease, reserve, option, or contract for the remaining available water supplies of the Authority in Lake Conroe, including amounts to be made available pursuant to the Houston Contract, and may be used for additional alternative waters supplies for the Project. To the extent that any 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 developing, holding, purchasing, leasing, reserving, optioning, or contracting for such alternative water supplies, including water supplies of the Authority or under the Houston Contract from the permitted yield of Lake Conroe, the first and prior use of such alternative 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 alternative 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 actual costs, expenses, or carrying costs and interest paid by or on behalf of the Participants for such alternative water supplies;
- (2) 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 developing, holding, purchasing, leasing, reserving, optioning, or contracting for a specifically identified, additional, or prospective alternative water supply, and except as provided in the foregoing subsection (c), the Authority shall have no fiduciary or other responsibility to the Participants with regard to developing, holding, purchasing, leasing, reserving, optioning, or contracting for any such alternative water supply;
- (3) should the Authority determine to pursue developing, holding, purchasing, leasing, reserving, optioning, or contracting for any such alternative 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 and hereby waives all claims in law or 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 served 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, 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 successful in securing additional water supplies.

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 properly 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.

Section 9.03: The Authority as GRP Administrator. (a) To facilitate the implementation of the GRP and the discharge of the Authority's obligations under this Contract, the Authority shall:

- (1) establish and maintain a separate operating division of the Authority with separate books of account that shall be audited annually;
- (2) contract for, lease, or purchase, for the benefit of such separate operating division, such services, land, equipment, and facilities, including administrative and management services and facilities, and water and water byproducts, 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 outside the GRP Area, without profit or loss to such separate operating division, such that, except as provided in Section 9.01(d) with respect to sales of excess water and this Section 9.03, 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) sell raw or untreated water to such separate operating division from one or more other operating divisions of the Authority, or from other sources, at generally prevailing and applicable rates adopted by the Authority and to use the revenues therefrom for other corporate purposes of the Authorities;
- (3) allocate and charge to such separate operating division amounts deemed reasonable and necessary by the Authority for developing, holding, purchasing, leasing, reserving, optioning, or contracting for water supplies for the benefit of such separate operating division; or
- (4) recover or be reimbursed the costs described in subsection (a), or for any other costs incurred by the Authority prior to the establishment of such separate operating division that are associated with the development of the GRP or the Project, or that otherwise generally 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 (a), 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.

(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.

(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 a request for appeal must be provided to the General Manager of the Authority within thirty (30) days of the date of such final decision, and the Board of Directors of the Authority shall consider the appeal as soon as practicable, but not later than sixty (60) days following the receipt of such request by the General Manager. The Board of Directors 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.

(g) 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, and 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 contractor engaged in construction of all or any portion of the Project shall be fully responsible therefor, the Authority shall not be required to carry such insurance with respect to such portion of the Project. 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, 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 promptly 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 directed by the Authority in its sound discretion 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, in its sound discretion, deems 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 in its sound discretion for the benefit and credit of the Participants.

(h) 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.

(i) 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 deemed surplus or otherwise immaterial to the Project by the Authority, in its sound discretion, 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 directed by the Authority in its sound discretion 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 fees, rates, and charges.

Section 9.05: Amendments to Contract. This Contract may be amended or otherwise modified 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 generally applicable to all similar situated Participants.

Section 9.06: Legislative Action. Participant understands and acknowledges that certain efficiencies and savings may be realized if the Texas Legislature grants the Authority the express authority, by or through amendment(s) to the Act, to impose all or a portion of the fees, rates, or charges authorized under this Contract. The Authority reserves the right to seek such amendments to the Act. If such power and authority is granted, the Parties agree that such power and authority may be substituted by the Authority for the power and authority conferred upon the Authority under this Contract, without further amendment hereto, but shall be exercised subject to all terms, limitations, and conditions set forth in this Contract.

[Section 9.07: Temporary Right of Termination. Either Party may terminate this Contract and be relieved of any and all obligations hereunder by providing written notice to such effect to the other Party on or before May 14, 2010, at 5:00 p.m., Houston, Texas time. This provision expires as of such date and time.]⁸

[Section 9.08: Participant's Creation of Interest and Sinking Fund. During each year of the Contract Term, Participant's City Council shall compute and ascertain the rate and amount of ad valorem tax, based on the latest certified tax rolls in respect of Participant, with full

⁸ Include only for first round of GRP Contracts. If deleted in subsequent GRP Contracts, re-number the following section and revise Section 12.02.

allowances being made for tax delinquencies and costs of collection, that will be sufficient to raise and produce funds required to pay or create a sinking fund for payment of any sums which may be or become due during such year by reason of the obligations of Participant under this Contract, in no instance to be less than two percent (2%) of such obligations, together with all interest thereon. Said rate and amount of ad valorem tax is hereby ordered to be levied, assessed, and collected against all taxable property within Participant's taxing jurisdiction for each year of the Contract Term.]⁹

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, equipment, pipelines, or canals, shortage, insufficiency, failure, interruptions, or curtailment of water or energy supply, and any other incapacities 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 is in no case to be held to any liability for failure to furnish any specific pressure of treated water. Further, Participant agrees that any representations to third

⁹ Include if Participant is a municipality.

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: 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 11.02 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*.

(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 subsection (d) below and Section 11.03 hereof, the non-defaulting Party may pursue any and all remedies existing at law and in equity.

(d) The Parties acknowledge and agree that the fees, rates, and charges established by the Authority hereunder, other than the raw water rates and reservation fees of the Authority as a component of same, are contractual in nature and that the sole and exclusive remedy to any Party for any dispute arising hereunder with respect to such fees, rates, and charges shall mediation and/or civil litigation, as provided herein.

Section 11.02: 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 ten (10) 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 agree to sign a document agreeing that the mediator shall be governed by the provisions of Chapter 154, Texas Civil Practice and Remedies Code, and such other rules as the mediator shall prescribe. 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 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 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.

(k) Mediation hereunder is a compromise negotiation for purposes of the federal and state rules of Evidence and constitutes privileged communication under Texas 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 privileged. 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.

Section 11.03: Termination Not a Remedy. The Parties agree that termination of this Contract in the event of a default shall not be remedy available to the Parties; provided, however, that nothing herein shall be deemed or construed to prevent 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(s) for cure provided herein.

Section 11.04: 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(s). In accordance with Sections 271.152 and 271.153 thereof, [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][the Authority hereby waives and acknowledges waiver of all constitutional, statutory, or common law right to sovereign or governmental immunity from liability or suit and expressly consents to be sued and to be liable to the limited extent necessary for Participant to enforce this Contract against the Authority]¹⁰.

Section 11.05: 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.

Section 11.06: Enforcement. 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.

Section 11.07: Choice of Law; Venue. 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 11.08: 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, 2045, 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.

¹⁰ Use the first option if Participant is a governmental entity, otherwise use second option.

Section 12.02: Termination. (a) Either Party may terminate this Contract prior to the expiration of Section 9.07 hereof, as provided therein.¹¹

(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 or rule currently in effect or hereafter enacted or adopted, over the raw water rates or reservation fees established by the Authority from time to time. Accordingly, in the event of a change in any such law or rule and the assertion of such original jurisdiction by Participant, the Authority shall have the right, but not the obligation, to terminate the Contract.

(c) This Contract may not be terminated as result of default by either Party.

(d) Except as provided above in this section, this Contract may only be terminated prior to the expiration of the Contract Term by mutual, written agreement of the Parties.

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, 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 supply sources to do so. This Section 12.03 shall survive the expiration of the Contract Term, but not the termination of this Contract. In the event of the termination of this Contract prior to the expiration of the Contract Term, this Section 12.03 shall be of no further force and effect as of such termination date.

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.

Section 13.02: Severability and Reformation. (a) If any provision of this Contract, other than the right of termination of this Contract by the Authority pursuant to Section 12.02(b) hereof, 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. Such a determination with respect to Section 12.02 (b) shall result in the invalidity of this Contract *ab initio*.

¹¹ If Section 9.07 is deleted, then delete this subsection and re-letter the following.

(b) Except 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,]¹² 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.

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

Telefax: _____
E-mail: _____

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 electronic mail to the other Party at the telefax number or electronic 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 electronic 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

¹² Include if Participant is a municipality.

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.

Section 13.05: Parties in Interest. 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, 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 entity to the benefits and shall assume and be bound by the obligations of Participant hereunder.

Section 13.07: Reservation of Rights. 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.

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

[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

By: _____
Reed Eichelberger, P.E.
General Manager

[SEAL]

NAME OF PARTICIPANT

By: _____
Name: _____
Title: _____
Date: _____

Exhibit A

[The Authority's Service Area]

Exhibit B

[Participant's Service Area]

Exhibit C

[Participant's Well Permits]

Exhibit D

[Participant's Historical Use]

Exhibit E

[Participant's Projected Future Demands]

Exhibit F

[Conceptual Drawing of the Project]

Exhibit G

[Form of Easement]

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.

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. Further, Grantor shall not cause or permit 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 the installation of such facilities will not 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 sixty (60) calendar days 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. 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.

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, 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 _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____,
20__, by _____, the _____ of
_____.

Notary Public in and for the
State of _____

(SEAL)

ACCEPTED this ____ day of _____, 20__.

SAN JACINTO RIVER AUTHORITY

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on this ____ day of _____,
20__, by _____, as _____ of the San Jacinto
River Authority, on behalf of the San Jacinto River Authority.

Notary Public in and for
the State of T E X A S

(SEAL)

Exhibit 1

[Description of the Easement Tract]