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Texas Court of Appeals Ninth Judicial District 1085 Pearl Street, Suite 330 Beaumont, Texas 77701

Re: Cause No. 09-20-00180-CV; San Jacinto River Authority v. City of Conroe and City of Magnolia

To the Honorable Justices of the Ninth Court of Appeals:

The Guadalupe-Blanco River Authority (GBRA) respectfully submits this *amicus curiae* letter in support of Appellant, San Jacinto River Authority (SJRA).<sup>1</sup>

### **Summary of GBRA's Position**

GBRA supports the positions taken by SJRA as expressed in SJRA's initial brief and the legal arguments SJRA makes in support of its positions.

In regard to the waiver of immunity under Tex. Local Govt. Code § 271.152 in particular, the District Court's ruling in favor of the Cities of Conroe and Magnolia (hereinafter, "Conroe," "Magnolia," and collectively, "the Cities."), represents an erroneous view of the law with potentially far-reaching consequences. It could destabilize a very common method of financing and operating many public water and sewer projects in the State of Texas.

### Identity and Interest of Amicus Curiae GBRA

GBRA, like SJRA, is a Texas conservation and reclamation district. GBRA was also created by an act of the Texas Legislature<sup>2</sup> under authority of Article XVI, Section 59

GBRA's Enabling Legislation was amended in 2019 by Senate Bill 626: <a href="https://capitol.texas.gov/tlodocs/86R/billtext/pdf/SB00626F.pdf#navpanes=0">https://capitol.texas.gov/tlodocs/86R/billtext/pdf/SB00626F.pdf#navpanes=0</a>

<sup>&</sup>lt;sup>1</sup> Per the requirement of Tex. R. App. Proc. 11(c), GBRA confirms that no person or entity other than GBRA made a monetary contribution to the preparation or filing of this brief.

<sup>&</sup>lt;sup>2</sup> Act of October 12, 1933, 43<sup>rd</sup> Leg., 1<sup>st</sup> C.S. ch.75, 1933 General & Special Laws of Texas 198-201, as amended (often cited as V.C.S. art.8280-106). The text, current through 2018 may be found at the following url: <a href="https://www.gbra.org/documents/about/GBRAEnablingAct.pdf">https://www.gbra.org/documents/about/GBRAEnablingAct.pdf</a>

of the Texas Constitution.<sup>3</sup> GBRA has many of the same missions as SJRA and essentially the same authority and limits.

GBRA, like SJRA, covers and serves a multi-county area within a major Texas river basin. Kendall, Comal, Hays, Caldwell, Guadalupe, Gonzales, DeWitt, Victoria, Calhoun, and Refugio Counties are all within GBRA's district boundaries and GBRA serves customers in and adjacent to its district boundaries. GBRA serves many water districts and municipal water and municipal sewer utilities from Bexar County, into the Hill Country north of San Antonio, up the Interstate 35 corridor to the outskirts of Austin, and down the Guadalupe Valley as it reaches the Texas coast.

GBRA has developed, and continues work on, regional projects that enable local entities, both large and small, to participate together. This cooperative effort allows smaller public entities and many private entities to have the use of infrastructure that they could not build or operate as easily or as economically alone.

GBRA has no authority to levy taxes. GBRA receives no appropriations from the Texas Legislature. Revenues to fulfill GBRA's statutory missions to develop and conserve water resources in the Guadalupe River Basin come almost exclusively from GBRA's selling raw and treated water and providing sewage treatment and disposal services.

The infrastructure to provide those water or sewer services is financed, constructed, and operated under long-term agreements, often with local governmental entities.

### I. Why the Decisions in the Trial Court Poses a Serious Problem

The arguments relating to incontestability and other issues are fully briefed by SJRA and discussed at length by both parties. GBRA has little to add to those discussions, but it does support SJRA's positions and urges this Court to rule in SJRA's favor.

The decision by the District Court that the GRP Contracts fail to state "essential terms" as required by Tex. Local Govt. Code § 271.152 does merit additional attention.

### A. The District Court's Ruling Seriously Impacts a Widely-Used Paradigm for Water and Sewer Project Contracts.

In GBRA's own experience, and in its observation of critical water and sewer projects by others in the State, the contracting paradigm for many large and small water and sewer projects in Texas is similar to the one employed in the case at bar. The paradigm consists of a long-term agreement between a regional entity such as a river authority and one or more water districts, municipal utilities, or similar local governmental entities. The agreement typically contemplates project design, project construction, project operation,

<sup>&</sup>lt;sup>3</sup> *Id.*, Sec. 1.

and project financing. If a water supply project is contemplated, the regional entity is most often the entity that brings the water supply to the table.

The primary term for these agreements typically coincides with the payment terms on the financing for the project, *e.g.*, 30 to 40 years. The agreements can involve small projects such as the construction and operation of a small sewage treatment plant and collection system serving a few adjoining neighborhoods. They can involve large projects, such as regional water treatment and supply projects.

In many instances, the regional entity will be responsible for design and construction with input from the local partners. In others, the local partners may take a larger role. Typically, though, the regional entity will issue bonds or secure loans to finance the contemplated project. Often, the regional entity is in a position to obtain interest rates that are more favorable. The debt will then be secured by the local entity's pledge of revenues from the project or from taxes, and a promise to pay as the debt comes due.

These long-term agreements typically provide for operation, maintenance and repair of the project. Associated fees are provided for. Often the regional entity will operate the project, but not always. In any case, operation, repair and maintenance is critical to the life and continued viability of the project, and that requires revenue over the long term. As the cost of anything over the past several decades clearly illustrates, those fees cannot be fixed or unchanging over the long term.

### B. Affirming the District Court's Ruling Will Have Negative Impacts.

By its ruling on jurisdiction, the District Court has denied SJRA a means to enforce existing agreements. GBRA submits that the decision: (1) undercuts the continued strength of existing obligations that support the payment of debt used to build projects; (2) undercuts the strength of obligations to fund maintenance, operation, and repair costs for existing projects, which is critical to their long-term viability; and (3) will likely have a chilling effect on future use of a method of financing and maintaining projects, that has been widely used in Texas. The reason is simple enough. The denial by the Courts of a remedy for refusal to meet contractual payment obligations will undoubtedly provide opportunities – and incentives – to disregard those obligations.

Having legal recourse for non-payment is critically important when millions of dollars go into the financing of a water and sewer project that is financed by bonds sold to the public or to the State of Texas backed by an unconditional promise to pay. It is also critical when considering the cost of operation and maintenance of a project over the long term. It is also critically important for regional entities contemplating how – and whether – to finance and operate future projects in their area.

### II. The Essential Terms Required Under Local Govt. Code § 271.152 Are Included in the GRP Contracts.

One thing that the Cities appear to ignore in their reply brief is that in many of the cases they cite, the contracts in question either did not have specific obligations to pay or accept certain services,<sup>4</sup> or they involved a promise to use good faith to obtain an increase in compensation to a contractor – in other words, an "agreement to agree," which is generally unenforceable.<sup>5</sup> Another was executed by a governmental body's staff without appropriate approval by the governing body, and the case may have turned more on the failure to comply with the requirement in § 271.152 that a contract be "properly executed."

In the GRP Contracts as described by SJRA, there is a definite obligation to pay which identifies what the payment is for.<sup>7</sup> SJRA notes that the GRP Contracts specifically provide that the rates will be set and reset from time to time.<sup>8</sup> There is a specific formula, however simple, which the signatories agreed to use to calculate the fees for groundwater pumping and for surface water.<sup>9</sup> There is a specific procedure (which includes comments from a multi-party GRP Review Committee) for the rate setting for comments and recommendations on proposed fees.<sup>10</sup>

### III. The Court's Decision Will Have an Impact Beyond this Case.

The question regarding the waiver of immunity before the Court of Appeals in this case is fundamental and of great importance because of the implications it carries for current and future water and sewer projects, as discussed above. This case will be watched. It will be considered in the framing of future arguments in other cases. It will figure in decisions on future projects.

<sup>&</sup>lt;sup>4</sup> *ICI Constr., Inc. v. Orangefield Indep. Sch. Dist.*, 339 S.W. 3d. 235, 239-40 (Tex. App. – Beaumont 2011, no pet.). *See* Cities' Brief at 30-31.

<sup>&</sup>lt;sup>5</sup> Dallas/Fort Worth Int'l. Airport Bd. V. Vizant Techs., LLC, 576 S.W.3d. 362, 368-71, (Tex. 2019). See Cities' Brief at 28-30.

<sup>&</sup>lt;sup>6</sup> El Paso Educ. Initiative. Inc. v. Amex Props., LLC, 602 S.W.3d. 521, 531-32 (Tex. 2020). See Cities' Brief at 25-26.

<sup>&</sup>lt;sup>7</sup> SJRA's Brief at 26-27.

<sup>8</sup> SJRA's Brief at 26-29.

<sup>&</sup>lt;sup>9</sup> *Id*.

<sup>&</sup>lt;sup>10</sup> *Id*.

### IV. Conclusion.

For the reasons stated above and for the reasons stated in SRJA's Brief, GBRA supports the request of SJRA that Court of Appeals to reverse the decision of the District Court and remand this case for trial.

Respectfully submitted,

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#### **Certificate of Service**

I hereby certify that a true and correct copy of this document was served on all counsel of record, identified below by on November 6, 2020, electronically through the electronic filing manager in compliance with the Texas Rules of Appellate Procedure:

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### Ninth Court of Appeals Beaumont, Texas

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### SAN JACINTO RIVER AUTHORITY.

Appellant,

V.

### CITY OF CONROE, TEXAS, AND CITY OF MAGNOLIA, TEXAS

Appellees.

On Appeal from the 284<sup>th</sup> Judicial District Court, Montgomery County, Texas Cause No. 19-09-12611

BRIEF OF AMICUS CURIAE IN SUPPORT OF APPELLANT

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November 13, 2020

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### TABLE OF CONTENTS

IDEN	TITY	OF THE PARTIES AND COUNSEL	2
INDE	EX OF	AUTHORITIES	6
STA	ГЕМЕ	NT OF INTEREST OF AMICUS CURIAE	9
SUM	MAR	Y OF THE ARGUMENT1	2
ARG	UME	NT1	3
I.	THE	LEGISLATURE'S BROAD WAIVER OF GOVERNMENTA	L
	IMM	UNITY FOR WHOLESALE WATER SUPPLY CONTRACT	S
	PRO	VIDES IMPORTANT PROTECTION AND STABILITY FOR TH	Е
	FINA	ANCING OF LONG-TERM WHOLESALE WATER SUPPLY	Y
	PRO.	JECTS ACROSS THE STATE OF TEXAS13	,
	A.	Texas utilizes long-term regional water supply planning efforts base	d
		on long-term water supply contracts, which are protected by holding	g
		governmental entities responsible for their commitments1	3
	B.	If governmental entities are not held responsible for their commitments	3,
		the state's structure for long-term water supply planning will fail1	5
II.	THE	USE OF A "RATE TIMES QUANTITY" FORMULA BASED ON A	4
	SEPA	ARATE RATE ORDER TO ESTABLISH PAYMENT OBLIGATION	S
	FOR	WHOLESALE WATER SUPPLY CONTRACTS IS WIDESPREAD	),
	IS TH	HE ACCEPTED WAY SUCH CONTRACTS ARE STRUCTURED II	V

	TEX.	AS, AND PROVIDES THE NECESSARY "ESSENTIAL TERMS"
	FOR	PURPOSES OF WAIVING GOVERNMENTAL IMMUNITY16
	A.	It is impracticable for long-term wholesale water supply contracts to
		specify a fixed price17
	B.	Wholesale water supply contracts like the GRP Contracts provide the
		"essential terms" necessary to waive governmental immunity19
	C.	Long-term water supply development in Texas favors reversing the
		lower court's decision regarding the applicability of the governmental
		immunity waiver
PRA	YER	
CER	ΓΙFΙC	ATE OF COMPLIANCE24
CER'	ΓΙΕΙC	ATE OF SERVICE25

### **INDEX OF AUTHORITIES**

### Cases

Canyon Regional Water Authority v. Guadalupe-Blanco River Authority, 286
S.W.3d 397, 403 404 (Tex. App.—Corpus 2008)19
David J. Sacks, P.C. v. Haden, 266 S.W.3d 447, 450 (Tex. 2008)19
Kirby Lake Dev., Ltd. v. Clear Lake City Water Auth., 320 S.W.3d 829, 838 (Tex.
2010)20
Shell Oil Co. v. HRN, Inc., 144 S.W.3d 429, 436 (Tex. 2004)19
<u>Statutes</u>
Tex. Bus. & Com. Code § 2.305
Tex. Const. art. III, § 49-c
Tex. Local Gov't Code § 271.151(2)(A)20
Tex. Local Gov't Code § 271.152
Tex. Local Gov't Code § 552.012
Tex. Gov't Code § 791.026(b)-(d)
Tex. Gov't Code § 1202.006(a)

TEX. GOV'T CODE § 1371.059
Tex. Water Code § 49.184
Tex. Water Code § 49.213
Sec.14, Chapter 78, Acts of the 53rd Legislature, Regular Session, 19539
Senate Bill 1, Act of June 1, 1997, 75th Leg., R.S., ch. 1010, 1997 Tex. Gen. Laws
361013
Other Authorities
Brief of Appellant18
Brief of Appellees
GRP Contracts 6.02, CR396-9716
TEXAS WATER DEVELOPMENT BOARD, 2017 STATE WATER PLAN – Water for Texas
(2017) available at
http://www.twdb.texas.gov/waterplanning/swp/2017/doc/SWP17-Water-for-
Texas.pdf?d=50452714

### No. 09-20-00180-CV Ninth Court of Appeals Beaumont, Texas

SAN JACINTO RIVER AUTHORITY, *Appellant*,

v.

CITY OF CONROE, TEXAS, AND CITY OF MAGNOLIA, TEXAS, Appellees.

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### BRIEF OF AMICUS CURIAE IN SUPPORT OF APPELLANT

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### TO THE HONORABLE NINTH COURT OF APPEALS:

Northeast Texas Municipal Water District ("NETMWD") submits this brief supporting the appeal to the Ninth Court of Appeals by the San Jacinto River Authority ("SJRA") to overturn the 284th Montgomery County District Court's ruling that wholesale water contracts between SJRA and the Cities of Conroe and Magnolia, Texas, were not subject to the legislature's waiver of sovereign immunity for goods and services contracts. If allowed to stand, the District Court's ruling to grant the Cities' pleas to the jurisdiction in this matter will undermine long-term state and regional water supply planning efforts in Texas and the relevant public financing required for those efforts that is based on wholesale contracts between

governmental entities. NETMWD respectfully urges the Court of Appeals to overrule the District Court in the above-referenced matter and thereby affirm the importance of the legislature's broad waiver of governmental immunity for goods and services contracts, including wholesale water contracts generating revenue to secure public securities.

NETMWD adopts the Statement of the Case, Issues Presented, and Statement of Facts offered by Appellant SJRA.

### STATEMENT OF INTEREST

NETMWD is a conservation and reclamation district created in 1953 under Article XVI, Section 59 of the Texas Constitution and operates in much the same way as Appellant SJRA. NETMWD is governed by a board of directors appointed by the city councils of the seven member cities that founded the District. To support its water supply obligations, NETMWD relies on revenue bonds, contracts, and contract payments to meet its mission as a regional water supplier for both current and future residents of communities in northeast Texas. NETMWD's enabling legislation subjects its bonds and contracts that secure those bonds, such as its wholesale water supply contracts with its member cities, to review and approval by the Attorney General. Once approved by the Attorney General, the legality and

9

<sup>&</sup>lt;sup>1</sup> See Sec.14, Chapter 78, Acts of the 53rd Legislature, Regular Session, 1953 (Article 8280-147, Vernon's Texas Civil Statutes).

validity of these contracts as public securities is established as a matter of law, and any future legal challenges regarding such validity is expressly prohibited under NETMWD's enabling legislation and multiple statutes.<sup>2</sup>

NETMWD and the reliability and enforceability of its wholesale water supply contracts, along with those of numerous other wholesale water suppliers across the state of Texas, will be negatively impacted if the ruling by the District Court is upheld. Wholesale water suppliers, their customers, and their investors depend on the reliability of long-term contracts negotiated at arm's length by sophisticated parties to allow the financing, construction, and operation of substantial and complex regional water supply systems. The legislature's adoption of a broad waiver of governmental immunity for such contracts<sup>3</sup> ensures their enforceability and that governmental entities will be held responsible for their commitments. The Appellees and the District Court in this matter fail to recognize the important and unique role of regional water supply planners like SJRA and NETMWD in providing reliable and affordable wholesale water supplies. Upholding the findings by the District Court would effectively allow parties to long-term wholesale water supply contracts to re-negotiate those contracts at any time, making the bonds issued based

<sup>&</sup>lt;sup>2</sup> See id.; see also Tex. Gov't Code §§ 1202.006(a) & 1371.059, Tex. Water Code § 49.184 (all providing independent statutory grounds for the incontestability of such contracts after approval by the Attorney General).

<sup>&</sup>lt;sup>3</sup> See Tex. Local Gov't Code § 271.152.

on those contracts uncertain. That result would undermine the reliability of wholesale contracts in Texas, including those of NETMWD, drastically increase the cost to the public for water supply infrastructure, and likely serve as a bar to the implementation of many desperately needed water supply projects throughout the state.

NETMWD is responsible for payment of all legal fees and costs associated with the preparation of this amicus curiae brief.

### **SUMMARY OF THE ARGUMENT**

If the District Court's ruling is upheld, it will undermine the vast majority of long-term wholesale water supply contracts in the state and allow the parties under such contracts to effectively opt-out of their contractual obligations, leaving wholesale suppliers and purchasers without recourse to enforce their contracts. This result will create uncertainty and instability for both wholesale suppliers and purchasers and threaten the financial foundation on which long-term state and regional water supply planning in Texas depends. The Ninth Court of Appeals should reverse the District Court and find that the Groundwater Reduction Plan Contracts ("GRP Contracts") between SJRA and the Appellees outlined the basic obligations and essential terms for performance, and therefore that Appellees waived their governmental immunity when entering into the GRP Contracts.

The Court has been presented with thorough legal analysis from SJRA regarding the Legislature's broad waiver of governmental immunity under Local Government Code Section 271.152. The focus of this amicus brief is on the practical ramifications this case may have on water supply planning, financing, and development in Texas if the District Court's ruling is upheld. NETMWD hopes to provide the Court with information related to how water suppliers in the state plan and finance long-term water supplies, and why the legislative waiver of governmental immunity for wholesale water supply contracts is imperative.

### **ARGUMENT**

- I. THE LEGISLATURE'S BROAD WAIVER OF GOVERNMENTAL IMMUNITY FOR WHOLESALE WATER SUPPLY CONTRACTS PROVIDES IMPORTANT PROTECTION AND STABILITY FOR THE FINANCING OF LONG-TERM WHOLESALE WATER SUPPLY PROJECTS ACROSS THE STATE OF TEXAS.
  - A. Texas utilizes long-term regional water supply planning efforts based on long-term water supply contracts, which are protected by holding governmental entities responsible for their commitments.

In making a determination regarding the applicability of the governmental immunity waiver in this matter, the Court should consider the impact its decision will have on Texas' state water planning model, which relies on regional water supply development based in large part on long-term water supply contracts.

The Texas Water Development Board ("TWDB") was created in 1957 in response to a significant drought experienced across Texas during the early 1950s.<sup>4</sup> TWDB was, in part, charged with financing and helping to develop long-term water supply planning across the state. In 1997, in response to the drought of 1996, the Texas Legislature passed Senate Bill 1, overhauling how state water planning would be conducted in Texas.<sup>5</sup> Senate Bill 1 created a stakeholder process in state water planning, directed drought contingency planning, emphasized conservation, and streamlined the state's regulatory system. Through Senate Bill 1, the legislature

<sup>&</sup>lt;sup>4</sup> Tex. Const. art. III, § 49-c.

<sup>&</sup>lt;sup>5</sup> Senate Bill 1, Act of June 1, 1997, 75th Leg., R.S., ch. 1010, 1997 Tex. Gen. Laws 3610 (codified in Tex. Water Code ch. 16, subchapter C).

required that regional water planning groups be created to develop regional water plans, which are then submitted to the TWDB and adopted into a single state water plan. Often described as a "bottom-up" approach to state water planning, the current state water plan includes the work of sixteen regional water planning groups.<sup>6</sup> The statutory framework for water planning is detailed, with a strong emphasis on public participation, open government processes, numerous opportunities for notice and comment, and the careful utilization of forecasting data for state growth and associated growth in water demand a half-century into the future. The Senate Bill 1 water planning process requires identification of water demands and needs, and of water supply projects to meet those demands and needs, on a 50-year rolling planning horizon to allow sufficient time for the research, planning, permitting, financing, and construction of large regional projects, which can take three or more decades in some instances to implement.

The ability of regional public water suppliers to implement the projects that are included in the regional and state water plans depends heavily on their ability to negotiate wholesale water contracts and pledge those contracts to secure the bonds issued to finance the water supply projects, which is the predominant financing mechanism for regional projects throughout the state. Such contracts provide the

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<sup>&</sup>lt;sup>6</sup> See Texas Water Development Board, 2017 State Water Plan — Water for Texas (2017) available at <a href="http://www.twdb.texas.gov/waterplanning/swp/2017/doc/SWP17-Water-for-Texas.pdf">http://www.twdb.texas.gov/waterplanning/swp/2017/doc/SWP17-Water-for-Texas.pdf</a>?d=504527.

economic security necessary to allow suppliers to develop and maintain water supplies and the related infrastructure to meet various regional needs. Without assurance that governmental entities can be held responsible for their water supply contract commitments through tools like the legislative waiver of governmental immunity, those governmental entities may be able to essentially opt-out of their obligations during the term of the contract. If this is allowed, no regional water supplier will have the financial security afforded by such long-term contracts to continue to develop and maintain regional water supplies and no purchaser can be assured that water will continue to be supplied through the contracts it has executed to meet its current and future demands and needs.

## B. If governmental entities are not held responsible for their commitments, the state's structure for long-term water supply planning will fail.

Regional water suppliers must finance the construction of facilities to provide the water supply needs outlined in the regional and state water plans. Such financing for capital assets like surface water reservoirs, water treatment plants, pipelines, and pump stations is often accomplished through the issuance of revenue bonds. To support the payment of debt service on the bonds issued by water suppliers such as SJRA and NETMWD, contracts are executed with cities and other political

subdivisions that will be purchasing the water supply on a wholesale basis.<sup>7</sup> Because they are part of coordinated long-term regional water planning efforts, such contracts are often for a term of decades. In fact, the Texas Legislature recognized the distinct role of wholesale water supply contracts, unlike retail water contracts, in long-term water supply planning by allowing such wholesale contracts to be of unlimited duration or for the life of bonds for projects.<sup>8</sup>

The GRP Contracts at issue were the result of negotiations between SJRA and the Appellees under the representation of their own legal counsel. The Appellees benefitted from these contracts, allowing them to pursue growth knowing that they had dependable wholesale water supplies. SJRA bondholders rely on the terms of the contracts to make low-cost financing available for long-term water infrastructure projects. Just as SJRA cannot suddenly decide to no longer maintain or continue to develop certain water supplies needed to meet the water demands of the Appellees, the Appellees cannot decide to walk away from their financial obligations under the contracts. The legislature confirmed the enforceability of the GRP Contracts through an expansive waiver of governmental immunity.

## II. THE USE OF A "RATE TIMES QUANTITY" FORMULA BASED ON A SEPARATE RATE ORDER 9 TO ESTABLISH PAYMENT OBLIGATIONS FOR WHOLESALE WATER SUPPLY CONTRACTS

<sup>&</sup>lt;sup>7</sup> See Tex. Local Gov't Code § 552.012, Tex. Water Code § 49.213 (providing two of many statutory bases in Texas for contracting authority to support this method of finance).

<sup>&</sup>lt;sup>8</sup> See Tex. Gov't Code § 791.026(b)-(d).

<sup>&</sup>lt;sup>9</sup> GRP Contracts 6.02, CR.396-97.

IS WIDESPREAD, IS THE ACCEPTED WAY SUCH CONTRACTS ARE STRUCTURED IN TEXAS, AND PROVIDES THE NECESSARY "ESSENTIAL TERMS" FOR PURPOSES OF WAIVING GOVERNMENTAL IMMUNITY.

## A. It is impracticable for long-term wholesale water supply contracts to specify a fixed price.

In suggesting that the scope of the Legislature's governmental immunity waiver is limited to wholesale water supply contracts that specify a fixed price and volume of water, <sup>10</sup> the Appellees fail to adequately recognize the long-term and unique nature of a wholesale water supply contract. As noted above, such contracts are for terms lasting many decades. It would be impracticable for such long-term contracts to set a fixed price when, over the course of the contract term, the cost of providing service under the contract will most certainly fluctuate.

NETMWD has wholesale water supply contracts with terms lasting 40 years and longer if outstanding debt is tied to the water supply. It is impossible to set an accurate price for the wholesale service of water 40 years in the future. The use of separate rate orders and fluctuating rates based on a formula or other objective standard clearly specified in the underlying contract allows suppliers to cover the ever-changing cost of service and inflation and to secure any additional water supplies needed in the future that may be unknown at the time the contract is executed, but necessary to satisfy the terms of the contract. Wholesale water service

17

<sup>&</sup>lt;sup>10</sup> Brief of Appellees, at p. 20.

is impacted by any number of factors, including the variable cost of purchasing electrical power, compliance with ever-changing state and federal treatment requirements, fluctuations in the price of water treatment chemicals and supplies, repair, replacement, and maintenance of water supply and treatment infrastructure and equipment, and other unpredictable operations and maintenance costs. The costs of these factors will certainly fluctuate over time, making a fixed price impossible to predict and utilize in the underlying contract.

The use of a formula-based pricing scheme with unknown variables in certain contracts is common and clearly authorized by law. Unlike SJRA's GRP Contracts, which state the essential price terms of the contracts by including a specific contractual formula to establish its water rates in conjunction with an "at lowest-cost" standard, 11 the Texas Business and Commerce Code authorizes parties to enter into binding contracts "though the price is not settled" and even if "nothing is said as to price." In such contracts or contracts where the price is to be fixed by the seller, the price will be held to be "a reasonable price" and the seller must fix the price "in good faith." The Texas Supreme Court has upheld the validity of "openterm price" contracts in which gasoline refiners set a sale price to a posted price that

<sup>&</sup>lt;sup>11</sup> Brief of Appellant, at pp. 26-27.

<sup>&</sup>lt;sup>12</sup> See Tex. Bus. & Com. Code § 2.305.

<sup>&</sup>lt;sup>13</sup> *Id*.

is fairly applied to similarly-situated purchasers. <sup>14</sup> Likewise, courts have acknowledged that there is a presumption that parties intended a reasonable price when an agreement specifies a formula or other basis on which a reasonable price may be determined. <sup>15</sup> In reviewing a wholesale water contract dispute, the Corpus Christi Court of Appeals upheld the validity of a contract much like the GRP Contracts, which contained an "open-term price" provision that calculated the sale price of wholesale water based upon a quantity and rate formula and the seller's cost of service. <sup>16</sup>

The vast majority of wholesale water supply contracts in Texas do not include a fixed price in the contract. Suggesting that such contracts must contain a fixed price in order for the legislative governmental immunity waiver to apply to those contracts will upend all similar contracts between governmental entities and cause chaos in Texas' water financing system. Ultimately, such a system will increase the cost of water for the public as water suppliers will be forced to raise prices to cover the cost of uncertainty.

## B. Wholesale water supply contracts like the GRP Contracts provide the "essential terms" necessary to waive governmental immunity.

<sup>&</sup>lt;sup>14</sup> Shell Oil Co. v. HRN, Inc., 144 S.W.3d 429, 436 (Tex. 2004).

<sup>&</sup>lt;sup>15</sup> See David J. Sacks, P.C. v. Haden, 266 S.W.3d 447, 450 (Tex. 2008) (holding that, although the parties did not specify an exact total price, their agreement to use hourly rates confirmed that they intended a reasonable price).

<sup>&</sup>lt;sup>16</sup> Canyon Regional Water Authority v. Guadalupe-Blanco River Authority, 286 S.W.3d 397, 403-404 (Tex. App.—Corpus Christi 2008).

In order for governmental immunity to be waived under a wholesale water supply contract, the contract must provide "the essential terms of the agreement." As briefed and addressed by SJRA, this requirement has been interpreted by the Texas Supreme Court to mean that the "basic obligations" of the contract must be clearly outlined. Wholesale water supply contracts that provide a formula-based price calculation, like the GRP Contracts and NETMWD's wholesale contracts, provide sufficient detail for purposes of price and volume to clear this bar. As addressed above, the price of water under most wholesale water supply contracts is based on a formula that is tied to a rate order or rate schedule. When entering into the contract, the purchaser knows that the price they will pay is based on a specific formula: the volume of water to be taken 19 multiplied by the rate order or schedule constructed to address unknown costs in supplying water.

For this Court to find that a constant, non-variable price amount must be set in a wholesale water supply contract in order for that contract to address the "basic obligations" of the parties would be to find that virtually no long-term wholesale water supply contract with a governmental entity can ever be enforced due to governmental immunity. Such an outcome would cause uncertainty across the state

<sup>&</sup>lt;sup>17</sup> TEX. LOCAL GOV'T CODE § 271.151(2)(A).

<sup>&</sup>lt;sup>18</sup> Kirby Lake Dev., Ltd. v. Clear Lake City Water Auth., 320 S.W.3d 829, 838 (Tex. 2010).

<sup>&</sup>lt;sup>19</sup> Like the GRP Contracts, NETMWD has wholesale water supply contracts that set a certain takeor-pay minimum that is used for calculating the price to be paid. NETMWD also has some wholesale contracts that do not require any minimum water purchase.

in water supply planning and financing, allowing governmental entity-purchasers to simply change their mind based on political whims if they do not want to pay under a wholesale water supply contract and allowing governmental entity-providers to stop service if they find a better customer that comes along for a higher price. For the stability and security of water supply planning and the water supply financing bond markets, in which the State of Texas through its agency the Texas Water Development Board and the citizens of Texas have a substantial investment and stake, and as clearly authorized and required by the statutes and common law of this state, governmental entities must be held accountable through the statutory waiver of governmental immunity for the fluctuating-price contracts they enter into and upon which wholesale providers finance water projects.

## C. Long-term water supply development in Texas favors reversing the lower court's decision regarding the applicability of the governmental immunity waiver.

The impact of the Court's ruling in this matter will have wide-spread implications for water supply providers in Texas. Appellees criticize SJRA for raising the fact that the District Court's ruling jeopardizes the enforceability of other municipal water supply contracts that utilize a formula-based rate structure. <sup>20</sup> However, if the Court upholds the applicability of governmental immunity in this

<sup>&</sup>lt;sup>20</sup> Brief of Appellees, at pp.31-34.

matter as the Appellees propose, there will be an unavoidable negative impact on the financing of long-term wholesale water supplies in Texas due to the uncertainty of rate and contract stability. Without the protection afforded by the Legislature's waiver of governmental immunity, financial lenders will recognize that purchasers under a wholesale contract have the ability to re-negotiate their rate essentially at any time (because suppliers do not have the ability to enforce their contracts), making an investment in water supply projects inherently riskier. Potential purchasers, when negotiating with a wholesale supplier, will be less careful regarding the terms to which they commit knowing that they can back out of such obligations. The ultimate cost of long-term water supply projects will increase under these circumstances as borrowing costs in the bond markets will predictably respond to the increased risk and unreliability of long-term wholesale contracts. Such costs will ultimately be passed along to the citizens of Texas in the form of substantially increased water rates.

#### **PRAYER**

For the reasons expressed in this brief, the Ninth Court of Appeals should reverse the decision of the Montgomery County District Court granting the Appellees' plea to the jurisdiction and remand the matter for trial.

### Respectfully submitted,

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In the Court of Appeals for the Ninth District of Texas Beaumont, Texas

\_\_\_\_

### San Jacinto River Authority

### **Appellant**

V.

### City of Conroe, Texas, and City of Magnolia, Texas

### **Appellees**

\_\_\_\_\_

On Appeal from the 284th District Court, Montgomery County, Texas Cause No. 19-09-12611, Hon. John Delaney, Judge Presiding

# BRIEF OF AMICI CURIAE NORTH HARRIS COUNTY REGIONAL WATER AUTHORITY, WEST HARRIS COUNTY REGIONAL WATER AUTHORITY, CENTRAL HARRIS COUNTY REGIONAL WATER AUTHORITY, AND NORTH FORT BEND WATER AUTHORITY

\_\_\_\_\_

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#### TO THE HONORABLE JUSTICES OF THE NINTH COURT OF APPEALS:

North Harris County Regional Water Authority, West Harris County Regional Water Authority, Central Harris County Regional Water Authority, and North Fort Bend Water Authority (collectively, the "Water Authorities") respectfully submit this amici curiae brief in support of Appellant San Jacinto River Authority ("SJRA") in this appeal.

# STATEMENT OF INTEREST OF AMICI CURIAE NORTH HARRIS COUNTY REGIONAL WATER AUTHORITY, WEST HARRIS COUNTY REGIONAL WATER AUTHORITY, CENTRAL HARRIS COUNTY REGIONAL WATER AUTHORITY AND NORTH FORT BEND WATER AUTHORITY

The North Harris County Regional Water Authority ("NHCRWA") is a regional water authority created by the Texas Legislature in 1999 under the Article XVI, Section 16 of the Texas Constitution (the "Conservation Amendment"). See Tex. Spec. Dist. Local Laws Code §§ 8888.001-.256. NHCRWA's express statutory powers include the acquiring and developing of water supplies and the selling and delivering of water to persons inside and outside NHCRWA's boundaries for the purposes of reducing groundwater withdrawals and subsidence. See id. § 8888.152.

The West Harris County Regional Water Authority ("WHCRWA") is a regional water authority created by the Texas Legislature in 2001 under the Conservation Amendment. *See* Act of May 15, 2001, 77th Leg., R.S., ch. 414, 2001

Tex. Gen. Laws 759, as amended ("WHCRWA Act"). WHCRWA's express statutory powers include providing for the reduction of groundwater withdrawals to facilitate compliance with the requirements of the Harris-Galveston Subsidence District, acquiring and developing water supplies, and selling and delivering water to persons and entities inside and outside WHCRWA's jurisdictional boundaries. *See* WHCRWA Act § 4.01, 2001 Tex. Gen. Laws at 787.

The Central Harris County Regional Water Authority ("CHCRWA") is a regional water authority created by the Texas Legislature in 2005 under the Conservation Amendment. *See* TEX. SPEC. DIST. LOCAL LAWS CODE §§ 8815-001-.151. CHCRWA's express statutory powers include providing for the reduction of groundwater withdrawals to facilitate compliance with Harris-Galveston Subsidence District rules, acquiring and developing water supplies, and selling and delivering water to persons and entities inside and outside of CHCRWA's jurisdictional boundaries. *See id.* § 8815.101.

The North Fort Bend Water Authority ("NFBWA") is a regional water authority created by the Texas Legislature in 2005 under the Conservation Amendment. *See* Tex. Spec. Dist. Local Laws Code §§ 8813.001-.151. NFBWA's express statutory powers include providing for the reduction of groundwater withdrawals to facilitate compliance with the requirements of the Fort Bend and Harris-Galveston Subsidence Districts, acquiring and developing water supplies,

and selling and delivering water to persons and entities inside and outside of NFBWA's jurisdictional boundaries. *See id.* § 8813.101.

The Water Authorities are individual political subdivisions serving similar functions but in different geographical areas. The Water Authorities are concerned that a ruling adverse to SJRA in this appeal could have far-reaching negative impacts, including calling into question the enforceability of water supply contracts under which the Water Authorities supply water to local governmental entities, as well as the enforceability of other wholesale water supply contracts around the State. Because this appeal has the potential to affect the Water Authorities, they are interested in the outcome of this case.

This brief has been prepared at the expense of the Water Authorities.

# <u>BACKGROUND</u>

Appellant SJRA builds large-scale water projects that serve public and private entities.<sup>1</sup> Appellees Cities of Conroe and Magnolia (the "Cities") are located in Montgomery County. As Montgomery County's population grew, concerns increased about the area's reliance on groundwater drawn from the Gulf Coast Aquifer. *See City of Conroe v. San Jacinto River Auth.*, 602 S.W.3d 444, 448 (Tex. 2020). The Legislature created the Lone Star Groundwater Conservation District

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<sup>&</sup>lt;sup>1</sup> Appellant's Brief at 21.

("LSGCD") to address these concerns. In 2008, LSGCD adopted rules that required large-volume groundwater users within its jurisdiction including the Cities to develop and implement plans to reduce their groundwater usage. Mandatory groundwater-usage cutbacks took effect in January 2016. *See id*.

Anticipating LSGCD's mandatory groundwater-usage cutbacks, SJRA developed plans to draw surface water from Lake Conroe, treat the water, and sell it to large-volume users. *See id.* SJRA entered into long-term Groundwater Reduction Plan ("GRP") contracts with approximately 80 water-system operators in 2010 (including the Cities), agreeing to provide them with surface water in exchange for monthly payments. *See id.* 

The GRP contracts do not include fixed price terms and do not specify a volume of water that the Cities are obligated to purchase each year. Instead, the GRP Contracts use a formula for setting the unit price for water that references a separate SJRA "rate order" which, as the GRP contracts state, shall be "amended from time to time" by SJRA.<sup>2</sup> With respect to volume, the GRP contracts give purchasers the flexibility to take as much water as they want within a range set by the GRP Administrator.<sup>3</sup>

<sup>2</sup> *Id.* at 27.

<sup>&</sup>lt;sup>3</sup> *Id.* at 51. The GRP contracts define the term "GRP Administrator" as "the General Manager of [SJRA], or his or her designee . . . ." CR 464.

In 2016, the Cities each adopted resolutions refusing to pay a rate increase that had been adopted earlier that year by SJRA. *City of Conroe*, 602 S.W.3d at 449. In response, SJRA filed an Expedited Declaratory Judgment Act ("EDJA") lawsuit in Travis County District Court seeking declarations regarding the GRP contracts, and whether the City of Conroe was in breach. The Cities filed pleas to the jurisdiction arguing that those claims may not be heard in an EDJA lawsuit in Travis County. Ultimately, the Texas Supreme Court held that SJRA's request for a declaration regarding compliance with the GRP contracts was not covered by the EDJA and could not be heard in Travis County. *See City of Conroe*, 602 S.W.3d 454.

Thereafter, SJRA filed claims against the Cities in district court in Montgomery County for breach of the Cities' respective GRP contracts. The Cities responded by filing pleas to the jurisdiction asserting immunity to suit on the grounds that those GRP contracts *lack essential terms* (specifically, a fixed price and a specific volume of water that must be purchased) and therefore do not meet the definition of "contract subject to this subchapter" in § 271.151, Local Government Code. The Cities argue, therefore, that those contracts are not covered by the associated waiver of immunity set forth in § 271.152, Local Government Code. CR 300. The trial court granted the Cities' pleas to the jurisdiction, dismissing

SJRA's claims against the Cities. CR 1144. SJRA perfected this accelerated appeal of the trial court's order granting the Cities' pleas to the jurisdiction.

### ISSUES IN THIS APPEAL

In this appeal, SJRA argues, among other things, that even if Texas Courts have jurisdiction to determine whether the GRP contracts fall outside of Tex. Local Gov't Code § 271.152's waiver of immunity, the Cities' arguments that the GRP contracts fail to state "essential terms" (and therefore are not covered by that waiver of immunity) are without merit.<sup>4</sup>

More specifically, in response to the Cities' assertion that the GRP contracts lack essential terms because they do not specify a fixed price (and that referencing a separate rate order does not count), SJRA argues, based on controlling Texas Supreme Court precedent, that the GRP contracts state their essential terms and therefore satisfy the requirements set forth in § 271.151, Local Government Code.<sup>5</sup> SJRA further argues and explains why it would be ludicrous and unreasonable to expect the long-term GRP contracts to include a fixed and unchanging price.<sup>6</sup> SJRA also argues that the GRP contracts do not fail to state an essential term because they

<sup>&</sup>lt;sup>4</sup> Appellant's Brief at 40-57; Appellant's Reply Brief at 10-26.

<sup>&</sup>lt;sup>5</sup> Appellant's Brief at 46-52; Appellant's Reply Brief at 18-20.

<sup>&</sup>lt;sup>6</sup> Appellant's Brief at 44-45.

give a purchaser freedom to purchase as much water as it wants within a range set by SJRA.<sup>7</sup>

SJRA further argues that if the Court of Appeals was to adopt the Cities' "essential terms" argument, the consequences would be catastrophic, endangering SJRA's municipal water contracts, and making it impossible for parties to many other water supply contracts around the state which involve local governmental entities (such as cities and Municipal Utility Districts ("MUDs")) to enforce those contracts.<sup>8</sup>

The Water Authorities agree with and support these legal arguments of SJRA.

### THE WATER AUTHORITIES' WATER SUPPLY CONTRACTS

A central purpose of the Water Authorities is to acquire and develop water supplies and to sell and deliver that water to persons and entities both within and outside of their respective jurisdictional boundaries.<sup>9</sup>

The Water Authorities' enabling acts authorize each of them to enter into contracts, including with local governmental entities. *See* TEX. SPEC. DIST. LOCAL LAWS §§ 8813.113(a)(3), 8888.161(a); WHCRWA Act § 4.01(b)(3). The Water Authorities also each have statutory authority to establish fees, rates, and charges as

<sup>&</sup>lt;sup>7</sup> *Id.* at 50-52; Appellant's Reply Brief at 23-26.

<sup>&</sup>lt;sup>8</sup> Appellant's Brief at 53-57; Appellant's Reply Brief at 21-23.

<sup>&</sup>lt;sup>9</sup> See supra at 2-4.

necessary to enable them to fulfil their purposes and regulatory obligations. *See* TEX. SPEC. DIST. LOCAL LAWS §§ 8813.103(a), 8888.154; WHCRWA Act § 4.03(a). Such fees, rate and charges must be sufficient to, among other things, enable the Water Authorities to meet operation and maintenance expenses, and pay the principal of, and any interest on, debt issued in connection with the exercise of their powers and duties. *See* TEX. SPEC. DIST. LOCAL LAWS §§ 8813.103(f), 8888.155; WHCRWA Act § 4.02(e).

Pursuant to their statutory authorities, the Water Authorities enter into water supply contracts with local governmental entities (mostly MUDs) and deliver and sell water to those entities under those agreements. Attached to this brief (at Tabs A through D) are examples of water supply contracts entered into by the Water Authorities and local governmental entities. These water supply contracts are uniformly long-term agreements, with minimum terms ranging from 10 to 50 years.<sup>10</sup>

These water supply contracts do not include fixed price terms; rather, they establish a unit cost for water that depends on prices set by the Water Authorities in

<sup>&</sup>lt;sup>10</sup> See, e.g., Tab A (Water Supply Agreement Between NHCRWA and Harris County Municipal Utility Districts ("MUDs") Nos. 367 & 383) (30 years); Tab B (Water Supply Letter Agreement Between WHCRWA and Harris County MUD No. 162) (50 years); Tab C (Water Supply Letter Agreement Between NFBWA and Fort Bend County MUD No. 190) (20 years); Tab D (Water Supply Commitment Letter Agreement Between CHCRWA and Harris County MUD No. 150 (10 years with automatic 5 year renewals).

separate *rate orders* issued and amended from time to time by each of the respective Water Authorities. More specifically, NHCRWA's water supply contracts incorporate by reference NHCRWA's "Rate Order, as it may be amended from time to time." WHCRWA's water supply contracts state that "payment for water service . . . shall be governed by the terms . . . of [WHCRWA's] orders . . . which may be amended from time to time by [WHCRWA]."12 NFBWA's water supply contracts state that "payment for water service . . . shall be governed by the terms . . . of [NFBWA]'s orders . . . which may be amended from time to time by [NFBWA]."13 CHCRWA's water supply contracts state that "payment for water service from [CHCRWA] shall be governed by the terms . . . of [CHCRWA]'s orders . . . which may be amended from time to time by [CHCRWA]."14 The Water Authorities' rate orders (or in the case of NHCRWA – its pricing policies associated with its rate order) – which are amended or reissued mostly on an annual basis, set forth a unit price for water.<sup>15</sup>

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<sup>&</sup>lt;sup>11</sup> Water Supply Agreement Between NHCRWA and Harris County MUDs Nos. 367 & 383 (Tab A) at 1.

<sup>&</sup>lt;sup>12</sup> Water Supply Letter Agreement Between WHCRWA and Harris County MUD No. 162 (Tab B) at 3-4.

<sup>&</sup>lt;sup>13</sup> Water Supply Letter Agreement Between NFBWA and Fort Bend County Municipal Utility District No. 190 (Tab C) at 4.

<sup>&</sup>lt;sup>14</sup> Water Supply Commitment Letter Agreement Between CHCRWA and Harris County MUD No. 150 (Tab D) at 4.

<sup>&</sup>lt;sup>15</sup> NHCRWA Rate Order (adopted Oct. 5, 2009) including Updated Pricing Policy (effective Apr. 1, 2020) (Tab E) at 5 & Exhibit A; WHCRWA Amended Rate Order (adopted Nov. 13, 2019)

Moreover, the Water Authorities' water supply contracts are not for fixed volumes of water. Although the water supply contracts of both WHCRWA and NFBWA establish a Daily Commitment Amount (stated in gallons per day), those contracts expressly allow those water authorities to unilaterally increase the volume of water that a MUD is required to take (and pay for). The water supply contracts of NHCRWA provide a range of volumes that the local governmental entity may purchase.

The Cities' "essential terms" argument, if accepted by the Court, would produce harsh and unintended results, calling into question the enforceability of the Water Authorities' water supply contracts and many other wholesale water supply contracts between water providers and local governmental entities around the State

Like the GRP contracts at issue in this appeal, the Water Authorities' water supply contracts, as detailed above, do not set a fixed price for water and do not

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<sup>(</sup>Tab F) at 7; NFBWA Amended Rate Order (adopted Dec. 19, 2019) (Tab G) at 6; Central Harris County Regional Water Authority Rate Order (effective Mar. 1, 2018) (Tab H) at 6.

<sup>&</sup>lt;sup>16</sup> See, e.g., Water Supply Letter Agreement Between WHCRWA and Harris County MUD No. 70 (Tab E) at 1 (establishing a Daily Commitment Amount and stating that "[t]his Agreement shall in no way limit [WHCRWA]'s rights. . . to require the [MUD] to take water from [WHCRA] in amounts that are greater than the amount set forth in this Agreement"); Water Supply Letter Agreement Between NFBWA and Fort Bend County MUD No. 190 (Tab H) at 1-2 (same). WHCRWA and NFBWA have statutory authority to specify the amount of surface water that local governmental entities within their respective jurisdictional boundaries must take from them. See Act of June 17, 2005, 2005, 79th Leg., R.S., ch. 524, § 7, 2005 Tex. Gen. Laws 1426; TEX. SPEC. DIST. LOCAL LAWS CODE § 8813.111(a)(4).

<sup>&</sup>lt;sup>17</sup> See, e.g., Tab A (Water Supply Agreement Between NHCRWA and Harris County MUDs Nos. 367 & 383) (stating that the MUDs "shall buy and receive from [NHCRWA], and [NHCRWA] shall sell and deliver . . . a volume of [NHCRWA] Water between 0.75 [MGD] and 2.0 MGD").

require customers to take and/or pay for a fixed volume of water. Instead, those contracts establish a unit price for water only by reference to a separate document issued by the respective water authority and amended or reissued by that entity, generally speaking, on an annual basis. Regarding volume, the water supply contracts of WHCRA and NFBWA establish a Daily Commitment Amount but expressly allow the water authorities to unilaterally increase the volume of water that a local governmental entity is required to take (and pay for). The water supply contracts of NHCRWA provide a range of volumes that the local governmental entity may purchase. On the contracts of volumes are particularly may purchase.

If the Cities succeed in their "essential terms" argument, the enforceability of the Water Authorities' water supply contracts would be called into question. Local governmental entities that are parties to such water supply contracts could breach those agreements, including by refusing to pay a duly adopted rate increase. If the water authority were to respond by seeking to enforce its contract in court, it could face a strong argument from its customer that the water supply contract at issue may not be enforced because it is not covered by Tex. Local Gov't Code § 271.152's waiver of immunity (because it lacks "essential terms").

<sup>18</sup> *See supra* at 9-10.

<sup>&</sup>lt;sup>19</sup> *See supra* at 10-11.

<sup>&</sup>lt;sup>20</sup> See supra at 11.

SJRA has presented several examples of water supply contracts from around the state that likewise could be called into question and rendered unenforceable if the Court were to adopt the Cities' "essential terms" argument.<sup>21</sup> The examples provided by SJRA are only a small sampling of water supply contracts entered into throughout Texas between water suppliers and local governmental entities.

Local governmental entities that function as retail water utilities (such as MUDs) and which need to purchase water, require long-term commitments in order to secure a stable and reliable supply. The costs incurred by wholesale water suppliers (such as SJRA and the Water Authorities) of constructing, operating and maintaining the facilities used to divert, store, treat, and convey wholesale water, the costs to finance such facilities, and the cost of the water itself, vary over time. <sup>22</sup> The volume of water needed by a local governmental entity/retail water utility frequently varies over time, often increasing as economies expand and populations grow, and sometimes decreasing, for example, as alternative water sources are developed or as conservation strategies are implemented. Flexibility is important.

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<sup>&</sup>lt;sup>21</sup> Brief of Appellants at 55-57.

<sup>&</sup>lt;sup>22</sup> There are external, statutory and regulatory controls on wholesale water rates set forth in water supply contracts. The Public Utility Commission of Texas ("PUCT") has appellate jurisdiction over wholesale water rates (as set forth in contracts and otherwise) under Chapter 13, Texas Water Code. *See* Tex. Water Code § 13.043(f); 16 Tex. Admin. Code §§ 24.301-.321. If the PUCT finds that a wholesale water rate adversely affects the public interest, it may set that rate aside and establish new rates. Tex. Water Code § 24.313.

When interpreting a statute, Texas Courts consider the "consequences that would follow" from each party's proposed construction. Atascosa County v. Atascosa County Appraisal Dist., 990 S.W.2d 255, 258 (Tex. 1999); see also In re Hecht, 213 S.W.3d 547, 564-65 (Tex. 2006); City of Marshall v. City of Uncertain, 206 S.W.3d 97, 105 (Tex. 2006); TEX. GOV'T CODE § 311.023 ("[i]n construing a statute . . . a court may consider . . . the . . . consequences of a particular construction"). To adopt the statutory construction urged by the Cities as a critical part of their "essential terms" argument would have the result of calling into question the enforceability of the Water Authorities' water supply contracts and many other water supply contracts currently in effect around the State of Texas.

Courts also interpret statutes so as to avoid "absurd results." Union Carbide Corp. v. Synatzske, 438 S.W.3d 39, 52 (Tex. 2014). The Water Authorities agree with SJRA that it would be an absurd and unintended result if a decision of this Court based on an interpretation of § 271.152, Local Government Code, were to cause water supply contracts between wholesale providers (like SJRA and the Water Authorities) and local governmental entities across the state to be rendered unenforceable.<sup>23</sup>

<sup>&</sup>lt;sup>23</sup> See Appellant's Brief at 55-57.

When construing a statute, courts are to give it the effect that the Legislature intended. *Bioderm Skin Care, LLC v. Sok*, 426 S.W.3d 753 (Tex. 2014). Moreover, in determining legislative intent, courts may consider factors such as the circumstances under which the statute was enacted and the statute's legislative history. *First Cash, Ltd. v. JQ-Parkdale, LLC*, 538 S.W.3d 189, 195 (Tex. App. Corpus Christi-Edinburg 2018, no pet.); *see also* Tex. Gov't Code § 311.023.

The legislative history of § 271.152, Local Government Code, shows that this provision was adopted by the Texas Legislature in 2005 to correct a shift in the law that had resulted from several decisions of the courts of appeal which – in the minds of many – had incorrectly, and contrary to legislative intent, limited the ability of parties to sue political subdivisions for breach of contract. The bill adding Subchapter I to Chapter 271, Local Government Code (which includes §§ 271.151 and .152) was intended to clarify and re-express "the legislature's intent that all local governmental entities that are given the statutory authority to enter into contracts shall not be immune from suits arising from those contracts, subject to the limitations set forth in [the bill]." Texas Bill Analysis, 2005 Regular Session, H.B. 2039 (May 17, 2005). The intent of § 271.152, Local Government Code, was thus to clarify and express a broad waiver of immunity for breach of contract claims against local governmental entities, and not establish new hurdles to prevent parties from accessing the courthouse where such entities are in breach of their contracts.

## **CONCLUSION**

For the above-stated reasons, the Water Authorities urge the Court to reject the Cities' "essential terms" argument.

Respectfully submitted,

KEMP SMITH LLP 6001 W. Parmer Lane, Suite 370-134 Austin, Texas 78727 (512) 320-5466 (office) (512) 293-5533 (mobile) (512) 320-5431 (FAX)

By: \_\_\_\_\_\_Andrew S. "Drew" Miller drew.miller@kempsmith.com
State Bar No. 00786857

ATTORNEYS FOR AMICUS CURIAE NORTH HARRIS COUNTY REGIONAL WATER AUTHORITY

### **CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing has been sent via first class mail and/or electronic filing system on this 16th day of November, 2020, to the following:

April Farris
<u>afarris@yettercoleman.com</u>
James E. Zucker
<u>jzucker@yettercoleman.com</u>
811 Main Street, Suite 4100
Houston, Texas 77002

Ramon G. Viada III
<a href="mailto:rayviada@viadastrayer.com">rayviada@viadastrayer.com</a>
VIADA & STRAYER

17 Swallow Tail Court
The Woodlands, TX 77381

Marvin W. Jones
marty.jones@sprouselaw.com
C. Brantley Jones
brantley.jones@sprouselaw.com
P.O. Box 15008
Amarillo, Texas 79105

Michael V. Powell

mpowell@lockelord.com

LOCKE LORD LLP

2200 Ross Avenue, Suite 2800

Dallas, TX 75201

Leonard V. Schneider IV

LSchneider@lilesparker.com

LILES PARKER PLLC

1221 Northpark Drive, Suite 445

Kingwood, Texas 77339

Andrew S Miller

# TAB A

#### WATER SUPPLY AGREEMENT

WHEREAS, Harris County Municipal Utility District No. 367 and Harris County Municipal Utility District No. 383, conservation and reclamation districts (the "Buyers") have requested this Water Supply Agreement (the "Agreement") from the North Harris County Regional Water Authority (the "Authority") so Buyers may maintain compliance with the Texas Commission on Environmental Quality's requirements related to Buyers's minimum water supply capacity;

WHEREAS, Buyers desires to purchase and the Authority desires to sell the volume of water specified below in the manner and on the terms herein specified;

NOW, THEREFORE, for and in consideration of the mutual promises and consideration hereinafter described, the Authority and Buyers hereby agree as follows:

- Purchase and Sale of Water. Buyers shall buy and receive from the Authority, and the Authority shall sell and deliver to the Buyers, at the Delivery Point, a volume of Authority Water between 0.75 million gallons per day ("MGD") and 2.0 MGD.
- Flow Rate, Pressure and Disinfection Method. The Authority shall deliver Authority Water at a rate not to exceed 83,340 gallons per hour and at pressure adequate to discharge Authority Water into Buyers's ground storage tank. To facilitate the operation of both the Authority System and Buyers's water production and distribution system, Buyers shall accept at the Delivery Point 1.2 MGD average daily flow and 2.0 MGD during peak day flow. Both the Authority and Buyers shall disinfect Authority Water using chloramines.
- Contact Information. The contact information for Buyers for all correspondence related to 3. this Agreement shall be:

Buyers:

Harris County Municipal Utility District No. 367 c/o Allen Boone Humphries Robinson LLP

Attention: Lynne Humphries

3200 Southwest Freeway, Suite 2600

Houston, Texas 77027 Telephone: 713-860-6406 Facsimile: 713-860-6606

Email: lhumphries@abhr.com

Harris County Municipal Utility District No. 383

c/o Allen Boone Humphries Robinson LLP Attention: Adisa M. Abudu-Davis

3200 Southwest Freeway, Suite 2600

Houston, Texas 77027 Telephone: 713-860-6494 Facsimile: 713-860-6694

Email: aabududavis@abhr.com

- Term. This Agreement shall be effective on the date on which this Agreement is signed by both parties hereto and shall end on January 1, 2040.
- Other Terms Incorporated by Reference. The Authority's Standard Terms of Water Supply 5. Agreement (the "Standard Terms") and Rate Order, as it may be amended from time to time, are incorporated by reference and made apart of this Agreement as though fully set forth herein. A copy of the Standard Terms is attached hereto as Appendix "1". Unless otherwise defined, capitalized terms in this Agreement and the Standard Terms shall have the meaning assigned in the Rate Order.

The parties hereto have caused this Agreement to be duly executed effective as of the date of the latest signature hereon.

Buyers:

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 367

Carrier Control	Lu Chu
Name:	Keurn Chesser
Title:	President
Attest:	Leva Library
Name:	LenaLalvasky
Title:	Secretary
P	3

Date: 3/9/10

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 383

Name:	12	Pum		
Title: 2	John P	orea	1 Pros	ident

Attest: Ran Butu

Name: Ron Benton
Title: Secretary

Date: March 3, 2010

Authority:

Jimmie Schindewolf

General Manager

Date: March 15, 2010

#### APPENDIX "1"

#### Standard Terms of Water Supply Agreement

Notices. All notices, consents, or other communications required hereunder shall be in writing and shall be sufficiently given (i) if addressed and mailed by first-class, certified or registered mail, postage prepaid, or (ii) upon receipt of notice given by facsimile, overnight courier or personal delivery, in either case as follows:

If to the Buyers: to the address and/or fax number listed in Paragraph 3 of the Water Supply Agreement.

If to the Authority:
Jimmie Schindewolf, General Manager
North Harris County Regional Water
Authority
3648 FM 1960 West, Suite 110
Houston, Texas 77068
(Fax) 281-440-4104

With a copy to: Robin S. Bobbitt Johnson Radcliffe Petrov & Bobbitt PLLC 1001 McKinney, Suite 1000 Houston, Texas 77002 (Fax) 713-237-1313

Binding Effect; Assignment. The Agreement shall inure to the benefit of, and shall be binding upon, the Authority, Buyers and their respective successors and assigns authorized by the terms of the Agreement. Neither party may assign the Agreement or its rights and responsibilities thereunder to a third party without the prior written consent of the other party to the Agreement.

Severability. In the event any provision of the Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of such Agreement and the Agreement shall be read as though the invalidated or unenforceable provision were not present.

Governing Law. The Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas, including, but not limited to, the rules and regulations of the Commission. Venue shall be in Harris County, Texas.

Third-Party Benefit. Nothing in the Agreement, express or implied, is intended or shall be construed to confer upon or give to any person, other than the Authority and the Buyers involved, any right, remedy or claim under or by reason of the Agreement; and the covenants and agreements contained therein are and shall be for the sole and exclusive benefit of the parties thereto or their successors and assigns.

Integration. The Water Supply

Agreement, these Standard Terms and the Rate Order constitute the entire agreement between the Authority and Buyers and shall completely and fully supersede all prior undertakings or agreements, whether oral or written, relating to the subject matter hereof.

Headings. Section and subsection headings in the Agreement are included for convenience of reference only and will not constitute a part of the Agreement for any purpose.

Updates to Authority Rules. The sale of Authority Water under the Agreement shall be subject to all of the provisions of the rules, rates and regulations established and amended from time to time by the Authority's Board of Directors or its General Manager concerning rate review generally-applicable adjustment, temporary interruptions of service, cut-off, lien for charges, and all other generallyapplicable matters now or hereafter prescribed by resolution of the Authority or delegated to the Authority's General Manager, including rules required by or promulgated under the Authority's Rate Order or GRP; provided that no amendment to or waiver of any provision of the Agreement, nor consent thereto, will be effective unless the same is in writing executed by both the Authority and the Buyers. Such amendment, waiver or consent will be effective only in the specific instance and for the specific purpose for which given. Nothing in this section shall prohibit any change to these Standard Terms of Water Supply Agreement required to comply with an order or a regulation of any State or Federal agency with jurisdiction over the Authority, and any such change shall be binding on the Buyers.

Waiver. Failure of either party at any time to require performance of any provision of the Agreement shall not limit the party's right to enforce such provision, nor shall any waiver of any breach of any provision constitute a waiver of any succeeding breach of that provision or a waiver of that provision itself.

Counterparts. The Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement.

Consequential Damages. In no event shall the parties or any of their affiliates, by reason of any of their respective acts or omissions relating to any of their obligations under the Agreement unless such acts or omissions are intentional, be liable, whether in contract, tort, misrepresentation, warranty, negligence (but not gross negligence), strict liability or otherwise, for any special, indirect, incidental or consequential damages arising out of or in connection with the Agreement, or the performance or breach thereof; provided however that nothing in the foregoing statement shall be construed to be a waiver of sovereign or governmental immunity protections or defenses to which the Authority or Buyers may otherwise be entitled.

Relationship of the Parties. The Authority and a Buyers shall not be deemed in a relationship of partners or joint ventures by reason of the Agreement or the activities taken pursuant hereto. The Agreement is intended to secure and provide for the services of each party hereto as an independent contractor.

Further Assurances. In furtherance of the terms and conditions of the Agreement, each of the parties shall cooperate in good faith with each other in order to achieve the performance of their respective obligations under the Agreement.

Force Majeure. In the event either Buyers or the Authority (a "Party") is rendered unable, wholly or in part, by Force Majeure, to carry out any of its obligations under this Agreement, it is agreed that upon such Party's giving notice and full particulars of such Force Majeure in writing to the other Party as soon as possible after the occurrence of the Force Majeure, the obligations of the Party giving such notice, to the extent it is affected by Force Majeure and to the extent that due diligence is being used to resume performance, shall be suspended for the duration of the Force Majeure. Such cause shall, as far as possible, be remedied with all reasonable dispatch.

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, acts of terrorism, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of government and people, explosions, breakage or damage to machinery, pipelines or canals, and any other inabilities of either Party, whether similar to those enumerated or otherwise, and not within the control of the Party claiming such inability, which by the exercise of due diligence and care such Party could not have avoided.

# TAB B





January 12, 2005

Dan Sallee, President

G. L. "Skipper" Rush, Jr., Vice President

Stacey Lee Burnett, Assistant Vice President

Douglas C. "Cam" Postle, Secretary

Arthur "Art" Garden, Assistant Secretary

Karla Cannon, Director

Johnny Nelson, Director

Bruce G. Parker, Director

Larry A. Weppler, P.C., Director

Harris County Municipal Utility District No. 162 c/o Fulbright & Jaworski L.L.P.
Attn: Jana Cogburn
1301 McKinney, Suite 5100
Houston, Texas 77010-3095

Re: Water Supply From West Harris County Regional Water Authority ("Authority") to Harris County Municipal Utility District No. 162 (the "District")

Dear Board of Directors:

As you know, pursuant to its Groundwater Reduction Plan and House Bill No. 1842, 77th Legislature, Regular Session (2001), as amended, the Authority will be supplying water to the District and requiring the District, in whole or in part, to reduce its use of groundwater and convert to surface water, or other alternate water, delivered by the Authority. Currently, the Authority has a contract with the City of Houston ("Houston") to purchase up to a specified amount of water from Houston on a daily basis. The District has requested this water supply commitment letter agreement (this "Agreement") from the Authority in order to set forth certain terms regarding the Authority's provision of water service to the District. For and in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto do mutually agree as follows:

1. Subject to the terms and conditions of this letter agreement ("Agreement"), the Authority shall deliver and make available to the District at the Delivery Point(s), defined below, up to 500,000 gallons per day of water (the "Daily Commitment Amount"). ("Delivery Point(s)" shall mean the output flange(s) of the meter and control valve assembly(ies) (collectively, the "Control Valve Assembly") installed by the Authority to serve the District.) The Authority shall use reasonable efforts to deliver the water required by this Agreement. This Agreement shall in no way limit the Authority's rights under its GRP (defined below), including, without limitation, its right to require the District to take water from the Authority in amounts that are greater than the amount set forth in this Agreement; provided, however, the Authority will not

reduce the Daily Commitment Amount. ("GRP" means that certain groundwater reduction plan adopted by the Authority's Order Establishing Groundwater Reduction Plan and Related Rules (the "GRP Order"), and all directives, determinations and requirements issued by the Authority, or its designee, pursuant to such order, as all of same may be amended by the Authority from time to time.)

- 2. The District understands that in order to have an alternative water supply source in the event that the Authority's water service to the District is interrupted for any reason, the District is strongly encouraged by the Authority to at all times: (i) maintain its existing groundwater well(s) and other groundwater facilities; and (ii) maintain water line interconnect(s) with other political subdivision(s) of this State that have functioning groundwater well facilities.
- 3. To the extent not already done so, the District shall approve and implement a water conservation plan and measures, as required by the Texas Commission on Environmental Quality pursuant to 30 Texas Administrative Code § 288. If the District intends to resell the water received from the Authority to a wholesale customer of the District, then the District shall require its wholesale customer to also implement water conservation measures pursuant to 30 Texas Administrative Code § 288.
- 4. Notwithstanding any other provision of this Agreement or any act of the Authority, the District shall not be guaranteed any specific quantity or pressure of water whenever Houston's or the Authority's water supply is limited or when Houston's or the Authority's equipment or facilities may become inoperative due to emergencies, equipment installation, repairs, modifications, replacements, inspections, breakdown or maintenance; and the Authority is in no case to be held to any liability for failure to furnish any specific amount or pressure of water.
- The Authority shall provide water meeting all applicable Texas and Federal regulations regarding water quality, including the Safe Drinking Water Act, as same may be amended from time to time. EXCEPT AS PROVIDED IN THE PRECEDING SENTENCE, THE AUTHORITY MAKES NO WARRANTY, EXPRESSED OR IMPLIED, REGARDING THE QUALITY OR DELIVERY PRESSURE OF THE WATER, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE DISTRICT HEREBY RELEASES

AND DISCHARGES THE AUTHORITY FROM ANY AND ALL FINES, DEMANDS, JUDGMENTS, LIABILITIES OR CLAIMS ARISING BY REASON OF OR IN CONNECTION WITH THE DELIVERY OF WATER WHICH MEETS THE REQUIREMENTS OF THIS PARAGRAPH.

- 6. This Agreement shall become effective upon the date that the water supply facilities (to be constructed by the District and the Authority) necessary to supply water to the District are completed and operational, which date is expected (but not guaranteed) to be no later than approximately July 1, 2005. Unless sooner terminated by written mutual agreement of the parties, this Agreement shall continue in force and effect for 50 years after the date shown on the first page hereof; provided, however, that after such 50 years this Agreement shall automatically renew for successive 5 year periods, unless either party gives the other party at least 180 days prior written notice of its intent to terminate the Agreement. After the termination of this Agreement, the Authority's provision of water to the District shall be governed by the Authority's then-applicable orders, resolutions, rules, regulations and requirements, and not by this Agreement.
- 7. This Agreement shall bind and benefit the Authority and the District and their legal successors, but shall not otherwise be assignable, in whole or in part, by either party without first obtaining written consent of the other. ("Assignment" as used herein means assignment in law or otherwise.) This Agreement shall be for the sole and exclusive benefit of the Authority and the District and shall not be construed to confer any rights upon any third party, nor upon any customers of the District or the Authority. Nothing herein shall be construed to confer standing to sue upon any party who did not otherwise have such standing and it is expressly agreed that nothing herein shall be construed to create any duty or obligation on the part of the Authority to the customers of the District.
- 8. This Agreement, and the terms and conditions of water service to the District, shall be subject to all present and future laws, orders, rules and regulations of the United States of America, the State of Texas, any regulatory body having jurisdiction, and present and future orders (including, without limitation, the GRP Order and Rate Order), regulations, resolutions, rules, requirements, fees, charges, remedies and penalties of the Authority, as any of same may be amended from time to time. The District's payment for

water service from the Authority shall be governed by the terms and provisions of the Authority's orders, resolutions, rules, regulations and requirements generally applicable to similarly situated users of Authority services, all of which may be amended from time to time by the Authority. The Authority's Board of Directors shall not adopt any order, regulation, resolution, rule or requirement that reduces the Daily Commitment Amount.

- 9. 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 Agreement, 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.
- 10. The parties agree that this Agreement shall not be construed in favor of or against either party on the basis that the party did or did not author this Agreement.
- 11. The District covenants and agrees that at all times it will establish and maintain, and from time to time adjust, the rates, fees, and charges for its services to its customers, to the end that the revenues and funds received from such rates, fees, and charges and any other lawfully available funds will be sufficient at all times to pay the amounts due from the District to the Authority pursuant to this Agreement.
- 12. It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all remedies existing at law or in equity, including specific performance and mandamus, may be availed of by any party and shall be cumulative.
- 13. In the event either party hereto is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, except the obligation to pay amounts owed or required to be paid pursuant to the terms of this Agreement, then the obligations of such party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the

party whose contractual obligations are affected thereby shall give notice and full particulars of such force majeure to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure", as used herein, shall include without limitation of the generality thereof, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, drought, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, or any other inabilities of either party, whether similar to those enumerated or otherwise, which are not within the control of the party claiming such inability, which such party could not have avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party when such settlement is unfavorable to it in the judgment of the party experiencing such difficulty.

14. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected thereby.

ATTEST:

By:

Name: Title:

(SEAL)

Sincerely,

West Harris County Regional Water Authority

Ву:

Name:

Title:

AGREED TO AND ACCEPTED

Harris County Municipal Utility District No. 162

Name;

Title!

ATTEST:

Name: TENNY

JOHNSON

Title:

SECRETARY

# TAB C

#### NORTH FORT BEND WATER AUTHORITY

Fort Bend County Municipal Utility District No. 190 c/o Allen Boone Humphries Robinson LLP Attn: Ms. Susan Edwards 3200 Southwest Freeway, Suite 2600 Houston, Texas 77027

Re: Water Supply from North Fort Bend Water Authority ("Authority") to Fort Bend County Municipal Utility District No. 190 (the "District")

#### Dear Board of Directors:

As you know, pursuant to its Groundwater Reduction Plan and Chapter 8813, Texas Special District Local Laws Code, as amended, the Authority is supplying surface water to the District and requiring the District, in whole or in part, to reduce its use of groundwater and convert to surface water, or other alternate water, delivered by the Authority. Currently, the Authority has a contract with the City of Houston ("Houston") to purchase up to a specified amount of water from Houston on a daily basis. The District has requested this water supply commitment letter agreement (this "Agreement") from the Authority in order to set forth certain terms regarding the Authority's provision of water service to the District. For and in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto do mutually agree as follows:

1. Subject to the terms and conditions of this Agreement, for the period commencing on December 1, 2018, and ending December 31, 2020, the Authority shall deliver and make available to the District at the Delivery Point(s), defined below, at least 378,000 gallons of water per day as based on a thirty (30) day average month (the "Daily Commitment Amount"). Notwithstanding the foregoing, the Authority shall not be obligated to deliver and make available the Daily Commitment Amount unless and until, the District has: (i) completed its purchase of emergency water supply capacity from Big Oaks Municipal Utility District ("Big Oaks") consistent with the terms of that certain First Supplement (Emergency Water Supply) to Amendment Regarding Water and Wastewater Facilities dated June 12, 2018, between the District and Big Oaks; and (ii) provided evidence of same to the Authority. Following the time period set forth in the first sentence of this Section, the Daily Commitment Amount will automatically be adjusted to 540,000 gallons of water per day as based on a thirty (30) day average month without any further action required by the Authority or the District, with such adjusted Daily Commitment Amount to remain in effect until December 31, 2021. Following the second time period set forth in the preceding sentence, the Daily Commitment Amount will automatically be adjust to 720,000 gallons of water per day as based on a thirty (30) day average month without any further action required by the Authority or the District, with such adjusted Daily Commitment Amount to remain in effect until such time further adjustments are made pursuant to this Agreement. "Delivery Point(s)" shall mean the output flange(s) of the meter and control valve assembly(ies) (collectively, the "Control Valve Assembly") installed by the Authority to serve the District. The Authority shall use reasonable efforts to deliver the water required by this Agreement. Both parties agree to review the Daily Commitment Amount on an annual basis, and as requested by either party, discuss and determine adjustments to the Daily Commitment Amount which are mutually agreeable to both parties. This Agreement shall in no way limit the Authority's rights under its GRP (defined below), including, without limitation, its right to require the District to take water from the Authority in the amount of the Daily Commitment Amount or in amounts that are greater than the Daily Commitment Amount; provided, however, the Authority will not reduce the Daily Commitment Amount. "GRP" means that certain groundwater reduction plan adopted by the Authority's Resolution Adopting Groundwater Reduction Plan (the "GRP Resolution"), and all directives, determinations, and requirements issued by the Authority, or its designee, pursuant to such resolution, as all of same may be amended by the Authority from time to time.

- 2. The District understands that in order to have an alternative water supply source in the event that the Authority's water service to the District is interrupted for any reason, the District is strongly encouraged by the Authority to at all times: (i) maintain its existing groundwater well(s) and other water supply facilities; and (ii) maintain water line interconnect(s) with other political subdivision(s) of this State that have functioning water supply well facilities. The District represents that it is currently in compliance with the Authority's Policy on Minimum Well Capacity, as adopted by the Authority on September 24, 2014, and will continue to remain in compliance therewith.
- 3. To the extent not already done so, the District shall (i) approve and implement a water conservation plan and measures, meeting or exceeding the minimum State of Texas requirements for retail water providers with 3,300 or more connections, and (ii) submit Annual Reports documenting the implementation of the water conservation plan to the Authority by May 1st of each year on the Annual Report form promulgated by the Texas Water Development Board. If the District intends to resell the water received from the Authority to a wholesale customer of the District, then the District shall obtain written permission from the Authority prior to doing so and contractually require its wholesale customer to also implement water conservation measures pursuant to 30 Texas Administrative Code § 288.

- 4. Notwithstanding any other provision of this Agreement or any act of the Authority, the District shall not be guaranteed any specific quantity or pressure of water whenever Houston's or the Authority's water supply is limited or when Houston's or the Authority's equipment or facilities may become inoperative due to emergencies, equipment installation, repairs, modifications, replacements, inspections, breakdown, or maintenance; and the Authority is in no case to be held liable for failure to furnish any specific amount or pressure of water. In case of a shortage of water resulting from drought, the water to be distributed by the Authority among those entities that are contractually entitled to receive water from the Authority, including the District, shall be divided in accordance with Texas Water Code, Section 11.039.
- 5. The Authority shall provide water meeting all applicable Texas and Federal regulations regarding water quality, including the Safe Drinking Water Act, as same may be amended from time to time. EXCEPT AS PROVIDED IN THE PRECEDING SENTENCE, THE AUTHORITY MAKES NO WARRANTY, EXPRESSED OR IMPLIED, REGARDING THE QUALITY OR DELIVERY PRESSURE OF THE WATER, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE DISTRICT HEREBY RELEASES AND DISCHARGES THE AUTHORITY FROM ANY AND ALL FINES, DEMANDS, JUDGMENTS, LIABILITIES, OR CLAIMS ARISING BY REASON OF OR IN CONNECTION WITH THE DELIVERY OF WATER WHICH MEETS THE REQUIREMENTS OF THIS PARAGRAPH.
- 6. Unless sooner terminated by written mutual agreement of the parties, this Agreement shall continue in force and effect for 20 years after the date it is executed by the Authority; provided, however, that after such 20 years this Agreement shall automatically renew for successive 1 year periods, unless either party gives the other party at least 180 days prior written notice of its intent to terminate the Agreement. After the termination of this Agreement, the Authority's provision of water to the District shall be governed by the Authority's then-applicable orders, resolutions, rules, regulations, and requirements, and not by this Agreement. Notwithstanding the foregoing, should the Fort Bend Subsidence District (the "FBSD") adopt any new rules and/or regulations that make it impracticable for the Authority to deliver the Daily Commitment Amount to the District, the Authority reserves the right to renegotiate the terms of this Agreement, including but not limited to, the Daily Commitment Amount. Should the Authority choose to do so, the Authority shall notify the District in writing within 90 days of the implementation of the applicable FBSD rule and/or regulation. If necessary due to the implementation of the applicable FBSD rule and/or regulation, the parties agree to renegotiate the terms of this Agreement in good faith. If the District and the Authority are unable to reach a new agreement within 90 days from the date the District receives the notice of the Authority's

intention to renegotiate, then this Agreement shall terminate. Notwithstanding the foregoing, should the Agreement terminate pursuant to the provisions of this Section, the Authority shall work in good faith to continue to supply the Daily Commitment Amount to the District for a reasonable period of time, not to exceed eighteen months, in order to allow the District to acquire an alternate water supply.

- 7. This Agreement shall bind and benefit the Authority and the District and their legal successors, but shall not otherwise be assignable, in whole or in part, by either party without first obtaining written consent of the other. "Assignment" as used herein means assignment in law or otherwise. This Agreement shall be for the sole and exclusive benefit of the Authority and the District and shall not be construed to confer any rights upon any third party, nor upon any customers of the District or the Authority. Nothing herein shall be construed to confer standing to sue upon any party who did not otherwise have such standing, and it is expressly agreed that nothing herein shall be construed to create any duty or obligation on the part of the Authority to the customers of the District.
- 8. This Agreement, and the terms and conditions of water service to the District, shall be subject to all present and future laws, orders, rules, and regulations of the United States of America, the State of Texas, any regulatory body having jurisdiction, and present and future orders (including, without limitation, the GRP Resolution and Amended Rate Order), regulations, resolutions, rules, requirements, fees, charges, remedies, and penalties of the Authority, as any of same may be amended from time to time. The District's payment for water service from the Authority and for pumpage from its groundwater well(s) shall be governed by the terms and provisions of the Authority's orders, resolutions, rules, regulations, and requirements generally applicable to similarly situated users of Authority services, all of which may be amended from time to time by the Authority. Notwithstanding the foregoing, the District shall be obligated to pay for the total Daily Commitment Amount, regardless of whether the District takes delivery of the Daily Commitment Amount in full or in part. All payments made pursuant to the terms of this Agreement shall be made without set-off, counterclaim, abatement, suspension, or diminution. The District shall not be entitled to the abatement of any payment made pursuant to the terms of this Agreement or any reduction thereof, unless the Authority experiences a water supply interruption that causes the Authority to be unable to deliver the Daily Commitment Amount in full, as such amount is averaged based on the Authority's delivery capability for one calendar month. Should the Authority only be able to deliver a portion of the Daily Commitment Amount as set forth above, the District will only be obligated to pay for the full amount which the Authority was capable of delivering, as opposed to the full Daily Commitment Amount, regardless of whether the District takes delivery of such amount in full or in part. If the District

disputes the amount to be paid to the Authority, the District shall nonetheless promptly make payments as billed by (or otherwise due to) the Authority, and if it is subsequently determined by agreement or court decision that such disputed payment should have been less, the Authority will make proper adjustments so that the District will receive credit for its overpayment(s).

- 9. 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 Agreement, 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.
- 10. The parties agree that this Agreement shall not be construed in favor of or against either party on the basis that the party did or did not author this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and venue shall be in a court of competent jurisdiction in Fort Bend County, Texas.
- 11. The District covenants and agrees that at all times it will establish and maintain, and from time to time adjust, the rates, fees, and charges for its services to its customers, to the end that the revenues and funds received from such rates, fees, and charges and any other lawfully available funds will be sufficient at all times to pay the amounts due from the District to the Authority pursuant to this Agreement.
- 12. It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all remedies existing at law or in equity, including specific performance and mandamus, may be availed of by any party and shall be cumulative. As of the date of this Agreement, neither Party hereto is in default pursuant to the terms set forth herein.
- 13. In the event either party hereto is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, except the obligation to pay amounts owed or required to be paid pursuant to the terms of this Agreement, then the obligations of such party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the party whose contractual obligations are affected thereby shall give notice and full particulars of such force majeure to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure", as used herein, shall include without limitation of the generality thereof,

acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, drought, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals, partial or entire failure of water supply, or any other inabilities of either party, whether similar to those enumerated or otherwise, which are not within the control of the party claiming such inability, which such party could not have avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party when such settlement is unfavorable to it in the judgment of the party experiencing such difficulty.

- 14. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected thereby.
- 15. Notwithstanding any provision of this Agreement, the Authority shall not be required to supply water to the District nor have any other obligations under this Agreement unless: (i) the District meets and continues to meet all of the chloramine disinfection requirements as set forth in the Authority's Amended Rate Order; and (ii) the District continues to comply with all applicable TCEQ regulations and provisions of the Authority's Amended Rate Order and Water Conservation Plan, as amended, as well as any Authority policies, regulations, or rules currently in place or implemented in the future applicable to the District.
- 16. In order for the Daily Commitment Amount to be delivered to the District's water plant, certain infrastructure must be constructed to complete the connection including the installation of a 12-inch water line, a meter, and a flow control valve station, as depicted more fully on **Exhibit A** attached hereto (the "Project"). The Authority agrees to reimburse the District for the construction costs associated with the Project, subject to the following:
  - a. The Authority's engineer confirms that only reimbursable items are included in the bid package or the District is only requesting payment for reimbursable items (the Authority will not advance funds for non-reimbursable items);

- b. The District shall donate or cause to be donated all easements necessary to complete the Project on an easement form acceptable to the Authority;
- c. The District agrees to submit (i) all Pay Estimates and Change Orders approved by the District's engineer and the District's Board of Directors, or its designee, and (ii) proof of payment of such Pay Estimates and Change Orders to the Authority for approval and reimbursement to the District;
- d. The Authority agrees to reimburse all Pay Estimates and Change Orders approved by the Authority's Board of Directors directly to the District within sixty (60) days of receipt; and
- e. The District agrees that, subject to the Authority reimbursing the District for all Pay Estimates and Change Orders, the District is not eligible for any further reimbursement from the Authority for construction costs.

[EXECUTION PAGES FOLLOW]

NORTH FORT BEND WATER AUTHORITY

By:
Name: feter Houghton
Title: President, Board of Directors

ATTEST:

(SEAL)



Executed and Agreed to by Fort Bend County Municipal Utility District No. 190 on Wegust // , 2018.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 190

By:

Name:

Title:

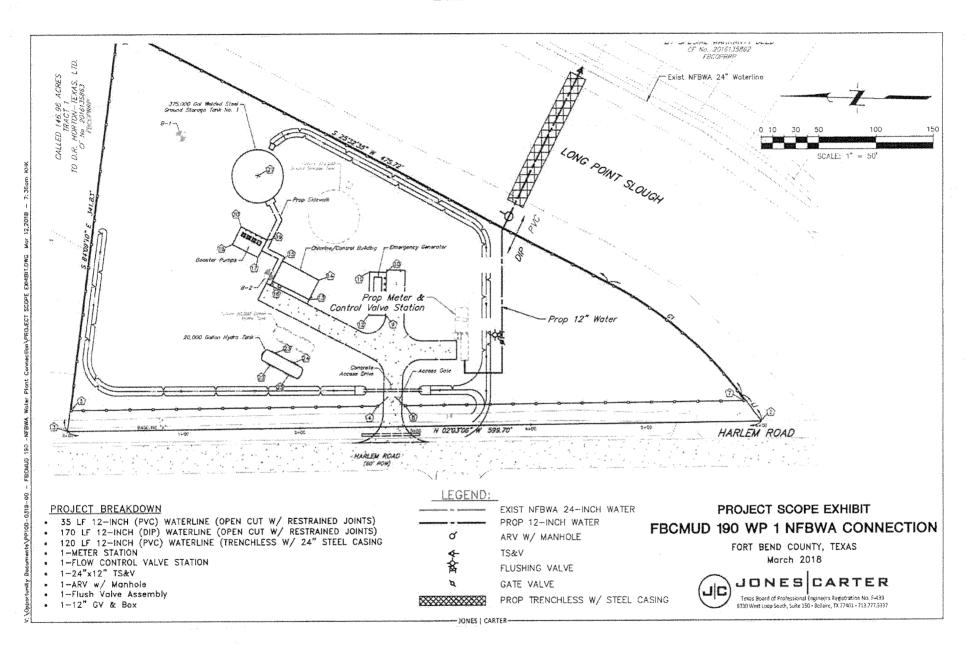
ATTEST:

By: Gten Slen Vinklave

Title: Sce

(SEAL)

#### Exhibit A



# TAB D

## CENTRAL HARRIS COUNTY REGIONAL WATER AUTHORITY 1300 Post Oak Boulevard, Suite 1400 Houston, Texas 77056

October 7, 2009

Board of Directors
Harris County Municipal
Utility District No. 150
c/o Ms. Kara Richardson
David M. Marks, P.C.
3700 Buffalo Speedway, Suite 830
Houston, Texas 77098

Re: Water Supply From Central Harris County Regional Water Authority ("Authority") to Harris County Municipal Utility District No. 150 ("District")

Dear Board of Directors:

As you know, pursuant to its Groundwater Reduction Plan ("GRP"), Chapter 8815, Special District Local Laws Code, and applicable provisions of the Texas Water Code, as amended, the Authority will be requiring the District to reduce its use of groundwater and convert, in whole or in part, to treated surface water, or other alternative water supply sources, delivered by the Authority. Currently, the Authority has a contract with the City of Houston ("City") to purchase treated surface water from the City on a daily basis, up to a certain amount. The District has requested this water supply commitment letter agreement (this "Agreement") from the Authority in order to set forth certain terms regarding the Authority's provision of water service to the District. For and in consideration of the premises and the mutual covenants and agreements herein contained, the Authority and the District hereby mutually agree as follows:

1. Subject to the terms and conditions of this Agreement, the Authority shall deliver and make available to the District at the Delivery Points, defined below, up to 939,800 gallons per day of water (the "Daily Commitment Amount"). "Delivery Points" shall mean the output flanges of the meter and control valve assemblies (collectively, the "Control Valve Assembly") installed by the Authority to serve the District's Water Plant Nos. 1 and 2. The Authority shall use reasonable efforts to deliver the water required by this Agreement. This Agreement shall in no way limit the Authority's rights under its GRP,

including, without limitation, its right to require the District to take water from the Authority in the amount of the Daily Commitment Amount or in amounts that are greater than the Daily Commitment Amount; provided, however, the Authority will not reduce the Daily Commitment Amount.

- 2. The District understands that in order to have an alternative water supply source in the event that the Authority's water service to the District is interrupted for any reason, the District is strongly encouraged by the Authority to at all times maintain: (i) its existing groundwater wells and other groundwater facilities; and (ii) water line interconnects with other political subdivisions of this State that have functioning groundwater well facilities.
- 3. The District shall approve and implement a water conservation plan and measures, as required by the Texas Commission on Environmental Quality ("TCEQ") pursuant to 30 Texas Administrative Code § 288. If the District intends to resell the water received from the Authority to a wholesale customer of the District, then the District shall require its wholesale customer to also implement water conservation measures pursuant to 30 Texas Administrative Code § 288.
- Notwithstanding any other provision of this Agreement or any 4. act of the Authority, the District shall not be guaranteed any specific quantity or pressure of water whenever the City's or the Authority's water supply is limited (pursuant to Chapter 13, Texas Water Code, as amended, or otherwise) or when the City's or the Authority's equipment or facilities may become inoperative due to emergencies, equipment installation, repairs, modifications, replacements, inspections, breakdown or maintenance; and the Authority is in no case to be held to any liability for failure to furnish any specific amount or pressure of water to the District. After delivery of water by the Authority at the Delivery Points, it shall be the sole responsibility of the District to receive, store, blend with other water supplies, treat or retreat, pressurize, and distribute such water for its purposes.
- 5. The Authority shall provide water meeting all applicable Texas and Federal regulations regarding water quality, including the Safe Drinking Water Act, as same may be amended from time to time, if and as measured at the Delivery Points. EXCEPT AS PROVIDED IN THE PRECEDING SENTENCE, THE AUTHORITY MAKES NO

- 2 -

WARRANTY, EXPRESSED OR IMPLIED, REGARDING THE QUALITY OR DELIVERY PRESSURE OF THE WATER, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE DISTRICT HEREBY RELEASES AND DISCHARGES THE AUTHORITY FROM ANY AND ALL FINES, DEMANDS, JUDGMENTS, LIABILITIES OR CLAIMS ARISING BY REASON OF OR IN CONNECTION WITH THE DELIVERY OF WATER WHICH MEETS THE REQUIREMENTS OF THIS PARAGRAPH.

- 6. Unless sooner terminated by written mutual agreement of the parties, this Agreement shall continue in force and effect for ten (10) years after the date it is executed by the Authority; provided, however, that after such ten (10) years, this Agreement shall automatically renew for successive five (5) year periods, unless either party gives the other party at least one hundred eighty (180) days prior written notice of its intent to terminate this Agreement. After the termination of this Agreement, the Authority's provision of water to the District, if any, shall be governed by the Authority's thenapplicable orders, resolutions, rules, regulations and requirements, and not by this Agreement.
- 7. This Agreement shall bind and benefit the Authority and the District and their legal successors, but shall not otherwise be assignable, in whole or in part, by either party without first obtaining written consent of the other. ("Assignment" as used herein means assignment in law or otherwise.) This Agreement shall be for the sole and exclusive benefit of the Authority and the District and shall not be construed to confer any rights upon any third party, nor upon any customers of the District or the Authority. Nothing herein shall be construed to confer standing to sue upon any party who did not otherwise have such standing and it is expressly agreed that nothing herein shall be construed to create any duty or obligation on the part of the Authority to the customers of the District.
- 8. This Agreement, and the terms and conditions of water service to the District, shall be subject to all present and future laws, orders, rules and regulations of the United States of America, the State of Texas, any regulatory body having jurisdiction, and present and future orders (including, without limitation, the Authority's GRP and the Authority's Resolution Establishing Groundwater Reduction Plan Fee and Water Importation Fee) and any other regulations, resolutions,

222275-1 - 3 -

rules, requirements, fees, charges, remedies and penalties of the Authority, as any of same may be adopted and/or amended from time to time. The District's payment for water service from the Authority shall be governed by the terms and provisions of the Authority's orders, resolutions, rules, regulations and requirements generally applicable to similarly situated users of Authority services, all of which may be amended from time to time by the Authority. The Authority's Board of Directors shall not adopt any order, resolution, rule, regulation or requirement that intentionally reduces the Daily Commitment Amount, without first obtaining the written consent of the District.

- 9. 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 Agreement, 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.
- 10. The parties agree that this Agreement shall not be construed in favor of or against either party on the basis that the party did or did not author this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and venue shall be in a court of competent jurisdiction in Harris County, Texas.
- 11. The District covenants and agrees that at all times it will establish and maintain, and from time to time adjust, the rates, fees, and charges for its services to its customers, to the end that the revenues and funds received from such rates, fees, and charges and any other lawfully available funds will be sufficient at all times to pay the amounts due from the District to the Authority pursuant to this Agreement.
- 12. It is not hereby intended to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all remedies existing at law or in equity, including specific performance and mandamus, may be availed of by any party and shall be cumulative.
- 13. In the event either party hereto is rendered unable, wholly or in part, by force majeure to carry out any of its obligations

under this Agreement, except the obligation to pay amounts owed or required to be paid pursuant to the terms of this Agreement, then the obligations of such party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the party whose contractual obligations are affected thereby shall give notice and full particulars of such force majeure to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure," as used herein, shall include without limitation of the generality thereof, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States of America or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, drought, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, or any other inabilities of either party, whether similar to those enumerated or otherwise, which are not within the control of the party claiming such inability, which such party could not have avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party when such settlement is unfavorable to it in the judgment of the party experiencing such difficulty.

14. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected thereby.

222275-1 - 5 -

15. Notwithstanding any provision of this Agreement, the Authority shall not be required to supply water to the District nor have any other obligations under this Agreement unless and until: (i) the Authority water lines to be constructed by the Authority to provide services to the District are complete and operational; (ii) any and all facilities, including, without limitation, chloramine disinfection facilities, to be constructed by the District to be able to receive water from the Authority are completed and operational; (iii) the District has complied with all TCEQ regulations and requirements of the Authority necessary for the District to be able to receive water from the Authority; and (iv) the TCEQ has approved the Authority's delivery of water to the District. After the Authority determines that the conditions of the preceding sentence have been satisfied, the Authority shall provide water to the District pursuant to this Agreement and the terms of its Groundwater Reduction Plan.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

Agreed to and executed by the Board of Directors of Harris County Municipal Utility District No. 150 on  $\frac{\text{Olumbly 9}}{\text{Olemon}}$ , 2009.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 150

Name: CORDIA JACKSO

Title: CORDIA JACKSON

Secretary

ATTEST:

By: Sand Ellett L.

Name: Parryal la Ellotton

Title: President

(SEAL)

Agreed to and executed by the Board of Directors of Central Harris County Regional Water Authority on October 7, 2009.

CENTRAL HARRIS COUNTY
REGIONAL WATER AUTHORITY

Margaret L. Cox

President, Board of Directors

ATTEST:

By: udg

Secretary, Board of Directors

REGIONAL AREGIONAL AREGION

# TAB E

#### NORTH HARRIS COUNTY REGIONAL WATER AUTHORITY

RATE ORDER

Date Adopted:

October 5, 2009

#### TABLE OF CONTENTS

RECITALS	***************************************	
ARTICLE I DEFI	NITIONS	
Section 1.01		
Section 1.02		
Section 1.03		
Section 1.04		
D000011.01	DHOORTO Date. Managaran and an	*******
	INGS	
Section 2.01	Findings	
ARTICLE III PRI	CING POLICY, COST OF WATER AND FEE COLLECTION	5
Section 3.01	Pricing Policy; Cost of Water.	
Section 3.02	Date Payments Due	
Section 3.03	Meter Reading; Reporting	
Section 3.04	Collection of Fees.	
Section 3.05	Form of Payment	
	•	
	SUREMENT OF WATER USAGE	
Section 4.01	Meters.	
Section 4.02	Audits	
Section 4.03	Failure to Read Meter or Report Water Received.	
Section 4.04	Annual Water Reports	7
ARTICLE V AUTE	HORITY WATER USE AND CONVERSION	8
Section 5.01	Use of Authority Water by Converted Entities	8
Section 5.02	Delivery Point; Title to Authority Water	
Section 5.03	Delivery Facilities	
Section 5.04	Connection to Authority System	
Section 5.05	Chloramine System.	
Section 5.06	Quantity or Pressure of Water; Water Supply Agreements	
Section 5.07	Interruptions in Service.	10
Section 5.08	Maintenance of Groundwater Wells and Interconnects	
Section 5.09	Early Conversion; Inadequate Groundwater Facilities	
Section 5.10	Implementation of GRP.	
Section 5.11	Early-Conversion/Over-Conversion Credits	
Section 5.12	Drought Contingency and Water Conservation Plans	
Section 5.13	Compliance of Converted Entities' Water Systems.	
Section 5.14	Termination and Reconnection of Service	
	HORITY RULES AND PENALTIES	
Section 6.01	Rate Order Constitutes Authority Rule	
Section 6.02	Civil Penalty	12
Section 6.03	Termination for Rate Order or GRP Violations	
Section 6.04	Injunction	13

Section 6.05	Penalties Passed through to Violator.	13
ARTICLE VII MIS	CELLANEOUS	13
Section 7.01	Right to Enter Land	13
	Amendments to Rate Order and GRP	
Section 7.03	Authority Designee	14
	Refusal to Add Persons to GRP	
Section 7.05	Compliance with Other Rules.	14
EXHIBIT "A" Price	ing Policy	
EXHIBIT "B" Deli	very Point	
EXHIBIT "C" Fori	n of Water Supply Agreement	

## NORTH HARRIS COUNTY REGIONAL WATER AUTHORITY RATE ORDER

STATE OF TEXAS §
COUNTY OF HARRIS §

#### RECITALS

WHEREAS, the North Harris County Regional Water Authority (the "Authority") is a regional water authority created pursuant to House Bill 2695 of the 76th Legislature, as amended (the "Act"), and Article XVI, Section 59 of the Texas Constitution; and

WHEREAS, the Authority was created, among other purposes, to accomplish the purposes of Article XVI, Section 59 of the Texas Constitution, including the acquisition and provision of surface water and groundwater for residential, commercial, industrial, agricultural, and other uses, the reduction of groundwater withdrawals, the conservation, preservation, protection, recharge and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and the control of subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions; and

WHEREAS, the Act provides that the Authority may: (1) provide for the conservation, preservation, protection, recharge, and prevention of waste of groundwater in a manner consistent with the purposes of Section 59, Article XVI, Texas Constitution; (2) acquire or develop surface water and groundwater supplies from sources inside or outside the boundaries of the Authority and may conserve, store, transport, treat, purify, distribute, sell, and deliver water to persons, corporations, municipal corporations, political subdivisions of the state, and others, inside of and outside of the boundaries of the Authority for the purposes of reducing groundwater withdrawals and subsidence; and (3) provide for the reduction of groundwater withdrawals by the development, implementation, or enforcement of a groundwater reduction plan, which shall be binding on persons, districts, entities and wells within the Authority's boundaries; and

WHEREAS, the Act provides that the Authority may establish fees, rates and charges and classifications of fee and rate payers, as necessary to enable the Authority to fulfill the Authority's purposes and regulatory obligations and such fee, rates and charges must be sufficient to achieve water conservation, prevent waste of water, serve as a disincentive to pumping ground water, and accomplish the purposes of the Act, including making available alternative water supplies and to enable the Authority to meet operation and maintenance expenses and pay the principal of and interest on debt issued in connection with the exercise of the Authority's general powers and duties; and

WHEREAS, the Act authorizes the Authority to specify the rates, terms and conditions under which sources of water other than groundwater will be provided by the Authority, which may be changed from time to time as deemed necessary by the Authority, and to enter into contracts with persons, including political subdivisions of the state, on terms and conditions the board considers desirable, fair and advantageous for the performance of its rights, power, and authority under the Act and requires the Authority to adopt and enforce rules reasonably required to implement the Act; and

WHEREAS, the Board has determined that the fees, rates, charges, and classifications of fee and ratepayers, as well as the terms and conditions under which Authority Water will be provided, established in this Rate Order are necessary to accomplish the purposes and requirements set forth in the Act.

NOW, THEREFORE, IT IS ORDERED BY THE BOARD OF DIRECTORS OF THE NORTH HARRIS COUNTY REGIONAL WATER AUTHORITY THAT:

#### ARTICLE I DEFINITIONS

Section 1.01 <u>Definitions</u>.

As used herein, the following terms shall have the respective meanings set forth or referred to below:

"Act" means House Bill 2965 of the 76th Texas Legislature, as amended.

"Authority" means the North Harris County Regional Water Authority or its representatives or consultants.

"Authority Engineer" means the Authority's Program Manager (currently AECOM USA Group, Inc.), which may be changed from time to time by the Authority.

"Authority Operator" means the operating company performing operations for the Authority (currently Severn Trent Environmental Services, Inc.), which may be changed from time to time by the Authority.

"Authority System" means the Authority's facilities, pipelines, storage tanks, conduits, pumping stations, treatment plants, meters, valves, and any other facility, device, or related appurtenance or connection used in the treatment, transportation, storage or otherwise related to the Authority's provision of Authority Water, including all easements, rights-of-way and sites owned or utilized by the Authority.

"Authority Water" means water (whether surface, ground, or a blend of both) that is delivered through or by the Authority System other than pursuant to a Groundwater Transfer Agreement – Buyer.

"Board" means the Board of Directors of the Authority.

"Chloramine System" means a chlorine and ammonia automatic proportional feed disinfection system, which is required to be installed by each Converted Entity prior to receiving Authority Water from the Authority, as further described in Section 5.05 hereof.

"Commission" means the Texas Commission on Environmental Quality, and any predecessor or successor agency.

"Converted Entity" means a Person who is designated by the Authority to receive or is actually receiving Authority Water other than through a Groundwater Transfer Agreement – Buyer or a temporary or emergency water interconnect with a Converted Entity.

"Cost of Water" means the Fee charged to a Payor based on the amount of (i) Water pumped from a Non-Exempt Well; (ii) Imported Water transported into the Authority; and/or (iii) Authority Water received, and shall be expressed as an amount of dollars for each 1,000 gallons of Water pumped, imported and/or received from the Authority, as applicable.

"Delivery Point" means the location at which the Authority's System connects to the water system of a Converted Entity through which Authority Water is supplied by the Authority to the Converted Entity.

"District" means any district created pursuant to Article III, Section 52(b)(1), (2) or Article XVI, Section 59, Texas Constitution, regardless of the manner of creation, other than a navigation district or a district governed by Chapter 36 of the Texas Water Code.

"Exempt Well" means a Well within the Authority's boundaries that (i) is not subject to groundwater reduction requirements imposed by the HGSD, as such requirements may be amended from time to time; (ii) is owned by a municipality not providing service to customers within the boundaries of the Authority; (iii) has a casing diameter of less than five (5) inches that solely serves a single family dwelling; (iv) is regulated under Chapter 27 of the Texas Water Code (injection wells); (v) is used for irrigation of agricultural crops; (vi) singularly or when aggregated with other Wells produces less than five (5) million gallons annually; or (vii) is used solely for electric generation.

"Fee" shall mean, collectively or individually, any fee, rate or charge imposed by the Authority under the provisions of this Rate Order.

"General Manager" means the General Manager of the Authority or his/her designee(s), or any other person who may hereafter exercise the functions of the said General Manager.

"GRP" means that certain groundwater reduction plan, dated May 2003, as amended, and all directives, determinations and requirements issued by the Authority (or the Authority Engineer or Authority Operator) pursuant to such plan, as all of same may be amended from time to time.

"HGSD" means the Harris-Galveston Subsidence District.

"Houston" means the City of Houston, Texas.

"Imported Water" means water, whether groundwater or surface water, that is produced outside of the boundaries of the Authority and transported into the boundaries of the Authority, by a Person other than the Authority, for subsequent distribution to an end user within the boundaries of the Authority.

"Importing Water" means the act of transporting water produced outside the Authority's boundaries across the Authority's boundaries for subsequent distribution to an end user within the Authority's boundaries.

"Meter" means any meter required to be installed by Section 4.01(a) hereof.

"Non-Exempt Well" means any Well within the Authority other than an Exempt Well.

"Non-Exempt Well Owner" means any Person owning a Non-Exempt Well.

"OPRS" means the Online Pumpage Reporting System maintained by the Authority to track the volume of Water received and from which each Payor will generate and print monthly bills for Fees owed by each Payor.

"Payor" means a Person required to pay a Fee under this Rate Order.

"Person" means any individual, corporation, organization, government or governmental subdivision or agency, District, municipality, county, political subdivision, business trust, trust, estate, partnership, association, or any other legal entity.

"Pricing Policy" means the policy adopted by the Board pursuant to which the Cost of Water is determined and implemented. The Cost of Water shall be stated within the body of or as an exhibit or attachment to the Pricing Policy. The Authority's current Pricing Policy is attached hereto as Exhibit "A".

"Rate Order" means this North Harris County Regional Water Authority Rate Order, as may be amended by the Authority from time to time.

"Water" means, collectively, groundwater pumped by a Non-Exempt Well, Imported Water and Authority Water.

"Water Importation Site" means each connection, other than a connection through which the Authority receives water, whether permanent or temporary, at which water originating from outside the boundaries of the Authority enters the boundaries of the Authority.

"Water Supply Agreement" means a written agreement in a form substantially similar to that attached hereto as Exhibit "C" wherein the Authority covenants to supply and sell, and a buyer covenants to receive and purchase, a stated volume of Authority Water.

"Well" means a facility, device, or method used to withdraw groundwater.

#### Section 1.02 Interpretations.

The article and section headings of this Rate Order are included herein for convenience of reference purposes only and shall not constitute a part of this Rate Order or affect its interpretation in any respect. Except where the context otherwise requires, words imparting the singular number shall include the plural and vice versa.

#### Section 1.03 References.

Any reference in this Rate Order to a document shall mean such document and all exhibits thereto as amended or supplemented from time to time.

#### Section 1.04 Effective Date.

This Rate Order shall become effective immediately upon adoption. However, the provisions of Article III below, including without limitation the Pricing Policy and the Cost of Water stated therein, shall become effective on January 1, 2010.

## ARTICLE II FINDINGS

#### Section 2.01 Findings.

Each of the recitals stated in this Rate Order are hereby adopted as a finding of the Board. All statutory requirements and conditions have been met for the establishment of those fees, rates, charges and classifications of fee and rate payers set forth in this Rate Order.

## ARTICLE III PRICING POLICY, COST OF WATER AND FEE COLLECTION

#### Section 3.01 Pricing Policy; Cost of Water.

The Authority shall, by order or resolution of the Board adopted in compliance with all applicable laws, implement a Pricing Policy and set the Cost of Water. The Board may periodically adopt an updated Pricing Policy and/or Cost of Water without the necessity of amending this Rate Order. A copy of the current Pricing Policy, which contains the Cost of Water, is attached hereto as **Exhibit "A"**.

#### Section 3.02 Date Payments Due.

A Payor must pay the full Fee owed on a monthly basis, and such Fees for Water received each month shall be due by the 18th day of the second (2<sup>nd</sup>) month following month during which the Payor incurred the Fee. For example, Fees for Water received during the month of January must be paid by the 18<sup>th</sup> of March. All payments must be received at the office of the Authority, if mailed, or in the Authority's account, if wired, on or before the due date.

#### Section 3.03 Meter Reading; Reporting.

- (a) Authority. The Authority will not send invoices or bills to any Payor. However, the Authority shall deliver to each Payor a notice, including a copy, of any orders or resolutions changing the Pricing Policy or Cost of Water and will read each Meter measuring Authority Water on the last regular business day of each month and enter such readings into the OPRS.
- (b) Payor. Payors must read Meters not measuring Authority Water on a daily basis and enter such readings into the OPRS a minimum of two (2) non-consecutive days each week. However, Payors whose water distribution systems serve fewer than 250 connections and use only groundwater or purchase treated Water shall read Meters not measuring Authority Water and enter such readings into the OPRS a minimum of one (1) time each week.

#### Section 3.04 Collection of Fees.

- (a) Fee Statements. Once all Meter readings have been entered pursuant to Section 3.03 hereof, the Payor shall print its Fee statement from the OPRS and deliver the Fee statement to the Authority with full payment, within the timeframe required by Section 3.02 hereof.
- (b) Late Fees. Payments for Fees not received by the Authority by the date required in Section 3.02 hereof shall accrue interest at a rate equal to the sum of one percent (1%) and the prime rate published in the Wall Street Journal on the first (1<sup>st</sup>) day of preceding July that does not fall on a Saturday or Sunday.
- (c) Collection Costs. In a formal administrative or judicial action to collect Fees or interest due under this Rate Order, the opposing party, which may be the Authority or the Payor, shall pay the reasonable attorney fees of the prevailing party.

#### Section 3.05 Form of Payment.

All Fees payable to the Authority shall be paid in money which is legal tender in the United States of America. Payments will be accepted only by check or money order made payable to the "North Harris County Regional Water Authority" or by wire transfer according to written wiring instructions provided by the Authority. No cash will be accepted. Written wire instructions are available upon request.

### ARTICLE IV MEASUREMENT OF WATER USAGE

#### Section 4.01 Meters.

- (a) Locations. Each Non-Exempt Well, Delivery Point and Water Importation Site shall be equipped with a Meter to measure the volume of (i) water pumped from each Non-Exempt Well, (ii) Authority Water supplied by the Authority to a Converted Entity; or (iii) Imported Water transported into the Authority, respectively; provided however, that any Water Importation Site which is solely for emergency use and is utilized for less than 30 days in any 365-day period shall be exempt from the requirement to be equipped with a Meter. The Authority may, in its sole discretion and on a case-by-case basis, exempt a Water Importation Site installed solely for emergency purposes in the event it must be used for more than 30 days in any 365-day period.
- (b) Accuracy Standards; Testing and Recalibration. All Meters must be calibrated at least once every two (2) years. Any Meter measuring Authority Water must be between 97% and 103% accurate. Any Meter measuring other types of Water must be between 95% and 105% accurate. If the Authority at any time believes a Meter measuring Water, other than Authority Water, fails to meet the aforementioned accuracy standards, it may cause such Meter to be independently tested and the results thereof be reported to the Authority. If the Payor refuses to test a Meter measuring Water other than Authority Water after the Authority so requests, the Authority may have the Meter independently tested and recalibrated, including, if necessary, removing the Meter for testing and replacing it with a temporary Meter. Likewise,

should a Payor believe a Meter measuring Authority Water fails to meet the aforementioned accuracy standards, it may notify the Authority and request that such Meter be independently tested and the results thereof be reported to the Payor. If the testing reveals that the Meter fails to meet these accuracy standards, the total quantity of Water received by the Payor will be deemed to be the average daily consumption as measured by the Meter when in working order, and the Meter shall be corrected, repaired, or replaced with an accurate Meter. In such event, the Payor's payments of Fees to the Authority shall be adjusted (increased or decreased) for a period extending back to the time when the inaccuracy began, if such time is ascertainable; and if such time is not ascertainable, for a period extending back to the last test of the measuring equipment, the date of a material change in average daily use or 120 days, whichever is shorter. Any such adjustments shall be reflected on the Payor's first payment following the adjustment. The party that owns and is responsible for operation and maintenance of the Meter, pursuant to Section 5.03 of this Rate Order, shall pay the cost for any testing, recalibrating, removing or replacing a Meter or installing a temporary Meter, as applicable, unless the testing reveals that the Meter complies with the aforementioned accuracy standards, in which case the party requesting the testing shall pay such costs.

#### Section 4.02 Audits.

The Authority shall have the right to audit the Water measurements or calculations submitted by the Payor by reading any of the Payor's Meter(s) and reviewing the Payor's records. Upon written request, a Payor shall provide to the Authority, without charge, a copy of any agreement related to a Water Importation Site or Imported Water and all data and reports used to calculate the volume of Imported Water or Non-Exempt Well pumpage. Any such audit shall be conducted in accordance with audit procedures adopted and implemented by the Authority.

#### Section 4.03 Failure to Read Meter or Report Water Received.

In the event a Payor fails to read a Meter and enter such readings, as required by Section 3.03(b) hereof, after giving notice of such failure the Authority shall have the right to read the Meter. If the Authority reads a Meter under such conditions, the Payor will be billed at the Authority's cost for this service. The Payor's Fee may be based on the Authority's reading, regardless of when the Authority reads the meter, at the Authority's sole discretion. In addition, the Authority may impose a penalty of \$100 for any month in which such Water was received but not reported, or the amount of such Water reported was more than 10% below the actual amount of such Water received, as determined by the Authority.

#### Section 4.04 Annual Water Reports.

Prior to January 31st of each year, each Well owner shall submit to the Authority an Annual Groundwater Pumpage Report for the immediately preceding calendar year, in the same format as that required by the HGSD. In addition, each Well owner whose Well permit has been aggregated by the HGSD under the Authority shall, by April 1 of each year, report to the Authority the estimated amount of Water it will use during the next permit year.

## ARTICLE V AUTHORITY WATER USE AND CONVERSION

#### Section 5.01 <u>Use of Authority Water by Converted Entities.</u>

Except as otherwise provided by this Section 5.01, all Converted Entities must use only Authority Water. In the event the Authority is unable to supply a Converted Entity with an adequate quantity of Authority Water to allow the Converted Entity to meet its demand, the Converted Entity may operate its Well(s) for the minimum duration necessary to meet its demand. However, a Converted Entity required to use its Well(s) to meet demand shall coordinate with the Authority and operate its water production and distribution system to maximize Authority Water consumption. In addition, a Converted Entity may exercise its Well(s) as necessary to maintain its/their proper operability; provided that the Converted Entity provides prior written notice of such necessity to the Authority Engineer detailing the duration and frequency of exercise the Well requires. Notwithstanding the foregoing, nothing in this Rate Order shall be interpreted as prohibiting a Converted Entity from taking steps necessary to respond to a life-safety emergency or to mitigate the impact thereof. The Authority will use its best efforts to provide reasonable assistance to Converted Entities in responding to a life-safety emergency as rapidly as practicable. As used this Section 5.01, a "life-safety emergency" shall include an explosion, fire or other event requiring unusual quantities of Water; sabotage, infection or contamination of Water; loss of pressure; disinfection failure; or another condition involving or relating to Water that could cause public illness, injury or loss of life.

#### Section 5.02 Delivery Point; Title to Authority Water.

The Delivery Point for Authority Water supplied by the Authority to a Converted Entity shall be one (1) foot downstream of the pressure/flow control station and/or Meter installed by the Authority to serve such Converted Entity, whichever is furthest downstream, as further illustrated on Exhibit "B" attached hereto. Title to Authority Water delivered hereunder shall pass from the Authority to the Converted Entity at the Delivery Point. As such, the Authority shall be deemed to be in exclusive control and possession of Authority Water until the same shall have been delivered to the Delivery Point and the Converted Entity shall be deemed to be in exclusive control and possession of Authority Water after receipt of same at the Delivery Point. In addition, the risk of loss for Water delivered hereunder shall be and remain with the party having exclusive control and possession of the Water as provided herein.

#### Section 5.03 Delivery Facilities.

Each Converted Entity shall be responsible for conveying Authority Water from the Delivery Point to and into the Converted Entity's water system. The Authority, and not the Converted Entity, shall own, operate and maintain all of the equipment installed by the Authority upstream of the Delivery Point; the Converted Entity shall maintain all facilities, tanks, buildings, materials, wells, lines downstream and any other similar or related equipment or facilities related to the receipt and distribution of Authority Water, specifically including the Converted Entity's existing water production and distribution system. The Payor shall be responsible for operation and maintenance of all Meters and related appurtenances used to measure Water that is not Authority Water.

#### Section 5.04 Connection to Authority System.

No Person shall connect to the Authority System unless and until the Authority consents in writing to such connection. If the Authority, at its option, so consents, the connection shall be made in strict conformity with the terms and conditions of such Authority consent. The Authority shall furnish, install and operate, at its own expense, the necessary equipment and devices of standard type for measuring the quantity of Authority Water delivered by the Authority. Unless otherwise agreed to in writing by the Authority, the Converted Entity shall at all times, at its own expense, maintain an air gap, in accordance with a location and specifications approved by the Authority, downstream of the Delivery Point before Authority Water enters the Converted Entity's ground storage tank. Nothing in this Section 5.04 shall: (i) require a Converted Entity to obtain any additional consent from the Authority related to connections to the Authority System existing on the date this Rate Order is adopted by the Authority; or (ii) apply to a connection constructed by the Authority.

#### Section 5.05 Chloramine System.

- (a) Installation. Each Converted Entity is required to: (i) receive permission from the Commission to use chloramine disinfection; (ii) receive approval from the Commission to construct its Chloramine System; (iii) install and begin use of its Chloramine System; and (iv) maintain use of its Chloramine System thereafter for so long as it is connected to the Authority's System. Failure to have a Chloramine System installed and operational by the date on which the Authority is prepared to provide Authority Water to the Converted Entity shall constitute a violation of this Rate Order subject to the penalties outlined in Sections 6.01–.03 hereof.
- (b) Notice. Prior to first (1<sup>st</sup>) using a Chloramine System, each Converted Entity (and each Person that receives water from a Converted Entity, for example and without limitation, via a water interconnect), and not the Authority, shall be responsible for: (i) notifying such Converted Entity's Water users about its conversion to and use of chloramine disinfection in compliance with the form and timeframe prescribed by the Commission; and (ii) complying with any applicable United States Environmental Protection Agency and Commission regulations and requirements, and any other applicable laws.
- (c) Certification. Prior to first (1<sup>st</sup>) receiving Authority Water, each Converted Entity shall provide evidence to the Authority, in a form acceptable to the Authority, demonstrating that it has complied with the requirements of this Section 5.05.

#### Section 5.06 Quantity or Pressure of Water; Water Supply Agreements.

(a) Except as provided in this Section 5.06 and notwithstanding any other provision of this Rate Order or act of the Authority, the Authority does not and will not guarantee to any Person a specific quantity or pressure of Authority Water for any purpose whatsoever. In no case shall the Authority be liable for the failure or refusal to furnish Authority Water or any particular amount or pressure of water. In addition, under current Commission rules, Authority Water is not considered a source of water for purposes of complying with Commission rules absent an executed water supply agreement. The Authority will consider entering such agreements in a form substantially similar to that attached hereto as **Exhibit** "C".

(b) The terms of this Rate Order shall be incorporated by reference into each Water Supply Agreement as if fully set forth therein. The General Manager shall negotiate each Water Supply Agreement on the terms specified on the form of such agreement attached hereto, or on such other terms as the General Manager determines necessary or convenient after consultation with the Authority Engineer and general counsel to the Authority. The General Manager shall have authority to execute each Water Supply Agreement and fully bind the Authority thereto.

#### Section 5.07 Interruptions in Service.

Notwithstanding any provision of this Rate Order or any applicable agreement entered into by the Authority, the Authority may interrupt, reduce or cease deliveries of Authority Water if such interruption or reduction is necessary: (i) due to limitations in the Authority System or Houston's water system; (ii) in case of emergencies or breakdowns in the Authority System or Houston's water system; or (iii) for equipment installation, repairs, modifications, replacements, inspections, or maintenance on the Authority System or Houston's water system. When practicable, the Authority shall provide notice in advance of such interruptions, reductions or cessation. However, the Authority may interrupt, reduce or cease deliveries of Authority Water without notice if such interruption or reduction is necessary because of any emergency condition involving public health, safety or welfare or for purposes of the GRP. The Authority shall have no liability to any Person for any damages caused by any interruption in service or any failure (partial or total) to deliver Authority Water.

#### Section 5.08 <u>Maintenance of Groundwater Wells and Interconnects.</u>

Subject to the limitations provided in Section 5.01, Converted Entities: (i) to the extent reasonable, shall maintain their existing groundwater well(s) and other groundwater facilities; and (ii) are encouraged to maintain water line interconnect(s) with other political subdivision(s). If a Converted Entity determines that its groundwater well cannot reasonably be maintained, such Converted Entity shall immediately notify the Authority of such determination.

#### Section 5.09 Early Conversion: Inadequate Groundwater Facilities.

To the extent that a Person desires to purchase Authority Water on a wholesale basis for any reason in advance of the date that the Authority intends to provide Authority Water, such Person may submit a written request for Authority Water to the Authority, which request will be evaluated by the Authority, in its sole discretion, on economic feasibility, GRP cost, and other factors; and the Authority will determine, in its sole discretion, if such request can be satisfied, in what amount, and according to what time frame and terms.

#### Section 5.10 Implementation of GRP.

Pursuant to the Act, the Authority is authorized to develop, prepare, revise, adopt, implement, enforce, manage and participate in the GRP. The GRP may specify the measures to be taken to reduce groundwater withdrawals and the dates and extent to which Persons shall reduce or terminate withdrawal of groundwater and instead receive water from alternative sources. The Authority shall manage the GRP, including, without limitation, coordinating with the HGSD and implementing the GRP's goals. In order to implement the GRP, the Authority may from time to time issue groundwater reduction requirements to Persons in order to: (a) comply with or exceed

HGSD groundwater reduction requirements; (b) allocate Authority Water among Persons, including requiring Persons to take Authority Water in amounts determined by the Authority, but that shall not exceed the Person's total demand; and/or (c) comply with the aggregated groundwater permit from the HGSD. All Persons shall comply with such orders and requirements of the Authority.

#### Section 5.11 <u>Early-Conversion/Over-Conversion Credits</u>.

The Authority shall receive and be entitled to any early-conversion or over-conversion credits issued by the HGSD related to Authority Water (or any Water other than groundwater) consumed or utilized by any Person within the GRP. No Person within the GRP shall obtain (or attempt to obtain) for such Person's own benefit or the benefit of anyone other than the Authority or sell (or attempt to sell), any such early-conversion or over-conversion credits. If requested by the Authority, Persons within the GRP shall cooperate with the Authority in order to enable the Authority to receive such early-conversion or over-conversion credits. Nothing in this Section 5.11 shall mean that the Authority will receive or be entitled to any credits resulting from any Person's participation in HGSD's WaterWise program.

#### Section 5.12 Drought Contingency and Water Conservation Plans.

- (a) Drought Contingency Plans. Prior to first receiving Authority Water, each Converted Entity shall certify to the Authority that it has adopted and implemented the drought contingency plan already required by 30 Texas Administrative Code ("TAC") Chapter 288. If a Converted Entity intends to resell Authority Water to a wholesale customer, the Converted Entity shall require its wholesale customer to also implement a drought contingency plan meeting the requirements of 30 TAC Chapter 288.
- (b) Water Conservation Plans. By April 1, 2010 or prior to first receiving Authority Water, whichever occurs latest, each Converted Entity shall (i) implement a water conservation plan that complies with 30 TAC § 288.2(a), whether or not the Person is otherwise currently required to implement such a plan; and (ii) certify such fact to the Authority. If a Converted Entity intends to resell Authority Water to a wholesale customer, the Converted Entity shall require its wholesale customer to also implement a water conservation plan meeting the requirements of this Section 5.12(b).
- (c) Certifications. The certifications required in Sections 5.12(a)-(b) stating that the drought contingency plan and/or water conservation plan, as applicable, has been adopted and implemented shall be signed by the Converted Entity's highest ranking officer. In addition, each Converted Entity certifying it has complied with Section 5.12(b) hereof shall enclose therewith a copy of the non-promotional rate structure (i.e. a rate structure that charges a higher rate as Water consumption increases) adopted under its water conservation plan.

#### Section 5.13 Compliance of Converted Entities' Water Systems.

In order to protect the Authority System, each Converted Entity's water system, shall be constructed and operated to comply with the rules promulgated by the Commission, or any successor agency. Should a condition in violation of these requirements be discovered, such Converted Entity shall promptly cure same. The Authority may conduct inspections from time to

time to determine that no conditions exist in such Converted Entity's water system and in connections to the Converted Entity's customers' premises which would or might adversely affect the Authority System.

#### Section 5.14 Termination and Reconnection of Service.

The Authority may take steps necessary to prevent a Converted Entity from continuing to receive Authority Water as a result of violating the terms of this Rate Order or other Authority rules. If a Converted Entity's ability to receive Authority Water is terminated by the Authority for any legally authorized cause, all charges then due and a reconnection fee shall be paid prior to service being restored. In the event the Authority deems it necessary to remove a Converted Entity's Meter to enforce such termination, a reinstallation fee shall be paid prior to service being restored, which fee is in addition to any other fees imposed (including, without limitation, the reconnection fee). The amount of the reconnection and reinstallation fees described above shall equal the actual cost incurred by the Authority to reconnect service and/or remove and reinstall the Converted Entity's Meter, respectively.

#### ARTICLE VI AUTHORITY RULES AND PENALTIES

#### Section 6.01 Rate Order Constitutes Authority Rule.

All of the terms, conditions and duties imposed upon any Person under this Rate Order shall constitute rules of the Authority. As such, failure by any Person to comply with this Rate Order shall be a violation of the Authority's rules. Such violations shall include, but are not limited to any Person's failure to:

- (a) read any Meter(s) not measuring Authority Water and accurately report such readings to the Authority;
- (b) allow the Authority to audit quantities of Well Pumpage or Imported Water, read any Meter(s), or test and recalibrate, if necessary, any Meter(s);
- (c) maintain any Meter(s) not measuring Authority Water at the applicable accuracy standard;
  - (d) pay all Fees when due; and
- (e) comply with the GRP and all directives and requirements issued by the Authority related to the GRP, including all requirements related to the amounts of Authority Water a Converted Entity must take from the Authority.

#### Section 6.02 Civil Penalty.

A Person is subject to a civil penalty of up to \$10,000 for each violation or each day of a continuing violation if the Person: (i) violates any provision of this Rate Order, the GRP or, any rules contained in either of same; (ii) makes unauthorized use of Authority services or facilities, or (iii) causes damage to Authority facilities by using such facilities in a manner or for a purpose contrary to the purpose for which such facilities were designed. The Authority shall set the

amount of the penalty based on (a) the severity of the offense; (b) whether such violation was willful, knowing, reckless or inadvertent; (c) the history of offenses by such Person; and (d) the damages sustained by the Authority. The Authority may bring an action to recover the penalty in a district court in the county where the violation occurred. Any such penalties shall be paid to the Authority.

#### Section 6.03 Termination for Rate Order or GRP Violations.

Any Person who violates any provision of this Rate Order or the GRP shall be subject to being removed from the GRP or having service terminated; provided, however, that prior to such removal or termination for violations that do not constitute a hazard to health or safety or endanger the integrity of the Authority's system or adversely affect the GRP, the Authority shall give written notice to such Person of the pending removal or disconnection, and such notice shall contain a timeframe during which the Person may contest, explain or correct the violation. In the event a Person's violations create a hazard to health or safety or endanger the integrity of the Authority's system or adversely affect the GRP, the Authority may terminate service to such Person without prior notice; provided that the Authority gives notice to such Person within 24 hours after service has been terminated. Removal from the GRP or termination of service shall be in addition to any other penalties that may be imposed by the Authority under this Rate Order and remedies that may otherwise be available to the Authority.

#### Section 6.04 Injunction.

The Authority may bring an action for injunctive relief in a district court in the county where a violation of an Authority rule or order occurs or is threatened to occur. The Authority may bring an action for a civil penalty and injunctive relief in the same proceeding.

#### Section 6.05 Penalties Passed through to Violator.

In the event the Authority is penalized for any reason and the cause for such penalty can be attributed to the action or inaction of any Person, to the maximum extent possible such penalty shall be passed through to such Person.

#### ARTICLE VII MISCELLANEOUS

#### Section 7.01 Right to Enter Land.

In addition to any other rights that the Authority may have (by easement or otherwise), the Authority and its representatives shall have the authority to enter upon any Payor's property or any property where a Payor's Meter is located at any reasonable time in order to: (1) inspect, repair, install, test, maintain or operate any Authority facilities located on a District's water plant site(s) or to test or monitor the Authority Water delivered; (2) audit the Water measurements submitted to the Authority; (3) measure Water in the event a Payor has failed to do so; (4) inspect and investigate conditions relating to the quality of Water or compliance with any Authority rule, regulation, permit or order. If requested by the Authority, Authority Engineer or Authority Operator, a Payor shall immediately cooperate with the Authority, Authority Engineer or Authority Operator to allow the Authority, Authority Engineer or Authority Operator to enter such

site(s) for any of such purposes. Unless the Authority has reason to believe that a Payor has not submitted correct Water data or an emergency condition involving the public health, safety or welfare exists, the Authority will provide the Payor a minimum of one (1) business day's notice of its intent to enter upon the Payor's land or any property where a Payor's Meter is located. Authority representatives entering private property pursuant to this Section shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection and shall notify any occupant or management of their presence and shall exhibit proper credentials.

#### Section 7.02 Amendments to Rate Order and GRP.

As determined necessary by the Authority, the Authority reserves the right to modify from time to time the GRP and the rates, charges, fees or any other terms of this Rate Order.

#### Section 7.03 Authority Designee.

The Authority hereby designates its General Manager, the Board President and Vice President, the Authority Engineer, the Authority's Financial Assistant and the Authority Operator as its designees with authority to exercise the Authority's powers under its GRP and this Rate Order. In addition, the General Manager may take any action on behalf of the Authority necessary and convenient to accomplish the purposes of this Rate Order and the GRP.

#### Section 7.04 Refusal to Add Persons to GRP.

The Authority, at its sole discretion, may refuse to add Persons (and their wells) to the GRP, including, without limitation, any Person seeking to be re-admitted to the GRP who at any time had been removed from the GRP.

#### Section 7.05 Compliance with Other Rules.

Except as specifically provided in this Rate Order, nothing herein shall affect any Person's duty to ensure it complies with all applicable rules, regulations, ordinances or laws governing such Person, specifically including without limitation those rules, regulations, ordinances or laws promulgated by the State of Texas, the Commission, the Texas Water Development Board, Harris County, HGSD and Houston.

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## EXHIBIT "A" Pricing Policy



## UPDATED PRICING POLICY OF THE NORTH HARRIS COUNTY REGIONAL WATER AUTHORITY (Effective April 1, 2020)

This Updated Pricing Policy of the North Harris County Regional Water Authority (this "Updated Pricing Policy") is intended to define the Cost of Water paid to the Authority for Water used within the Authority and is an integral part of the Authority's Rate Order (the "Rate Order"), adopted on October 5, 2009. Unless specifically defined otherwise, capitalized terms in this Updated Pricing Policy shall have the meanings defined in the Rate Order.

Effective April 1, 2020, the following Cost of Water will apply to and be due by users of Water within the Authority:

Authority Water \$4.70 per 1,000 gallons Water pumped from a Non-Exempt Well \$4.25 per 1,000 gallons Imported Water \$4.25 per 1,000 gallons

In addition to the above Fees, the Authority shall continue to provide a credit to each Converted Entity that constructed a Chloramine System prior to December 1, 2015 in accordance with the Authority's prior policy and procedures. Such credits shall be calculated as outlined below. Furthermore, any credits for capital contributions paid to the Authority by a Payor shall continue as provided in the applicable written agreement executed between the Payor and the Authority.

The Authority may revise the above Fees and modify, delete or add any credit(s), subject to the provisions of any applicable written agreements, if and when necessary. Payors will be notified of any such changes.

#### **Chloramination Credits**

The annual Chloramination Credit shall be calculated by amortizing the cost of the Chloramine System at 6% interest over a 30-year period, which shall begin the year the facilities are placed in service. The annual Chloramination Credit amount will be divided by 12 and the resultant amount will be credited monthly toward the fees payable to the Authority for the Water used by the Converted Entity.

#### New/Replacement Facilities

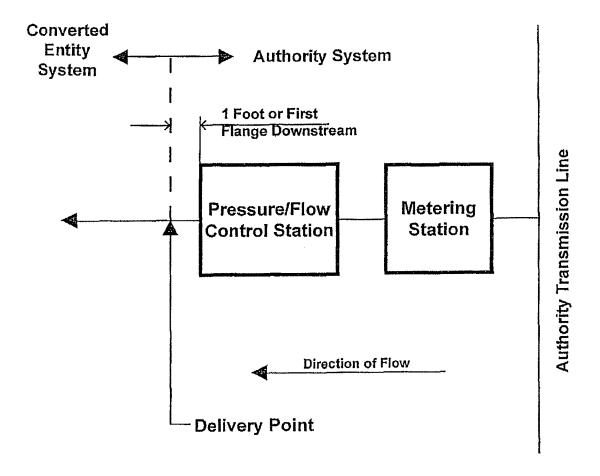
In order to help facilitate the effective implementation of the GRP, any Payor who anticipates the construction of new or replacement Water production, storage and/or treatment facilities and/or related appurtenances shall advise the Authority of those plans as early in the process as possible. The Authority will review such proposed improvements for conformity with the goals of the GRP and the possibility of the Authority being able to address those needs (i.e., by providing water in lieu of the Payor having to construct or replace facilities). Within the limits of its jurisdiction, the Authority will regulate construction of such facilities to accomplish the goals of the GRP.

#### Policy Implementation

The General Manager is authorized to take any actions on behalf of the Authority necessary and convenient to accomplish the purposes of this Updated Pricing Policy. The General Manager is also authorized to take actions necessary to comply with any special credit provisions provided under any agreements that may exist between a Payor and the Authority.

## EXHIBIT "B" Delivery Point

# SCHEMATIC LAYOUT OF LOCATION OF DELIVERY POINT



NOT TO SCALE

## EXHIBIT "C" Form of Water Supply Agreement

#### WATER SUPPLY AGREEMENT

WHEREAS, [buyer name], a [entity type] (the "Buyer") has requested this Water Supply Agreement (the "Agreement") from the North Harris County Regional Water Authority (the "Authority") so Buyer may maintain compliance with the Texas Commission on Environmental Quality's requirements related to Buyer's minimum water supply capacity;

WHEREAS, Buyer desires to purchase and the Authority desires to sell the volume of water specified below in the manner and on the terms herein specified;

NOW, THEREFORE, for and in consideration of the mutual promises and consideration hereinafter described, the Authority and Buyer hereby agree as follows:

- 1. Purchase and Sale of Water. Buyer shall buy and receive from the Authority, and the Authority shall sell and deliver to the Buyer, at the Delivery Point, a volume of Authority Water between \_\_ million gallons per day ("MGD") and \_\_ MGD.
- 2. Flow Rate, Pressure and Disinfection Method. The Authority shall deliver Authority Water at a rate not to exceed \_\_gallons per hour and at pressure adequate to discharge Authority Water into Buyer's ground storage tank. To facilitate the operation of both the Authority System and Buyer's water production and distribution system, Buyer shall accept at the Delivery Point \_\_ MGD average daily flow and \_\_ MGD during peak day flow. Both the Authority and Buyer shall disinfect Authority Water using chloramines.
- 3. Contact Information. The contact information for Buyer for all correspondence related to this Agreement shall be:

 Buyer
 With a copy to:

 [Name]
 [Name]

 [Street]
 [Street]

 [City, State Zip]
 [City, State Zip]

 [Phone #]
 [Phone #]

 [Fax #] Fax
 [Fax #] Fax

- 4. Term. This Agreement shall be effective on the date on which this Agreement is signed by both parties hereto and shall end on January 1, 2040.
- 5. Other Terms Incorporated by Reference. The Authority's Standard Terms of Water Supply Agreement (the "Standard Terms") and Rate Order, as it may be amended from time to time, are incorporated by reference and made apart of this Agreement as though fully set forth herein. A copy of the Standard Terms is attached hereto as Appendix "1". Unless otherwise defined, capitalized terms in this Agreement and the Standard Terms shall have the meaning assigned in the Rate Order.

The parties hereto have caused this Agreement to be duly executed effective as of the date of the latest signature hereon.

Buyer:		_ Authority:	
	Name:	-	Jimmie Schindewolf
	Title:	<del>-</del>	General Manager
Attest:		- Date:	
	Name:		
	Title:	-	
Date:		•••	

#### APPENDIX "1"

#### Standard Terms of Water Supply Agreement

Notices. All notices, consents, or other communications required hereunder shall be in writing and shall be sufficiently given (i) if addressed and mailed by first-class, certified or registered mail, postage prepaid, or (ii) upon receipt of notice given by facsimile, ovemight courier or personal delivery, in either case as follows:

If to the Buyer: to the address and/or fax number listed in Paragraph 3 of the Water Supply Agreement.

If to the Authority:
Jimmie Schindewolf, General Manager
North Harris County Regional Water
Authority
3648 FM 1960 West, Suite 110
Houston, Texas 77068
(Fax) 281-440-4104

With a copy to:
Robin S. Bobbitt
Johnson Radcliffe Petrov & Bobbitt PLLC
1001 McKinney, Suite 1000
Houston, Texas 77002
(Fax) 713-237-1313

Binding Effect; Assignment. The Agreement shall inure to the benefit of, and shall be binding upon, the Authority, Buyer and their respective successors and assigns authorized by the terms of the Agreement. Neither party may assign the Agreement or its rights and responsibilities thereunder to a third party without the prior written consent of the other party to the Agreement.

Severability. In the event any provision of the Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of such Agreement and the Agreement shall be read as though the invalidated or unenforceable provision were not present.

Governing Law. The Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas, including, but not limited to, the rules and regulations of the Commission. Venue shall be in Harris County, Texas.

Third-Party Benefit. Nothing in the Agreement, express or implied, is intended or shall be construed to confer upon or give to any person, other than the Authority and the Buyer involved, any right, remedy or claim under or by reason of the Agreement; and the covenants and agreements contained therein are and shall be for the sole and exclusive benefit of the parties thereto or their successors and assigns.

Integration. The Water Supply

Agreement, these Standard Terms and the Rate Order constitute the entire agreement between the Authority and Buyer and shall completely and fully supersede all prior undertakings or agreements, whether oral or written, relating to the subject matter hereof.

Headings. Section and subsection headings in the Agreement are included for convenience of reference only and will not constitute a part of the Agreement for any purpose.

Updates to Authority Rules. The sale of Authority Water under the Agreement shall be subject to all of the provisions of the rules, rates and regulations established and amended from time to time by the Authority's Board of Directors or its General Manager concerning rate review adjustment, generally-applicable temporary interruptions of service, cut-off, lien for charges, and all other generallyapplicable matters now or hereafter prescribed by resolution of the Authority or delegated to the Authority's General Manager, including rules required by or promulgated under the Authority's Rate Order or GRP; provided that no amendment to or waiver of any provision of the Agreement, nor consent thereto, will be effective unless the same is in writing executed by both the Authority and the Buyer. Such amendment, waiver or consent will be effective only in the specific instance and for the specific purpose for which given. Nothing in this section shall prohibit any change to these Standard Terms of Water Supply Agreement required to comply with an order or a regulation of any State or Federal agency with jurisdiction over the Authority, and any such change shall be binding on the Buyer.

Waiver. Failure of either party at any time to require performance of any provision of the Agreement shall not limit the party's right to enforce such provision, nor shall any waiver of any breach of any provision constitute a waiver of any succeeding breach of that provision or a waiver of that provision itself.

Counterparts. The Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement.

Consequential Damages. In no event shall the parties or any of their affiliates, by reason of any of their respective acts or omissions relating to any of their obligations under the Agreement unless such acts or omissions are intentional, be

liable, whether in contract, tort, misrepresentation, warranty, negligence (but not gross negligence), strict liability or otherwise, for any special, indirect, incidental or consequential damages arising out of or in connection with the Agreement, or the performance or breach thereof; provided however that nothing in the foregoing statement shall be construed to be a waiver of sovereign or governmental immunity protections or defenses to which the Authority or Buyer may otherwise be entitled.

Relationship of the Parties. The Authority and a Buyer shall not be deemed in a relationship of partners or joint ventures by reason of the Agreement or the activities taken pursuant hereto. The Agreement is intended to secure and provide for the services of each party hereto as an independent contractor.

Further Assurances. In furtherance of the terms and conditions of the Agreement, each of the parties shall cooperate in good faith with each other in order to achieve the performance of their respective obligations under the Agreement.

Force Majeure. In the event either Buyer or the Authority (a "Party") is rendered unable, wholly or in part, by Force Majeure, to carry out any of its obligations under this Agreement, it is agreed that upon such Party's giving notice and full particulars of such Force Majeure in writing to the other Party as soon as possible after the occurrence of the Force Majeure, the obligations of the Party giving such notice, to the extent it is affected by Force Majeure and to the extent that due diligence is being used to resume performance, shall be suspended for the duration of the Force Majeure. Such cause shall, as far as possible, be remedied with all reasonable dispatch.

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, acts of terrorism, blockades. insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of government and people, explosions, breakage or damage to machinery, pipelines or canals, and any other inabilities of either Party, whether similar to those enumerated or otherwise, and not within the control of the Party claiming such inability, which by the exercise of due diligence and care such Party could not have avoided.

# TAB F

# WEST HARRIS COUNTY REGIONAL WATER AUTHORITY AMENDED RATE ORDER

STATE OF TEXAS \$

COUNTIES OF HARRIS AND FORT BEND \$

WHEREAS, the West Harris County Regional Water Authority (the "Authority") is a regional water authority created pursuant to House Bill 1842 of the 77th Legislature, as amended, (the "Act") and Article XVI, Section 59 of the Texas Constitution; and

WHEREAS, the Authority was created, among other purposes, to accomplish the purposes of Article XVI, Section 59 of the Texas Constitution, including the acquisition and provision of surface water and groundwater for residential, commercial, industrial, agricultural, and other uses, the reduction of groundwater withdrawals, the conservation, preservation, protection, recharge and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and the control of subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions; and

WHEREAS, the Act provides that the Authority may: (1) provide for the conservation, preservation, protection, recharge, and prevention of waste of groundwater, and for the reduction of groundwater withdrawals as necessary to develop, implement, or enforce a groundwater reduction plan, in a manner consistent with the purposes of Article XVI, Section 59 of the Texas Constitution; and (2) acquire or develop surface water and groundwater supplies from sources inside or outside the boundaries of the Authority and may conserve, store, transport, treat, purify, distribute, sell, and deliver water to or among persons, corporations, municipalities, municipal corporations, political subdivisions of the state, and others, inside and outside the boundaries of the Authority, and allocate water among persons participating in the Authority's groundwater reduction plan whether they are located inside or outside the Authority's boundaries; and

WHEREAS, the Act authorizes the Authority to establish fees, user fees, rates and charges and classifications of fee and ratepayers, as necessary to enable the Authority to fulfill its purposes and regulatory functions provided in the Act; and

WHEREAS, Section 4.03(e) of the Act provides that the Authority may establish fees, user fees, rates and charges that are sufficient to: (1) achieve water conservation; (2) prevent waste of water; (3) serve as a disincentive to pumping groundwater; (4) develop, implement, or enforce a groundwater reduction plan; (5) accomplish the purposes of the Act, including making available alternative water supplies; (6) enable the Authority to meet operation and maintenance expenses; (7) pay the principal of and interest on notes, bonds, and other obligations issued in connection with the exercise of the Authority's

general powers and duties; and (8) satisfy all rate covenants relating to the issuance of notes, bonds, and other obligations; and

WHEREAS, prior to the Board's adoption of the GRP Fee, Surface Water Fee, and Imported Water Fee hereinafter set forth in this Amended Rate Order, the Board provided municipalities and districts within the Authority written notice of the date, time and location of the meeting at which the Board would adopt the GRP Fee, Surface Water Fee, and Imported Water Fee and the amount of said fees; and

WHEREAS, the Board has determined that the fees, user fees, rates and charges established in this Amended Rate Order are necessary to accomplish those purposes set forth in Section 4.03 (e) of the Act; and

WHEREAS, it is necessary that the Authority establish fees, user fees, rates, charges, and conditions and terms of service from the Authority System, the Authority's GRP and any other services provided by the Authority, and rules related thereto; and

WHEREAS, the Board has determined that the rules adopted by the Authority in this Amended Rate Order are necessary to implement the Act and to implement and enforce the Authority's GRP and its delivery of Surface Water.

NOW, THEREFORE, IT IS ORDERED BY THE BOARD OF DIRECTORS OF THE WEST HARRIS COUNTY REGIONAL WATER AUTHORITY THAT:

## ARTICLE I DEFINITIONS

<u>Section 1.01</u>. <u>Definitions</u>. As used herein, the following terms shall have the respective meanings set forth or referred to below:

"Act" means House Bill 1842 of the 77th Texas Legislature, as amended.

"Authority" means the West Harris County Regional Water Authority.

"Authority Engineer" means the Authority's general operating engineer (currently Dannenbaum Engineering Corporation), which may be changed from time to time by the Authority.

"Authority Operator" means the operating company performing operations for the Authority (currently Inframark Water & Infrastructure Services), which may be changed from time to time by the Authority.

"Authority System" means the Authority's facilities, pipelines, storage tanks, conduits, canals, pumping stations, treatment plants, meters, remote meter reading devices, valves, and any other construction, device, or related appurtenance or

connection used to treat, transport or store Surface Water, including all easements, rights-of-way and sites owned or utilized by the Authority, together with all Authority rights related thereto.

"Baseline" means 5335.70, which was the Construction Index for January 2010.

"Board" means the Board of Directors of the Authority.

"Chloramine System" is defined hereinafter.

"Commission" means the Texas Commission on Environmental Quality, and any successor agency.

"Construction Index" means the Engineering News Record Construction Cost Index (Dallas), as issued by the Engineering News Record, or such other index as may be selected by the Authority from time to time.

"Construction Index Adjustment" is defined hereinafter.

"Control Valve Assembly" is defined hereinafter.

"Converted Customer" means a District (or other Authority customer) whose water supply facilities have been actually and directly connected to the Authority's System and who is actually receiving Surface Water directly from the Authority's System. A District that merely has a water interconnect with (or receives water through a water interconnect from) a Converted Customer is not considered a Converted Customer, unless said District's own water supply facilities have been actually and directly connected to the Authority's System and said District is itself actually receiving Surface Water directly from the Authority's System.

"Current Calendar Year" is defined hereinafter.

"Day" means calendar day.

"District" means any district created pursuant to Article III, Section 52(b)(1), (2) or Article XVI, Section 59 of the Texas Constitution, regardless of the manner of creation other than a navigation district or a district governed by Chapter 36 of the Texas Water Code.

"Delivery Point" is defined hereinafter.

"Exempt Well" means: (i) a Well with a casing diameter of less than five inches that solely serves a single family dwelling, (ii) a Well that is regulated under Chapter 27 of the Texas Water Code, or (iii) a Well that is not subject to any groundwater reduction requirement imposed by the HGSD or FBSD (as applicable).

"FBSD" means the Fort Bend Subsidence District.

"GRP" means that certain groundwater reduction plan adopted by the Authority's Order Establishing Groundwater Reduction Plan and Related Rules, dated May 14, 2003, as amended; and all directives, determinations and requirements issued by the Authority (or the Authority Engineer or Authority Operator) pursuant to such order, as all of same may be amended from time to time.

"GRP Fee" means the groundwater reduction plan fee/rate adopted by the Board pursuant to Section 4.03 (including Section 4.03(b)) of the Act and set forth hereinafter.

"Houston" means the City of Houston, Texas.

"HGSD" means the Harris Galveston Subsidence District.

"Imported Water" means water (whether surface water or groundwater) that is produced outside of the boundaries of the Authority and transported into the boundaries of the Authority for distribution to an end user within the boundaries of the Authority. The term "Imported Water" does not include Surface Water delivered through or by the Authority System.

"Imported Water Fee" means the imported water fee/rate adopted by the Board pursuant to Section 4.03 (including Section 4.03(g)) of the Act and set forth hereinafter.

"Interest Rate" is defined hereinafter.

"Maximum Chloramine Construction Reimbursement" (i) means \$190,000 if the Winning Bid Date for the Chloramine System construction project is (or was) prior to or during the year 2010; and (ii) means the revised figure established pursuant to the Construction Index Adjustment set forth in Section 5.19 of this Rate Order if the Winning Bid Date for the Chloramine System construction project is after the year 2010.

"Maximum Daily Amount" is defined hereinafter.

"Minimum Daily Amount" is defined hereinafter.

"Non-Exempt Well" means: (i) any Well within the Authority other than an Exempt Well, (ii) any Well located in the Authority or participating in its GRP by written contract that was subject, on or before February 1, 2013, to a groundwater reduction requirement imposed by the HGSD or FBSD (as applicable), or the regulatory provisions, permitting requirements, or jurisdiction of the HGSD or FBSD (as applicable), and (iii) any Well located in the Authority or participating in its GRP by written contract that belongs to a class of Wells that was subject, on or before February 1, 2013, to a groundwater reduction requirement imposed by the HGSD or FBSD (as applicable), or

the regulatory provisions, permitting requirements, or jurisdiction of the HGSD or FBSD (as applicable).

"Non-Exempt Well Owner" means any Person that owns a Non-Exempt Well.

"Person" means any individual, corporation, organization, government or governmental subdivision or agency, District, municipality, county, political subdivision, business trust, trust, estate, partnership, association, or any other legal entity.

"Rate Order" means this Amended Rate Order, as amended.

"Realty Interest Document" means a written document (in a form acceptable to the Authority) that grants the following rights to the Authority across, along, under, over and upon any property (whether or not a water plant site) owned by a Person, or in which a Person has any interest: (i) water line and/or water meter easement(s), (ii) consent to conveyance of Authority easement(s), (iii) subordination of a Person's realty interests to the Authority's rights under Authority easement(s), or (iv) any other property interest necessary or convenient for the Authority to provide and/or meter Surface Water delivered by the Authority to any Authority customers.

"Shut-off Valve(s)" means the shutoff valve(s) installed by the Authority or the Person in the Surface Water line(s) on a Person's water plant site(s).

"Surface Water" means water (whether surface water, groundwater, or a blend of both) that is delivered through or by the Authority System.

"Surface Water Availability Date" means the date Surface Water is generally available to a Person, as determined by the sole discretion of the Authority

"Surface Water Fee" means the surface water fee/rate adopted by the Board pursuant to Section 4.03 (including Section 4.03(f)) of the Act and set forth hereinafter.

"Surface Water User" means any Person that receives Surface Water.

"Three Year Time-Period" means the three year time-period preceding the date Surface Water is generally available to a Person, as determined by the sole discretion of the Authority.

"User" means any Non-Exempt Well Owner, Surface Water User, or Water Importer.

"Water Importer" means a Person located, in whole or in part, within the Authority's boundaries that: (i) uses or distributes Imported Water; and (ii) uses or distributes more than 10,000,000 gallons of water in a calendar year. The term "Water Importer" does not include an owner of an Exempt Well if, and only if, such owner does

not own any Non-Exempt Wells.

"Water Line Segment" is defined hereinafter.

"Water Usage Reports" is defined hereinafter.

"Well" means a facility, device, or method used to withdraw groundwater: (i) from a groundwater source that is located within the boundaries of the Authority; or (ii) from a groundwater source that is located outside the boundaries of the Authority, but is part of the GRP pursuant to a written contract with the Authority.

"Well Owner" means any Person that owns a Well.

"Winning Bid Date" means the date that the District receives the winning bid for construction of the Chloramine System. In the event of a dispute or uncertainty regarding the date of the Winning Bid Date, the Authority Board shall determine the date based on data provided by the Authority Engineer.

<u>Section 1.02</u>. <u>Interpretations</u>. The article and section headings of this Rate Order are included herein for convenience of reference purposes only and shall not constitute a part of this Rate Order or affect its interpretation in any respect. Except where the context otherwise requires, words imparting the singular number shall include the plural and vice versa.

Section 1.03. References, Etc. Any reference in this Rate Order to a document shall mean such document and all exhibits thereto as amended or supplemented from time to time.

# ARTICLE II FINDINGS

Section 2.01. Findings. Each of the recitals stated in this Rate Order are hereby adopted as a finding of the Board. All statutory requirements and conditions (including those of Section 4.03 of the Act) have been met for the establishment of those fees, user fees, rates and charges set forth in this Rate Order.

# ARTICLE III RATES AND CHARGES

#### Section 3.01. GRP Fee.

(a) The Board hereby adopts a GRP Fee pursuant to Section 4.03 (including Section 4.03(b)) of the Act. Each Non-Exempt Well Owner shall pay the Authority the GRP Fee for monthly pumpage, as provided in this Section. Effective as of January 1, 2020, the

GRP Fee shall be equal to \$3.20 for each 1,000 gallons of water pumped from each Non-Exempt Well.

- (b) For groundwater pumpage during the period before but not including January 1, 2020, the provisions of this subsection shall apply. Payment of the GRP Fee is due by the 15th of the second month following the month for which pumpage is required to be calculated. (For example, payment for January pumpage is due by March 15th; payment for February pumpage is due by April 15th; etc.) The Authority will not send invoices or billings to Non-Exempt Well Owners for the amount of GRP Fees that are due. Each Non-Exempt Well Owner shall be responsible for remitting to the Authority the GRP Fee on or before the due date. The GRP Fee shall be calculated on the form promulgated by the Authority and attached hereto as Exhibit "A", which form shall be provided by the Non-Exempt Well Owner to the Authority with such owner's monthly GRP Fee payment. Each Non-Exempt Well Owner shall complete such form and provide it to the Authority monthly, even if the Non-Exempt Well Owner's pumpage was zero. If a User had both Well pumpage and Surface Water usage during a month, then such User shall report the amount of each on the form promulgated by the Authority.
- (c) For groundwater pumpage on and after January 1, 2020, the provisions of this subsection shall apply. Each month, the Authority shall, via meter reading, determine the amount of groundwater pumped by Non-Exempt Well Owners. The Authority will invoice Non-Exempt Well Owners on a monthly basis for the amount of GRP Fees due for the period.

#### Section 3.02. Surface Water Fee.

- (a) The Board hereby adopts a Surface Water Fee pursuant to Section 4.03 (including Section 4.03(f)) of the Act. Each Surface Water User shall pay the Authority the Surface Water Fee for Surface Water received monthly, as provided in this Section. Effective as of January 1, 2020, the Surface Water Fee shall be equal to \$3.60 for each 1,000 gallons of Surface Water received.
- (b) For Surface Water received during the period before but not including January 1, 2020, the provisions of this subsection shall apply. Payment of the Surface Water Fee is due by the 15th of the second month following the month for which Surface Water usage is required to be calculated. (For example, payment for January Surface Water usage is due by March 15th; payment for February Surface Water usage is due by April 15th; etc.) The Authority will not send invoices or billings to Surface Water Users for the amount of Surface Water Fees that are due. Each Surface Water User shall be responsible for remitting to the Authority the Surface Water Fee on or before the due date. The Surface Water Fee shall be calculated on the form promulgated by the Authority and attached hereto as Exhibit "A", which form shall be provided by the Surface Water User to the Authority with such User's monthly Surface Water Fee payment. Each Surface Water User shall complete such form and provide it to the Authority monthly, even if

such User's Surface Water use was zero. If a User had both Well pumpage and Surface Water usage during a month, then such User shall report the amount of each on the form promulgated by the Authority.

(c) For Surface Water received, on and after January 1, 2020, the provisions of this subsection shall apply. Each month, the Authority shall, via meter reading, determine the amount of Surface Water received by Surface Water Users. The Authority will invoice Surface Water Users on a monthly basis for the amount of Surface Water Fees due for the period.

<u>Section 3.03</u>. <u>Imported Water Fee</u>. The Board hereby adopts an Imported Water Fee pursuant to Section 4.03 (including Section 4.03(g)) of the Act. If a Water Importer obtains Imported Water to serve all or any portion of the property it serves, then such Water Importer must immediately notify the Authority in writing and must pay to the Authority monthly the following Imported Water Fee: (i) a fee equal to the then-current GRP Fee applied on all Imported Water, if the Authority's System has not been directly connected to the Water Importer's water supply facilities; or (ii) a fee equal to the thencurrent Surface Water Fee applied on all Imported Water, if the Authority's System has been directly connected to the Water Importer's water supply facilities. The Imported Water Fee is due and payable to the Authority monthly even if the Water Importer also pays another entity for the Imported Water and even if the Authority is not then providing Surface Water to the Water Importer. The fees due pursuant to this section shall be calculated by the Authority based on the information provided by the Water Importer in the form promulgated by the Authority and attached hereto as Exhibit "B", which form shall be provided by the Water Importer to the Authority monthly. Upon the Authority's receipt of such form, the Authority will invoice the Water Importer for the Imported Water Fee due for the period. Notwithstanding any provision of this Section, a Water Importer shall not be required to pay the Imported Water Fee: (i) on Imported Water if the Authority has agreed in writing that no Imported Water Fee applies to the particular Imported Water; (ii) on Imported Water that the Water Importer receives during a period not to exceed 60 consecutive or inconsecutive days during any calendar year if, and only if, the Water Importer receives the Imported Water due to emergency conditions; or (iii) as provided in Section 4.03(g) of the Act, on water imported from a source located in Waller County that serves a municipality within the Authority.

Section 3.04. Manual Meter Reading Fee. On and after January 1, 2020, the Authority shall charge any User \$150.00 per month for each meter the Authority Operator must read manually if: (i) such User has failed to provide a written right of entry agreement in a form acceptable to the Authority for the installation of the Authority's remote meter reading device on a Non-Exempt Well meter (provided, however, for new Non-Exempt Wells, such \$150.00 charge shall not apply during the 3-month period after the Non-Exempt Well becomes operational); (ii) such User has prevented the Authority from installing, maintaining, modifying, repairing, operating, and/or replacing the

Authority's remote meter reading device on a Non-Exempt Well meter or a Surface Water meter; or (iii) such User has prevented the Authority Operator from obtaining information from the Authority's remote meter reading device on a Non-Exempt Well meter or a Surface Water meter.

<u>Section 3.05</u>. <u>Special Assessments</u>. Section 4.05 of the Act allows the Board to impose special assessments. To date, the Board has not imposed such special assessments. The Board reserves the right to impose such special assessments at any time by adopting a resolution, rule, requirement, or order (or amendment to this Rate Order) that expressly provides for the imposition of such special assessments.

## Section 3.06. Payment of Amounts Due to the Authority.

- (a) All fees, rates, charges, or other amounts payable to the Authority shall be paid in money which is legal tender in the United States of America.
- (b) For the period before but not including January 1, 2020, the provisions of this subsection shall apply. Payments will be accepted only by check or money order made payable to the "West Harris County Regional Water Authority" or by wire transfer according to written wiring instructions provided by the Authority. No cash will be accepted. All payments must be received by the bookkeeper of the Authority (currently, Myrtle Cruz, Inc., at 3401 Louisiana Street, Suite 400, Houston, TX 77002-9552) by the due date. Written wire instructions are available upon request.
- (c) On and after January 1, 2020, the provisions of this subsection shall apply. The Authority will invoice a User for all fees, rates, charges, or other amounts due to the Authority pursuant to this Rate Order on a monthly basis and as otherwise needed. All invoices shall be payable on the 45th day after the date of the invoice for said amount. Payments shall be made by check made payable to "West Harris County Regional Water Authority." No cash or other forms of payment will be accepted. All payments must be received by the due date at the payment address provided on the invoice. Payments received after the due date shall be considered delinquent and are subject to penalties and interest in accordance with this Rate Order.

# ARTICLE IV WELL PUMPAGE AND OWNERSHIP

## Section 4.01. Self-Reporting.

(a) If requested by the Authority, a Non-Exempt Well Owner shall be responsible for (i) reading the meter which measures the amount of groundwater pumped from each Non-Exempt Well owned by such owner, and (ii) reporting such measurement to the Authority (even if it shows zero pumpage for the month) on the reporting form promulgated by the Authority. All Persons shall provide requested reporting forms to

the Authority electronically via the Authority's designated website and, if requested by the Authority, also by hard-copy. If the Authority determines in writing that internet access is not reasonably available to a Person, then the Authority may allow such Person to provide the requested reporting forms to the Authority via hard-copy.

(b) For groundwater pumpage during the period before but not including January 1, 2020, the provisions of this subsection shall apply. Each Non-Exempt Well Owner shall be responsible for reading the meter which measures the amount of water pumped from each Non-Exempt Well owned by such owner at the end of each month. measurement (even if it shows zero pumpage for the month) shall be reported to the Authority on the reporting form promulgated by the Authority and attached hereto as Exhibit "A". Along with such owner's monthly GRP Fee payment, such owner shall provide the reporting form to the Authority no later than the 15th of the second month following the month for which pumpage is required to be calculated. (For example, the reporting form for January pumpage is due by March 15th; the reporting form for February pumpage is due by April 15th; etc.). All Persons shall provide their monthly reporting forms to the Authority electronically via the Authority's designated website and, if requested by the Authority, also by hard-copy. If the Authority determines in writing that internet access is not reasonably available to a Person, then the Authority may allow such Person to provide its monthly reporting forms to the Authority via hardcopy.

Section 4.02. Audits. The Authority shall have the right to audit any Well pumpage measurements submitted by the Well Owner by reading the meter at such Well. In addition, the Authority, at its discretion, may read the meter for any other reason. If a Well Owner reports an amount of pumpage to the Authority that differs from the amount of pumpage that the Authority determines occurred based on the Authority's reading of the meter, or if a Well Owner reports an amount of pumpage to the HGSD or FBSD, as applicable, that differs from the amount of pumpage that the Well Owner reports to the Authority, the Authority may utilize any of said amounts to determine the total GRP Fees due the Authority. If such Authority determination shows that the Well Owner underpaid the Authority, then, in addition to all other remedies available to the Authority, the Authority may invoice the Well Owner for the shortfall. (Any such invoice will be due to the Authority no later than the date provided in the invoice.) If such Authority determination shows that the Well Owner overpaid the Authority, then the Authority may pay the Well Owner the amount of the overage. Notwithstanding the previous two sentences, the Board may refrain from sending invoices for shortfalls and/or payments for overages that are below any threshold amount that is from time to time determined by the Board.

<u>Section 4.03</u>. <u>Failure to Read Meter</u>. In the event a Non-Exempt Well Owner fails when required by this Rate Order to timely or properly read the meter which measures the amount of water pumped from its Well, the Authority may read the meter. The

Authority may establish the Non-Exempt Well Owner's GRP Fee based on the Authority's reading, regardless of when the Authority reads the meter.

Section 4.04. Accuracy of Meters. (a) Each Non-Exempt Well Owner, at its expense, shall be responsible to install and maintain a Well meter on each Non-Exempt Well that has an accuracy within the range of 97% to 103% of the actual flow. Such owner shall test the accuracy of each water meter as installed in place and submit a certificate (on the form available from the HGSD) of the test results to the Authority according to the following schedule: (i) every 3 years for meters less than 6 inches in size, and (ii) every year for meters 6 inches and larger in size. Only equipment capable of accuracy results of plus or minus one percent of actual flow with repeatable accuracy of ½ of 1 percent may be used to calibrate or test meters. If the test results indicate meter accuracy outside the range of 97% to 103% of the actual flow: (i) the Non-Exempt Well Owner shall take appropriate steps to remedy the inaccuracy range within 90 days from the date of the test to recalibrate the meter to 100% of actual flow, or to repair or replace the water meter, (ii) the Authority may, in its sole discretion, if the testing reveals that the accuracy was below 97%, require the owner to pay the Authority the GRP Fees for under-reported gallons, all as determined by the Authority, and (iii) the Authority may, in its sole discretion, if the testing reveals that the accuracy was above 103%, refund the owner the GRP Fees for over-reported gallons, all as determined by the Authority.

(b) If the Authority at any time believes that the meter accuracy is outside the range of 97% to 103% of the actual flow, it may notify the Non-Exempt Well Owner and require that such meter be independently tested and the results reported to the Authority. If the testing reveals that the meter accuracy is within the range of 97% to 103% of the actual flow, the Authority shall pay the cost of such testing and the cost of any necessary temporary meter used. If the testing reveals that the meter accuracy is outside the range of 97% to 103% of the actual flow: (i) the Non-Exempt Well Owner shall take appropriate steps to remedy the inaccuracy range within 90 days from the date of the test to recalibrate the meter to 100% of actual flow, or to repair or replace the water meter, (ii) the Non-Exempt Well Owner shall pay the cost of such testing and the cost of any necessary temporary meter used, (iii) the Authority may, in its sole discretion, if the testing reveals that the accuracy was below 97%, require such owner to pay the Authority the GRP Fees for under-reported gallons, all as determined by the Authority, and (iv) the Authority may, in its sole discretion, if the testing reveals that the accuracy was above 103%, refund such owner the GRP Fees for over-reported gallons, all as determined by the Authority. If such owner refuses to test the meter after the Authority requires it to do so, the Authority may remove the Well meter for independent testing and recalibration, and replace it with a temporary meter. The Authority shall pay for the cost of such testing and temporary meter, unless the results show that the meter was outside the range of 97% to 103% of the actual flow, in which case the Non-Exempt Well Owner shall be responsible for the cost of testing and recalibration of the meter, the cost of the temporary meter, and payment to the Authority of the GRP Fees for unread gallons, as determined by the Authority.

- (c) Notwithstanding Sections 4.04(a) and (b) above, if a water meter or related piping or equipment is tampered with or damaged so that the measurement accuracy of the meter is impaired, the Authority may require the Non-Exempt Well Owner, at the Non-Exempt Well Owner's expense, to take appropriate steps to remedy the inaccuracy range, and to retest the water meter within 30 days from the date the problem is discovered.
- (d) The Authority may install, maintain, modify, repair, operate, and/or replace remote meter reading devices on any Non-Exempt Well meter. In the event the Authority installs or replaces such devices, the Authority shall own, maintain, and operate same. The Authority's installation or replacement of a remote meter reading device on any Non-Exempt Well does not modify or remove the Non-Exempt Well Owner's duty to self-report water pumpage in accordance with this Rate Order.
- (e) Each Non-Exempt Well Owner, and not the Authority, shall own, maintain, and operate the Well meter, regardless of whether the Well meter was installed by the Authority or the Non-Exempt Well Owner. Prior to installing a new or replacement meter on a Non-Exempt Well, the Non-Exempt Well Owner shall obtain from the Authority Engineer written approval of the type, make, and model of the meter to be installed. Should a Non-Exempt Well Owner fail to obtain such written approval of the Authority Engineer and install a meter that is incompatible with the remote meter reading devices installed by the Authority, such Non-Exempt Well Owner shall be responsible for all costs (including the Authority's costs if the Authority performs the work) to replace such meter with a meter that has been approved in writing by the Authority Engineer and is compatible with the remote meter reading devices installed by the Authority.

Section 4.05. Subsidence District Water Well Permitting. The HGSD has to date issued an aggregate water well permit to the Authority comprising all of the permitted groundwater production for the Authority's GRP. Each Non-Exempt Well Owner shall provide the Authority data and information required by the Authority for the Authority to prepare and file documents with the HGSD or FBSD related to well permitting. Each Non-Exempt Well Owner shall maintain: (i) ownership of its Well(s) and operational responsibility therefor, and (ii) subject to groundwater reduction requirements imposed by the Authority, the terms of the GRP, and any limitations imposed by the HGSD or FBSD, the right to pump from such Well(s) the amount of groundwater reasonably determined by such owner to be needed by such owner, for itself or for its customers, to provide water in accordance with at least the minimum regulatory requirements for pressure and supply, including, without limitation, during an emergency requiring immediate use of groundwater (such as for firefighting purposes) so long as such owner is not committing waste or being wasteful. For purposes of this provision "waste" and

"wasteful" shall have the most restrictive meaning ascribed to such terms in the following: (i) the Special District Local Laws Code Chapter 8801 with respect to Non-Exempt Wells in the HGSD or Chapter 8834 with respect to Non-Exempt Wells in the FBSD, (ii) rules or requirements of the HGSD with respect to Non-Exempt Wells in the HGSD or rules or requirements of the FBSD with respect to Non-Exempt Wells in the FBSD, or (iii) the terms of the aggregate water well permit issued to the Authority.

<u>Section 4.06</u>. <u>Change of Well Ownership</u>. Any Person who becomes the owner of a Non-Exempt Well must notify the Authority in writing of the name and contact information for the new owner within 90 days after the date of the change in ownership.

Section 4.07. Water Usage Reports. Before January 31st of each year, each Non-Exempt Well Owner shall submit to the Authority a report, on a form available from the Authority, stating the following: (1) name of the owner of the Non-Exempt Well(s); (2) the Well number(s) of such Well(s); (3) the total amount of groundwater produced by such Well(s) during each separate month of the immediately preceding calendar year; (4) the total amount of groundwater produced by such Well(s) during each separate month of the immediately preceding calendar year; (5) the purpose for which the groundwater was used; (6) the amount and source of water (except for groundwater) used by such owner; and (7) any other information requested by the Authority, HGSD, or FBSD. In addition, each Non-Exempt Well Owner shall (1) read the water meter for such Well between December 15th and January 15th of each year, and (2) report the reading in writing to the Authority by January 15th of each year. The reports required by the preceding two sentences are referred to herein as the "Water Usage Reports."

## ARTICLE V SURFACE WATER USE AND CONVERSION

## Section 5.01. Self-Reporting.

- (a) If requested by the Authority, each Surface Water User shall be responsible for (i) reading the meter which measures the amount of Surface Water delivered by the Authority to such user, and (ii) reporting such measurement to the Authority (even if it shows zero Surface Water usage for the month) on the reporting form promulgated by the Authority. All Persons shall provide requested reporting forms to the Authority electronically via the Authority's designated website and, if requested by the Authority, also by hard-copy. If the Authority determines in writing that internet access is not reasonably available to a Person, then the Authority may allow such Person to provide the requested reporting forms to the Authority via hard-copy.
- (b) For Surface Water received during the period before but not including January 1, 2020, the provisions of this subsection shall apply. Each Surface Water User shall be responsible for reading the meter which measures the amount of Surface Water delivered

by the Authority to such user at the end of each month. Such measurement (even if it shows zero Surface Water usage for the month) shall be reported to the Authority on the reporting form promulgated by the Authority and attached hereto as Exhibit "A." Along with such user's monthly Surface Water Fee payment, such user shall provide the reporting form to the Authority no later than the 15th of the second month following the month for which Surface Water usage is required to be calculated. (For example, the reporting form for January Surface Water usage is due by March 15th; the reporting form for February Surface Water usage is due by April 15th; etc.) All Persons shall provide their monthly reporting forms to the Authority electronically via the Authority's designated website and, if requested by the Authority, also by hard-copy. If the Authority determines in writing that internet access is not reasonably available to a Person, then the Authority may allow such Person to provide its monthly reporting forms to the Authority via hard-copy.

<u>Section 5.02</u>. <u>Audits</u>. The Authority shall have the right to audit any Surface Water usage measurements submitted by the Surface Water User by reading the Surface Water meter. In addition, the Authority, at its discretion, may read the meter for any other reason.

Section 5.03. Failure to Read Meter. In the event a Surface Water User fails when required by this Rate Order to timely or properly read the meter which measures the amount of Surface Water delivered, the Authority may read the meter. The Authority may establish the Surface Water User's Surface Water Fee based on the Authority's reading, regardless of when the Authority reads the meter.

Section 5.04. Delivery Point and Measuring and Control Equipment. The delivery point of water (the "Delivery Point") by the Authority to a Person receiving Surface Water shall be the output flange of the meter and control valve assembly (collectively, the "Control Valve Assembly") installed by the Authority to serve such Person. No Person shall connect to the Authority System, unless and until the Authority consents in writing to such connection. If the Authority, at its option, so consents, the connection shall be made in strict conformity with the terms and conditions of such Authority consent. The Authority shall furnish, install and operate, at its own expense, at the Delivery Point equipment and devices for measuring the quantity of Surface Water delivered by the Authority. Such Control Valve Assembly and other equipment installed by the Authority shall remain the property of the Authority.

Section 5.05. Testing of Measuring Equipment. The Authority will from time to time test the measuring equipment that measures the amount of Surface Water delivered by the Authority. Should the test of the measuring equipment show that the equipment has an accuracy outside the range of 97% to 103% of the water delivered, the Authority may deem that the total quantity of water delivered to the Person is the average daily consumption as measured by the measuring equipment when in working order, and the meter shall be corrected, repaired, or replaced by the Authority with accurate measuring

equipment. In such event, the Authority may adjust (increase or decrease) the Person's payments for Surface Water to the Authority for a period extending back to the time when the inaccuracy began, if such time is ascertainable; and if such time is not ascertainable, for a period extending back to the last test of the measuring equipment or 120 days, whichever is shorter.

Section 5.06. Delivery, Facilities and Title to Water. Each Person receiving Surface Water from the Authority shall be responsible to deliver water from the Delivery Point to and into the Person's water system. The Authority, and not the Person receiving Surface Water from the Authority, shall own, operate and maintain: (i) any sensor equipment installed by the Authority on the Person's ground storage tank facilities or other water plant facilities and related electrical and control connections by conduit pipe, or other means, connecting such sensor equipment to the Authority's facilities (the "Sensor Line and Equipment"); and (ii) the Control Valve Assembly installed by the Authority. The Person receiving Surface Water from the Authority, and not the Authority, shall own, operate and maintain all equipment, facilities, tanks, buildings, materials, Wells, and lines downstream of the Control Valve Assembly, except for the Sensor Line and Equipment. Unless otherwise agreed to in writing by the Authority, the Person receiving Surface Water from the Authority shall at all times, at the Person's expense, maintain an air gap, in accordance with a location and specifications approved by the Authority, downstream of the Delivery Point before the water delivered by the Authority enters the Person's ground storage tank(s); provided, however, the Authority, at its option, may provide an alternative backflow prevention procedure or mechanism. Title to, possession, and control of Surface Water shall remain with the Authority until it passes through the Control Valve Assembly, where title to, possession, and control of the Surface Water shall pass from the Authority to the Person receiving same.

Section 5.07. Chloramine Disinfection. Usually, Surface Water delivered by the Authority will be disinfected with chloramines. Each Converted Customer is required to: (i) convert its water treatment system to a chloramine disinfection system, or install a chloramine disinfection system, prior to becoming a Converted Customer and no later than the date required by the Authority; and (ii) maintain use of such chloramine disinfection system thereafter for so long as such Converted Customer is connected to the Authority's System and for so long as the Surface Water delivered by the Authority is disinfected with chloramines. It shall be the responsibility of each Converted Customer (and each Person that receives water from a Converted Customer, for example and without limitation, via a water interconnect), and not the Authority, to: (i) notify such Converted Customer's (or such Person's) water customers and water users about its conversion to and use of chloramine disinfection; and (ii) comply with any applicable United States Environmental Protection Agency and Commission (and other applicable agency) regulations and requirements, and applicable laws. Prior to completion of design (and commencement of construction) of the chloramine disinfection system required by this Section, the Person to be converted to Surface Water shall submit plans and

specifications to the Authority Engineer for review and approval. ANY SUCH APPROVAL DOES NOT RELIEVE THE PERSON, AND ITS ENGINEER, OF ADEQUATELY DESIGNING AND CONSTRUCTING THE FACILITIES AND ANY SUCH APPROVAL IS NOT AN ASSUMPTION BY THE AUTHORITY (OR THE AUTHORITY ENGINEER) OF RESPONSIBILITY OR LIABILITY FOR THE ADEQUACY (OR INADEQUACY) OF SUCH PLANS AND SPECIFICATIONS OR THE FACILITIES CONSTRUCTED THEREBY, ALL OF SAME BEING EXPRESSLY DISCLAIMED.

Section 5.08. Daily Amount. The Authority, the Authority Engineer, or the Authority Operator may from time to time designate a maximum daily amount of Surface Water (the "Maximum Daily Amount") to be taken by a Person and/or a minimum daily amount of Surface Water ("Minimum Daily Amount") to be taken by a Person. In such event, during any one day, no Person shall take from the Authority more than the Maximum Daily Amount nor less than the Minimum Daily Amount. The Authority may from time to time increase or decrease a Person's Maximum Daily Amount and/or Minimum Daily Amount, as determined necessary by the Authority, the Authority Engineer or the Authority Operator. If in violation of this Rate Order, and in addition to all other remedies available to the Authority (including, without limitation, those set forth in this Rate Order), a Person takes more than its Maximum Daily Amount or less than its Minimum Daily Amount in any one day, the Person shall be responsible for payment for any damages suffered by the Authority and payment for any charges incurred by the Authority related thereto (including, without limitation, any charges or fees charged to the Authority by Houston or the HGSD).

Section 5.09. Quantity or Pressure of Water. Notwithstanding any provision of this Rate Order or act of the Authority, the Authority does not and will not guarantee to any Person a specific quantity or pressure of water for any purpose whatsoever. In no case shall the Authority be liable for the failure or refusal to furnish water or any particular amount or pressure of water.

Section 5.10. Interruptions in Service. The Authority shall use reasonable efforts to deliver to any Person with whom the Authority has entered into a written water supply commitment agreement a constant and uninterrupted supply of Surface Water in the amount provided in such agreement. Notwithstanding any provision of this Rate Order or any applicable agreement entered into by the Authority, the Authority may interrupt, reduce or cease deliveries of Surface Water to any Person if such interruption or reduction is necessary: (i) due to limitations in the Authority System or Houston's water system; (ii) in case of emergencies or breakdowns in the Authority System or Houston's water system; or (iii) for equipment installation, repairs, modifications, replacements, inspections, or maintenance on the Authority System or Houston's water system. In addition, the Authority may interrupt, reduce or cease deliveries of Surface Water if such interruption or reduction is necessary for purposes of the Authority's GRP. The

Authority shall have no liability to any Person for any damages caused by any interruption in service or any failure (partial or total) to deliver Surface Water.

Section 5.11. Maintenance of Groundwater Wells. In order to have an alternative water supply source in the event that the Authority's water service is interrupted or ceases for any reason, Persons that receive Surface Water are strongly encouraged by the Authority to at all times: (i) maintain their groundwater Well(s) and other groundwater facilities; and (ii) maintain water line interconnect(s) with other political subdivision(s) of this State that have functioning groundwater Well facilities.

Section 5.12. Early Conversion. To the extent that a Person desires to purchase Surface Water for any reason in advance of the date that the Authority intends to provide Surface Water to such Person, such Person may submit a written request for Surface Water to the Authority, which request will be evaluated by the Authority, in its sole discretion, on economic feasibility, GRP cost, and other factors; and the Authority will determine, in its sole discretion, if such request can be satisfied, in what amount, and according to what time frame and terms.

Section 5.13. Compliance with GRP. Pursuant to the Act, the Authority is authorized to develop, prepare, revise, adopt, implement, enforce, manage or participate in the GRP. The GRP may specify the measures to be taken to reduce groundwater withdrawals and the dates and extent to which Persons shall reduce or terminate withdrawal of groundwater and instead receive water from alternative sources. The Authority, the Authority Engineer and/or the Authority Operator shall manage and enforce the GRP, including without limitation coordination with the HGSD and FBSD, monitoring compliance with the GRP, and enforcing the terms of the GRP. All Persons shall comply with the terms of the GRP and all other Authority orders and requirements (including, without limitation, those from the Authority Engineer or the Authority Operator) for the reduction of groundwater usage and the use or non-use of Surface Water. The Authority, the Authority Engineer and/or the Authority Operator may from time to time issue groundwater reduction requirements or Surface Water usage or nonusage requirements to Persons in order to: (a) comply with or exceed HGSD or FBSD groundwater reduction requirements; (b) satisfy the terms of the GRP; and/or (c) allocate Surface Water among Persons, including requiring Persons from time to time to take more or less Surface Water from the Authority in amounts determined by the Authority. The Authority and/or the Authority Engineer may from time to time add or remove Persons (and their Wells) from the GRP.

Section 5.14 <u>Early-Conversion/Over-Conversion Credits</u>. The Authority, and not the Person within the Authority's GRP, shall receive and be entitled to any early-conversion or over-conversion credits issued by the HGSD related to Surface Water or any water other than groundwater (including untreated surface water, rain or stormwater, or effluent reuse) consumed or utilized by any Person within the Authority's GRP. No Person within the Authority's GRP shall obtain (or attempt to obtain) for such

Person's own benefit or the benefit of anyone other than the Authority or sell (or attempt to sell), any such early-conversion or over-conversion credits. If requested by the Authority, Persons within the Authority's GRP shall cooperate with the Authority (including, without limitation, by amending their HGSD or FBSD well permits) in order to enable the Authority to receive such early-conversion or over-conversion credits.

Section 5.15. <u>Inadequate Groundwater Facilities</u>. Districts or users that need or desire Surface Water because they do not have adequate groundwater facilities (or for any other reason) may request a water supply commitment agreement from the Authority. At the Authority's discretion, the Authority may, according to terms and conditions acceptable to the Authority, enter into such an agreement.

Section 5.16. Water Conservation Program. All Persons receiving Surface Water from the Authority shall, prior to receiving Surface Water from the Authority, approve and implement a water conservation plan and measures, as required by the Commission pursuant to 30 Texas Administrative Code § 288. If such Person intends to resell the Surface Water to a wholesale customer of such Person, then the Person shall require its wholesale customer to also implement water conservation measures pursuant to 30 Texas Administrative Code § 288.

Section 5.17. Compliance of Person's Water System. In order to protect the Authority's water system, each Person's water system that is receiving Surface Water from the Authority shall be constructed and operated to comply with the rules promulgated by the Commission and the policy requirements of the City of Houston regarding backflow prevention and cross connections. Should a condition in violation of these requirements be discovered, such Person shall promptly cure same. If determined necessary by the Authority or if the Person fails to promptly cure same, the Authority, in addition to all other remedies available to it (including, without limitation, those provided in this Rate Order), may cure same, at the cost and expense of the Person, which the Authority shall charge such cost and expense to such Person. The Authority may conduct inspections from time to time to determine that no conditions exist in such Person's water system and in connections to the Person's customers' premises which would or might adversely affect the Authority System.

Section 5.18. Termination for Failure to Pay and Reconnection of Service. The Authority may, in its discretion, disconnect service to a Person for failure to pay all amounts due to the Authority, including without limitation penalties and interest, by the 50th day after the due date; provided, however, that prior to disconnecting services, the Authority shall send written notice by United States first class mail to the Person at the appropriate address and provide the Person with an opportunity to contest, explain or correct the charges, services, or disconnection, at a meeting of the Board of Directors of the Authority. The written notice shall inform the Person of the amount of the delinquent payment, the date service will be disconnected or additional service withheld if payment is not made, the date, time and place of the next scheduled meeting of the Board of

Directors, and of the opportunity to contest, explain or correct the charges, services, or disconnection, by presenting in person or in writing such matter to the Board of Directors at the next scheduled meeting as shown on the notice. The date specified for disconnection shall be ten (10) days after the date of the next scheduled meeting of the Board of Directors as shown in the notice and the date for withholding additional service shall be ten (10) days after the date of that Board meeting. The notice shall be deposited, postpaid, in a post office or official depository under the care and custody of the United States Postal Service at least ten (10) days prior to the date of the scheduled meeting of the Board of Directors. A written statement by the Authority Operator that the notice was so mailed shall be prima facie evidence of delivery of same. If the Person appears before the Board in person or in writing, the Board shall hear and consider the matter and inform the Person of the Board's determination by sending written notice by United States first class mail to the Person at the appropriate address. If service to a Person is disconnected for nonpayment of a delinquent bill or for any cause legally authorized, a reconnection fee of \$500 shall be paid to the Authority prior to service being restored. Reductions in the delivery of Surface Water that the Authority implements in connection with its allocation of water pursuant to its GRP are not considered a termination to a Person for failure to pay under this Section and, accordingly, the provisions of this Section shall not apply to such reductions.

Section 5.19. Authority Reimbursement to a Converted Customer. In lieu of the Authority designing or installing the Water Line Segment or the Chloramine System (both defined below), the Authority has determined to require Persons that will become Converted Customers to design and install the Water Line Segment and the Chloramine System and to allow certain of the related costs incurred by Converted Customers to be eligible for potential reimbursement from the Authority, as provided in this Section. Nothing in this Section shall be construed as limiting the Authority's right to require a Person, at the Person's sole cost, to: (i) convert to Surface Water, or (ii) install the Water Line Segment or the Chloramine System. Unless agreed to otherwise in writing by the Board, the Converted Customer, and not the Authority, shall own, maintain, operate, and repair (and be responsible to obtain any appropriate insurance for) the Water Line Segment and Chloramine System and also the Converted Customer's water plant buildings, tanks, and water Wells.

- (a) If a written request for reimbursement is made by a Converted Customer to the Authority as set forth in this Section, then such Converted Customer may be eligible for Authority reimbursement of construction and engineering costs for the Water Line Segment and the Chloramine System as follows:
  - (i) The Converted Customer may be eligible for reimbursement of the actual and reasonable construction and engineering costs incurred by the Converted Customer to construct a segment of water line ("Water Line Segment") from the Authority's water meter/vault facilities to

such Customer's ground storage tank facilities (or other water plant facilities). A Converted Customer shall not be eligible for this reimbursement if the Converted Customer fails to execute a Realty Interest Document in favor of the Authority in a form and at the time required by the Authority, and at no expense to the Authority. The Authority may require that such Realty Interest Document, among other things, allow the Authority the right to: (i) install, own, operate and maintain water line and/or meter facilities and related appurtenances, and (ii) install, own, operate and maintain sensor equipment on such Customer's ground storage tank facilities (or other water plant facilities) and electrical and control connections by conduit pipe (or other means) connecting such sensor equipment to the Authority's System. No costs for repair, maintenance, operation, upgrade or replacement of the Water Line Segment shall be eligible for reimbursement from the Authority.

(ii) The Converted Customer may be eligible for reimbursement of the actual and reasonable construction and engineering costs incurred by the Converted Customer to convert its water treatment system from a chlorine disinfection system to a chloramine disinfection system ("Chloramine System"). No costs for repair, maintenance, operation, upgrade, or replacement of a Chloramine System shall be eligible for reimbursement from the Authority. Notwithstanding any provision of this Rate Order, unless approved in writing by the Authority Engineer and the Board, the Authority shall not reimburse more than the Maximum Chloramine Construction Reimbursement for Chloramine System construction costs for each water plant of the Converted Customer.

Each year starting in 2011, the Authority (or Authority Engineer) will determine the amount that the Construction Index has increased or decreased during the prior calendar year and will adjust the Maximum Chloramine Construction Reimbursement accordingly for that calendar year. The adjusted figure shall apply to all Chloramine System construction projects that have a Winning Bid Date during that calendar year. (For example, if for January 2011, the Construction Index is 5,442.41, which would reflect a 2% increase in the Baseline, then the Maximum Chloramine Construction Reimbursement will be adjusted to \$193,800 on projects that have a Winning Bid during 2011; and if thereafter for January 2012, the Construction Index is 5,389.06, which would reflect a 1% increase in the Baseline, then the Maximum Chloramine Construction Reimbursement will be adjusted to \$191,900 on projects that have a Winning Bid Date during 2012.) In no event will

the adjustment to the Maximum Chloramine Construction Reimbursement provided for in this paragraph cause the Maximum Chloramine Construction Reimbursement to be less than \$190,000. (The adjustment to the Maximum Chloramine Construction Reimbursement provided for in this paragraph is defined herein as the "Construction Index Adjustment.")

- (iii) The purpose of the reimbursement provided for in this Section is intended to reimburse for certain costs associated with modifying a pre-existing water plant. Accordingly, unless approved in writing by the Authority, no Person will be eligible for reimbursement of a Chloramine System or Water Line Segment on any new water plants constructed within the Three Year Time-Period or constructed after the Surface Water Availability Date.
- (b) Actual and reasonable engineering costs will be eligible for reimbursement in an amount not to exceed 25% of the actual and reasonable construction costs that are eligible and approved by the Authority for reimbursement under this Section; provided, however, such engineering costs shall not exceed \$120,000 for each water plant of the Converted Customer unless the Board, in its discretion, approves an amount greater than \$120,000.
- (c) Any reimbursement pursuant to this Section shall be subject to approval by the Authority Engineer; and any such reimbursement shall be made in accordance with standards approved by the Authority Engineer and the Board, which standards may change from time to time. Prior to completion of design (and commencement of construction) of the Water Line Segment and Chloramine System, the Person to be converted to Surface Water shall submit plans and specifications to the Authority Engineer for review and approval. ANY SUCH APPROVAL DOES NOT RELIEVE THE AND PERSON, ITS ENGINEER, OF ADEQUATELY **DESIGNING** CONSTRUCTING THE FACILITIES AND ANY SUCH APPROVAL IS NOT AN ASSUMPTION BY THE AUTHORITY (OR THE AUTHORITY ENGINEER) OF RESPONSIBILITY OR LIABILITY FOR THE ADEQUACY (OR INADEQUACY) OF SUCH PLANS AND SPECIFICATIONS OR THE FACILITIES CONSTRUCTED THEREBY, ALL OF SAME BEING EXPRESSLY DISCLAIMED.
- (d) Construction of the Water Line Segment and the Chloramine System shall be done pursuant to the competitive bidding requirements of Chapter 49, Texas Water Code, or, if applicable, the Commission emergency approval of negotiated contracts under Section 49.274, Texas Water Code. In the event the Water Line Segment and Chloramine System are constructed pursuant to a contract negotiated under said Section 49.274 (instead of a contract that was competitively bid pursuant to said Chapter 49), the Board may disapprove any amount of reimbursement sought by the Converted Customer if the

Board determines that the reimbursement exceeds the costs that would have been incurred had the contract been competitively bid.

- (e) Unless otherwise agreed to in writing by the Authority, the potential reimbursement eligibility set forth in this Section shall not be available until and after a Person becomes a Converted Customer. Accordingly, for example and without limitation, a Person that is not directly connected to the Authority's System but that receives water through a water interconnect with a Converted Customer shall not be eligible for the potential reimbursement described in this Section until and after such Person becomes a Converted Customer. In addition to and without limiting the other provisions of this Section, and in addition to any other remedies available to the Authority, some or all of the potential reimbursement eligible to a Converted Customer under this Section may be reduced or eliminated by the Board: (i) if the Converted Customer fails to install the Water Line Segment and Chloramine System and commence receiving Surface Water by the date that the Authority is able to deliver Surface Water; or (ii) if the Converted Customer fails to submit a written request for reimbursement (with adequate supporting documentation) to the Authority within 180 days after the Person becomes a Converted Customer. No interest or interest expenses shall be included in any potential reimbursement eligible under this Section.
- (f) Any and all reimbursement pursuant to this Section shall be subject to Board approval, which approval may be granted or denied based on the Board's sole discretion. In addition, the Authority may deny reimbursement for facilities, work, or services that the Authority or the Authority Engineer determines to be: (i) unnecessary for a Person's receipt of Surface Water; or (ii) excessive in scope or price. The Authority may require a Person to execute a receipt and release in a form acceptable to the Authority prior to receiving any reimbursement under this Section.

Section 5.20. Claims for Lost Water. Unless otherwise agreed to in writing by the Authority, the Authority will not consider a claim from a Converted Customer for reimbursement of water that the Converted Customer alleges was lost due to the fault or negligence of the Authority or the malfunction of Authority facilities unless the Converted Customer submits such claim in writing to the Authority within 90 days after the occurrence of the event giving rise to the claim. If submitted within such 90 day period, the Authority will consider such claim and determine whether to grant or deny the claim based on factors determined appropriate by the Authority.

## ARTICLE VI COLLECTION OF AMOUNTS DUE TO AUTHORITY

<u>Section 6.01</u>. <u>Late Penalties and Interest</u>. Payments of any fees, rates, charges, or other amounts due to the Authority that are received by the Authority after the due date

will be subject to a late penalty of 5% of the fees, rates, charges, or amounts due, and such 5% penalty shall be due to the Authority on the first day such fees, rates, charges, or amounts are late. An additional 5% penalty (for a total penalty of 10%) shall be imposed if the payment is more than 30 days late, and such additional 5% penalty shall be due to the Authority on the 31st day such fees, rates, charges, or amounts are late. Additionally, overdue amounts (including late penalties) shall accrue interest, from the day after the due date until the day the overdue amount is paid to the Authority, at an annual interest rate ("Interest Rate") that is calculated in accordance with the following formula. Starting with 2009 and continuing each year thereafter, effective on September 1st of each calendar year (the "Current Calendar Year"), the Interest Rate shall automatically reset to the lesser of: (1) one percent plus the prime rate as published in the Wall Street Journal on the first day of July of the Current Calendar Year that does not fall on a Saturday or Sunday; or (2) one percent plus the prime rate as published in the Wall Street Journal on the first day of July of the year preceding the Current Calendar Year that does not fall on a Saturday or Sunday. (For example, if said prime rate were 5% on July 1, 2008 and 7% on July 1, 2009, then on September 1, 2009, the Interest Rate would have been 5% plus 1%, or 6% per annum. The prime rates reflected in the previous sentence represent hypothetical rates, which may or may not be the actual prime rates as published in the Wall Street Journal.)

Section 6.02. Collection Costs. If the Authority is required to incur costs to collect an overdue account, all such costs, including court costs, reasonable attorney's fees, and expenses, shall be paid by the delinquent Person, and the Authority shall be entitled to collect such costs in any suit for collection of a delinquent account.

<u>Section 6.03</u>. <u>Expulsion from GRP</u>. The Board may exclude a Person, or any territory or Well owned or controlled by a Person, from the GRP for failure to make a complete or timely payment to the Authority of fees, user fees, rates, charges, penalties, interest or any other amounts due to the Authority.

### ARTICLE VII AUTHORITY RULES

Section 7.01. Self-Reporting Violations. Each Non-Exempt Well Owner and Surface Water User shall be responsible, when required pursuant to this Rate Order, for reading the meter(s) to measure the amount of water pumped from each Non-Exempt Well and the amount of Surface Water received in the manner provided in this Rate Order and reporting such measurements (even if the measurements show zero pumpage or zero Surface Water usage) to the Authority on the form promulgated by the Authority on or before the due date. Each Non-Exempt Well Owner shall be responsible to provide the Water Usage Reports by the due date and to the appropriate party, as required by this Rate Order. Each Water Importer that obtains Imported Water to serve all or any portion of the property it serves shall be responsible to immediately notify the Authority in writing, to measure the amount of Imported Water, and to report such measurement to

the Authority on the form promulgated by the Authority. Failure to make the measurements required by this Rate Order, failure to accurately or timely report required measurements to the Authority, failure to provide the Water Usage Reports to the appropriate party by the due date, and failure to provide notice of Imported Water shall be a violation of the Authority's rules. If a Person reports higher pumpage or higher Surface Water usage to the HGSD or FBSD than the Person reported to the Authority, the Authority shall be entitled to find that such Person did not accurately report to the Authority and therefore violated the Authority's rules.

Section 7.02. Failure to Comply with Measurement Requirements. Each Non-Exempt Well Owner and Surface Water User is required to comply with the provisions of this Rate Order, including without limitation, obtaining written approval of the Authority Engineer of the type, make, and model of a Non-Exempt Well meter and allowing the Authority the right to: (1) audit and/or measure Well pumpage and Surface Water usage; (2) read the Well Owner's meter and the Surface Water meter, including without limitation by the Authority installing, repairing, maintaining, and operating remote meter reading devices on Surface Water meters and, if allowed by a written right of entry, on Non-Exempt Well meters; (3) enter the Well Owner's land to audit and/or measure Well pumpage and Surface Water usage; and (4) test and recalibrate, if necessary, the Well Owner's meter and the Surface Water meter. Failure of the Well Owner or Surface Water User to comply with such provisions, or any other provision of this Rate Order, shall be a violation of the Authority's rules.

Section 7.03. Calibration of Meters. Each Non-Exempt Well Owner is responsible for keeping its Well meter within the accuracy range of 97% to 103% of actual flow, as required by this Rate Order. It shall be a violation of the Authority's rules for any Well Owner who knows or should reasonably know that its Well meter is outside such accuracy range to fail to promptly correct such meter and to correct any reports previously made to the Authority of inaccurate data. It shall be a violation of the Authority's rules for any Person to fail to perform and/or report meter accuracy testing as required by this Rate Order. It shall be a violation of the Authority's rules for any Person to remove, modify, tamper with, or take any action which affects a water meter or a remote meter reading device on a Non-Exempt Well or a water meter or a remote meter reading device that measures the amount of Surface Water delivered by the Authority, or related piping or equipment, so that the measurement accuracy of the meter or the functionality of the remote meter reading device is impaired.

Section 7.04. Damage to Authority Property. No Person other than the Authority Operator or duly authorized representative of the Authority shall repair, alter, tamper with, remove, interfere with, make connections or additions to, or in any way take any action which affects the Authority System, any meter owned by the Authority, and any remote meter reading device owned by the Authority without the express written approval of the Authority. The Authority reserves the right to immediately, and without

notice, disconnect any Person who repairs, alters, tampers with, removes, interferes with, makes connections or additions to, or in any way takes any action which affects the Authority System, any meter owned by the Authority, and any remote meter reading device owned by the Authority or reconnects service which was terminated by the Authority. The Authority reserves the right to repair any damage to Authority property related to a Person's violation of this section, and the cost of such repair shall be due from such Person to the Authority. In addition, the Authority reserves the right to assess against any Person such penalties as are provided by law and/or this Rate Order, including the right to file any available legal and/or criminal charges against any Person. These charges and remedies are in addition to all remedies available to the Authority under law or in equity.

Section 7.05. Payment Violations. Each Person shall be responsible for paying the Authority the GRP Fees, Surface Water Fees, Imported Water Fees, and any other charges (including, without limitation, any penalties and interest) due the Authority on or before the due date. Failure to make such payment when due, regardless of whether the Authority has made demand for payment, shall be a violation of the Authority's rules.

Section 7.06. GRP. Each Person shall be responsible to promptly comply with the GRP and all directives and requirements issued by the Authority, the Authority Engineer or the Authority Operator for the purposes of or related to the GRP, including, without limitation, all requirements that the Person: (i) take (or refrain from taking) amount(s) of Surface Water from time to time required by the Authority; and (ii) install the Water Line Segment and Chloramine System by the date the Authority is able to deliver Surface Water to the Person. In addition, no Person shall utilize the Shut-off Valve(s) to control the rate of flow of Surface Water being delivered by the Authority, as such Shut-off Valves are intended only to be used in the event a waterline needs to be taken out of service. Failure to comply with the provisions of this Section shall be a violation of the Authority's rules.

Section 7.07. Daily Amount. If the Authority, Authority Engineer or Authority Operator has designated a Maximum Daily Amount or Minimum Daily Amount for a Person connected to the Authority System, then such Person shall be responsible to take no more than its Maximum Daily Amount and no less than its Minimum Daily Amount during any one day. Failure to so comply shall be a violation of the Authority's rules.

<u>Section 7.08</u>. <u>Right of Entry</u>. Each Person shall be responsible: (1) to timely comply with the Section of this Rate Order entitled "Right to Enter Land"; and (2) to not prevent or hinder the Authority's rights under the Section of this Rate Order entitled "Right to Enter Land." Failure to do so shall be a violation of the Authority's rules.

<u>Section 7.09</u>. <u>Authority Rules and Orders</u>. All requirements set forth in this Article VII are adopted as rules of the Authority. All requirements and rules set forth in any part of this Rate Order shall be considered orders of the Authority.

# ARTICLE VIII CIVIL PENALTIES AND MISCELLANEOUS

Section 8.01. Civil Penalty. A Person is subject to a civil penalty of up to \$5,000 for each violation or each day of a continuing violation if the Person: (i) violates any provision of this Rate Order, the GRP, any rules contained in either of same, or any other order or rule of the Authority, (ii) makes unauthorized use of Authority services, property, or facilities, or (iii) causes damage to Authority property or facilities by using them in a manner or for a purpose contrary to the purpose for which they were designed. The Board may set the penalty based on (all as determined by the Board): (i) the severity of the offense; (ii) whether such violation was willful, knowing, reckless or inadvertent; (iii) the history of conduct by such Person; (iv) the damages sustained by the Authority; (v) the risk or damage to the GRP; and (vi) any other factors determined appropriate by the Board. The Authority may bring an action to recover the penalty in a district court in the county where the violation occurred. The penalty shall be paid to the Authority.

Section 8.02. Termination for Rate Order or GRP Violations. Any Person who violates any provision of this Rate Order or the GRP, in addition to being subject to the penalties described in this Rate Order and any other remedies available to the Authority, shall be subject to having service terminated. Provided, however, prior to disconnecting service for violations that do not constitute a hazard to health or safety or endanger the integrity of the Authority's system or adversely affect the Authority's GRP, the Authority shall give written notice by first class mail or otherwise, to such Person of the pending disconnection, and shall give such Person the opportunity to contest, explain or correct the violation at a meeting of the Board of Directors of the Authority. The provisions of the preceding sentence do not apply to reductions in delivery of Surface Water that the Authority implements in connection with its allocation of water pursuant to its GRP.

<u>Section 8.03.</u> <u>Injunction</u>. The Authority may bring an action for injunctive relief in a district court in the county where a violation of an authority rule or order occurs or is threatened to occur. The Authority may bring an action for a civil penalty and injunctive relief in the same proceeding.

Section 8.04. Right to Enter Land. In addition to any other rights that the Authority may have (by easement or otherwise), the Authority and its representatives shall have the authority to enter upon any public property (including, without limitation, property owned by a District) or private property within the Authority's boundaries or property adjacent to any property owned by the Authority (and enter upon any property owned by a District included in the Authority's GRP by contract) at any reasonable time in order to: (1) inspect, repair, install, test, maintain or operate any Authority facilities or meters on Wells; (2) test or monitor the Surface Water delivered by the Authority; (3) audit Well pumpage or Surface Water measurements submitted by a Person to the Authority; (4) measure Well pumpage or Surface Water usage, including without limitation by the Authority installing, repairing, maintaining, and operating remote meter reading devices

on Surface Water meters and, if allowed by a written right of entry, on Non-Exempt Well meters; (5) inspect and investigate conditions relating to the quality of water in the State of Texas; and/or (6) investigate compliance with any Authority rule, regulation, permit or order. If requested by the Authority or Authority Operator, a Person shall immediately cooperate with the Authority or Authority Operator to allow the Authority or Authority Operator to enter such site(s) for any of such purposes. Authority representatives entering private property pursuant to this Section shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection and shall notify any occupant or management of their presence and shall exhibit proper credentials.

Section 8.05. Groundwater Reduction Plan Participation Agreements. Any Person that is a member or participant of the Authority's GRP through a written contract with the Authority shall be subject to all of the terms, provisions, rules, requirements, and penalties of this Rate Order and all other orders, resolutions and requirements of the Authority, to the extent they are not inconsistent with the terms and provisions of such written contract.

<u>Section 8.06.</u> <u>Prior Resolutions Establishing Groundwater Reduction Plan Fees and Rate Orders.</u> The Authority retains all of its rights and remedies under all prior Authority Resolutions Establishing Groundwater Reduction Plan Fee, as amended, and all prior Authority rate orders, as amended.

<u>Section 8.07</u>. <u>Amendments to Rate Order and GRP</u>. As determined necessary by the Authority, the Authority reserves the right to modify from time to time: (1) the rates, charges and fees contained in this Rate Order; (2) any other terms and provisions of this Rate Order; and (3) its GRP.

<u>Section 8.08</u>. <u>Authority Designee</u>. The Authority hereby designates the Board President, Board Vice President, Board Assistant Vice President, the Authority Engineer and/or the Authority Operator to exercise the Authority's powers under its GRP and this Rate Order.

Section 8.09. Refusal to Add Persons to GRP. The Board, at its discretion, may refuse to add Persons (and their Wells) to the GRP, including, without limitation, any Person seeking to be re-admitted to the GRP who was previously in the GRP.

<u>Section 8.10</u>. <u>No Waiver</u>. The failure of the Authority to insist, in any one or more instances, upon a Person's performance of any of the terms, requirements or conditions of this Rate Order shall not be construed as a waiver or relinquishment of the future performance of any such term, requirement or condition by that Person or any other Person.

Section 8.11. Lien. Pursuant to Section 4.03(i) of the Act, fees and user fees imposed by the Authority under 4.03(b) of the Act, and any related penalties, interest,

collection expenses, and reasonable attorney's fees incurred by the Authority are a first and prior lien against the Well to which the fees or user fees apply. The Authority may enforce said lien in any manner provided by the Act or other law.

[EXECUTION PAGE FOLLOWS]

## ADOPTED AND EFFECTIVE THIS 13th DAY OF NOVEMBER, 2019.

WEST HARRIS COUNTY REGIONAL WATER AUTHORITY

Bv:

President, Board of Directors

ATTEST:

By:

Secretary, Board of Directors

(SEAL)

# EXHIBIT A WEST HARRIS COUNTY REGIONAL WATER AUTHORITY Pumpage/Surface Water and Billing Form

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### EXHIBIT B WEST HARRIS COUNTY REGIONAL WATER AUTHORITY Imported Water Billing Form

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Parkway North, Suite 100, Katy, Texas 77449.

# TAB G

# NORTH FORT BEND WATER AUTHORITY AMENDED RATE ORDER

STATE OF TEXAS

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COUNTIES OF FORT BEND AND HARRIS

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WHEREAS, the North Fort Bend Water Authority (the "Authority") is a regional water authority created pursuant to Senate Bill 1798 of the 79th Legislature, as amended (the "Act"), which amended the Special District Local Laws Code by adding Chapter 8813 ("Section 8813"), and Article XVI, Section 59 of the Texas Constitution; and

WHEREAS, the Authority was created, among other purposes, to accomplish the purposes of Article XVI, Section 59 of the Texas Constitution, including the acquisition and provision of surface water and groundwater for residential, commercial, industrial, agricultural, and other uses, the reduction of groundwater withdrawals, the conservation, preservation, protection, recharge of groundwater and of groundwater reservoirs or their subdivisions, the prevention of waste of groundwater, and the control of subsidence caused by the withdrawal of water from groundwater reservoirs or their subdivisions; and

WHEREAS, the Act provides that the Authority may: (1) provide for the conservation, preservation, protection, recharge, and prevention of waste of groundwater, and for the reduction of groundwater withdrawals as necessary to develop, implement, or enforce a groundwater reduction plan, in a manner consistent with the purposes of Article XVI, Section 59 of the Texas Constitution; and (2) acquire or develop surface water and groundwater supplies from sources inside or outside the boundaries of the Authority and may conserve, store, transport, treat, purify, distribute, sell, and deliver water to or among persons, corporations, municipalities, municipal corporations, political subdivisions of the state, and others, inside and outside the boundaries of the Authority, and allocate water among persons participating in the Authority's groundwater reduction plan whether they are located inside or outside the Authority's boundaries; and

WHEREAS, the Act authorizes the Authority to establish fees, user fees, rates, and charges and classifications of fee and ratepayers, as necessary to enable the Authority to fulfill its purposes and regulatory functions provided in the Act; and

WHEREAS, Section 8813.008 provides that the Authority may establish fees, user fees, rates, charges, or special assessments, that are necessary to pay for the costs of accomplishing the purposes of the Authority, including: (1) the reduction of groundwater withdrawals; (2) the facilitation of compliance with the requirements of the Fort Bend Subsidence District and the Harris Galveston Subsidence District, as applicable; and (3) the provision of services, facilities, and systems; and

WHEREAS, prior to the Board's adoption of the GRP Fee, Surface Water Fee, and Imported Water Fee hereinafter set forth in this Amended Rate Order, the Board provided municipalities and districts within the Authority written notice of the date, time, and location of the meeting at which the Board would adopt the GRP Fee, Surface Water Fee, Imported Water Fee and the amount of said fees; and

WHEREAS, the Board has determined that the fees, user fees, rates, and charges established in this Amended Rate Order are necessary to accomplish those purposes set forth in the Act; and

WHEREAS, it is necessary that the Authority establish fees, user fees, rates, charges, and conditions and terms of service from the Authority System, the Authority's GRP and any other services provided by the Authority, and rules related thereto;

NOW, THEREFORE, IT IS ORDERED BY THE BOARD OF DIRECTORS OF THE NORTH FORT BEND WATER AUTHORITY THAT:

# ARTICLE I DEFINITIONS

<u>Section 1.01</u>. <u>Definitions</u>. As used herein, the following terms shall have the respective meanings set forth or referred to below:

"Act" means Senate Bill 1798 of the 79th Texas Legislature, as amended.

"Authority" means the North Fort Bend Water Authority.

"Authority Engineer" means the Authority's general operating engineer (currently BGE, Inc.), which may be changed from time to time by the Authority.

"Authority Operator" means the operating company performing operations for the Authority (currently Inframark Water Infrastructure Operations), which may be changed from time to time by the Authority.

"Authority System" means the Authority's facilities, pipelines, storage tanks, conduits, canals, pumping stations, treatment plants, meters, valves, and any other construction, device, or related appurtenance or connection used to treat, transport, or store Surface Water, including all easements, rights-of-way, and sites owned or utilized by the Authority, together with all Authority rights related thereto.

"Board" means the Board of Directors of the Authority.

"Chloramine System" is defined hereinafter.

"Commission" means the Texas Commission on Environmental Quality, and any successor agency.

"Control Valve Assembly" is defined hereinafter.

"Converted Customer" means a District (or other Authority customer) whose water supply facilities have been actually and directly connected to the Authority System and who is actually receiving Surface Water directly from the Authority System. A District that merely has a water interconnect with (or receives water through a water interconnect from) a Converted Customer is not considered a Converted Customer, unless said District's own water supply facilities have been actually and directly connected to the Authority System and said District is itself actually receiving Surface Water directly from the Authority System.

"Current Calendar Year" is defined hereinafter.

"District" means any district created pursuant to Article III, Section 52(b)(1), (2) or Article XVI, Section 59, Texas Constitution, regardless of the manner of creation other than a navigation district or a district governed by Chapter 36 of the Texas Water Code.

"Delivery Point" is defined hereinafter.

"Exempt Well" means a Well with a casing diameter of less than five inches that solely serves a single family dwelling, a Well that is regulated under Chapter 27 of the Texas Water Code, or a Well that is not subject to any groundwater reduction requirement imposed by the FBSD or HGSD (as appropriate).

"FBSD" means the Fort Bend Subsidence District.

"GRP" means that certain groundwater reduction plan adopted by the Authority's Board in March 2008, as amended; and all directives, determinations and requirements issued by the Authority (or the Authority Engineer or Authority Operator) pursuant to such plan, as all of same may be amended from time to time.

"GRP Fee" means the groundwater reduction plan fee/rate adopted by the Board pursuant to Section 8813.103 and set forth hereinafter.

"HGSD" means the Harris Galveston Subsidence District.

"Houston" means the City of Houston, Texas.

"Imported Water" means water of any type that is produced outside of the boundaries of the Authority and transported into the boundaries of the Authority for distribution to an end user within the boundaries of the Authority. The term "Imported Water" does not include Surface Water delivered through or by the Authority System.

"Imported Water Fee" means the imported water fee/rate adopted by the Board pursuant to Section 8813.103(h) of the Texas Special District Local Laws Code and set forth hereinafter.

"Interest Rate" is defined hereinafter.

"Maximum Daily Amount" is defined hereinafter.

"Minimum Daily Amount" is defined hereinafter.

"Non-Exempt Well" means any Well within the Authority other than an Exempt Well.

"Non-Potable Water" means water other than potable Surface Water or other ground water, including but not limited to, rain water, storm water, and/or effluent reuse water.

"Online Reporting System" means the Authority's online pumpage reporting system.

"Person" means any individual, corporation, organization, government or governmental subdivision or agency, District, municipality, county, political subdivision, business trust, trust, estate, partnership, association, or any other legal entity.

"Rate Order" means this Amended Rate Order.

"Realty Interest Document" means a written document (in a form acceptable to the Authority) that grants the following rights to the Authority across, along, under, over, and upon any property (whether or not a water plant site) owned by a Person, or in which a Person has any interest: (i) water line and/or water meter easement(s), (ii) consent to conveyance of Authority easement(s), (iii) subordination of a Person's realty interests to the Authority's rights under Authority easement(s), or (iv) any other property interest necessary or convenient for the Authority to provide and/or meter Surface Water delivered by the Authority to any Authority customers.

"Shut-off Valve(s)" means the shutoff valve(s) installed by the Authority or the Person in the Surface Water line(s) on a Person's water plant site(s).

"Surface Water" means water (whether surface, ground, or a blend of both) that is delivered through or by the Authority System.

"Surface Water Availability Date" means the date Surface Water is generally available to a Person, as determined by the sole discretion of the Authority

"Surface Water Fee" means the surface water fee/rate adopted by the Board pursuant to Section 8813.103 of the Act and set forth hereinafter.

"Three Year Time-Period" means the three year time-period preceding the date Surface Water is generally available to a Person, as determined by the sole discretion of the Authority.

"Water Importer" means a Person located, in whole or in part, within the Authority's boundaries that uses or distributes Imported Water. The term "Water Importer" does not include an owner of an Exempt Well if, and only if, such owner does not own any Non-Exempt Wells.

"Water Line Tank Connection" is defined hereinafter.

"Well" means a facility, device, or method used to withdraw groundwater: (i) from a groundwater source that is located within the boundaries of the Authority; or (ii) from a groundwater source that is located outside the boundaries of the Authority, but is part of the GRP pursuant to a written contract with the Authority.

<u>Section 1.02</u>. <u>Interpretations</u>. The article and section headings of this Rate Order are included herein for convenience of reference purposes only and shall not constitute a part of this Rate Order or affect its interpretation in any respect. Except where the context otherwise requires, words imparting the singular number shall include the plural and vice versa.

<u>Section 1.03</u>. <u>References, Etc.</u> Any reference in this Rate Order to a document shall mean such document and all exhibits thereto as amended or supplemented from time to time.

## ARTICLE II FINDINGS

<u>Section 2.01</u>. <u>Findings</u>. Each of the recitals stated in this Rate Order are hereby adopted as a finding of the Board. All statutory requirements and conditions (including those of Section 8813.103) have been met for the establishment of those fees, user fees, rates and charges set forth in this Rate Order.

## ARTICLE III RATES AND CHARGES

Section 3.01. GRP Fee. The Board hereby adopts a GRP Fee pursuant to Section 8813.103. The owner of each Non-Exempt Well within the Authority shall pay the Authority the GRP Fee for monthly pumpage, as provided in this Section. Effective January 1, 2020, the GRP Fee shall be equal to \$3.95 for each 1,000 gallons of water pumped from each Non-Exempt Well. Payment of the GRP Fee is due by the last day of

the month following the month for which pumpage is required to be calculated (the "Due Date"). (For example, payment for January pumpage is due by February 28th; payment for February pumpage is due by March 31st; etc.) The Authority will not send invoices or billings to Non-Exempt Well owners for the amount of GRP Fees that are due. Each Non-Exempt Well owner shall be responsible for remitting to the Authority the GRP Fee on or before the Due Date. The GRP Fee for any billing period beginning on or after January 1, 2020, shall be calculated on the form promulgated by the Authority and attached hereto as Exhibit "A", which form shall be provided by the Non-Exempt Well owner to the Authority with the owner's monthly GRP Fee payment. Each Non-Exempt Well owner shall complete the appropriate form and provide it to the Authority monthly, even if the Non-Exempt Well owner's pumpage was zero. If the user had both Well pumpage and Surface Water usage during a month, then the user shall report the amount of each on the form promulgated by the Authority.

Section 3.02. Surface Water Fee. The Board hereby adopts a Surface Water Fee pursuant to Section 8813.103. Each Person that receives Surface Water from the Authority shall pay the Authority the Surface Water Fee for Surface Water received monthly, as provided in this Section. Effective January 1, 2020, the Surface Water Fee shall be equal to \$4.30 for each 1,000 gallons of Surface Water received. Payment of the Surface Water Fee is due by the last day of the month following the month for which Surface Water usage is required to be calculated, the Due Date. (For example, payment for January Surface Water usage is due by February 28th; payment for February Surface Water usage is due by March 31st; etc.) The Authority will not send invoices or billings to Surface Water users for the amount of Surface Water Fees that are due. Each Surface Water user shall be responsible for remitting to the Authority the Surface Water Fee on or before the due date. The Surface Water Fee for any billing period beginning on or after January 1, 2020, shall be calculated on the form promulgated by the Authority and attached hereto as Exhibit "A," which form shall be provided by the Surface Water user to the Authority with the user's monthly Surface Water Fee payment. Each Surface Water user shall complete the appropriate form and provide it to the Authority monthly, even if the user's Surface Water use was zero. If the user had both Well pumpage and Surface Water usage during a month, then the user shall report the amount of each on the form promulgated by the Authority.

### Section 3.03. Imported Water Fee.

(a) Adoption of Imported Water Fee. The Board hereby adopts an Imported Water Fee pursuant to Chapter 8813 (including Section 8813.103(h)) of the Texas Special District Local Laws Code. If a Water Importer obtains Imported Water to serve all or any portion of the property it serves, then such Water Importer must immediately notify the Authority in the method set forth below and must pay to the Authority monthly the following Imported Water Fee: (i) a fee equal to the then-current GRP Fee applied on all Imported Water if the Water Importer is not a Converted Customer; or

- (ii) a fee equal to the then-current Surface Water Fee applied on all Imported Water, if the Water Importer is a Converted Customer. Notification of interconnect use shall be submitted on the Authority's official Interconnect Notification Form, which may be obtained on the Authority's website. Notification of Imported Water from any other source must be submitted in writing to the Authority. The Imported Water Fee is due and payable to the Authority monthly even if the Water Importer also pays another entity for the Imported Water and even if the Authority is not then providing Surface Water to the Water Importer.
- (b) Imported Water Fee Payment. The Imported Water Fee is due and payable to the Authority monthly at the same time as the Water Importer's GRP Fee or Surface Water Fee payment, even if the Water Importer also pays another entity for the Imported Water and even if the Authority is not then providing any water to the Water Importer. The Imported Water Fee for any billing period beginning on or after January 1, 2020, shall be calculated on the form promulgated by the Authority and attached hereto as Exhibit "A," which form shall be provided by the Water Importer to the Authority with the Water Importer's Imported Water Fee payment. Each Water Importer shall complete such form and provide it to the Authority monthly, even if the Water Importer's pumpage was zero.
- (c) Emergency Situations. If the Water Importer is experiencing an emergency situation and receiving surface water from the Authority, then the Water Importer will be charged the Imported Water Fee unless a variance is granted in accordance with subsection (d) below. Notwithstanding the foregoing, if special circumstances exist, as determined in the sole discretion of the Authority pursuant to subsection (e) below, in which the Authority is unable to deliver water to the Water Importer, then the Imported Water Fee shall not be imposed for the time period in which the Authority cannot deliver surface water. If the Water Importer is experiencing an emergency situation, as determined in the sole discretion of the Authority, but is not receiving surface water from the Authority, then the Water Importer shall not be charged an Imported Water Fee on the Imported Water that it receives during a period not to exceed 60 consecutive or inconsecutive days during any calendar year. Such time period may be extended by the Authority, in its sole discretion and as appropriate, on a case by case basis considering the circumstances of the particular emergency.
- (d) <u>Variance Requests</u>. If the Water Importer is obtaining Imported Water due to other special circumstances, including but not limited to system repairs, the Water Importer may submit a variance request to the Authority detailing the special circumstances and any supporting reasons for which the Imported Water Fee should not be assessed in that particular situation. Such variance request must be submitted within 30 days of the earlier of (a) the date on which the Water Importer receives written notification from the Authority that an Imported Water Fee will be charged to the Water Importer, (b) the date on which Water Importer self-reported receiving

Imported Water via the Online Reporting System, or (c) 30 days before any scheduled system repairs or maintenance creating the possible need for Imported Water by the Water Importer. The Authority will consider the variance request and advise the Water Importer of its decision. The Authority's decision shall be final, and should the Authority deny the variance request, all outstanding amounts due related to the Imported Water Fee shall be due and payable to the Authority within 30 days of written notification from the Authority alerting the Water Importer of the variance denial. Any Imported Water Fees incurred by the Water Importer following the delivery of the written notification of the Authority's determination will become due and payable as otherwise set forth in subsection (b) above. Once granted a variance by the Authority, a Water Importer shall not be required to pay the Imported Water Fee on Imported Water for the time period that the Authority has agreed in writing that no Imported Water Fee applies to the particular Imported Water. Such time period may be extended by the Authority, in its sole discretion and as appropriate, on a case-by-case basis considering the circumstances of the special circumstances.

(e) <u>Interruptions in Surface Water Delivery</u>. In the event that the Authority is otherwise regularly delivering Surface Water to a Converted Customer and special circumstances exist in which the Authority is unable to deliver such Surface Water, as determined in the sole discretion of the Authority, to the Converted Customer, then the Imported Water fee shall not be imposed during the time period in which the Authority determines it was unable to deliver water to the Converted Customer. The foregoing sentence shall not apply in instances in which a Converted Customer annexes additional property, whether contiguous or otherwise, into the boundaries of the Converted Customer following the Authority's initial conversion of the Converted Customer, where the Authority is not currently providing Surface Water to the property annexed into the Converted Customer. The Imported Water Fee for Imported Water related to such annexed property shall be equal to the Authority's then-current Surface Water Fee.

Section 3.04. Payment of Fees. All fees payable to the Authority shall be paid in money which is legal tender in the United States of America. Payments will be accepted only by check or money order made payable to the "North Fort Bend Water Authority" or by wire transfer according to written wiring instructions provided by the Authority. No cash will be accepted. All payments must be received by the bookkeeper of the Authority (currently, AVANTA Services, 5635 Northwest Central Drive, Suite 104E, Houston, Texas 77092) by the Due Date. Written wire instructions are available upon request.

Section 3.35. Special Assessments. Section 8813.105 allows the Board to impose special assessments. To date, the Board has not imposed such special assessments. The Board reserves the right to impose such special assessments at any time by adopting a

resolution, rule, requirement, or order (or amendment to this Rate Order) that expressly provides for the imposition of such special assessments.

### ARTICLE IV WELL PUMPAGE

Section 4.01. Self-Reporting. Each Non-Exempt Well owner shall be responsible for reading the meter which measures the amount of water pumped from each Non-Exempt Well at the end of each month. Such measurement (even if it shows zero pumpage for the month) shall be reported to the Authority on the reporting form promulgated by the Authority: (i) available electronically on the Online Reporting System, or (ii) if the Authority determines that access to the Online Reporting System is not reasonably available to a Person, then reporting may be made via the non-electronic reporting form attached hereto as Exhibit "A," provided permission to use the non-electronic reporting form is obtained in writing from the Authority. Along with the owner's monthly GRP Fee payment, the owner shall provide the reporting form to the Authority no later than the last day of the second month following the month for which pumpage is required to be calculated. (For example, the reporting form for January pumpage is due by February 28th; the reporting form for February pumpage is due by March 31st; etc.). The Authority reserves the right to request more frequent reporting, at its sole discretion.

Section 4.02. Audits. The Authority shall have the right to audit the Well pumpage measurements submitted by the Well owner by reading the meter at the Well. In addition, the Authority, at its discretion, may read the meter for any other reason. If a Well owner reports an amount of pumpage to the Authority that differs from the amount of pumpage that the Authority determines occurred based on the Authority's reading of the meter, or if a well Owner reports an amount of pumpage to the FBSD that differs from the amount of pumpage that the Well owner reports to the Authority, the Authority may utilize any of said amounts to determine the total GRP Fees due the Authority. If such Authority determination shows that the Well owner underpaid the Authority, then, in addition to all other remedies available to the Authority, the Authority may invoice the Well owner for the shortfall. (Any such invoice will be due to the Authority no later than the date provided in the invoice.) If such Authority determination shows that the Well owner overpaid the Authority, then the Authority may pay the Well owner the amount of the overage. Notwithstanding the previous two sentences, the Board may refrain from sending invoices for shortfalls and/or payments for overages that are below any threshold amount that is from time to time determined by the Board.

Section 4.03. Failure to Read Meter. In the event a Non-Exempt Well owner fails to read the meter, which measures the amount of water pumped from its Well, the Authority shall have the right to read the meter. The Authority may establish the Well

owner's GRP Fee based on the Authority's reading, regardless of when the Authority reads the meter.

Section 4.04. Accuracy of Meters. Each Non-Exempt Well owner shall be responsible to install and maintain a Well meter on each Non-Exempt Well that meets all FBSD requirements, including but not limited to, registering a meter accuracy within the range of 97% to 103% accuracy (the "Meter Accuracy Range"). If the Authority at any time believes that the meter accuracy fails to fall within the Meter Accuracy Range, it may notify the Well owner and require that such meter be independently tested and the results reported to the Authority. If the testing reveals that the meter accuracy is within the Meter Accuracy Range, the Authority shall pay the cost of such testing and the cost of any necessary temporary meter used. If the testing reveals that the meter accuracy is not within the Meter Accuracy Range, then the Well owner shall pay the cost of such testing, the cost of any necessary temporary meter used, and the cost to recalibrate the meter such that the meter accuracy falls within the Meter Accuracy Range, and the owner shall be responsible for payment to the Authority of the GRP Fee for unread gallons, as determined by the Authority. If the owner refuses to test the meter after the Authority requires it to do so, the Authority may remove the Well meter for independent testing and recalibration, and replace it with a temporary meter. The Authority shall pay for the cost of such testing and temporary meter, unless the results show that the meter accuracy was not within the Meter Accuracy Range, in which case the Well owner shall be responsible for the cost of testing and recalibration of the meter, the cost of the temporary meter, and payment to the Authority of the GRP Fee for unread gallons, as determined by the Authority. Payment of the GRP Fee under this Section, for unread gallons resulting from a meter with meter accuracy not in compliance with the Meter Accuracy Range, shall be due to the Authority within 45 days after the Authority submits an invoice to the Well owner for same.

Section 4.05. Fort Bend Subsidence District Water Well Permitting. The FBSD has issued an aggregate water well permit to the Authority comprising all of the permitted non-exempt groundwater production for the Authority's GRP within Fort Bend County. The Authority shall be responsible for all administrative matters related to the aggregate water well permit, including permit renewal, payment of permit fees, requests for permit rebates, and year-end pumpage reporting requirements. Each Well owner listed on the Authority's aggregate water well permit shall provide the Authority data and information required by the Authority for the Authority to prepare and file documents with the FBSD related to well permitting. Each Non-Exempt Well owner shall maintain: (i) ownership of its Well(s) and operational responsibility therefor, and (ii) subject to groundwater reduction requirements imposed by the Authority, the terms of the GRP, and any limitations imposed by the FBSD, the right to pump from such Well(s) the amount of groundwater reasonably determined by such owner to be needed by such owner, for itself or for its customers, to provide water in accordance with at least the minimum regulatory requirements for pressure and supply, including, without

limitation, during an emergency requiring immediate use of groundwater (such as for firefighting purposes) so long as such owner is not committing waste or being wasteful. For purposes of this provision "waste" and "wasteful" shall have the most restrictive meaning ascribed to such terms in the following: (i) the Special District Local Laws Code Chapter 8834 with respect to Non-Exempt Wells in the FBSD, (ii) rules or requirements of the FBSD with respect to Non-Exempt Wells in the FBSD, or (iii) the terms of the aggregate water well permit issued to the Authority.

<u>Section 4.06.</u> <u>Well Procedures.</u> All requests for new Wells or changes in status to existing Wells subject to the Authority's GRP must first be submitted to the Authority and shall not be submitted directly to Fort Bend Subsidence District. Requests must be submitted to the Authority on the New Well or Activity Status Change Request form attached as Exhibit "B."

### ARTICLE V SURFACE WATER USE AND CONVERSION

Section 5.01. Self-Reporting. Each Surface Water user shall be responsible for reading the meter, which measures the amount of Surface Water delivered by the Authority, at the end of each month. Such measurement (even if it shows zero Surface Water usage for the month) shall be reported to the Authority on the reporting form promulgated by the Authority: (i) available electronically on the Online Reporting System, or (ii) if the Authority determines that access to the Online Reporting System is not reasonably available to a Person, then reporting may be made via the non-electronic reporting form attached hereto as Exhibit "A," provided permission to use the non-electronic reporting form is obtained in writing from the Authority. Along with the user's monthly Surface Water Fee payment, the user shall provide the reporting form to the Authority no later than the last day of the second month following the month for which Surface Water usage is required to be calculated. (For example, the reporting form for January Surface Water usage is due by February 28th; the reporting form for February Surface Water usage is due by March 31st; etc.) The Authority reserves the right to request more frequent reporting, at its sole discretion.

<u>Section 5.02</u>. <u>Audits</u>. The Authority shall have the right to audit the Surface Water usage measurements submitted by the Surface Water user by reading the Surface Water meter. In addition, the Authority, at its discretion, may read the meter for any other reason.

Section 5.03. Failure to Read Meter. In the event a Surface Water user fails to read the meter, which measures the amount of Surface Water delivered, the Authority shall have the right to read the meter. The Authority may establish the Surface Water user's Surface Water Fee based on the Authority's reading, regardless of when the Authority reads the meter.

Section 5.04. Delivery Point and Measuring and Control Equipment. The delivery point of water (the "Delivery Point") by the Authority to a Person receiving Surface Water shall be the output flange of the meter and control valve assembly (collectively, the "Control Valve Assembly") installed by the Authority to serve such Person. No Person shall connect to the Authority System, unless and until the Authority consents in writing to such connection. If the Authority, at its option, so consents, the connection shall be made, provided the connection: (i) is in strict conformity with the terms and conditions of such Authority consent, (ii) has prior approval for the connection from the Commission, and (iii) meets all applicable Commission requirements. The Authority shall furnish, install, and operate, at its own expense, at the Delivery Point the necessary equipment and devices of standard type for measuring the quantity of Surface Water delivered by the Authority. Such Control Valve Assembly and other equipment installed by the Authority shall remain the property of the Authority.

Section 5.05. Testing of Measuring Equipment. The Authority may from time to time test the measuring equipment. Should the test of the measuring equipment show that the equipment is registering more than one hundred two percent (102%) or less than ninety-five percent (95%) of the water delivered, the total quantity of water delivered to the Person will be deemed to be the average daily consumption as measured by the measuring equipment when in working order, and the meter shall be corrected, repaired, or replaced by the Authority with accurate measuring equipment. In such event, the Person's payments for Surface Water to the Authority shall be adjusted (increased or decreased) for a period extending back to the time when the inaccuracy began, if such time is ascertainable; and if such time is not ascertainable, for a period extending back to the last test of the measuring equipment or 120 days, whichever is shorter.

Section 5.06. Delivery, Facilities and Title to Water. Each Person receiving Surface Water from the Authority shall be responsible to deliver water from the Delivery Point to and into the Person's water system. The Authority, and not the Person receiving Surface Water from the Authority, shall own, operate, and maintain: (i) any sensor equipment installed by the Authority on the Person's ground storage tank facilities or other water plant facilities and related electrical and control connections by conduit pipe, or other means, connecting such sensor equipment to the Authority's facilities (the "Sensor Line and Equipment"); and (ii) the Control Valve Assembly installed by the Authority. The Person receiving Surface Water from the Authority, and not the Authority, shall own, operate, and maintain all equipment, facilities, tanks, buildings, materials, wells, and lines downstream of the Control Valve Assembly, except for the Sensor Line and Equipment, and shall be responsible for any malfunctions of said items, including tank overflows. Unless otherwise agreed to in writing by the Authority, the Person receiving Surface Water from the Authority shall at all times, at the Person's expense, maintain an air gap, in accordance with a location

and specifications approved by the Authority, downstream of the Delivery Point before the water delivered by the Authority enters the Person's ground storage tank(s); provided, however, the Authority, at its option, may provide an alternative backflow prevention procedure or mechanism. Title to, possession, and control of Surface Water shall remain with the Authority until it passes through the Control Valve Assembly, where title to, possession, and control of the Surface Water shall pass from the Authority to the Person receiving same.

Section 5.07. Chloramine Disinfection. Usually, Surface Water delivered by the Authority will be disinfected with chloramines. Each Converted Customer is required to: (i) convert its water treatment system to a chloramine disinfection system, or install a chloramine disinfection system, prior to becoming a Converted Customer and no later than the date required by the Authority; and (ii) maintain use of such chloramine disinfection system thereafter for so long as such Converted Customer is connected to the Authority System and for so long as the Surface Water delivered by the Authority is disinfected with chloramines. The Authority shall provide notice to each Person to be Converted to Surface Water of the required conversion to chloramines. It shall be the responsibility of each Converted Customer (and each Person that receives water from a Converted Customer, for example and without limitation, via a water interconnect), and not the Authority, to: (i) notify such Converted Customer's (or such Person's) water customers and water users about its conversion to and use of chloramine disinfection; (ii) comply with any applicable United States Environmental Protection Agency and Commission (and other applicable agency) regulations and requirements, and applicable laws; and (iii) comply with any applicable Commission regulations and requirements, including the variance process for chloramines conversion and approval for interconnections. Prior to completion of design (and commencement of construction) of the chloramine disinfection system required by this Section, the Person to be converted to Surface Water shall submit plans and specifications to the Authority Engineer for review and approval. ANY SUCH APPROVAL DOES NOT RELIEVE THE PERSON, AND ITS ENGINEER, OF ADEQUATELY DESIGNING AND CONSTRUCTING THE FACILITIES AND ANY SUCH APPROVAL IS NOT AN ASSUMPTION BY THE AUTHORITY (OR THE AUTHORITY ENGINEER) OF RESPONSIBILITY OR LIABILITY FOR THE ADEQUACY (OR INADEQUACY) OF SUCH PLANS AND SPECIFICATIONS OR THE FACILITIES CONSTRUCTED THEREBY, ALL OF SAME BEING EXPRESSLY DISCLAIMED.

Section 5.08. Daily Amount. The Authority, the Authority Engineer, or the Authority Operator may from time to time designate a maximum daily amount of Surface Water (the "Maximum Daily Amount") to be taken by a Person and/or a minimum daily amount of Surface Water ("Minimum Daily Amount") to be taken by a Person. In such event, during any one day, no Person shall take from the Authority more than either the Maximum Daily Amount or less than the Minimum Daily Amount. The Authority may from time to time increase or decrease a Person's

Maximum Daily Amount and/or Minimum Daily Amount, as determined necessary by the Authority, the Authority Engineer, or the Authority Operator. If in violation of this Rate Order, and in addition to all other remedies available to the Authority (including, without limitation, those set forth in this Rate Order), a Person takes more than its Maximum Daily Amount or less than its Minimum Daily Amount in any one day, the Person shall be responsible for payment for any damages suffered by the Authority and payment for any charges incurred by the Authority related thereto (including, without limitation, any charges or fees charged to the Authority by Houston, the FBSD, or the HGSD).

Section 5.09. Quantity or Pressure of Water. Notwithstanding any provision of this Rate Order, and unless otherwise specified in a water supply commitment agreement, the Authority does not and will not guarantee to any Person a specific quantity or pressure of water for any purpose whatsoever. Unless such a water supply commitment agreement is in place, the above limitations on quantity and pressure may be inadequate to fulfill the Commission's regulations and requirements for capacity and water quality. In no case shall the Authority be liable for the failure or refusal to furnish water or any particular amount or pressure of water.

Section 5.10. Interruptions in Service. The Authority shall use reasonable efforts to deliver to any Person with whom the Authority has entered into a written water supply commitment agreement a constant and uninterrupted supply of Surface Water in the amount provided in such agreement. Notwithstanding any provision of this Rate Order or any applicable agreement entered into by the Authority, the Authority may interrupt, reduce, or cease deliveries of Surface Water if such interruption or reduction is necessary: (i) due to limitations in the Authority System or Houston's water system; (ii) in case of emergencies or breakdowns in the Authority System or Houston's water system; or (iii) for equipment installation, repairs, modifications, replacements, inspections, or maintenance on the Authority System or Houston's water system. In addition, the Authority may interrupt, reduce, or cease deliveries of Surface Water if such interruption or reduction is necessary for purposes of the Authority's GRP. The Authority shall have no liability to any Person for any damages caused by any interruption in service or any failure (partial or total) to deliver Surface Water.

Section 5.11. Maintenance of Groundwater Wells. In order to have an alternative water supply source in the event that the Authority's water service is interrupted or ceases for any reason, Persons that have converted, in whole or in part, to usage of Surface Water are strongly encouraged by the Authority to at all times: (i) maintain their existing groundwater well(s) and other groundwater facilities; and (ii) maintain water line interconnect(s) with other political subdivision(s) of this State that have functioning groundwater well facilities.

<u>Section 5.12</u>. <u>Early Conversion</u>. To the extent that a Person desires to purchase Surface Water for any reason in advance of the date that the Authority intends to

provide Surface Water to such Person, such Person may submit a written request for Surface Water to the Authority, which request will be evaluated by the Authority, in its sole discretion, on economic feasibility, GRP cost, and other factors; and the Authority will determine, in its sole discretion, if such request can be satisfied, in what amount, and according to what time frame and terms.

Section 5.13. Compliance with GRP. Pursuant to the Act, the Authority is authorized to develop, prepare, revise, adopt, implement, enforce, manage, or participate in the GRP. The GRP may specify the measures to be taken to reduce groundwater withdrawals and the dates and extent to which Persons shall reduce or terminate withdrawal of groundwater and instead receive water from alternative sources. The Authority, the Authority Engineer, and/or the Authority Operator shall manage and enforce the GRP, including without limitation coordination with the FBSD or HGSD, monitoring compliance with the GRP, and enforcing the terms of the GRP. All Persons shall comply with the terms of the GRP and all other Authority orders and requirements (including, without limitation, those from the Authority Engineer or the Authority Operator) for the reduction of groundwater usage and the allocation of Surface Water. The Authority, the Authority Engineer, and/or the Authority Operator may from time to time issue groundwater reduction requirements to Persons in order to: (a) comply with or exceed FBSD or HGSD groundwater reduction requirements; (b) satisfy the terms of the GRP; and/or (c) allocate Surface Water among Persons, including requiring Persons to from time to time timely take Surface Water from the Authority in amounts determined by the Authority.

Section 5.14 Early-Conversion/Over-Conversion Credits. The Authority, and not the Person within the Authority's GRP, shall receive and be entitled to any early-conversion or over-conversion credits issued by the FBSD or HGSD related to Surface Water or any water other than groundwater (including but not limited to Non-Potable Water) consumed or utilized by any Person within the Authority's GRP. No Person within the Authority's GRP shall obtain (or attempt to obtain) for such Person's own benefit or the benefit of anyone other than the Authority or sell (or attempt to sell), any such early-conversion or over-conversion credits. If requested by the Authority, Persons within the Authority's GRP shall cooperate with the Authority (including, without limitation, by amending their HGSD or FBSD well permits, as applicable), in order to enable the Authority to receive such early-conversion or over-conversion credits.

Section 5.15. Inadequate Groundwater Facilities. Districts or users that need or desire Surface Water because they do not have adequate groundwater facilities (or for any other reason) may request a water supply commitment agreement from the Authority. At the Authority's discretion, the Authority may, according to terms and conditions acceptable to the Authority, enter into such an agreement. Only water supply commitment agreements guaranteeing quantity and pressure may be adequate to fulfill the Commission's regulations and requirements for capacity and water quality.

Section 5.16. Compliance of Person's Water System. In order to protect the Authority's System, each Person's water system that is receiving Surface Water from the Authority, shall be constructed and operated to comply with the rules promulgated by the Commission, or any successor agency, and the policy requirements of Houston regarding backflow prevention and cross connections. Should a condition in violation of these requirements be discovered, such Person shall promptly cure same. If determined necessary by the Authority or if the Person fails to promptly cure same, the Authority, in addition to all other remedies available to it (including, without limitation, those provided in this Rate Order), may cure same, at the cost and expense of the Person. The Authority may conduct inspections from time to time to determine that no conditions exist in such Person's water system and in connections to the Person's customers' premises which would or might adversely affect the Authority System.

Section 5.17. Termination and Reconnection of Service. The Authority may, in its discretion, disconnect service for failure to pay all charges, including penalties and interest, by the 50th day after the Due Date; provided, however, that prior to disconnecting services, the Authority shall send written notice by United States first class mail to the Person at the appropriate address and provide the Person with an opportunity to contest, explain, or correct the charges, services, or disconnection, at a meeting of the Board. The written notice shall inform the Person of the amount of the delinquent payment, the date service will be disconnected or additional service withheld if payment is not made, the date, time, and place of the next scheduled meeting of the Board, and of the opportunity to contest, explain, or correct the charges, services, or disconnection, by presenting in person or in writing such matter to the Board at the next scheduled meeting as shown on the notice. The date specified for disconnection shall be ten (10) days after the date of the next scheduled meeting of the Board as shown in the notice, and the date for withholding additional service shall be ten (10) days after the date of that Board meeting. The notice shall be deposited, postpaid, in a post office or official depository under the care and custody of the United States Postal Service at least ten (10) days prior to the date of the scheduled meeting of the Board. A written statement by the Authority Operator that the notice was so mailed and a certificate of mailing by the United States Postal Service shall be prima facie evidence of delivery of same. If the Person appears before the Board in person or in writing, the Board shall hear and consider the matter and inform the Person of the Board's determination by sending written notice by United States first class mail to the Person at the appropriate address. If service to a Person is disconnected for nonpayment of a delinquent bill or for any cause legally authorized, a reconnection fee of \$500 shall be paid prior to service being restored. In the event that the Authority Operator removes a Person's meter due to unauthorized reconnection of service subsequent to its termination by the Authority, a reinstallation fee of \$500 shall be paid prior to service being restored, which fee is in addition to any other fees imposed (including, without limitation, the reconnection fee).

Section 5.18. Authority Reimbursement to a Converted Customer. In lieu of the Authority designing or installing the Water Line Tank Connection or the Chloramine System (both defined below), the Authority has determined to require Persons that will become Converted Customers to design and install the Water Line Tank Connection and the Chloramine System and to allow certain of the related costs incurred by Converted Customers to be eligible for potential reimbursement from the Authority, as provided in this Section. Nothing in this Section shall be construed as limiting the Authority's right to require a Person, at the Person's sole cost, to: (i) convert to Surface Water, or (ii) install the Water Line Tank Connection or the Chloramine System. Unless agreed to otherwise in writing by the Board, the Converted Customer, and not the Authority, shall own, maintain, operate, and repair (and be responsible to obtain any appropriate insurance for) the Water Line Tank Connection and Chloramine System and also the Converted Customer's water plant buildings, tanks, and water wells. Notwithstanding the foregoing, nothing in this Section shall be construed as limited the Converted Customer's obligations as the receiving system to comply with Commission regulations and requirements. For example, in the event of a violation, the Commission will hold the Converted Customer responsible for any problems associated with the connection or chloramines system.

- (a) If a written request for reimbursement is made by a Converted Customer to the Authority as set forth in this Section, then such Converted Customer may be eligible for Authority reimbursement of construction and engineering costs for the Water Line Tank Connection and the Chloramine System as follows:
  - (i) The Converted Customer may be eligible for reimbursement of the actual and reasonable construction and engineering costs incurred by the Converted Customer to construct a segment of water line ("Water Line Tank Connection") from the Authority's water meter/vault facilities to such Customer's ground storage tank facilities (or other water plant facilities). A Converted Customer shall not be eligible for this reimbursement if the Converted Customer fails to execute a Realty Interest Document in favor of the Authority in a form and at the time required by the Authority, and at no expense to the The Authority may require that such Realty Interest Authority. Document, among other things, allow the Authority the right to: (i) install, own, operate, and maintain water line and/or meter facilities and related appurtenances, and (ii) install, own, operate, and maintain sensor equipment on such Customer's ground storage tank facilities (or other water plant facilities) and electrical and control connections by conduit pipe (or other means) connecting such sensor equipment to the Authority System. No costs for repair, maintenance, operation, upgrade, or replacement of the Water Line Tank Connection shall be eligible for reimbursement from the Authority. Such items that are

ineligible for reimbursement include, but are not limited to, painting of water tanks beyond those areas that are affected by the conversion to chloramines disinfection system, modifications to a Converted Customer's facilities downstream of its water tanks, building modifications, and access modifications.

- (ii) The Converted Customer may be eligible for reimbursement of the actual and reasonable construction and engineering costs incurred by the Converted Customer to convert its water treatment system from a chlorine disinfection system to a chloramine disinfection system ("Chloramine System"), including but not limited to adding ammonia storage and feed facilities, modifying chlorine storage and feed facilities, making control system modifications, and installing all necessary appurtenances thereto.
- (iii) The purpose of this reimbursement is intended for costs associated with converting a pre-existing disinfection system to a chloramines disinfection system. Accordingly, unless approved in writing by the Authority, Persons scheduled by the Authority to become Converted Customers will not be eligible for a Chloramine System reimbursement on any new water plants constructed within three years before such time as Surface Water is generally available from the Authority, as determined by the sole discretion of the Authority. No costs for repair, maintenance, operation, upgrade, or replacement of a Chloramine System shall be eligible for reimbursement from the Authority. Such items that are ineligible for reimbursement include, but are not limited to, painting of water tanks beyond those areas that are affected by the conversion to chloramines disinfection system, modifications to a Converted Customer's facilities downstream of its water tanks, building modifications, and access modifications. addition to the foregoing, in the event that a Converted Customer annexes additional land into the boundaries of the Converted Customer, whether contiguous or otherwise, costs related to the Chloramine System on any new water plants constructed by the previously Converted Customer shall not be reimbursement by the Authority. The foregoing sentence shall apply regardless of the timeline on which the Authority may deliver Surface Water to the property annexed by the Converted Customer.
- (b) Actual and reasonable engineering costs will be eligible for reimbursement in an amount not to exceed 25% of the actual and reasonable construction costs that are eligible and approved by the Authority for reimbursement under this Section if, and only if, such approved construction costs are less than or equal to \$500,000 for each water plant of the Converted Customer. If such approved construction costs are greater

than \$500,000 for each water plant of the Converted Customer, then the percentage of engineering costs eligible for reimbursement will be determined by the Board at the Board's sole discretion.

- (c) Any reimbursement pursuant to this Section shall be subject to approval by the Authority Engineer; and any such reimbursement shall be made in accordance with standards approved by the Authority Engineer and the Board, which standards may change from time to time. Prior to completion of design (and commencement of construction) of the Water Line Tank Connection and Chloramine System, the Person to be converted to Surface Water shall submit plans and specifications to the Authority Engineer for review and approval. The Authority Engineer will provide written approval of the plans and specifications that are not eligible for reimbursement by the Authority in accordance with this Section. ANY SUCH APPROVAL DOES NOT RELIEVE THE PERSON, AND ITS ENGINEER, OF ADEQUATELY DESIGNING AND CONSTRUCTING THE FACILITIES AND ANY SUCH APPROVAL IS NOT AN ASSUMPTION BY THE AUTHORITY (OR THE AUTHORITY ENGINEER) OF RESPONSIBILITY OR LIABILITY FOR THE ADEQUACY (OR INADEQUACY) OF SUCH PLANS AND SPECIFICATIONS OR THE FACILITIES CONSTRUCTED THEREBY, ALL OF SAME BEING EXPRESSLY DISCLAIMED.
- (d) Construction of the Water Line Tank Connection and the Chloramine System shall be done pursuant to the competitive bidding requirements of Chapter 49, Texas Water Code, or, if applicable, the Commission emergency approval of negotiated contracts under Section 49.274, Texas Water Code. In the event the Water Line Tank Connection and Chloramine System are constructed pursuant to a contract negotiated under said Section 49.274 (instead of a contract that was competitively bid pursuant to said Chapter 49), the Board may disapprove any amount of reimbursement sought by the Converted Customer if the Board determines that the reimbursement exceeds the costs that would have been incurred had the contract been competitively bid.
- (e) Unless otherwise agreed to in writing by the Board in its sole discretion, the potential reimbursement eligibility set forth in this Section shall not be available until and after a Person becomes a Converted Customer. Accordingly, for example and without limitation, a Person that is not directly connected to the Authority System but that receives water through a water interconnect with a Converted Customer shall not be eligible for the potential reimbursement described in this Section until and after such Person becomes a Converted Customer. In addition to and without limiting the other provisions of this Section, and in addition to any other remedies available to the Authority, some or all of the potential reimbursement eligible to a Converted Customer under this Section may be reduced or eliminated by the Board: (i) if the Converted Customer fails to install the Water Line Tank Connection and Chloramine System and commence receiving Surface Water by the date that the Authority is able to deliver Surface Water; or (ii) if the Converted Customer fails to submit a written request for reimbursement (with adequate supporting documentation) to the Authority within 180

days after the Person becomes a Converted Customer. No interest or interest expenses shall be included in any potential reimbursement eligible under this Section.

- (f) A Converted Customer shall not be eligible for the reimbursement described in this Section if the Converted Customer fails to obtain approval of its plans and specifications by the Authority Engineer in accordance with the provisions above.
- (g) Any and all reimbursement pursuant to this Section shall be subject to Board approval, which approval may be granted or denied based on the Board's sole discretion. Any requests for variances from the reimbursement procedures and policies contained in this Section must be submitted to the Board in writing prior to a Person commencing the design of the Water Line Tank Connection or the Chloramine System. The Authority may require a Person to execute a receipt and release in a form acceptable to the Authority prior to receiving any reimbursement under this Section.

Section 5.19. Realty Interest Documents. During the course of constructing the facilities necessary to serve an intended Converted Customer with Surface Water, the Authority will need certain realty interests to provide and/or meter Surface Water delivered by the Authority to the intended Converted Customer. An intended Converted Customer shall execute any Realty Interest Documents in favor of the Authority in a form and at the time required by the Authority, and at no expense to the Authority, necessary to provide the intended Converted Customer with Surface Water, as determined by the Authority in its sole and reasonable discretion.

### ARTICLE VI COLLECTION OF FEES

<u>Section 6.01</u>. <u>Late Penalties and Interest</u>. Payments of any fees, charges, or rates shall be considered delinquent if they are received more than 10 days after the Due Date (the "Delinquent Date"). A payment postmarked after the Delinquent Date shall be deemed delinquent. Payments of any fees, charges or rates received by the Authority after the Delinquent Date will be subject to a late penalty of 2% of the fees, charges, or rates due, and such 2% penalty shall be due to the Authority on the first day such fees, charges, or rates are late. Notwithstanding the foregoing, the 2% late penalty shall not exceed an amount of \$2,000. An additional 5% penalty (for a total penalty of the lesser of 7% or \$2,000 plus 5%) shall be imposed if the payment is received more than 30 days after the Due Date, and such additional 5% penalty shall be due to the Authority on the 31st day after the Due Date. Additionally, overdue amounts (including late penalties) shall accrue interest, from the day after the Delinquent Date until the day the overdue amount is paid to the Authority, at an annual interest rate ("Interest Rate") of 5.5%. On September 1st of each calendar year (the "Current Calendar Year"), the Interest Rate shall automatically reset to the lesser of: (1) one percent plus the prime rate as published in the Wall Street Journal on the first day of July of the current calendar year that does not fall on a Saturday or Sunday; or (2) one percent <u>plus</u> the prime rate as published in

the Wall Street Journal on the first day of July of the year preceding the current calendar year that does not fall on a Saturday or Sunday. (For example, if said prime rate was 5.0% on July 1, 2018 and is 5.5% on July 1, 2019, then on September 1, 2019, the Interest Rate shall be 5.0% plus 1%, or 6.0% per annum. The prime rates reflected in the previous sentence represent hypothetical rates, which may or may not be the actual prime rates as published in the Wall Street Journal.)

<u>Section 6.02</u>. <u>Collection Costs</u>. If the Authority is required to incur costs to collect an overdue account, all such costs, including court costs, reasonable attorney's fees, and expenses, shall be paid by the delinquent Person, and the Authority shall be entitled to collect such costs in any suit for collection of a delinquent account.

<u>Section 6.03</u>. <u>Expulsion from GRP</u>. The Board may exclude a Person, or any territory or Well owned or controlled by a Person, from the GRP for failure to make a complete or timely payment to the Authority of fees, user fees, rates, penalties, interest, or any other charges due to the Authority.

### ARTICLE VII AUTHORITY RULES

Section 7.01. Self-Reporting Violations. Each Non-Exempt Well owner and Surface Water user shall be responsible for reading the meter(s) to measure the amount of water pumped from each Non-Exempt Well and the amount of Surface Water received at the end of each month and for accurately reporting, in the manner provided in this Rate Order, such measurements (even if the measurements show zero pumpage or zero Surface Water usage) to the Authority on the form promulgated by the Authority on or before the due date. The Authority reserves the right to request more frequent reporting, at its sole discretion. Failure to make such measurements, or failure to accurately or timely report them to the Authority, shall be a violation of the Authority's rules. If a Person reports higher pumpage or higher Surface Water usage to the FBSD or HGSD than the Person reported to the Authority, the Authority shall be entitled to find that such Person did not accurately report to the Authority and therefore violated the Authority's rules.

Section 7.02. Failure to Comply with Measurement Requirements. Each Non-Exempt Well owner and Surface Water user is required to comply with the provisions of this Rate Order, including without limitation, allowing the Authority the right to: (1) audit Well pumpage and Surface Water usage; (2) read the Well owner's meter and the Surface Water meter; (3) enter the Well owner's land to audit and/or measure Well pumpage and Surface Water usage; (4) test and recalibrate, if necessary, the Well owner's meter and the Surface Water meter. Failure of the Well owner to comply with such provisions, or any other provision of this Rate Order, shall be a violation of the Authority's rules.

Section 7.03. Calibration of Meters. Each Non-Exempt Well owner is responsible for keeping its Well meter within the Meter Accuracy Range (as defined in Section 4.04 above). It shall be a violation of the Authority's rules for any Well owner who knows or should reasonably know that its Well meter's accuracy is not within the Meter Accuracy Range to fail to promptly correct such meter and to correct any reports previously made to the Authority of inaccurate data. In addition to the foregoing, each Non-Exempt Well owner shall be required to conduct a meter calibration test, at its sole cost and expense, on each Non-Exempt Well once per calendar year. Notwithstanding anything to the contrary in the FBSD's requirements related to meter calibration, the requirement set forth in the preceding sentence shall apply to all Non-Exempt Wells regardless of meter diameter. Only equipment capable of accuracy results of plus or minus one percent of actual flow with repeatable accuracy of ½ of 1 percent may be used to calibrate or test meters. A copy of the accuracy verification report must be submitted to the Authority on or before December 31st of each calendar year confirming that the meter accuracy is within the Meter Accuracy Range.

<u>Section 7.04</u>. <u>Payment Violations</u>. Each Person shall be responsible for paying the Authority the GRP Fees, Surface Water Fees, Imported Water Fees, and any other charges (including, without limitation, any penalties and interest) due the Authority on or before the due date. Failure to make such payment when due shall be a violation of the Authority's rules.

Section 7.05. GRP. Each Person shall be responsible to promptly comply with the GRP and all directives and requirements issued by the Authority, the Authority Engineer, or the Authority Operator for the purposes of or related to the GRP, including, without limitation, all requirements that the Person: (i) take (or refrain from taking) amount(s) of Surface Water from time to time required by the Authority; and (ii) install the Water Line Tank Connection and Chloramine System by the date the Authority is able to deliver Surface Water to the Person. In addition, no Person shall utilize the Shut-off Valve(s) to control the rate of flow of Surface Water being delivered by the Authority, as such Shut-off Valves are intended only to be used in the event a waterline needs to be taken out of service. Failure to comply with the provisions of this Section shall be a violation of the Authority's rules.

Section 7.06. <u>Daily Amount</u>. If the Authority, Authority Engineer, or Authority Operator has designated a Maximum Daily Amount or Minimum Daily Amount for a Person connected to the Authority System, then such Person shall be responsible to take no more than its Maximum Daily Amount and no less than its Minimum Daily Amount during any one day. Failure to so comply shall be a violation of the Authority's rules.

Section 7.07. Water Conservation Program. To encourage efficient use of water, the Authority requires Non-Exempt Well owners and/or Persons receiving Surface Water to (i) approve and submit to the Authority by May 1, 2012 (or prior to receiving Surface Water if delivery shall occur after May 1, 2012), a water conservation plan

meeting or exceeding the minimum State requirements for retail water providers with 3,300 or more connections, and (ii) submit Annual Reports documenting the implementation of the water conservation plan to the Authority by May 1<sup>st</sup> of each year on the Annual Report form promulgated by the Texas Water Development Board. If such Person intends to resell the Surface Water to a wholesale customer of such Person, then the Person shall require its wholesale customer to also implement water conservation measures pursuant to 30 Texas Administrative Code § 288.

Section 7.08. Right of Entry. Each Person shall be responsible: (1) to timely comply with the Section of this Rate Order entitled "Right to Enter Land"; and (2) to not prevent or hinder the Authority's rights under the Section of this Rate Order entitled "Right to Enter Land." Failure to do so shall be a violation of the Authority's rules.

<u>Section 7.09</u>. <u>Authority Rules and Orders</u>. All requirements set forth in this Article VII are adopted as rules of the Authority. All requirements and rules set forth in any part of this Rate Order shall be considered orders of the Authority.

Section 7.10. Interconnect Agreements. In order for the Authority to maintain an accurate inventory of the interconnects for all of the Non-Exempt Well owners and/or Persons within its boundaries, each Non-Exempt Well owner and/or Person that is a party to an interconnect agreement, regardless of whether or not the other party is located within the boundaries of the Authority, must submit copies of all interconnect agreements currently in effect or entered into in the future to the Authority. A copy of each interconnect agreement currently in effect must be submitted by September 1, 2012, and copies of interconnect agreements entered into after July 25, 2012 must be submitted by September 1, 2012 or within 30 days of execution. Further, as of October 1, 2012, any new interconnects constructed for the benefit of a Non-Exempt Well owner and/or Person located within the Authority's boundaries with parties located outside of the Authority's boundaries must be metered. Interconnects in which all parties are located within the Authority's boundaries or interconnects that were constructed prior to October 1, 2012 with parties outside of the Authority's boundaries shall not be subject to this requirement.

Section 7.11 Regional System Agreements. If a Non-Exempt Well is part of a regional system, the Non-Exempt Well owner must submit the agreement relating to such regional system, including the regional system's participating entities and/or persons, to the Authority by September 1, 2012. If any new agreements and/or amendments relating to Non-Exempt Wells within regional systems are entered into after July 25, 2012, such agreement and/or amendment must be submitted to the Authority by September 1, 2012 or within 30 days of execution.

<u>Section 7.12</u>. <u>Contact Information Submission</u>. In order to have accurate contact information to be able to readily contact all Non-Exempt Well owners in the case of an emergency or to transmit other necessary communication, each Non-Exempt Well

owner has the responsibility to inform the Authority of the key persons involved with their system, including, as applicable, the Non-Exempt Well owner's operator, engineer, bookkeeper, attorney, and management company. Should the contact information for any of the foregoing persons change, the Non-Exempt Well owner should submit notification to the Authority as soon as reasonably practicable.

## ARTICLE VIII CIVIL PENALTIES AND MISCELLANEOUS

Section 8.01. Civil Penalty. A Person is subject to a civil penalty of up to \$10,000 for each violation or each day of a continuing violation if the Person: (i) violates any provision of this Rate Order, the GRP, any rules contained in either of same, or any other order or rule of the Authority, (ii) makes unauthorized use of Authority services or facilities, or (iii) causes damage to Authority facilities by using such facilities in a manner or for a purpose contrary to the purpose for which such facilities were designed. The Board may set the penalty based on (all as determined by the Board): (i) the severity of the offense; (ii) whether such violation was willful, knowing, reckless, or inadvertent; (iii) the history of conduct by such Person; (iv) the damages sustained by the Authority; (v) the risk or damage to the GRP; and (vi) any other factors determined appropriate by the Board. The Authority may bring an action to recover the penalty in a district court in the county where the violation occurred. The penalty shall be paid to the Authority.

Section 8.02. Other Penalties for Rate Order or GRP Violations. Any Person who violates any provision of this Rate Order or the GRP in addition to being subject to the penalties described in this Rate Order, shall be subject to: (i) having Surface Water service terminated; or (ii) expulsion from the Authority's GRP; provided, however, that prior to disconnecting Surface Water service for violations that do not constitute a hazard to health or safety or endanger the integrity of the Authority System or adversely affect the Authority's GRP or excluding a Person from the Authority's GRP, the Authority shall give written notice by first class mail or otherwise, to such Person of the pending disconnection or anticipated expulsion, and shall give such Person the opportunity to contest, explain, or correct the violation at a meeting of the Board. Such disconnection or expulsion shall be in addition to penalties that may be imposed by the Authority under this Rate Order and remedies that may otherwise be available to the Authority.

Section 8.03. <u>Injunction</u>. The Authority may bring an action for injunctive relief in a district court in the county where a violation of an authority rule or order occurs or is threatened to occur. The Authority may bring an action for a civil penalty and injunctive relief in the same proceeding

<u>Section 8.04.</u> Right to Enter Land. In addition to any other rights that the Authority may have (by easement or otherwise), the Authority and its representatives

shall have the authority to enter upon any public property (including, without limitation, property owned by a District) or private property within the Authority's boundaries or property adjacent to any property owned by the Authority (and enter upon any property owned by a District included in the Authority's GRP by contract) at any reasonable time in order to: (1) inspect, repair, install, test, maintain, or operate any Authority facilities or to test or monitor the Surface Water delivered by the Authority; (2) audit Well pumpage or Surface Water measurements submitted by a Person to the Authority; (3) measure Well pumpage or Surface Water usage; (4) inspect and investigate conditions relating to the quality of water in the State of Texas; and/or (5) investigate compliance with any Authority rule, regulation, permit, or order. requested by the Authority or Authority Operator, a Person shall immediately cooperate with the Authority or Authority Operator to allow the Authority or Authority Operator to enter such site(s) for any of such purposes. Authority representatives entering private property pursuant to this Section shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection and shall notify any occupant or management of their presence and shall exhibit proper credentials.

Section 8.05. Groundwater Reduction Plan Participation Agreements. Any Person that is a member or participant of the Authority's GRP through a written contract with the Authority shall be subject to all of the terms, provisions, rules, requirements, and penalties of this Rate Order and all other orders, resolutions, and requirements of the Authority, to the extent they are not inconsistent with the terms and provisions of such written contract.

Section 8.06. Non-Potable Water Agreements. The Authority from time to time may enter into written contracts governing the purchase and/or use of Non-Potable Water and/or related infrastructure. All such contracts shall be subject to all of the terms, provisions, rules, requirements, and penalties of this Rate Order and all other orders, resolutions, and requirements of the Authority, to the extent that they are not inconsistent with the terms and provisions of such written contract. reporting for all metered Non-Potable Water required pursuant to the terms of each contract shall be reported to the Authority on the reporting form promulgated by the Authority (i) available electronically on the Online Reporting System, or (ii) if the Authority determines that access to the Online Reporting System is not reasonably available to a Person, then reporting may be made via the non-electronic reporting form attached hereto as Exhibit "C," provided permission to use the non-electronic reporting form is obtained in writing from the Authority. If in the sole and reasonable discretion of the Authority, it is determined that neither of the foregoing reporting methods are suitable for the specific project, the Authority may request direct reporting to the Authority Engineer. Such reporting shall be provided to the Authority no later than the last day of the second month following the month for which Non-Potable Water usage is required to be calculated. (For example, the reporting form for January pumpage is due by February 28th; the reporting form for February pumpage is due by March 31st; etc.). The Authority reserves the right to request more frequent reporting, at its sole discretion.

Section 8.07. Prior Resolutions Establishing Groundwater Reduction Plan Fees and Rate Orders. The Authority retains all of its rights and remedies under all prior Authority Resolutions Establishing Groundwater Reduction Plan Fee, as amended.

<u>Section 8.08</u>. <u>Amendments to Rate Order and GRP</u>. As determined necessary by the Authority, the Authority reserves the right to modify from time to time: (1) the rates, charges, and fees contained in this Rate Order; (2) any other terms and provisions of this Rate Order; and (3) its GRP.

Section 8.09. <u>Authority Designee</u>. The Authority hereby designates the Board President, Board Vice President, Board Assistant Vice President, the Authority Engineer, and/or the Authority Operator to exercise the Authority's powers under its GRP and this Rate Order.

Section 8.10. Refusal to Add Persons to GRP. The Board, at its discretion, may refuse to add Persons (and their wells) to the GRP, including, without limitation, any Person seeking to be re-admitted to the GRP who at any time had been removed from the GRP because the Person's groundwater pumpage reduced below the amount required for the Person to be subject to FBSD or HGSD groundwater reduction requirements.

<u>Section 8.11</u>. <u>No Waiver</u>. The failure of the Authority to insist, in any one or more instances, upon a Person's performance of any of the terms, requirements, or conditions of this Rate Order shall not be construed as a waiver or relinquishment of the future performance of any such term, requirement, or condition by that Person or any other Person.

Section 8.12. Lien. Pursuant to Section 8813.108, fees and user fees imposed by the Authority under Section 8813.103(b), any related penalties and interest, collection expenses, and reasonable attorney's fees incurred by the Authority are a first and prior lien against the well to which the fees or user fees apply. The Authority may enforce said lien in any manner provided by the Act or other law.

[EXECUTION PAGE FOLLOWS]

### ADOPTED THIS 19th DAY OF DECEMBER, 2019.

NORTH FORT BEND WATER AUTHORITY

By:

President, Board of Directors

ATTEST:

By:\_

Secretary, Board of Directors

(SEAL)



## EXHIBIT A NORTH FORT BEND WATER AUTHORITY Pumpage/Surface Water and Billing Form Effective January 1, 2020

	pg	**		
Name of Well Owner	or Recipient of Surface	Water:		
Identify: Well #1:	; Well #2:	; Well #3:	; Well #4:	
Identify: Meter #1:	; Meter #2:	; Meter	#3:	; Meter #4:
	Check the billing	period for which t	his report is bei	ng filed
Billing F	Period	Rate		Due Date
		0.5		7 1 20 20

Billing Period	Rate	Due Date
January 1-31, 20	\$3.95 pumpage/ \$4.30 surface	February 28, 20
February 1-28/29, 20	\$3.95 pumpage/ \$4.30 surface	March 31st, 20
March 1-31, 20	\$3.95 pumpage/ \$4.30 surface	April 30, 20
April 1-30, 20	\$3.95 pumpage/ \$4.30 surface	May 31, 20
May 1-31, 20	\$3.95 pumpage/ \$4.30 surface	June 30, 20
June 1-30, 20	\$3.95 pumpage/ \$4.30 surface	July 31, 20
July 1-31, 20	\$3.95 pumpage/ \$4.30 surface	August 31, 20
August 1-31, 20	\$3.95 pumpage/ \$4.30 surface	September 30, 20
September 1-30, 20	\$3.95 pumpage/ \$4.30 surface	October 31, 20
October 1-31, 20	\$3.95 pumpage/ \$4.30 surface	November 30, 20
November 1-30, 20	\$3.95 pumpage/ \$4.30 surface	December 31, 20
December 1-31, 20	\$3.95 pumpage/ \$4.30 surface	January 31, 20

Gallons of Water Pumped, Imported, or Purchased for Billing Period

	Start Meter Reading	End Meter Reading	Total
Well #1			
Well #2			
Well #3			
Well #4			
Imported Water			
Surface Water			
For additional	wells, attach a second report	ing form and put total from a	all wells below.
ALL			

1	Enter total gallons of water pumped	
2	Divide by 1,000	
3	Total pumpage fee due (multiply line 2 x 3.95)	
4	Enter total gallons of surface water received	
5	Divide by 1,000	
6	Total surface water fee due (multiply line 5 x 4.30)	
7	Enter total gallons of water imported	
8	Divide by 1,000	
9	Total import fee due (multiply line 8 x 3.95 or 4.30)	
10	LESS APPLICABLE CREDIT DUE FROM CAPITAL CONTRIBUTION	
11	Total due (add lines 3, 6, and 9 then subtract line 10)	

I declare that the above information is true and correct to the best of my knowledge and belief.

Dated:	By:
Name:	Title:

If your payment is received late (as defined in the Authority's Amended Rate Order) the Authority will send you an invoice for the late penalties and interest set forth in the Authority's Amended Rate Order.

Make check payable to: North Fort Bend Water Authority; c/o AVANTA Services, 5635 Northwest Central Drive, Suite 104E, Houston, Texas 77092 (rates effective 1/1/2020)

### **EXHIBIT B**

### NEW WELL OR ACTIVITY STATUS CHANGE REQUEST FORM

## NORTH FORT BEND WATER AUTHORITY STATUS CHANGE FORM - FOR WELLS OR SURFACE WATER METERS

Date of request	Date change made on Online Reporting System				
ADD A WELL OR SURFA	CE WATER METER				
Well Owner					
Well or Meter No.	#	Well(check one)	Surface water meter	r	
Date pumpage or delivery to	begin		Beginning reading _		Alexandria de la compansión de la compan
Well inside NFB\	WA, outside	e NFBWA (che	ck one)		
Additional information		The State of the S			
		THE STATE OF THE S			
CHANGE IN EXISTING W	<u>ELL OR SURFACE V</u>	VATER METE	R STATUS		
Well Owner					
Well or Meter No.	# Well	Surface v	water meter	Meter reading	Will farm Colonic Spaces
Change status to: (check one)	Active	A	In-Active		
	Exempt	Victoria de la compansión de la compansi	_ Non-Exempt		
Effective date of change					
Additional information		unnachania maniespeirie curi, municipi prima		Management (Section Control of Co	
				Hadriner over velsche gleiter i deskunde	
BGE, Inc.	Name (printed):				
	Signature & date:	MILLION CONTRACTOR CONTRACTOR CONTRACTOR CONTRACTOR CONTRACTOR CONTRACTOR CONTRACTOR CONTRACTOR CONTRACTOR CONT			
	Name (printed):				
	Signature & date:				

## EXHIBIT C NORTH FORT BEND WATER AUTHORITY Non-Potable Water and Billing Form Effective January 1, 2020

Name of Non-Potable Wate	r System:					
	Check the bi	illing period for	r which th	is rej	port is being file	ed
Billing Period		Rate			Credit	Due Date
January 1-31, 20		\$3.95 pump	oage		\$0.75	February 28, 20
February 1-28/29, 20		\$3.95 pump	oage		\$0.75	March 31st, 20
March 1-31, 20		\$3.95 pump	oage		\$0.75	April 30, 20
April 1-30, 20		\$3.95 pump			\$0.75	May 31, 20
May 1-31, 20		\$3.95 pump			\$0.75	June 30, 20
June 1-30, 20		\$3.95 pump	oage		\$0.75	July 31, 20
July 1-31, 20		\$3.95 pump			\$0.75	August 31, 20
August 1-31, 20		\$3.95 pump	oage		\$0.75	September 30, 20
September 1-30, 20		\$3.95 pump	page		\$0.75	October 31, 20
October 1-31, 20		\$3.95 pump	oage		\$0.75	November 30, 20
November 1-30, 20		\$3.95 pump	oage		\$0.75	December 31, 20
December 1-31, 20		\$3.95 pump	oage		\$0.75	January 31, 20
	Galle	ons of Water Pi	umped for	· Billi	ing Period	
		er Reading			er Reading	Total
Reuse Effluent Meter				***********		
For Sto	rmwater and I	Rainwater Capt	ure Syste	ms u	se the following	grows:
Make-Up Well #1						
Irrigation Meter #1		***************************************		************		
Make-Up Well #2						
Irrigation Meter #2						***************************************
Make-Up Well #3				-		
Irrigation Meter #3						
	wells, attach	a second report	ing form	and r	out total from al	l wells below.
ALL				1		
	Total (	Credit Earned f	or Effluer	nt Re	use Systems	
1 Enter total gallons of re	euse effluent	metered				
2 Divide by 1,000						
3 Total pumpage fee due	or credit ear	ned (multiply li	ne 2 x 3.9	95 or	line 2 x 0.75)	
					water Capture S	ystems
1 Enter total gallons of N	Aake-up Wate	er minus the Irr	igation M	eter i	#1	
2 Enter total gallons of N	∕lake-up Wate	er minus the Irr	igation M	eter	#2	
3 Enter total gallons of N	Лаke-up Wate	er minus the Irr	igation M	eter i	#3	
4 Divide by 1,000						
5 Total credit earned (mi	altiply line 4 :	x 0.75)				
I declare that the above info					y knowledge an	
Name:			Tit	tle: _	<u> </u>	

If your payment is received late (as defined in the Authority's Amended Rate Order) the Authority will send you an invoice for the late penalties and interest set forth in the Authority's Amended Rate Order.

North Fort Bend Water Authority; c/o AVANTA Services, 5635 Northwest Central Drive, Suite 104E, Houston, Texas 77092 (rates effective 1/1/2020)

# TAB H

## CENTRAL HARRIS COUNTY REGIONAL WATER AUTHORITY RATE ORDER

(Effective March 1, 2018)

### **TABLE OF CONTENTS**

## ARTICLE I FINDINGS; REVOCATION OF PRIOR RESOLUTIONS; EFFECTIVE DATE

Section 1.01:	Findings	2
Section 1.02:	Prior Resolutions; Effective Date	2
	ARTICLE II	
	DEFINITIONS; INTERPRETATIONS; REFERENCES	
Section 2.01:	<u>Definitions</u>	3
Section 2.02:	<u>Interpretations</u>	
Section 2.03:	<u>References</u>	4
	ARTICLE III	
	FEES; PAYMENT; COLLECTIONS	
Section 3.01:	GRP Fee	4
Section 3.02:	Importation Fee	
Section 3.03:	Surface Water Fee	
Section 3.04:	Manner and Method of Payment of Fees	
Section 3.05:	Late Fees	
Section 3.06:	Collection Costs	
Section 3.07:	Termination of Surface Water	
	ARTICLE IV MEASURING WELL PUMPAGE AND IMPORTATION	
	MEASORING WEED I OWI AGE AND IMI ORIATION	
<u>Section 4.01</u> :	Meters	7
Section 4.02:	Measurement of Well Pumpage	
<u>Section 4.03</u> :	Self-Reporting of Imported Water	
Section 4.04:	<u>Audits</u>	
<u>Section 4.05</u> :	Failure to Provide Imported Water Quantity	7
Section 4.06:	Calibration of Meters	8
	ARTICLE V	
	WELL PERMITTING	
Section 5.01:	Aggregate Permit; Renewal	8
	Groundwater Allocations.	
	Limitation on Groundwater Pumpage	
	- · ·	

### ARTICLE VI SURFACE WATER CONVERSION

Section 6.01:	Mandatory and Non-Mandatory Surface Water Conversion; Surface	
	Water Commitment.	9
Section 6.02:	Delivery Point; Measuring and Control Equipment	9
Section 6.03:	Delivery; Facilities; Title to Water	10
Section 6.04:	Chloramine Disinfection	10
Section 6.05:	Maintenance and Operation of Wells	10
Section 6.06:	Compliance of Converted Customer's System	10
Section 6.07:	Daily Amount; Quantity and Quality Warranties	11
Section 6.08:	Interruptions in Service	11
Section 6.09:	Measurement of Surface Water Usage	12
<u>Section 6.10</u> :	Testing of Measuring Equipment.	
<u>Section 6.11</u> :	Early Conversion Credits; Over-Conversion Credits.	12
Section 6.12:	Water Conservation Program.	12
	ARTICLE VII AUTHORITY RULES AND VIOLATIONS; CIVIL PENALTIES; INJUNCTION; TERMINATION; REMOVAL FROM GRP	
Section 7.01:	Rate Order Constitutes Authority Rule	12
Section 7.02:	Surface Water Commitment Constitutes Authority Rule	
<u>Section 7.03</u> :	Civil Penalty	
Section 7.04:	<u>Injunction</u>	13
<u>Section 7.05</u> :	Termination of Service	13
Section 7.06:	Removal from GRP	14
<u>Section 7.07</u> :	Rights and Remedies Cumulative; No Waiver	15
	ARTICLE VIII MISCELLANEOUS	
Section 8.01:	Authority Designee	15
Section 8.02:	Right to Enter Land	
<u>Section 8.03</u> :	Compliance with GRP	
Section 8.04:	Amendments to GRP	
Section 8.05:	Refusal to Add Persons to GRP	
Section 8.06:	Amendments to Rate Order	16
Exhibit "A" Exhibit "B"	<ul> <li>Imported Water Billing Form</li> <li>Form of Surface Water Commitment</li> </ul>	

### CENTRAL HARRIS COUNTY REGIONAL WATER AUTHORITY

#### RATE ORDER

### (Effective March 1, 2018)

THE STATE OF TEXAS

COUNTY OF HARRIS

### RECITALS

WHEREAS, the Central Harris County Regional Water Authority (the "Authority") is a regional water authority created pursuant to special act of the 79th Texas Legislature, codified at Chapter 8815 of the Texas Special District Local Laws Code (the "Code"), and Article XVI, Section 59 of the Texas Constitution; and

WHEREAS, the Authority was created to accomplish the purposes of Article XVI, Section 59 of the Texas Constitution, and § 8815.101(a) of the Code provides in such regard that the Authority may (1) provide for the conservation, preservation, protection, recharge, and prevention of waste of groundwater, and for the reduction of groundwater withdrawals as necessary to develop, implement, or enforce a groundwater reduction plan, in a manner consistent with the purposes of Section 59, Article XVI, Texas Constitution, and facilitate compliance with the rules, orders, regulations, or requirements of the Harris Galveston Subsidence District (the "Subsidence District"); (2) acquire or develop surface water and groundwater supplies from sources inside or outside the boundaries of the Authority, conserve, store, transport, treat, purify, distribute, sell, and deliver water to or among persons inside and outside the boundaries of the Authority, and allocate water among persons participating in the Authority's groundwater reduction plan (the "GRP") whether they are located inside or outside the Authority's boundaries; (3) enter into contracts with persons inside or outside the Authority on terms and conditions deemed desirable, fair, and advantageous; (4) coordinate water services provided inside, outside, or into the Authority; and (5) administer and enforce the various provisions set forth in Chapter 8815 of the Code; and

WHEREAS, § 8815.103(a) of the Code provides that the Authority may establish fees, user fees, and charges as necessary to enable the Authority to fulfill the Authority's purposes and regulatory functions set forth in Chapter 8815 of the Code; and

WHEREAS, § 8815.103(b) of the Code provides that, subject to certain exemptions, the Authority may charge the owner of a well located within the Authority's boundaries a fee or user fee according to the amount of water pumped from the well, which is referred to herein as the "GRP Fee;" and

WHEREAS, § 8815.103(g) of the Code provides that the authority may establish fees, user fees, or charges for the importation of water into the Authority's boundaries from a source located outside the Authority's boundaries, referred to herein as a "Importation Fee;" and

WHEREAS, § 8815.103(f) of the Code provides that the authority may establish fees for the purchase of water from the Authority, including potable water derived from surface water supplies, referred to herein as the "Surface Water Fee;" and

WHEREAS, § 8815.103(e) of the Code provides that the Authority may establish fees, user fees, or charges that are sufficient to (1) achieve water conservation; (2) prevent waste of water; (3) serve as a

disincentive to pumping groundwater; (4) develop, implement, or enforce the GRP; (5) accomplish the purposes of Chapter 8815 of the Code, including making available alternative water supplies; (6) enable the Authority to meet operation and maintenance expenses; (7) pay the principal of and interest on notes, bonds, and other obligations issued in connection with the exercise of the Authority's general powers and duties; and (8) satisfy all rate covenants relating to the issuance of notes, bonds, and other obligations; and

WHEREAS, the Board of Directors (the "Board") of the Authority has made reasonable efforts to send its Member Districts written notice of the date, time, and location of the meeting at which the Board intends to adopt a proposed charge pursuant to § 8815.103(b) of the Code, and the amount of the proposed charge, all in accordance with § 8815.103(c) of the Code; and

WHEREAS, the Board has considered the comments submitted by the public concerning the GRP Plan Fee, Importation Fee, and the Surface Water Fee (collectively, the "Fees") and has determined that the Fees are necessary and appropriate pursuant to § 8815.103(e) of the Code; and

WHEREAS, the Board has determined to establish rules pursuant to § 8815.102 of the Code for the calculation and reporting of pumpage from certain wells within the Authority, for the calculation and reporting of the amount of water imported into the Authority from outside its boundaries, and for the collection of applicable Fees; and

WHEREAS, the Board has determined to establish rules pursuant to § 8815.102 of the Code related to the Subsidence District's consolidation of well permits jointly issued to the Member Districts and the Authority into a single permit in the name of the Authority; and

WHEREAS, the Authority has completed the construction of facilities and related improvements (the "Authority System") necessary to provide for the transmission and delivery of potable water, derived from surface water supplies ("Surface Water"), to certain Member Districts on a wholesale basis, as generally contemplated by the GRP; and

WHEREAS, the Board has determined to establish a rate applicable to the sale of Surface Water, on a per 1,000 gallons basis, pursuant to § 8815.103(f) of the Code; and

WHEREAS, the Board has determined to establish rules pursuant to § 8815.102 of the Code applicable to the sale of Surface Water to Member Districts, including the collection of applicable Fees;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE BOARD OF DIRECTORS OF THE CENTRAL HARRIS COUNTY REGIONAL WATER AUTHORITY THAT:

### ARTICLE I FINDINGS; REVOCATION OF PRIOR RESOLUTIONS; EFFECTIVE DATE

Section 1.01: Findings. Each of the recitals stated in this Rate Order are hereby adopted as findings of the Board. All statutory requirements and conditions have been met for the establishment of the Fees under § 8815.103 of the Code.

Section 1.02: Prior Resolutions; Effective Date. Any prior written resolution, order, or other instrument duly authorized and executed by and on behalf of the Board, and any amendment(s) thereto, adopted by the Board and establishing Fees shall be revoked as of March 1, 2018, the effective date of this Rate Order.

### ARTICLE II DEFINITIONS; INTERPRETATIONS; REFERENCES

<u>Section 2.01</u>: <u>Definitions</u>. In addition to terms defined elsewhere herein, the following terms used in this Rate Order shall have the respective meanings set forth below unless context clearly requires otherwise:

- (a) Authority Engineer. The term "Authority Engineer" shall mean IDS Engineering Group, or any successor engineering firm engaged by the Authority to provide general engineering services to the Authority relative to the design, permitting, and construction of the Authority System and/or the administration of the Authority's GRP.
- (b) Authority Operator. The term "Authority Operator" shall mean Municipal Operations & Consulting, Inc., or any successor operating company engaged by the Authority to provide Subsidence District permitting, operations, maintenance, billing and collection services, or other similar services to the Authority, relating to the operation and maintenance of the Authority System and/or the administration of the Authority's GRP.
- (c) Converted Customer. The term "Converted Customer" shall mean any person or entity, including but not limited to a Water Well Owner, a Water Service Provider, or a Member District, whose water supply facilities have been actually and directly connected to the Authority's System and who is actually receiving surface water from the Authority's System.
- (d) Exempt Wells. The following wells within the boundaries of the Authority shall be referred to as "Exempt Wells" and shall not be subject to a GRP Fee:
  - (1) wells with a casing diameter of less than five inches (5") that serve only a single-family dwelling;
  - (2) wells regulated under Chapter 27 of the Texas Water Code (injection wells); or
  - (3) wells that are not subject to any groundwater reduction requirement imposed by the Subsidence District.
- (e) Imported Water. The term "Imported Water" shall mean water, whether groundwater or surface water, that is produced outside of the boundaries of the Authority and transported into the boundaries of the Authority for subsequent distribution to an end user within the boundaries of the Authority.
- (f) Member Districts. The term "Member Districts" shall have the meaning set forth in § 8815.001 (8) of the Code.
- (g) Non-Exempt Wells. The term "Non-Exempt Wells" shall mean each and every groundwater well located within the boundaries of the Authority other than Exempt Wells.
- (h) Person. The term "Person" shall mean any individual, corporation, organization, government or governmental subdivision or agency, municipality, county, political subdivision, business trust, trust, estate, partnership, association, or any other legal entity, and specifically including any Member District, Water Well Owner, Water Service Provider, which is subject to the jurisdiction of or regulation by the Authority under Chapter 8815 of the Code.

3

- (i) Reading Date. The term "Reading Date" means the first calendar day of a month, regardless of whether same falls on a Saturday, a Sunday, or a state or federal holiday.
- (j) Water Importation Site. The term "Water Importation Site" shall mean each connection, whether permanent or temporary, at which water originating from outside the boundaries of the Authority enters the boundaries of the Authority.
- (k) Water Service Provider. The term "Water Service Provider" shall mean any person or entity, including but not limited to a Member District, that supplies potable water, whether surface water or groundwater, to any end user of such water within the boundaries of the Authority.
- (I) Water Well Owner. The term "Water Well Owner" shall mean any person or entity owning a Non-Exempt Well.
- Section 2.02: <u>Interpretations</u>. The article, section, and subsection headings of this Rate Order are included herein for convenience of reference purposes only and shall not constitute a part of this Rate Order or affect its interpretation in any respect. Except where the context otherwise requires, words imparting the singular number shall include the plural and vice versa. References to an entity refer to the legal successors of such entity, and to the board of directors, officers, or other officials of such entity where appropriate.
- <u>Section 2.03</u>: <u>References</u>. Any reference in this Rate Order to a document shall mean such document and all exhibits thereto as amended or supplemented from time to time.

### ARTICLE III FEES; PAYMENT; COLLECTIONS

- Section 3.01: GRP Fee. (a) Rate; Quantity. Effective as of March 1, 2018, each Water Well Owner shall pay a GRP Fee equal to \$3.01 for each 1,000 gallons of water pumped from each of its Non-Exempt Wells on a monthly basis. The Authority shall determine the quantity of water pumped from all Non-Exempt Wells in accordance with Section 4.02 hereof.
- (b) Billing by the Authority. The Authority will provide Water Well Owners with a written invoice for GRP Fees on a monthly basis. The Authority invoice shall specify thereon the date of the invoice, the appropriate due date for payment of the GRP Fee, the quantity of water pumped from each Water Well Owner's Non-Exempt Well(s) during the applicable billing month and the corresponding GRP Fee based on such quantity, and any applicable late fees for past due payments.
- (c) Due Date. Payment of the GRP Fee is due within 45 days of the date of receipt of an Authority invoice for same. For purposes hereof, a Water Well Owner's receipt of the Authority's invoices shall be deemed to be the third business day following the date of such invoice, regardless of the date of actual receipt or the failure of the Water Well Owner to actually receive such invoice. Each Water Well Owner shall be responsible for remitting to the Authority the GRP Fee on or before the due date.
- (d) Converted Customers. A Converted Customer shall report water pumpage from each of its Non-Exempt Wells, and remit the corresponding GRP Fee to the Authority as provided hereinabove until the Authority assumes responsibility therefor in accordance with this subsection. Once a Converted Customer begins to receive Surface Water from the Authority System, the Authority Operator will read each meter installed by a Converted Customer pursuant to Section 4.01 hereof and determine the quantity of water pumped from such Converted Customer's Non-Exempt Wells at the same time the Authority Operator reads the Authority Meter pursuant to Section 6.09 hereof. Based on such quantity, the

Authority will provide Converted Customers with a written invoice of the GRP Fee on a monthly basis. The Authority invoice shall specify thereon the date of the invoice, the appropriate due date for payment of the GRP Fee, the quantity of water pumped from such Converted Customer's Non-Exempt Wells, the applicable billing month, the corresponding GRP Fee based on such quantity and the rate for Surface Water specified herein, and any applicable late fees for past due payments. Such invoice shall be consolidated with the invoice for the Surface Water Fee to be provided under Section 3.03(b) hereof, and the GRP Fee shall be due at the same time such Surface Water Fee is due under Section 3.03(c) hereof. Each Converted Customer shall be responsible for remitting to the Authority the GRP Fee on or before the due date. The Authority shall provide a Converted Customer with advance notice prior to the Authority's assumption of responsibility for determining the quantity of water pumped from such Converted Customer's Non-Exempt Wells and invoicing such Converted Customer the corresponding GRP Fee as provided hereinabove.

Section 3.02: <u>Importation Fee</u>. (a) *Rate; Quantity*. Effective as of March 1, 2018, each Water Service Provider shall pay an Importation Fee equal to \$3.01 for each 1,000 gallons of Imported Water on a monthly basis. Each Water Service Provider shall determine the quantity of Imported Water in accordance with Article IV hereof.

- (b) Self Remission. The Authority will not send invoices or billings to Water Service Providers for the amount of Importation Fees that are due. The Importation Fee shall be calculated on a monthly basis on the form promulgated by the Authority and attached hereto as **Exhibit "A"**, which form shall be provided by the Water Service Provider to the Authority with the Water Service Provider's monthly Importation Fee payment. Each Water Service Provider owner shall complete such form and provide it to the Authority monthly, even if the quantity of Imported Water was zero.
- (c) Due Date. Payment of the Importation Fee is due by the 17th day of the second month following the month for which the quantity of Imported Water is required to be calculated and reported. (For example, payment for Imported Water for the month of June is due by August 17th; payment for Imported Water for the month of July is due by September 17th; etc.) Each Water Service Provider shall be responsible for remitting to the Authority the Importation Fee on or before the due date.
- (d) Exemptions. Notwithstanding anything in this Section 3.02 above, no Importation Fee shall be due with respect to Imported Water received by a Water Service Provider during an unanticipated emergency that impacts the ability of such Water Service Provider to meet its water demands, or Imported Water received by a Water Service Provider in repayment for water delivered by such Water Service Provider to a Person that is not subject to this Rate Order during an unanticipated emergency that impacts the ability of such Person to meet its water demands, where
  - (1) Imported Water was received by the Water Service Provider pursuant to the provisions of an emergency water supply agreement between the supplying Person and such Water Service Provider;
  - (2) the emergency water supply agreement between the Person supplying the Imported Water to the Water Service Provider specifically provides for in-kind payment for water provided or received by the parties thereto;
  - (3) in-kind repayment by the Water Service Provider for Imported Water received (i.e., the Water Service Provider supplies water to the Person) is initiated and completed as expeditiously as reasonably possible following the resolution of the emergency, and in no event shall such repayment be completed later than 120

5

- days following the resolution of the emergency without written approval by the Authority; and
- (4) the quantity of water repaid in-kind by the Water Service Provider equals or exceeds the quantity of Imported Water received during the emergency experienced by such Water Service Provider.

If a Water Service Provider is exempt, in whole or in part, from paying Importation Fees pursuant to this subsection (d), then such Water Service Provider shall submit a statement describing with reasonable detail the basis for such exemption in place of, or along with, payment to the Authority of fees otherwise due under this Article III. If not previously provided to the Authority, such statement shall be accompanied by a current copy of the emergency water supply agreement between the Water Service Provider and the Person supplying Imported Water to the Water Service Provider

Upon the prior written request of a Water Service Provider, the Authority shall also consider, on a case-by-case basis, waiving Importation Fees on Imported Water received by a Water Service Provider from a Person not subject to this Rate Order for non-emergency purposes. The Water Service Provider requesting the Waiver of Importation Fees on Imported Water proposed to be used by such Water Service Provider shall notify the Authority no less than thirty (30) days prior to the date it desires to commence use of Imported Water of (i) the reason it is proposing to use Imported Water, (ii) the source of such Imported Water, (iii) the estimated amount of Imported Water it anticipates using, and (iv) the desired date of commencement of the use of Imported Water and the estimated duration of such usage. The Authority shall consider the specific facts and circumstances of each request in good faith and shall determine, in its sole and absolute discretion, whether to waive the Importation Fees related to the proposed use of such Imported Water, and shall notify the Water Service Provider of its decision in writing as soon thereafter as possible.

- Section 3.03: Surface Water Fee. (a) Rate; Calculation. Effective as of March 1, 2018, each Converted Customer that receives Surface Water from the Authority shall pay a Surface Water Fee equal to \$3.35 for each 1,000 gallons of Surface Water received on a monthly basis. The quantity of Surface Water received shall be determined by the Authority pursuant to Section 6.09 hereof.
- (b) Billing by Authority. The Authority will provide Converted Customers with a written invoice of the Surface Water Fee on a monthly basis. The Authority invoice shall specify thereon the date of the invoice, the appropriate due date for payment of the Surface Water Fee, the quantity of Surface Water delivered to the Converted Customer during the applicable billing month and the corresponding Surface Water Fee based on such quantity and the rate for Surface Water specified herein, and any applicable late fees for past due payments.
- (c) Due Date. Payment of Surface Water Fee is due within 45 days of the date of receipt of an Authority invoice for same. For purposes hereof, a Converted Customer's receipt of the Authority's invoices shall be deemed to be the third business day following the date of such invoice, regardless of the date of actual receipt or the failure of the Converted Customer to actually receive such invoice. Each Converted Customer shall be responsible for remitting to the Authority the Surface Water Fee on or before the due date.
- Section 3.04: Manner and Method of Payment of Fees. All Fees payable to the Authority shall be paid in money which is legal tender in the United States of America. Payments will be accepted only by check or money order made payable to the "Central Harris County Regional Water Authority" or by wire transfer according to written wiring instructions provided by the Authority. No cash will be accepted. All payments must be received by the bookkeeper of the Authority, Fran Matuska, F. Matuska,

Inc., 4600 Highway 6 North, Suite 315, Houston, Texas 77084, by the due date. Written wire instructions are available upon request.

- Section 3.05: <u>Late Fees</u>. Payments of Fees received after the due date will be subject to a late penalty of 5%. An additional 5% penalty (for a total penalty of 10%) shall be imposed if the payment is more than 30 days late. Overdue amounts shall also accrue interest at 12% per annum after the due date.
- Section 3.06: Collection Costs. If the Authority is required to incur costs to collect an overdue account, all such costs, including reasonable attorney's fees, court costs, and expenses, shall be paid by the delinquent Water Service Provider, and the Authority shall be entitled to collect such costs in any suit for collection of a delinquent account.
- Section 3.07: <u>Termination of Surface Water</u>. Without limiting any other rights or remedies available to the Authority, in the event of non-payment of Fees by a Converted Customer, the Authority reserves the right under Section 7.05(a) hereof to terminate Surface Water service to the Converted Customer.

## ARTICLE IV MEASURING WELL PUMPAGE AND IMPORTATION

- Section 4.01: Meters. Each Non-Exempt Well shall be equipped with a meter which measures the amount of water pumped from such Non-Exempt Well. Each Water Importation Site shall be equipped with a meter which measures the amount of water imported from outside the boundaries of the Authority, provided however, that any Water Importation Site which is solely for emergency use only and is not in use for more than 50% of the calendar days in any 365-day period, except with notice to and prior written approval by the Authority, shall be exempt from the requirement to be equipped with a meter.
- Section 4.02: Measurement of Well Pumpage. The Authority Operator shall read each Non-Exempt Well meter on the Reading Date. The Authority Operator shall report the meter readings, and the amount of water pumped from each Non-Exempt Well, to each Water Well Owner on the invoice for the GRP Fee to be delivered pursuant to Section 3.01(b) hereof.
- Section 4.03: Self-Reporting of Imported Water. Each Water Service Provider, whether or not a Converted Customer, shall be responsible for reading any meter which measures the amount of Imported Water at its Water Importation Site(s) on the Reading Date. In the event a Water Importation Site is not equipped with a meter in accordance with Section 4.01 above, the Water Service Provider shall be responsible for providing the Authority with an accurate measurement of the quantity of Imported Water taken at such Water Importation Site(s) as of the Reading Date. Such measurements shall be reported to the Authority on the reporting form attached hereto as Exhibit "A". The Water Service Provider shall deliver the reporting form to the Authority with its Importation Fee payment.
- Section 4.04: Audits. The Authority shall have the right to audit the water importation measurements or calculations submitted by a Water Service Provider by reading the meter(s) at the Water Importation Site(s) and reviewing the records of the Water Service Provider to audit the calculations. Upon written request, a Water Service Provider shall provide to the Authority, without charge, a copy of any agreement related to a Water Importation Site or Imported Water and all data and reports used to calculate the amount of Imported Water.
- Section 4.05: Failure to Provide Imported Water Quantity. (a) In the event a Water Service Provider fails to read the meter which measures the amount of Imported Water transported into the

boundaries of the Authority, the Authority shall have the right to read the meter. If the Authority is required to read the meter, such Water Service Provider will be billed an inspection fee of \$100. The Water Service Provider's Water Importation Fee will be based on the Authority's reading, which will be reported by the Authority to such Water Service Provider in writing promptly after the Authority's reading, regardless of when the Authority reads the meter. In such event, the Importation Fee shall be due on the 45th day following the date of receipt of the written results of the Authority's reading. For purposes of the foregoing, the date of receipt shall be deemed to be the third business day following the date of such written results, regardless of the date of actual receipt or the failure of the Water Service Provider to actually receive such written results.

(b) In the event a Water Service Provider fails to provide the Authority with an accurate measurement of the quantity of Imported Water taken at a Water Importation Site, or fails to provide an agreement relating to any Water Importation Site or Imported Water, or fails to provide information sufficient for the Authority to ascertain the quantity of Imported Water used by the Water Service Provider, the Authority may impose a penalty of \$250 for any month in which Imported Water was imported but not reported, or incorrectly reported by more than 10%. The penalty shall be in addition to the payment of Importation Fees applicable to such unreported or underreported Imported Water, which Importation Fees shall be due and payable in arrears on the 45th day following the date such Water Service Provider knew or reasonably should have known of such unreported or underreported usage of Imported Water.

Section 4.06: Calibration of Meters. Each Water Well Owner shall be responsible for keeping the meter on each Non-Exempt Well operating within an accuracy tolerance of  $\pm$  5%. Each Water Service Provider shall be responsible for keeping the meter for each Water Importation Site operating within an accuracy tolerance of  $\pm$  5%. If the Authority at any time believes that the meter is less than 95% accurate, it may notify the Water Well Owner or Water Service Provider and ask that such meter be recalibrated and the results reported to the Authority. If the Water Well Owner or Water Service Provider refuses to recalibrate the meter or elects to have the Authority to do so, the Authority shall remove the meter for calibration and replace it with a temporary meter. The Authority shall pay for the cost of such calibration.

#### ARTICLE V WELL PERMITTING

Section 5.01: Aggregate Permit; Renewal. The Subsidence District has issued, an aggregate groundwater well permit to the Authority for all Non-Exempt Wells representing the total of all groundwater production from Non-Exempt Wells projected in the Authority's GRP for a permit period beginning June 1, 2017, and ending May 31, 2018. The Authority shall renew such permit on an annual basis, and file amendments thereto from time to time as may be deemed necessary and appropriate by the Authority. On an annual basis, the Authority will request that each Water Well Owner timely provide the Authority with data and information reasonably required by the Authority in order for the Authority to prepare and file documents with the Subsidence District related to permit renewals, amendments, or other groundwater permitting matters, including projected groundwater demands for the upcoming Subsidence District permit period. Subsidence District costs and fees related to the Authority's permit will be paid directly to the Subsidence District by the Authority out of Authority funds, without the pass-through or other direct assessment of such costs and fees to Water Well Owners unless otherwise approved by the Board.

Section 5.02: Groundwater Allocations. (a) Notice of Allocation. By May 31 of each year, the Authority shall issue a letter to each Water Well Owner confirming the quantity of groundwater that may be pumped from its Non-Exempt Well(s) during the upcoming Subsidence District permit period. The

8

Authority shall use all reasonable diligence to issue such letter so as to authorize each Water Well Owner to withdraw the quantity of groundwater projected to be pumped from its Non-Exempt Well(s) during the upcoming Subsidence District permit period, as reflected in the information and data provided in response to an Authority request under Section 5.01 hereof, subject to (i) the terms and withdrawal quantities authorized in the Subsidence District permit, and (ii) the requirements of the GRP.

(b) Amendments. The Authority reserves the right to modify, from time to time at its discretion, the amount of groundwater allocated to a Water Well Owner under Section 5.02 hereof in order to implement and enforce the Authority's GRP and to achieve and maintain compliance with the groundwater reduction requirements of the Subsidence District.

Section 5.03: Limitation on Groundwater Pumpage. It shall be a violation of this Rate Order for a Water Well Owner to withdraw groundwater from its Non-Exempt Well(s) in excess of the amount allocated to the Water Well Owner under Section 5.02 hereof. In such event, in addition to all other remedies available to the Authority in respect of such violation (including, without limitation, those set forth in this Rate Order), the Water Well Owner shall be responsible for payment for any damages suffered by the Authority and payment for any charges incurred by the Authority related thereto, including, without limitation, any charges or fees charged to the Authority by the Subsidence District.

#### ARTICLE VI SURFACE WATER CONVERSION

Section 6.01: Mandatory and Non-Mandatory Surface Water Conversion; Surface Water Commitment. (a) Mandatory Conversion. Converted Customers shall begin taking Surface Water at the Delivery Point (as such term is defined in Section 6.02 hereof) in a quantity at least equal to or exceeding the Minimum Daily Amount but not in excess of the Maximum Daily Amount (as such terms are defined in Section 6.07(a) hereof), on and after the date specified in writing by the Authority.

- Water because of groundwater quantity or quality reasons, or for any other reasons, may request that the Authority enter into a written agreement relative to the non-mandatory conversion of such Water Service Provider to Surface Water. At the Authority's discretion, the Authority may, according to terms and conditions acceptable to the Authority, enter into such an agreement, and thereupon, such Water Service Provider shall be considered a Converted Customer for all purposes of this Rate Order. In addition to any other terms and conditions, such an agreement may require the Water Service Provider to make a capital payment to the Authority for connection to the Authority System in an amount the Authority determines in its sound discretion to be fair and reasonable under the circumstances and equitable to all Water Service Providers.
- (c) Surface Water Commitment. Prior to connecting to the Authority System, the Authority shall issue a Converted Customer a written commitment to provide Surface Water, in a form substantially similar to **Exhibit "B"** attached hereto, in order to specify the Minimum Daily Amount, the Maximum Daily Amount, and any other terms and conditions relative to connection to and receiving Surface Water from the Authority System.

Section 6.02: Delivery Point; Measuring and Control Equipment. The delivery point of water (the "Delivery Point") by the Authority to a Converted Customer shall be the output flange of the meter and control valve assembly (collectively, the "Control Valve Assembly") installed by the Authority to serve the Converted Customer. No Water Service Provider shall connect to the Authority System, unless and until the Authority consents to such connection in writing. Such connection shall be made in strict conformity with the terms and conditions of specified by the Authority. The Authority shall install, at its

expense, at the Delivery Point the necessary equipment and devices for measuring the quantity of Surface Water delivered by the Authority (the "Authority Meters"), and sensor equipment on the Converted Customer's ground storage tank facilities or other water plant facilities and related electrical and control connections by conduit pipe, or other means, connecting such sensor equipment to the Authority's facilities downstream of the Control Valve Assembly (the "Sensor Line and Equipment"). The Control Valve Assembly, Authority Meters, and Sensor Line and Equipment shall remain the property of the Authority.

Section 6.03: Delivery; Facilities; Title to Water. Each Converted Customer, and not the Authority, shall be responsible to deliver water from the Delivery Point to and into the Converted Customer's water system. The Authority, and not the Converted Customer, shall own, operate and maintain: (i) the Sensor Line and Equipment; (ii) the Control Valve Assembly; and (iii) the Authority meters. Each Converted Customer, and not the Authority, shall own, operate and maintain all equipment, facilities, tanks, buildings, materials, wells, and lines downstream of the Control Valve Assembly, except for the Sensor Line and Equipment. Unless otherwise agreed to in writing by the Authority, the Converted Customer shall at all times, at the Converted Customer's expense, maintain an air gap, in accordance with a location and specifications approved by the Authority, downstream of the Delivery Point before the water delivered by the Authority enters the Converted Customer's ground storage tank(s); provided, however, the Authority, at its option, may in its reasonable discretion approve alternative backflow prevention procedures or mechanisms in writing upon request of a Converted Customer. Title to, possession, and control of Surface Water shall remain with the Authority until it passes through the Control Valve Assembly, where title to, possession, and control of the Surface Water shall pass from the Authority to the Converted Customer receiving same.

Section 6.04: Chloramine Disinfection. Surface Water will be disinfected with chloramines. Each Converted Customer is required to: (i) convert its water treatment system to a chloramine disinfection system, or install a chloramine disinfection system, prior to connecting to the Authority System and no later than the date required by the Authority; and (ii) maintain use of such chloramine disinfection system thereafter for so long as such Converted Customer is connected to the Authority's System and for so long as the Surface Water delivered by the Authority is disinfected with chloramines. It shall be the responsibility of each Converted Customer (and each Water Service Provider that receives water from a Converted Customer, for example and without limitation, by an interconnect), and not the Authority, to: (i) notify such Converted Customer's (or such Water Service Provider's) customers about its conversion to and use of chloramine disinfection; and (ii) comply with any applicable laws or regulations or requirements of the United States Environmental Protection Agency, Texas Commission on Environmental Quality, or any other agency with jurisdiction.

Section 6.05: Maintenance and Operation of Wells. In order to have an alternative water supply source in the event that Surface Water service is interrupted or ceases for any reason, Converted Customers are strongly encouraged by the Authority at all times to: (i) maintain any existing groundwater wells and other groundwater facilities; and (ii) maintain water line interconnect(s) with other entities that have functioning groundwater well facilities, and continue any related contractual arrangements with such entities in force and effect.

Section 6.06: Compliance of Converted Customer's System. In order to protect the Authority's water system, each Converted Customer's water system shall be constructed and operated to comply with the rules promulgated by the Texas Commission on Environmental Quality, or any successor agency, and the policy requirements of the City of Houston regarding backflow prevention and cross connections. Should a condition in violation of these requirements be discovered, such Converted Customer shall promptly cure same. If determined necessary by the Authority or if the Converted Customer fails to promptly cure same, the Authority, in addition to all other remedies available to it under this Rate Order or otherwise, may cure same at the cost and expense of the Converted Customer. The Authority may

conduct inspections from time to time to determine that no conditions exist in such Converted Customer's water system which may adversely affect the Authority System.

Section 6.07: Daily Amount; Quantity and Quality Warranties. (a) The Authority, the Authority Engineer, or the Authority Operator shall initially designate a maximum daily amount of Surface Water (the "Maximum Daily Amount") to be taken by a Converted Customer and/or a minimum daily amount of Surface Water ("Minimum Daily Amount") to be taken by a Converted Customer under the Surface Water Commitment. During any one day, no Converted Customer shall take Surface Water from the Authority System in an amount in excess of the Maximum Daily Amount, or in an amount less than the Minimum Daily Amount. The Authority may from time to time increase or decrease a Converted Customer's Maximum Daily Amount and/or Minimum Daily Amount, as determined necessary by the Authority, the Authority Engineer or the Authority Operator. Notice of such increase or decrease shall be delivered to the Converted Customer in writing, by the re-issuance of an amended Surface Water Commitment, a separate amendment to an outstanding Surface Water Commitment, or by any other means deemed reasonable and appropriate under the circumstances. If in violation of this Rate Order, and in addition to all other remedies available to the Authority (including, without limitation, those set forth in this Rate Order), a Converted Customer takes more than its Maximum Daily Amount or less than its Minimum Daily Amount in any one day, the Converted Customer shall be responsible for payment for any damages suffered by the Authority and payment for any charges incurred by the Authority related thereto (including, without limitation, any charges or fees charged to the Authority by the Subsidence District).

- (b) THE AUTHORITY SHALL PROVIDE SURFACE WATER TO A CONVERTED CUSTOMER AT THE DELIVERY POINT OF A QUALITY THAT MEETS ALL APPLICABLE TEXAS AND FEDERAL REGULATIONS REGARDING WATER QUALITY, INCLUDING THE SAFE DRINKING WATER ACT; PROVIDED, HOWEVER, THAT TO THE EXTENT OF ANY CONFLICT BETWEEN THIS WARRANTY AND ANY WARRANTY IN A SURFACE WATER COMMITMENT, THE WARRANTY PROVIDED UNDER THE SURFACE WATER COMMITMENT SHALL CONTROL. THE AUTHORITY SHALL PROVIDE CONVERTED CUSTOMERS WITH ALL INFORMATION CONCERNING THE QUALITY OF SUCH WATER AS MAY BE REQUIRED TO BE DISCLOSED UNDER APPLICABLE TEXAS AND FEDERAL REGULATIONS, AND SUCH FURTHER INFORMATION REGARDING THE QUALITY OR CHARACTER OF WATER AS THE AUTHORITY MAY HAVE AND THE PARTICIPANT MAY REQUEST FROM TIME TO TIME.
- (c) NOTWITHSTANDING ANY PROVISION OF THIS RATE ORDER OR ACT OF THE AUTHORITY, THE AUTHORITY DOES NOT AND WILL NOT WARRANT OR GUARANTEE TO ANY CONVERTED CUSTOMER A SPECIFIC QUANTITY OR PRESSURE OF SURFACE WATER FOR ANY PURPOSE WHATSOEVER. IN NO CASE SHALL THE AUTHORITY BE LIABLE FOR THE FAILURE OR REFUSAL TO FURNISH WATER OR ANY PARTICULAR AMOUNT OR PRESSURE OF WATER.

Section 6.08: Interruptions in Service. The Authority shall use reasonable efforts to deliver a constant and uninterrupted supply of Surface Water in a daily amount at least equal to the Minimum Daily Amount. Notwithstanding any provision of this Rate Order, any Surface Water Commitment, or any applicable agreement entered into by the Authority, the Authority may interrupt, reduce or cease deliveries of Surface Water if such interruption or reduction is necessary: (i) due to limitations in the Authority System or in any facilities that supply the Authority's System; (ii) in case of emergencies or breakdowns in the Authority System or in any facilities that supply the Authority's System; or (iii) for equipment installation, repairs, modifications, replacements, inspections, or maintenance on the Authority System or in any facilities that supply the Authority's System. In addition, the Authority may interrupt, reduce or cease deliveries of Surface Water if such interruption or reduction is necessary for purposes of

the Authority's GRP. The Authority shall have no liability to any Converted Customer for any damages caused by any interruption in service or any failure (partial or total) to deliver Surface Water.

<u>Section 6.09</u>: <u>Measurement of Surface Water Usage</u>. The Authority Operator shall read each Authority Meter serving a particular Converted Customer on the Reading Date. The Authority Operator shall report the meter readings, and resulting monthly Surface Water usage, to each Converted Customer on the invoice for the Surface Water Fee to be delivered pursuant to Section 3.03(b) hereof.

Section 6.10: Testing of Measuring Equipment. Each Water Well Owner shall be responsible for keeping the meter on each Non-Exempt Well operating within an accuracy tolerance of  $\pm$  5%. The Authority shall from time to time test the accuracy of the Authority Meters, and will provide a Converted Customer with notice of such test at least one (1) business day in advance. A representative of the Converted Customer shall have the right to attend and observe the test. Should the test of an Authority Meter show that the equipment is registering more than 105% or less than 95% of the water delivered, the total quantity of water delivered to the Converted Customer will be deemed to be the average daily consumption as measured by the Authority Meter when in working order, and the malfunctioning Authority Meter shall be corrected, repaired, or replaced by the Authority with an accurate Authority Meter. In such event, the Converted Customer's payments of the Surface Water Fee shall be adjusted (increased or decreased) for a period extending back to the time when the inaccuracy began, if such time is ascertainable, and if such time is not ascertainable, for a period extending back to the last test of the measuring equipment or 120 days, whichever is shorter.

Section 6.11: Early Conversion Credits; Over-Conversion Credits. The Authority, and not the Converted Customer, shall receive and be entitled to any early conversion or over-conversion credits issued by the Subsidence District related to Surface Water consumed or utilized by any Converted Customer within the Authority's GRP. No Converted Customer within the Authority's GRP shall obtain (or attempt to obtain) for such Converted Customer's own benefit or the benefit of anyone other than the Authority or sell (or attempt to sell), any such early-conversion or over-conversion credits. If requested by the Authority, Converted Customers within the Authority's GRP shall cooperate with the Authority in order to enable the Authority to receive such early conversion or over-conversion credits.

Section 6.12: Water Conservation Program. All Converted Customers shall, prior to receiving Surface Water from the Authority System, approve and implement a water conservation plan and measures, as required by the Texas Commission on Environmental Quality pursuant to 30 Texas Administrative Code § 288, and provide a copy of such plan to the Authority's Engineer. Any subsequent amendment or modification to a plan so submitted shall be provided to the Authority's Engineer no later than sixty (60) days following the effective date of such amendment or modification. If such Converted Customer intends to resell the Surface Water to a wholesale customer of such Converted Customer, then the Converted Customer shall require its wholesale customer to also implement water conservation measures pursuant to 30 Texas Administrative Code § 288.

# ARTICLE VII AUTHORITY RULES AND VIOLATIONS; CIVIL PENALTIES; INJUNCTION; TERMINATION; REMOVAL FROM GRP

Section 7.01: Rate Order Constitutes Authority Rule. All of the terms, conditions and duties imposed upon any Person under this Rate Order shall constitute rules of the Authority. As such, failure by any Person to comply with this Rate Order shall be a violation of the Authority's rules. Such violations shall include, but are not limited to any Person's failure to:

- (1) read any Meter(s) measuring Imported Water and accurately report such readings to the Authority;
- (2) allow the Authority to audit quantities of Imported Water, read any Meter(s), or test and recalibrate, if necessary, any Meter(s);
- (3) maintain any Non-Exempt Well Meter(s) or any Meter(s) measuring Imported Water at the applicable accuracy standard;
- (4) pay all Fees when due; and
- (5) comply with the GRP and all directives and requirements issued by the Authority related to the GRP, including all requirements related to the amounts of Authority Water a Converted Customer must take from the Authority.

Section 7.02: Surface Water Commitment Constitutes Authority Rule. All of the terms, conditions and duties imposed upon any Converted Customer under a Surface Water Commitment shall constitute rules of the Authority, separate and in addition to the rules embodied under this Rate Order or any other rule or order of the Authority. As such, failure by any Converted Customer to comply with the terms, conditions and duties specified in a Surface Water Commitment shall be a violation of the Authority's rules.

Section 7.03: Civil Penalty. A Person or entity that violates a rule or order of the Authority is subject to a civil penalty of not more than \$5,000, as determined by the Board, for each violation or each day of a continuing violation. The Board may set the penalty based on the severity of the offense; whether such violation was willful, knowing, reckless or inadvertent; the history of offenses by such Person; and the damages sustained by the Authority. The Authority may bring an action to recover the penalty in a district court in Harris County, Texas. The penalty shall be paid to the Authority.

Section 7.04: <u>Injunction</u>. The Authority may bring an action for injunctive relief in a district court in Harris County, Texas. The Authority may bring an action for a civil penalty and injunctive relief in the same proceeding.

Section 7.05: Termination of Service. (a) Non-Payment. The Authority may, in its discretion, terminate Surface Water service to any Converted Customer for failure to pay all Fees and any other charges imposed by the Authority under this Rate Order or any separate Authority order, including penalties and interest, by the 50th day after the due date; provided, however, that prior to disconnecting Surface Water services, the Authority shall send written notice by United States first class mail to the Converted Customer at the appropriate address and provide the Converted Customer with an opportunity to contest, explain or correct the charges, services, or disconnection, at a meeting of the Board. The written notice shall inform the Converted Customer of the amount of the delinquent payment, the date Surface Water service will be disconnected or additional Surface Water service withheld if payment is not made, the date, time and place of the next scheduled meeting of the Board, and of the opportunity to contest, explain or correct the charges, services, or disconnection, by presenting in person or in writing such matter to the Board at the next scheduled meeting as shown on the notice. The date specified for disconnection shall be ten (10) days after the date of the next scheduled meeting of the Board as shown in the notice and the date for withholding additional Surface Water service shall be ten (10) days after the date of that Board meeting. The notice shall be deposited, postage paid, in a post office or official depository under the care and custody of the United States Postal Service at least ten (10) days prior to the date of the scheduled meeting of the Board. A written statement by the Authority's Operator that the notice was so mailed and a certificate of mailing by the United States Postal Service shall be prima facie evidence of delivery and receipt of same. If the Converted Customer appears before the Board in person,

or submits information to the Board in writing, the Board shall hear and consider the matter and inform the Converted Customer of the Board's determination by sending written notice by United States first class mail to the Converted Customer at the appropriate address. If Surface Water service to a Converted Customer is disconnected for nonpayment or for any cause legally authorized, a reconnection fee of \$500 shall be paid prior to Surface Water service being restored. In the event that the Authority's Operator removes a Converted Customer's meter due to unauthorized reconnection of Surface Water service subsequent to its termination by the Authority, a reinstallation fee of \$500 shall be paid prior to Surface Water service being restored, which fee is in addition to any other fees imposed by the Authority, including, without limitation, the \$500 reconnection fee.

Rule Violations. The Authority may, in its discretion, terminate Surface Water service to any Converted Customer that violates any provision of this Rate Order, any other order or rule of the Authority, or the GRP; provided, however, that prior to such termination for violations that do not constitute a hazard to health or safety or endanger the integrity of the Authority's System or adversely affect the GRP, the Authority shall send written notice by United States first class mail to the Converted Customer at the appropriate address and provide the Person with an opportunity to contest, explain or correct the violation. The written notice shall inform the Converted Customer of the amount of the violation, the date Surface Water service will be disconnected or additional Surface Water service withheld if the violation is not cured, the date, time and place of the next scheduled meeting of the Board, and of the opportunity to contest, explain or correct the violation, by presenting in person or in writing such matter to the Board at the next scheduled meeting as shown on the notice. The date specified for disconnection shall be ten (10) days after the date of the next scheduled meeting of the Board as shown in the notice and the date for withholding additional Surface Water service shall be ten (10) days after the date of that Board meeting. The notice shall be deposited, postage paid, in a post office or official depository under the care and custody of the United States Postal Service at least ten (10) days prior to the date of the scheduled meeting of the Board. A written statement by the Authority's Operator that the notice was so mailed and a certificate of mailing by the United States Postal Service shall be prima facie evidence of delivery and receipt of same. If the Converted Customer appears before the Board in person, or submits information to the Board in writing, the Board shall hear and consider the matter and inform the Converted Customer of the Board's determination by sending written notice by United States first class mail to the Converted Customer at the appropriate address. If Surface Water service to a Converted Customer is disconnected for violation of this Rate Order, any other order or rule of the Authority, or the GRP, a reconnection fee of \$500 shall be paid prior to Surface Water service being restored. In the event that the Authority's Operator removes a Converted Customer's meter due to unauthorized reconnection of Surface Water service subsequent to its termination by the Authority, a reinstallation fee of \$500 shall be paid prior to Surface Water service being restored, which fee is in addition to any other fees imposed by the Authority, including, without limitation, the \$500 reconnection fee. In the event a Converted Customer's violations create a hazard to health or safety or endanger the integrity of the Authority's System or adversely affect the GRP, the Authority may terminate Surface Water service to such Converted Customer without prior notice; provided that the Authority gives notice to such Converted Customer within 24 hours after Surface Water service has been terminated in the manner specified hereinabove.

Section 7.06: Removal from GRP. Any Person that violates any provision of this Rate Order, any other order or rule of the Authority, or the GRP, shall be subject to being removed from the GRP; provided, however, that (i) prior to such removal for violations that do not constitute a hazard to health or safety or endanger the integrity of the Authority's System or adversely affect the GRP, the Authority shall send written notice by United States first class mail to the Person at the appropriate address and provide the Person with a timeframe during which the Person may contest, explain or correct the violation; and (ii) in the event a Person's violations create a hazard to health or safety or endanger the integrity of the Authority's System or adversely affect the GRP, the Authority may terminate Surface Water service to

such Person without prior notice and give notice in the manner specified in the preceding clause (i) to such Person within 24 hours after Surface Water service has been terminated.

- Section 7.07: Rights and Remedies Cumulative; No Waiver. (a) The rights and remedies specified in this Article VII are cumulative and not exclusive of one another. The Authority reserves all rights and remedies available at law or in equity, but not expressed herein, to enforce and collect upon any monetary obligations (including Fees) owed by any Person to the Authority, and to enforce any Authority rules or orders against any Person.
- (b) The failure of the Authority to insist, in any one or more instances, upon a Person's performance of any of the terms, requirements or conditions of this Rate Order shall not be construed as a waiver or relinquishment of the future performance of any such term, requirement or condition by that Person or any other Person.

#### ARTICLE VIII MISCELLANEOUS

Section 8.01: Authority Designee. The Authority hereby designates the Board President, Board Vice President, the Authority Engineer and/or the Authority Operator to exercise the Authority's powers under its GRP and this Rate Order.

Section 8.02: Right to Enter Land. In addition to any other rights that the Authority may have, by easement or otherwise, the Authority and its representatives shall have the authority to enter upon any public property or private property within the Authority's boundaries, or property adjacent to any property owned by the Authority, at any reasonable time in order to: (1) inspect, repair, install, test, maintain or operate any Authority facilities or to test or monitor the Surface Water delivered by the Authority; (2) audit Non-Exempt Well pumpage or Imported Water measurements submitted to the Authority; (3) measure Non-Exempt Well pumpage or Imported Water usage; (4) inspect and investigate conditions relating to the quality of water in the State of Texas; and/ or (5) investigate compliance with any Authority rule, regulation, permit or order. If requested by the Authority or Authority Operator, a Person shall immediately cooperate with the Authority or Authority Operator to allow the Authority or Authority Operator to enter such site(s) for any of such purposes. Authority representatives entering private property pursuant to this section shall observe the Person's reasonable rules and regulations concerning safety, internal security, and fire protection and shall notify any occupant or management of their presence and shall exhibit proper credentials.

Section 8.03: Compliance with GRP. Pursuant to the Act, the Authority is authorized to develop, prepare, revise, adopt, implement, enforce, manage or participate in the GRP. The GRP may specify the measures to be taken to reduce groundwater withdrawals and the dates and extent to which Persons shall reduce or terminate withdrawal of groundwater and instead receive water from alternative sources. The Authority, the Authority's Engineer and/ or the Authority's Operator shall manage and enforce the GRP, including without limitation coordination with the Subsidence District, monitoring compliance with the GRP, and enforcing the terms of the GRP. All Persons shall comply with the terms of the GRP and all other Authority orders and requirements (including, without limitation, those from the Authority Engineer or the Authority Operator) for the reduction of groundwater usage and the allocation of Surface Water. The Authority, the Authority Engineer and/ or the Authority Operator may from time to time issue groundwater reduction requirements to Persons in order to: (a) comply with or exceed Subsidence District groundwater reduction requirements; (b) satisfy the terms of the GRP; and/or (c) allocate Surface Water among Persons, including requiring Persons to from time to time timely take Surface Water from the Authority in amounts determined by the Authority.

- <u>Section 8.04</u>: <u>Amendments to GRP</u>. As determined necessary by the Authority, the Authority reserves the right to modify from time to time its GRP.
- Section 8.05: Refusal to Add Persons to GRP. The Board, at its discretion, may refuse to add Persons (and their wells) to the GRP, including, without limitation, any Person seeking to be re-admitted to the GRP that had at any time had been removed from the GRP.
- Section 8.06: Amendments to Rate Order. As determined necessary by the Authority, the Authority reserves the right to modify from time to time: (1) the rates, charges and fees contained in this Rate Order; and (2) any other terms and provisions of this Rate Order.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

PASSED AND APPROVED on February 7, 2018, but effective as of March 1, 2018.

	/s/ MARGARET L. COX
ATTEST	President, Board of Directors
/s/ DAVID GRANADINO	
Secretary, Board of Directors	

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17

(SEAL)

#### Exhibit "A"

### CENTRAL HARRIS COUNTY REGIONAL WATER AUTHORITY Imported Water Billing Form

Name of	Water Importation	n Site Owner:				
Identify:	Importatio Importatio	on Site #1: on Site #3:	; Im	portation Site	te #2: te #4:	_; _
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2	Divide by 1,00					
3		multiply line 2 X \$3	.01)			
4	Add late payn	nent penalty, if app		5% for less	than 30 days,	
	10% thereafter			•		
5		ent interest, if applic	cable (19	% per month	)	
6	Total due					
I declare	that the above info	ormation is true and	correct 1	to the best of	fmy knowledge a	and belief.
Dated:			B <sub>v</sub>			
			Nan	ie.		
			T 141			
			1 1116	<b>5</b> .		

Make check payable to:
Central Harris County Regional Water Authority
c/o Fran Matuska
F. Matuska, Inc.
4600 Highway 6 North, Suite 315
Houston, Texas 77084

#### Exhibit "B"

# CENTRAL HARRIS COUNTY REGIONAL WATER AUTHORITY 1300 Post Oak Boulevard, Suite 1400 Houston, Texas 77056

					 20				
Board	l of Direc	etors							
c/o			_						
	, Texas		_						
Re:	Water	Supply	From	Central Hai ("Distr	Regional	Water	Authority	("Authority")	to
Dear !	Board of	Director	rs:						

As you know, pursuant to its Groundwater Reduction Plan ("GRP"), Chapter 8815, Special District Local Laws Code, and applicable provisions of the Texas Water Code, as amended, the Authority will be requiring the District to reduce its use of groundwater and convert, in whole or in part, to treated surface water, or other alternative water supply sources, delivered by the Authority. Currently, the Authority has a contract with the City of Houston ("City") to purchase treated surface water from the City on a daily basis, up to a certain amount. The District has requested this water supply commitment letter agreement (this "Agreement") from the Authority in order to set forth certain terms regarding the Authority's provision of water service to the District. For and in consideration of the premises and the mutual covenants and agreements herein contained, the Authority and the District hereby mutually agree as follows:

- 1. Subject to the terms and conditions of this Agreement, the Authority shall deliver and make available to the District at the Delivery Points, defined below, up to \_\_\_\_\_ gallons per day of water (the "Daily Commitment Amount"). "Delivery Points" shall mean the output flanges of the meter and control valve assemblies (collectively, the "Control Valve Assembly") installed by the Authority to serve the District's Water Plant No. \_\_\_\_. The Authority shall use reasonable efforts to deliver the water required by this Agreement. This Agreement shall in no way limit the Authority's rights under its GRP, including, without limitation, its right to require the District to take water from the Authority in the amount of the Daily Commitment Amount or in amounts that are greater than the Daily Commitment Amount; provided, however, the Authority will not reduce the Daily Commitment Amount.
- 2. The District understands that in order to have an alternative water supply source in the event that the Authority's water service to the District is interrupted for any reason, the District is strongly encouraged by the Authority to at all times maintain: (i) its existing groundwater wells and other groundwater facilities; and (ii) water line interconnects with other political subdivisions of this State that have functioning groundwater well facilities.

- 3. The District shall approve and implement a water conservation plan and measures, as required by the Texas Commission on Environmental Quality ("TCEQ") pursuant to 30 Texas Administrative Code § 288. If the District intends to resell the water received from the Authority to a wholesale customer of the District, then the District shall require its wholesale customer to also implement water conservation measures pursuant to 30 Texas Administrative Code § 288.
- 4. Notwithstanding any other provision of this Agreement or any act of the Authority, the District shall not be guaranteed any specific quantity or pressure of water whenever the City's or the Authority's water supply is limited (pursuant to Chapter 13, Texas Water Code, as amended, or otherwise) or when the City's or the Authority's equipment or facilities may become inoperative due to emergencies, equipment installation, repairs, modifications, replacements, inspections, breakdown or maintenance; and the Authority is in no case to be held to any liability for failure to furnish any specific amount or pressure of water to the District. After delivery of water by the Authority at the Delivery Points, it shall be the sole responsibility of the District to receive, store, blend with other water supplies, treat or retreat, pressurize, and distribute such water for its purposes.
- 5. The Authority shall provide water meeting all applicable Texas and Federal regulations regarding water quality, including the Safe Drinking Water Act, as same may be amended from time to time, if and as measured at the Delivery Points. EXCEPT AS PROVIDED IN THE PRECEDING SENTENCE, THE AUTHORITY MAKES NO WARRANTY, EXPRESSED OR IMPLIED, REGARDING THE QUALITY OR DELIVERY PRESSURE OF THE WATER, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE DISTRICT HEREBY RELEASES AND DISCHARGES THE AUTHORITY FROM ANY AND ALL FINES, DEMANDS, JUDGMENTS, LIABILITIES OR CLAIMS ARISING BY REASON OF OR IN CONNECTION WITH THE DELIVERY OF WATER WHICH MEETS THE REQUIREMENTS OF THIS PARAGRAPH.
- 6. Unless sooner terminated by written mutual agreement of the parties, this Agreement shall continue in force and effect for ten (10) years after the date it is executed by the Authority; provided, however, that after such ten (10) years, this Agreement shall automatically renew for successive five (5) year periods, unless either party gives the other party at least one hundred eighty (180) days prior written notice of its intent to terminate this Agreement. After the termination of this Agreement, the Authority's provision of water to the District, if any, shall be governed by the Authority's then-applicable orders, resolutions, rules, regulations and requirements, and not by this Agreement.
- 7. This Agreement shall bind and benefit the Authority and the District and their legal successors, but shall not otherwise be assignable, in whole or in part, by either party without first obtaining written consent of the other. ("Assignment" as used herein means assignment in law or otherwise.) This Agreement shall be for the sole and exclusive benefit of the Authority and the District and shall not be construed to confer any rights upon any third party, nor upon any customers of the District or the Authority. Nothing herein shall be construed to confer standing to sue upon any party who did not otherwise have such standing and it is expressly agreed that nothing herein shall be construed to create any duty or obligation on the part of the Authority to the customers of the District.

- 8. This Agreement, and the terms and conditions of water service to the District, shall be subject to all present and future laws, orders, rules and regulations of the United States of America, the State of Texas, any regulatory body having jurisdiction, and present and future orders (including, without limitation, the Authority's GRP and the Authority's Resolution Establishing Groundwater Reduction Plan Fee and Water Importation Fee) and any other regulations, resolutions, rules, requirements, fees, charges, remedies and penalties of the Authority, as any of same may be adopted and/or amended from time to time. The District's payment for water service from the Authority shall be governed by the terms and provisions of the Authority's orders, resolutions, rules, regulations and requirements generally applicable to similarly situated users of Authority services, all of which may be amended from time to time by the Authority. The Authority's Board of Directors shall not adopt any order, resolution, rule, regulation or requirement that intentionally reduces the Daily Commitment Amount, without first obtaining the written consent of the District.
- 9. 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 Agreement, 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.
- 10. The parties agree that this Agreement shall not be construed in favor of or against either party on the basis that the party did or did not author this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and venue shall be in a court of competent jurisdiction in Harris County, Texas.
- 11. The District covenants and agrees that at all times it will establish and maintain, and from time to time adjust, the rates, fees, and charges for its services to its customers, to the end that the revenues and funds received from such rates, fees, and charges and any other lawfully available funds will be sufficient at all times to pay the amounts due from the District to the Authority pursuant to this Agreement.
- 12. It is not hereby intended to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all remedies existing at law or in equity, including specific performance and mandamus, may be availed of by any party and shall be cumulative.
- 13. In the event either party hereto is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, except the obligation to pay amounts owed or required to be paid pursuant to the terms of this Agreement, then the obligations of such party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the party whose contractual obligations are affected thereby shall give notice and full particulars of such force majeure to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure," as used herein, shall include without limitation of the generality thereof, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States of America or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts,

drought, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, or any other inabilities of either party, whether similar to those enumerated or otherwise, which are not within the control of the party claiming such inability, which such party could not have avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party when such settlement is unfavorable to it in the judgment of the party experiencing such difficulty.

- 14. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected thereby.
- 15. Notwithstanding any provision of this Agreement, the Authority shall not be required to supply water to the District nor have any other obligations under this Agreement unless and until: (i) the Authority water lines to be constructed by the Authority to provide services to the District are complete and operational; (ii) any and all facilities, including, without limitation, chloramine disinfection facilities, to be constructed by the District to be able to receive water from the Authority are completed and operational; (iii) the District has complied with all TCEQ regulations and requirements of the Authority necessary for the District to be able to receive water from the Authority; and (iv) the TCEQ has approved the Authority's delivery of water to the District. After the Authority determines that the conditions of the preceding sentence have been satisfied, the Authority shall provide water to the District pursuant to this Agreement and the terms of its Groundwater Reduction Plan.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

340368.1 4

	he Board of Directors of, 20	
	Ву:	
	Name:	
	Title:	
ATTEST:		
By:		
Name:		
Title:		
(SEAL)		

5

Agreed to and executed by the Boa Authority on, 20	ard of Directors of Central Harris County	Regional Water
	CENTRAL HARRIS COUNTY REGIONAL WATER AUTHORITY	
	By:	<u>-</u>
ATTEST:		
By: Name: Secretary, Board of Directors		
(SEAL)		

6

#### **Automated Certificate of eService**

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Samara Traylor on behalf of Drew Miller Bar No. 786857 samara.traylor@kempsmith.com Envelope ID: 48145981

Status as of 11/17/2020 8:23 AM CST

Associated Case Party: San Jacinto River Authority

Name	BarNumber	Email	TimestampSubmitted	Status
James Zucker	24060876	jzucker@yettercoleman.com	11/16/2020 7:10:20 PM	SENT
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Associated Case Party: Quadvest, L.P. d/b/a Quadvest Water and Sewer Utility

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Marvin Jones	10929100	marty.jones@sprouselaw.com	11/16/2020 7:10:20 PM	SENT

Associated Case Party: Woodland Oaks Utility, L.P.

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Marvin Jones	10929100	marty.jones@sprouselaw.com	11/16/2020 7:10:20 PM	SENT

Associated Case Party: Everett Square, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Marvin Jones	10929100	marty.jones@sprouselaw.com	11/16/2020 7:10:20 PM	SENT

Associated Case Party: E.S. Water Consolidators, Inc.

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Associated Case Party: Utilities Investment Co., Inc.

Name

#### **Automated Certificate of eService**

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Samara Traylor on behalf of Drew Miller Bar No. 786857 samara.traylor@kempsmith.com Envelope ID: 48145981

Status as of 11/17/2020 8:23 AM CST

Associated Case Party: Utilities Investment Co., Inc.

Marvin Jones	10929100	marty.jones@sprouselaw.com	11/16/2020 7:10:20 PM	SENT
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Associated Case Party: T&W Water Service Company

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No. 09-20-00180-CV

## In the Court of Appeals

# for the Ninth District of Texas Beaumont, Texas

SAN JACINTO RIVER AUTHORITY,

Appellant,

V.

CITY OF CONROE, TEXAS AND CITY OF MAGNOLIA, TEXAS,

Appellees.

# BRIEF OF AMICUS CURIAE IN SUPPORT OF APPELLANT

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COUNSEL FOR THE CITIES OF
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TEXAS

### TABLE OF CONTENTS

TABLE OF CONTENTS	2
TABLE OF AUTHORITIES	. 3
IDENTITY OF AMICUS CURIAE	5
ARGUMENT	7
CONCLUSION AND PRAYER	20
CERTIFICATE OF SERVICE	21
CERTIFICATE OF COMPLIANCE.	23

### **INDEX OF AUTHORITIES**

#### Cases

537 S.W.3d 549, 557 (Tex. AppAustin 2017, pet. denied)
Ben Bolt-Palito Blanco Consol. Indep. Sch. Dist. v. Tex. Political Subdivisions
Prop./Cas. Ins. Joint Self-Insurance Fund, 212 S.W.3d 320, 328 (Tex. 2006)
Berkman v. City of Keene, 311 S.W.3d 523, 527 (Tex.AppWaco 2009, no pet.)).
<i>Id.</i> , at 3039
City of El Paso v. Heinrich, 284 S.W.3d 366, 368–69 (Tex.2009)5
City of Houston v. Williams, 353 S.W.3d 128, 138-39 (Tex. 2011)7
Clear Creek Independent School District v. Cotton Commercial USA, Inc 11, 12
Federal Sign v. Texas S. Univ., 951 S.W.2d 401, 405 (Tex.1997)5
Fischer, 479 S.W.3d at 23712
Fort Worth Indep. Sch. Dist. v. City of Fort Worth, 22 S.W.3d 831, 846 (Tex.
2000)12
Gen'l Serv. Comm'n v. Little-Tex Insulation Co., Inc., 39 S.W.d 591, 594 (Tex.
2001)5
Kirby Lake Dev., Ltd. v. Clear Lake City Water Auth., 320 S.W.3d 829, 839 (Tex.
2010) 6, 8, 11
Leach v. Texas Tech University, (Tex. App.— Amarillo [7 <sup>th</sup> Dist.] 2011)5

LTTS Charter School, Inc. v. Palasota, 362 S.W.2d 202, 210-11 (Tex. App. –	
Dallas 2012, no pet.)	3,
Lubbock County Water Control and Improvement District v. Church & Akin 442	
S.W.3d 297, 306-09 (Tex. 2014, pet den)	1
Pace Corp. v. Jackson, 155 Tex. 179, 284 S.W.2d 340, 345 (1955)	1
Parker Drilling Co. v. Romfor Supply Co., 316 S.W.3d 68, 74 (Tex. App.—	
Houston [14th Dist.] 2010, pet. denied)	9
San Antonio River Authority v. Austin Bridge & Road, L.P., S. Ct. Texas. May 1,	
2020, 601 S.W.3d 616, 63 Tex. Sup. Ct. J. 939	5
T.O. Stanley Boot Co. v. Bank of El Paso, 847 S.W.2d 218, 221 (Tex. 1992)	9
Tex. A & M University–Kingsville v. Lawson, 87 S.W.3d at 520–21	5
Tex. Natural Res. Comm'n v. IT–Davy 74 S.W.3d at 854	5
Van Zandt v. Fort Worth Press, 359 S.W.2d 893, 895 (Tex.1962)	9
OTHER AUTHORITIES	
TEX. LOC. GOV'T CODE § 271.151(2)(A)	9
TEX. LOC. GOV'T CODE § 271.151(3), 271.152 and 271.153	9
TEX. LOC. GOV'T CODE §§ 271.151(2)(A), 271.15210	0
TEX. LOC. GOV'T CODE Ann. §§ 271.151(2)(A), 271.152. Id	7
TEX. LOC. GOV'T CODE, Subchapter I, Sections 271.151 et seq	8

#### **IDENTITY OF AMICUS CURIAE**<sup>1</sup>

Amicus Curiae is The Woodlands Township ("Township"). The Township is a political subdivision of the state, being a conservation and reclamation district, created under Article XVI, Section 59 of the Texas Constitution, pursuant to the provisions of Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993 as amended.

The Cities' position in this case drastically impacts the cost of water to all other signatories to the Groundwater Reduction Planning, Alternative Water Supply and Related Goods and Services ("GRP") contracts and the cost of water to the end user, including those homes and businesses located within the Township's boundaries. It is the Township's position that the trial court incorrectly granted the Cities' plea to the jurisdiction.

The Township is not a party to the GRP contracts, the enforcement of which is sought by the San Jacinto River Authority ("SJRA") and for which the Cities of Conroe and Magnolia seek sovereign immunity. Nonetheless, the Township has an active interest in the outcome of these proceedings. The Appellant SJRA's Woodlands Division acts as a water wholesaler from its groundwater wells (from the Evangeline and Jaspar Aquifers) to the ten municipal utility districts (MUDs) within

<sup>&</sup>lt;sup>1</sup> The Amicus Curiae adopts the designation of the identities of the parties and their counsel as set forth in the Appellants' and Appellee's Briefs.

the Montgomery County portion of the Township. These MUDS in turn, provide retail water to the Township's residents.<sup>2</sup>

The Township is paying the fees associated with the preparation of this Amicus Brief.

Counsel for Amicus Curiae is:

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THE WOODLANDS TONWSHIP
2801 Technology Forest Blvd.
The Woodlands, Texas 77381
Telephone: (281) 210-3484

<sup>&</sup>lt;sup>2</sup> These MUDS receive central management services through the Woodlands Water Agency (WWA, formerly Woodlands Joint Powers Agency), a governmental entity, by providing water distribution, wastewater collection and storm drainage, as well as tax collection services.

#### **ARGUMENT**

Political subdivisions, as well as municipalities, are afforded immunity from both liability and suit. *Tex. A & M University–Kingsville v. Lawson*, 87 S.W.3d at 520–21; *Federal Sign v. Texas S. Univ.*, 951 S.W.2d 401, 405 (Tex.1997). Immunities can only be waived by the Legislature. *Ben Bolt–Palito Blanco Consol. Indep. Sch. Dist. v. Tex. Political Subdivisions Prop./Cas. Ins. Joint Self–Insurance Fund*, 212 S.W.3d 320 (Tex. 2006); *Tex. Natural Res. Comm'n v. IT–Davy*, 74 S.W.3d 849, 854 (Tex.2002). The Texas Supreme Court has admittedly "consistently deferred to the Legislature" to effectuate waivers of immunity. *Id.* at 326, *quoting Tex. Natural Res. Comm'n v. IT–Davy*, 74 S.W.3d 849, 854 (Tex. 2002).

State law provides that "a statute shall not be construed as a waiver . unless the waiver is effected by clear and unambiguous language." TEX. LOC. GOV'T CODE Ann. § 311.034 (the "Government Code"). See also IT-Davy, 74 S.W.3d at 854, citing Gen'l Serv. Comm'n v. Little-Tex Insulation Co., Inc., 39 S.W.3d 591, 594 (Tex. 2001). As the Court in Leach v. Texas Tech University, (Tex. App.—Amarillo [7th Dist.] 2011) explained, "What this means, then, is that unless the words of a statute controlling a particular dispute between the government and its wards clearly and unambiguously specify that one or both aspects of immunity are removed, the governmental entity continues to enjoy its judicially created insulation against paying damages." Leach at 392, citing City of El Paso v. Heinrich, 284

S.W.3d 366, 368–69 (Tex.2009).

It is axiomatic that the judiciary must determine in the first instance the existence and boundaries of governmental immunity. The legislature determines whether that immunity is waived and to what extent. *San Antonio River Authority v. Austin Bridge* & *Road, L.P.*, S. Ct. Texas. May 1, 2020, 601 S.W.3d 616, 63 Tex. Sup. Ct. J. 939.

The Texas Legislature has expressly waived immunity from suit for contracts entered by local governments for goods or services. *See* TEX. LOC. GOV'T CODE, Subchapter I, Sections 271.151 *et seq.* (the "Section 271.152 Waiver"). Services: "Services" provided to a local governmental entity, within meaning of statutory waiver of governmental immunity from suit for breach of contract claims involving contracts for goods or services, is broad enough to encompass a wide array of activities and includes generally any act performed for the benefit of another. *Tex. Loc. Gov't Code Ann. §§* 271.151(2)(A), 271.152. *Id. Kirby Lake Dev., Ltd. v. Clear Lake City Water Auth.*, 320 S.W.3d 829, 839 (Tex. 2010); *Ben Bolt–Palito Blanco Consol. Indep. Sch. Dist. v. Tex. Political Subdivisions Prop./Cas. Joint Self–Ins. Fund*, 212 S.W.3d 320 (Tex. 2006); *Kirby Lake*, 320 S.W.3d at 839.

Statutory waiver of governmental immunity from suit for breach of contract claims involving contracts for goods or services does not apply to a contract that provides

only an indirect, attenuated benefit to the local government. TEX. LOC. GOV'T CODE §§ 271.151(2)(A), 271.152.

The trial court held, as a matter of law, that Local Government Code Chapter 271 did not waive the Appellees' immunity from suit for this breach-of-contract claim. The Township respectfully disagrees.

Chapter 271 waives a local governmental entity's immunity from breach-of-contract claims brought under the chapter. An authorized local government entity "that enters into a contract subject to this subchapter waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of the contract, subject to the terms and conditions of this subchapter." The parties do not dispute that Appellees are local governments for purposes of chapter 271. See TEX. LOC. GOV'T CODE § 271.151(3). See also, § § 271.152 and 271.153 (limiting awards and damages). A "contract subject to this subchapter" means "a written contract stating the essential terms of the agreement for providing goods or services to the local governmental entity that is properly executed on behalf of the local governmental entity." Id. § 271.151(2)(A). It is this latter provision which is the crux of the instant appeal, as Appellees dispute that the contracts in question state essential terms.

The GRP contracts in the case at bar, authorize the SJRA to charge participants (such as the Appellee Cities) for water, with the revenues being used to service the

project's indebtedness and allow the parties to these contracts to share the cost of a \$554 million dollar water treatment plant and related pipelines and facilities in the County, for which the Texas Water development Board holds \$439,230,000.00 in bonds. Appellee Cities contend that Chapter 271's waiver does not apply, because it contends the GRP agreement doesn't include essential terms, to wit, price. SJRA, in turn, contends that the price is stated via a legislatively determined formula for the GRP contracts.

The Act waives immunity from contract suits for local governmental entities, such as the Cities of Conroe and Magnolia. Section 271.152 of the TEX. LOC. GOV'T CODE states:

A local governmental entity that is authorized by statute or the constitution to enter into a contract and that enters into a contract subject to this subchapter waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of the contract, subject to the terms and conditions of this subchapter.

A "contract subject to this subchapter" includes "a written contract stating the essential terms of the agreement for providing goods or services to the local governmental entity.

The Texas Supreme Court also subsequently ruled that the Section 271.152 Waiver applies to interlocal agreements entered under the authority of the Interlocal

Cooperation Act, when such agreements are for goods or services. *Ben Bolt–Palito Blanco Consol. Indep. Sch. Dist. v. Tex. Political Subdivisions Prop./Cas. Ins. Joint Self–Insurance Fund*, 212 S.W.3d 320, 328 (Tex. 2006), *rehearing denied*.

The Appellees have argued that since price is fixed to an external reference outside of the four corners of the GRP contract, that this somehow causes the GRP to be missing be an "essential term." Specifically, the Cities object that "one must go outside the GRP Contracts to SJRA's unilaterally-issued rate Orders to find rates." In light of the Appellee's citation to and reliance on City of Houston v. Williams, such an argument would seem ill-founded. In City of Houston v. Williams, the Texas Supreme Court had found both an agreement (and a waiver of immunity) in separate contract writings. 353 S.W.3d 128, 138-39 (Tex. 2011). That is, there was no single document which comprised the contract for which the count found a waiver of immunity. Rather, there were several documents, which the Court found, taken as a whole, to be the agreement. Thus, that a price (SJRA's Rate Orders) is located in an external document, much as the Consumer Price Index or another external document does not cause the failure of an "essential term", where the contract itself references such document. Moreover, the parties agreed as to the means of fixing the rate. Indeed, the City of Conroe sits on a committee which reviews any rate increase prior to its adoption; other cities vote for a representative city to sit on the six-member Review Committee. Moreover, Participants, in addition to the Review Committee

have an opportunity to comment on the GRP during the initial preparation stage, and during any amendments. In light of these facts, the rate isn't 'unilaterally' adopted, as the Cities now argue.

The Cities further arguments, therefore, regarding "price" are likewise not wellfounded, as they are premised on a specious argument, that price not only must be expressed within the agreement, but must also be expressed numerically as a firmfixed price. The Texas Local Government Code only requires "essential terms." While price is certainly an essential term of an agreement, until the trial court's decision in this matter, price has never been interpreted in such a limited manner. See e.g., Kirby Lake Dev., Ltd. v. Clear Lake City Water Auth., which held that a written contract states the essential terms when it outlines the names of the parties, the property at issue, and the parties' "basic obligations." 320 S.W.2d 829, 830 (Tex. The other cases cited by Appellee Cities to the contrary are readily 2010). distinguishable. In one matter, the portion of the agreement which stated price was an addendum, which was to be appended to and be made part of the contract. In what the Court referred to as a fatal error in pleading, it was not included and appended as part of the pleadings submitted to the court. From the court's perspective, the agreement wasn't enforceable at all under the Statute of Frauds, much less for a waiver of immunity pursuant to §271.151(2)(A). See, LTTS Charter School, Inc. v. Palasota, 362 S.W.2d 202, 210-11 (Tex. App. – Dallas 2012, no pet.)

In West Travis County Public Utility Agency v. Travis County Municipal Utility District No. 12, the court determined that the disputed contract was contingent upon an agreement. That contract stated that the Agency would provide wholesale services for treatment of raw water and delivery of potable water to the MUD in return for payment, if the MUD installed water meter and the Agency approved the same. The court reasoned that the contingency lacked both price and time of performance for installation of water meter. Thus, there being no mechanism to enforce the contingency, the services contract failed, as it conferred only a unilateral benefit, rather than an enforceable right for the Agency to receive water. 537 S.W.3d 549, 557 (Tex. App. -Austin 2017, pet. denied).

Likewise, *Lubbock County Water Control and Improvement District v. Church & Akin*, is inapplicable to the case at bar. That matter involved a leasehold, which did not require that the property be used for a particular enumerated purpose but for one of the recited uses, finding it to be covenant against a noncomplying use, not a covenant to use in a particular manner, (as a marina). The court likewise determined that the even if it assumed that Church & Akin were providing the District with a marina as "services," rather than simply complying with a use restriction, any provision of marina services *to the District's residents* was not the provision of such services to the Water District itself. In other words, the agreement in that case failed,

because it didn't contain the requisite bargained -for flow of consideration or exchange between the parties, of price for services. *See, Church & Akin*, 442 S.W.3d 297, 306-08 (Tex. 2014, pet. den).

#### The Court noted however, that:

...[C]hapter 271 does not define the term "services," and that the ordinary meaning of the term "is broad enough to encompass a wide array of activities." 320 S.W.3d at 839. In support of this statement, we cited authorities holding that the term "includes generally \*303 any act performed for the benefit of another under some arrangement or agreement whereby such act was to have been performed," *id.* (quoting *Van Zandt v. Fort Worth Press*, 359 S.W.2d 893, 895 (Tex.1962)), but would not extend to "contracts in which the benefit that the local governmental entity would receive is an indirect, attenuated one." *Id.* (quoting *Berkman v. City of Keene*, 311 S.W.3d 523, 527 (Tex.App.-Waco 2009, no pet.)). *Id.*, at 303

Indeed, the issue is of price (for the tickets), in that case was raised only at oral argument and was not stated in the lease or even an ancillary written agreement. The case is thus instructive to the one at bar, only to show that the courts consider each contract separately on a case-by-case basis to determine its essential terms. *See T.O. Stanley Boot Co. v. Bank of El Paso*, 847 S.W.2d 218, 221 (Tex. 1992); *see also Parker Drilling Co. v. Romfor Supply Co.*, 316 S.W.3d 68,

74 (Tex. App.—Houston [14th Dist.] 2010, pet. denied). Pursuant to Chapter 271, courts first look to the agreement's language to identify its essential terms, as the written agreement's terms themselves are the substance that determine whether immunity is waived *See Lubbock Cty. Water Control*, 442 S.W.3d at 304.

Significantly, however, the Cities' interpretation of the GRP Agreements, rests more on an implied comparison of the GRP Agreements to firm-fixed price contracts, rather than whether the GRP Contracts state the obligations of the parties and the Cities' intent to be bound thereby. Indeed, the Cities' limited definition of price under Section 271. 151(2)(A) would limit waiver to firm fixed-price contracts, precluding waiver in all requirements and output contracts. In many contracts for sale of goods or services (including for transactions under Article 2 of the Uniform Commercial Code or UCC), the parties numerically establish price, in dollars, subject to price adjustment mechanisms and most-favored customer clauses. These escalator clauses are frequently external to the document, are established and/or published by third parties and vary, based on certain criteria.

Sometimes, however, the parties may decide to either to not numerically establish the quantity, but establish the quantity based on the buyer's *requirements* of the goods and/or the seller's production or *output* of the goods. These requirements or output contracts are no less legally established than those agreements which

establish price numerically, as they provide consideration or non-numerically state price, stating and thus satisfying "price" as an "essential term of the agreement," under classic contract hornbook law.

Such contract arrangements likewise exist for certain electric power agreements. Capacity contracts in electric power markets that are used in situations where regulatory requirements from a state public utility commission obligate load serving entities and load serving electric utilities to purchase "capacity" (sometimes referred to as "resource adequacy") from suppliers to secure grid management and on-demand deliverability of power to consumers. Many political subdivisions, including municipalities, have electric utilities and these utilities have such agreements.

Likewise, certain natural gas supply contracts include peaking supply contracts which enable an electric utility to purchase natural gas from another natural gas provider on those days when its local natural gas distribution companies curtail its natural gas transportation service. These latter agreements are unlike to numerically establish price; rather the price will be set at a yet unestablished market rate.

Indeed, the variety in the types of government contracts doesn't require that price be stated either within the agreement itself, or even numerically. Indefinite-Delivery, Indefinite-Quantity agreements, for example, provide for the acquisition of supplies

or services but do not specify a firm quantity that will be issued and delivered during the period of the contract (as delivery orders or task orders). The basic contract will specify the contract types authorized (e.g. Cost Reimbursement or Firm Fixed Price) and each task order will identify the specific contract type utilized. These are used when a government entity cannot predetermine, above a specified minimum, the precise quantities of supplies or services it will require during the contract period and it is inadvisable for the governmental entity to commit itself for more than a minimum quantity. These are also commonly used when a recurring need is anticipated. There are three types of indefinite-delivery contracts: definite quantity, indefinite quantity, and requirements contracts. Pursuant to the GRP contracts, the parties agreed that the SJRA was authorized to set rates for the participants, under contractually recited procedures in the contracts.

Under the trial court's holding and the Cities' arguments in this case, all of these various contracts would, pursuant to *Tex. Loc. Gov't Code* § 271.151(2)(A), be lacking the essential term of price, inasmuch as they are not firm fixed-price agreements. Therefore, if one accepts the Cities' argument, the Legislature intended to only provide a waiver of immunity for a very limited portion of government contracts that is, only those where the governmental entity entered into firm-fixed price agreements.

Moreover, the above argument, that the GRP Agreements lack price and thus are unenforceable under *Tex. Loc. Gov't Code* § 271.151(2)(A), is at odds with the weight of other judicial authority holding that, to be enforceable, a contract must address its essential terms with "a reasonable degree of certainty and definiteness." *Pace Corp. v. Jackson*, 155 Tex. 179, 284 S.W.2d 340, 345 (1955); *see also Lubbock Cty. Water Control*, 442 S.W.3d at 309 (Willett, J., dissenting) (contract contains its "essential terms" when it "outlines the material terms necessary to make a contract enforceable") (citing *Kirby Lake*, 320 S.W.3d at 838).

As the court in *Clear Creek Independent School District v. Cotton Commercial USA, Inc.* noted, in determining whether services were sufficiently defined, 'a contract's essential terms must at least be sufficiently definite to confirm that both parties intended to be contractually bound. 529 S.W.3d 569, 580 (Tx. Ct. App – Houston [14<sup>th</sup> Dist], 2017), *See also, Fort Worth Indep. Sch. Dist. v. City of Fort Worth*, 22 S.W.3d 831, 846 (Tex. 2000). Even when that intent is clear, the agreement's terms must also be sufficiently definite to "enable a court to understand the parties' obligations," *id.*, and to give "an appropriate remedy" if they are breached. *Fischer*, 479 S.W.3d 231, 237 (Tex. 2016).

The GRP Contracts enunciate price in Article 6, spanning several pages of detailed

provisions and culminating in Section 6.02, which obligates the Cities to pay and pay by enumerated formulae based in the (1) amount of groundwater pumped or surface water taken, in an amount set by the SJRA's Rate Order.

There was no question that the Travis County Court sufficiently understood the parties' obligations, when it issued its Order on September 10, 2016. Nor is there any question that the other governmental entities who entered into these GRP agreements understand the implications of this Court's decision should it invalidate the agreements at bar as being somehow uncertain or lacking essential terms. Such a decision, at a minimum, would result in the Appellants being able to walk away from their contractual obligations – and cause the remaining governmental entities to shoulder the burden of providing that essential service – water - to their residents. However, in the larger context, it may well also be the watershed for utility agreements statewide.

### **CONCLUSION**

For these reasons and the reasons explained by Appellant in its brief, this Court should find for the Appellant, overturn the ruling of the trial court and remand this case for a hearing on the facts, consistent with the Court's opinion.

Respectfully submitted,

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Re: No. 09-20-00180-CV

San Jacinto River Authority v. City of Conroe, Texas and City of Magnolia, Texas

Letter Brief of the Texas Water Conservation Association and Others

To the Honorable Justices of the Ninth Court of Appeals:

Amici curiae the Texas Water Conservation Association ("TWCA"), the Trinity River Authority of Texas ("TRA"), North Texas Municipal Water District ("NTMWD"), Upper Trinity Regional Water District ("UTRWD"), Sabine River Authority of Texas (SRA), The Woodlands Water Agency (WWA), and Tarrant Regional Water District ("TRWD") come forward as friends of the court in support of the Appellant, San Jacinto River Authority ("SJRA"), in the above-captioned matter. TWCA's members, including the individual undersigned Amici, collectively provide water supply and wastewater treatment services that are critical for the public health and safety of the vast majority of Texans. Those services are sometimes furnished under contracts that do not specify the quantity of water to be delivered or wastewater to be treated. They often provide a formula for price setting or incorporate a rate set by action of the seller's governing body. These contracts nonetheless contain all "essential terms" for purposes of Texas Local Government Code ("TLGC") Chapter 271 and form the wholesale backbone for retail service to millions of Texans.

The Appellees, the Cities of Conroe and Magnolia ("Cities"), challenged the trial court's jurisdiction on two independent bases. First, they urged that their contract with SJRA was insufficiently definite to waive their governmental immunity under TLGC Chapter 271. CR.300 Second, the Cities contended that the failure to mediate the dispute before suit "negate[d] any waiver of Conroe's or Magnolia's governmental immunity from suit under Section 271.152." CR.297-98. The trial court did not specify the basis or bases upon which the Cities' pleas were granted. CR.1144. *Amici* are concerned only with the first basis of the Cities' pleas and express no opinion with regard to the second. *Amici* will also not address the incontestability arguments raised in SJRA's briefing to the Court.

With regard to the first basis for their pleas, the Cities contend that their immunity has not been waived because the GRP Contracts do not contain all essential terms in accordance with the definition of "a contract subject to this subchapter" found in TLGC Section 271.151(2)(A). Cities' Brief p. 16. In support of that claim, the Cities argue that, in order to be a "a contract subject to this subchapter," a contract must contain a "volume" and "price." *Id.* at 20 (arguing that "neither the volume nor the price—obviously essential terms—are stated within the GRP Contracts."). Chapter 271, however, does not include any such requirement.

If the Court reaches the question of the Cities' governmental immunity, the *Amici* respectfully urge caution. If the trial court's order is sustained as to the Cities' governmental immunity, it potentially places the stability and enforceability of many contracts for water supply and wastewater treatment in jeopardy.

TWCA has not paid any fees, and will not pay any fees, for the preparation of this brief. Tex. R. App. P. 11(c).

TWCA is a 501(c)(4) association of water professionals and organizations in Texas. Its members include river authorities, navigation and flood control districts, water control and improvement districts, drainage and irrigation districts, utility districts, municipalities, groundwater conservation districts, all kinds of water users, and general/environmental water interests. As relevant to the above-captioned case, TWCA's members include most large public water suppliers in the State of Texas.

TWCA serves as a leader and advocate for sound water policy in Texas, engaging on state-wide broad water issues that may affect its members. TWCA does not engage in individual or local water issues, except where those matters may have wide-ranging effects. The governmental immunity arguments urged by the Cities pose such an immediate threat to the stability of water supply in Texas that TWCA is compelled to provide this brief to the Court.

The additional Amici, all of which are members of TWCA, deliver treated or raw water and/or provide wastewater treatment services to municipalities like the Cities. For instance, TRA, NTMWD, UTRWD, SRA and WWA operate systems that provide treated water and/or wastewater treatment to municipal customers on a wholesale basis. Many of those systems are regional in nature and provide service to multiple municipal customers. These systems allow the individual Amici and their customers to leverage economies of scale that reduce costs, and those savings are passed on to millions of Texans every day. Many systems are operated under contracts that contain formula-based price and quantity terms, or incorporate a price set by the seller's governing body, but do not include a fixed price or quantity term in the contract. If the enforceability of those contracts is called into question, the ultimate burden will fall on

<sup>&</sup>lt;sup>1</sup> The following individual *Amici* paid fees to counsel related to the preparation of this brief: North Texas Municipal Water District, Upper Trinity Regional Water District, Sabine River Authority of Texas, and Tarrant Regional Water District.

individual Texans in the form of higher rates to account for the risk associated with contract enforcement.

The *Amici* submit that if the trial court concluded that flexible price and quantity term contracts are insufficiently definite to waive governmental immunity under TLGC Chapter 271, it did so in error. Contracts may, in fact, completely exclude a fixed price or quantity term and still state "the essential terms of the agreement" for purposes of TLGC Section 271.151(2)(a). Contracts for the sale of treated and raw water often exclude fixed price or quantity terms for both practical and statutory reasons. A finding that the absence of fixed price and quantity terms renders contracts too indefinite to waive governmental immunity would ignore general contract law principles. It would also fail to account for the specific nature of wholesale contracts for the sale of water or for wastewater treatment. If the Court opines on the issue of governmental immunity in this case, it should consider that its decision may affect the enforceability of numerous contracts across the state.

1. A contract does not need to include a fixed price term to waive governmental immunity under Texas Local Government Code Chapter 271.

TLGC Section 271.151(2) does not include the term "fixed price," and requires only that the "essential terms" of the contract be identified in order to waive governmental immunity. Water and wastewater contracts, like any other contract, must adhere to the basic principles of contract law. A contract must be sufficiently definite in its terms to enable a court to understand the contractual obligations it creates. *Bendalin v. Delgado*, 406 S.W.2d 897, 899 (Tex. 1966). A contract need only state all "essential terms" for purposes of a waiver of governmental immunity under TLGC Chapter 271. Tex. Loc. Gov'T Code § 271.151(2)(a).

Essential terms are stated when "the names of the parties, property at issue, and <u>basic obligations</u> are clearly outlined." *Kirby Lake Dev., Ltd. v. Clear Lake City Water Auth.*, 320 S.W.3d 829, 838 (Tex. 2010) (emphasis added). The "failure to specify the price does not leave [a] contract so incomplete that it cannot be enforced," provided that "the parties have done everything else necessary to make a binding agreement for the sale of goods or services." *Bendalin*, 406 S.W.2d at 900. As observed in *Bendalin*, "[i]n most cases [where] the parties clearly intend to make a binding agreement, with the price left open, [] the court does violence to their intention, and injustice to one of them, if the agreement is defeated." *Id.* (quoting William L. Prosser, *Open Price in Contracts for the Sale of Goods*, 16 MINN. L. REV. 733, 790 (1932)). That is precisely what the Cities seek to accomplish by asserting governmental immunity in this matter. And, it should be noted that the consequences of allowing the Cities' claims of governmental immunity to stand are potentially far reaching.

As a matter of general contract law, the enforceability of open-price term contracts, those which exclude even a price formula, is recognized in the Texas Business and Commerce Code. Tex. Bus. & Com. Code § 2.305(a) (providing that "parties[,] if they so intend[,] can conclude a contract for sale even though the price is not settled."). In instances "where parties have done

everything else necessary to make a binding agreement for services . . . their failure to specify a price does not leave the contract so incomplete that it cannot be enforced." *Pennington v. Gurkoff*, 899 S.W.2d 767, 770 (Tex. App.—Fort Worth 1995, writ denied) (citing *Bendalin*, 406 S.W.2d at 900; *Polland & Cook v. Lehmann*, 832 S.W.2d 729, 739–40 (Tex. App.—Houston [1st Dist.] 1992, writ denied)).

The use of non-fixed price terms in a water supply contract is not unique to the SJRA's contracts with the Cities. In fact, it is the prevailing model in contracts for both wholesale water supply and wholesale wastewater treatment provided to municipalities like the Cities. That model is common because the use of a non-fixed price term is both practically and legally necessary.

Wholesale water supply contracts, especially for municipal supply, are often decades long. In some instances, water supply contracts may be of a duration of 100 years. Many contracts that provide for municipal customers to finance the development and operation of regional systems owned by a special district are effectively perpetual. Special districts like SJRA and the district *Amici* are authorized to enter into contracts with municipalities, like the Cities, for an "unlimited duration." Tex. Water Code § 49.068(b); see also, Tex. Gov't Code § 791.026(d).

Anticipating the financial requirements to provide water or wastewater treatment to municipal customers decades into the future is simply not possible. It is without question, however, that those services will be needed. The use of non-fixed price terms permits sellers <u>and</u> buyers the flexibility of meeting current costs today, the ability to adjust future rates to meet future requirements, and the ability to raise funds for capital costs through bond issuance. That is the practical basis for the ubiquity of non-fixed price terms in such contracts. If that flexibility results in contracts being rendered unenforceable under TLGC Chapter 271, it imperils the operational and financial stability of the model underlying wholesale water supply and wholesale wastewater treatment across Texas.

Moreover, it is legally necessary in long-term water supply contracting to use something other than a fixed price, because rates charged to like customers must be "without discrimination." Tex. Water Code §§ 11.036(b); see also, Tex. Water Code § 13.043(j) (providing that a rate charged for treated water or wastewater treatment services cannot be "unreasonably preferential, prejudicial, or discriminatory"). A flexible price term permits rates to be adjusted equally and simultaneously among like customers, so that those rates are always consistent, i.e., without unreasonable discrimination.

If a contract for water supply or wastewater treatment must include a fixed price to be enforceable, it would undermine the ability of buyers and sellers to make contracts of long duration. That, in turn, would negatively affect the cost of capital available for system maintenance and expansion. Ultimately, it would increase the cost to end users: Texans, businesses and industry.

2. A contract does not need to include a fixed quantity to waive governmental immunity under Texas Local Government Code Chapter 271.

Contracts for water delivery and wholesale wastewater treatment service often provide that the seller will meet all of the buyer's needs, without the specification of an exact contract quantity. Contracts that do not specify a contract quantity are generally recognized as enforceable. Tex. Bus. & Com. Code § 2.306(a) (providing that an open-quantity term is sufficiently definite for purposes of contract formation). Texas law has long recognized that an agreement to furnish or deliver the quantity of goods or services the buyer may need during the contract term — a requirements contract — "is sufficiently definite and certain to bind the parties and is not unilateral." *McCall v. Texas Dragline Svc. Co.*, 188 S.W.2d 243, 245 (Tex. Civ. App.—Galveston 1945, writ ref'd w.o.m.) (citing *Tampa Shipbuilding & Eng'g Co. v. Gen. Const. Co.*, 43 F.2d 309, 312 (5th Cir. 1930)).

As with flexible price terms, the use of contracts that do not include a fixed quantity for furnishing water or wastewater treatment services is also a practical necessity. The amount of water required by a municipality in any year, whether next year or fifty years in the future, is quantifiable only in hindsight. Water demands and the quantity of wastewater generated by a municipality vary significantly depending on weather conditions and other considerations such as population growth and water conservation efforts.

Given that demands for water and wastewater treatment cannot be forecast with precision, even in the near term, it is unsurprising that contracts for those services commonly do not specify a contract quantity. If that form of contract is insufficiently definite to invoke the statutory waiver of a municipal purchaser's governmental immunity under TLGC Chapter 271, this again would undermine the stability of those contracts and lead to higher costs of capital. Ultimately, that would result in higher rates for the millions of Texans who rely upon municipal water and wastewater services in municipalities that depend upon special districts like the district *Amici* for water supply and wastewater treatment.

For the reasons set forth herein, the *Amici* respectfully request that if the Court opines on the issue of the governmental immunity of Appellees the Cities of Conroe and Magnolia, that it find that non-fixed price and quantity terms are sufficiently definite to waive governmental immunity under TLGC Chapter 271.

Respectfully submitted,

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Cullom Jones	24079808	brantley.jones@sprouselaw.com	12/9/2020 12:24:31 PM	SENT
Marvin Jones	10929100	marty.jones@sprouselaw.com	12/9/2020 12:24:31 PM	SENT

Associated Case Party: Everett Square, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Cullom Jones	24079808	brantley.jones@sprouselaw.com	12/9/2020 12:24:31 PM	SENT
Marvin Jones	10929100	marty.jones@sprouselaw.com	12/9/2020 12:24:31 PM	SENT

Associated Case Party: E.S. Water Consolidators, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Cullom Jones	24079808	brantley.jones@sprouselaw.com	12/9/2020 12:24:31 PM	SENT
Marvin Jones	10929100	marty.jones@sprouselaw.com	12/9/2020 12:24:31 PM	SENT

Associated Case Party: Utilities Investment Co., Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Cullom Jones	24079808	brantley.jones@sprouselaw.com	12/9/2020 12:24:31 PM	SENT
Marvin Jones	10929100	marty.jones@sprouselaw.com	12/9/2020 12:24:31 PM	SENT

Associated Case Party: T&W Water Service Company

Name
Cullom Jones

### **Automated Certificate of eService**

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Stacey Steinbach on behalf of Stacey Steinbach Bar No. 24050218 ssteinbach@twca.org Envelope ID: 48767781

Status as of 12/9/2020 1:11 PM CST

Associated Case Party: T&W Water Service Company

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### GRP REVIEW COMMITTEE MINUTES OF REGULAR MEETING

### MARCH 22, 2021

The San Jacinto River Authority (SJRA) GRP Review Committee Meeting was held at 11:30 a.m., March 22, 2021 at the San Jacinto River Authority G&A Building – Boardroom 1577 Dam Site Rd, Conroe, Texas 77304 and via telephone conference call/webinar. Notice of said meeting was duly posted per GRP Contract requirements.

### The following Review Committee Members participated:

Present:

**GRP Review Committee:** 

Representing:

Jackie Chance

MUDs West of I-45

Duke Coon

City of Conroe

Mike Mooney

Chair

Woodlands Water

Rick Moffatt

MUDs East of I-45

Joe Sherwin

Cities other than City of Conroe

Mike Stoecker

Investor Owned Utilities

#### Absent:

All Review Committee members were present.

#### Also present:

Name:

Title:

Matt Corley

SJRA Customer Service Manager

David Guyer

SJRA Utility Enterprise Maintenance Manager

Jace Houston

SJRA General Manager

Ron Kelling, P.E.

SJRA Deputy General Manager

Chris Meeks

SJRA Utility Enterprise Operations & Maintenance Manager

Tom Michel

SJRA Director of Financial and Administrative Services

Mitchell Page

Schwartz, Page & Harding, L.L.P., SJRA General Counsel

Ed Shackelford, P.E.

SJRA Director of Utility Operations

Kelli Stormer

SJRA Senior Accountant

Jason Williams

SJRA Utility Enterprise Operations Manager

#### 1. CALL TO ORDER

Chairman, Mr. Mike Mooney, called the meeting to order at 11:31 a.m.

#### 2. PUBLIC COMMENTS

Mr. Simon Sequeira, CEO of Quadvest, questioned as to what is the role of the GRP Committee. He asked if GRP should be performing an independent risk analysis. There were no other public comments.

### 3. APPROVAL OF MINUTES – Regular Meeting February 22, 2021

Mr. Rick Moffatt highlighted that his name had been misspelt in the Meeting Minutes. Assuming that correction he motioned for approval. His motion was seconded by Mr. Jackie Chance. Motion passed unanimously.

### 4. GRP DIVISION UPDATES

Mr. Corley highlighted the GRP Division's successful efforts during the recent Winter Storm. Community Impact reported that San Jacinto River Authority provided potable water to Montgomery County emergency services such as regional hospitals, dialysis centers and the Houston Airport System. GRP had two line leaks within the past month and a half, both leaks have been repaired.

# 5. CONSIDER AND ACT UPON A RESOLUTION OF THE GRP REVIEW COMMITTEE ADOPTING A POLICY ON MEMBERS PLACING ITEMS ON GRP REVIEW COMMITTEE MEETING AGENDAS

Mr. Corley shared a letter that he received from Mr. Marty Jones, representative of Mr. Sequeira and Mr. Stoecker. GRP staff recommended deferring the item to another date but opened the floor if the Review Committee Members would like to discuss. Mr. Stoecker questioned the mechanics of adding an item to the Agenda. Mr. Duke Coon stated that he and his attorney understand the language and guidelines in 2.10 and consider it to be a very narrow window. He thinks it is important that a board member is able to add something to the Agenda without such limiting processes. Chairman, Mr. Mooney, responded that he does not believe that is the intention and he suggested to defer it until next month. There were no motions, Mr. Mitchell Page advised that without a motion we simply move on.

### 6. PRESENTATION AND DISCUSSION REGARDING THE GRP DIVISION'S FISCAL YEAR 2022 10-YEAR PROJECT PLAN

Mr. Corley introduced a presentation on the GRP 10 – Year Project Plan. He shared an overview of the project planning process and recognized the high value of understanding customer and community needs. Mr. Corley highlighted the single project in the GRP 10-Year Project Plan, replacement of aging low pressure microfiltration membranes in FY27. The estimated cost of this project is \$3.6 million, the source of funding is the R&R fund with a current balance of \$0. GRP will be presenting different routes to take in obtaining the needed funds in the upcoming Special Budget Workshop on April 12. As an alternative, Mr. Chris Meeks will be visiting the idea of replacing the membranes on a rotating schedule rather than all at once.

## 7. RECEIVE PRESENTATION REGARDING THE GRP DIVISION'S RATE DIFFERENTIAL OF SURFACE WATER AND GROUNDWATER PUMPAGE FEES FOR FISCAL YEAR 2022

The FY2020 – FY2024 GRP Rate Differential Study, courtesy of Raftelis, was presented by Mr. Corley. GRP gathered data from participants and calculated a three year weighted average cost per thousand gallons providing a \$0.42 differential.

### 8. RECEIVE INFORMATION REGARDING IMPACTS OF SUBSIDENCE ON FLOODING

Mr. Ron Kelling directed the Review Committee Members to the United States Geological Survey (USGS) Houston Subsidence website https://txpub.usgs.gov/houston\_subsidence/home. The front webpage lists Consequences of land subsidence in the Houston-Galveston Region. The fifth bullet states "Alters the flow of creeks and bayous which may increase the frequency and severity of flooding."

# 9. LONE STAR GROUNDWATER CONSERVATION DISTRICT REPORT - Invited Guest Speaker – Samantha Reiter, General Manager, LSGCD

Ms. Samantha Reiter was unable to attend, Ms. Jennifer Thayer attended in her absence. She reported no updates related to district rules, management plan and/or bylaws.

No questions.

## 10. GRP ITEMS FOR CONSIDERATION BY THE SJRA BOARD OF DIRECTORS ON MARCH 25, 2021

No Items for Consideration.

### 11. ATTORNEY'S UPDATE

Mr. Mitchell Page provided an update on GRP related legal matters.

### 12. FUTURE MEETING SCHEDULE & AGENDA ITEMS:

- a. April 12, 2021 Fiscal Year 2022 Special Budget Workshop
- b. April 19, 2021
- c. May 24, 2021
- d. June 21, 2021

### 13. ADJOURN

Without objection, the meeting was adjourned at 12:45 p.m.

Chris Meeks

Utility Enterprise O&M Manager

Matt Corley

**GRP** Administrator

### In the Court of Appeals for the Ninth Judicial District Beaumont, Texas

SAN JACINTO RIVER AUTHORITY,

Appellant,

v.

CITY OF CONROE, TEXAS AND CITY OF MAGNOLIA, TEXAS,

Appellee.

On Appeal from the 284th Judicial District Court, Montgomery County (No. 19-09-12611)

### BRIEF OF AMICUS CURIAE IN SUPPORT OF APPELLANT

Ken Paxton Lea N. Brigtsen Attorney General of Texas **Assistant Attorney General** State Bar No. 24054504 **Brent Webster** Lea.Brigtsen@oag.texas.gov First Assistant Attorney General Mark A. Levy Grant Dorfman **Assistant Attorney General** Deputy First Assistant Attorney General State Bar No. 24014555 Mark.Levy@oag.texas.gov Shawn Cowles Deputy Attorney General for Civil Financial Litigation and Charitable **Trusts Division** Litigation Office of the Attorney General Joshua R. Godbey P.O. Box 12548 Division Chief, Financial Litigation and Austin, Texas 78711-2548 Charitable Trusts Division Tel.: (512) 475-4476 Fax: (512) 457-4479

> Counsel for Amicus Curiae Texas Water Development Board

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### TABLE OF CONTENTS

Identit	y of Parties and Counsel	ii
Table	of Contents	iii
Index	of Authorities	iv
Statem	ent of Interest of Amicus Curiae	1
Summ	ary of Argument	2
Argum	ient	4
I.	The GRP Contracts state the essential terms to waive sovereign immunity.	4
A.	The GRP Contracts' price and volume terms are sufficiently definite because they contain a clear standard by which to determine the terms.	5
В.	Longstanding contract principles support finding that the GRP Contracts contain the required essential terms.	8
II.	The GRP Contracts are and should remain incontestable	10
A.	Texas statutes and case law provide that the GRP Contracts are incontestable.	11
В.	Abandoning incontestability will chill future investment in water development projects and increase costs on utility providers.	13
C.	If Appellees' ability to breach is upheld, TWDB and similarly-situated bond purchasers risk serious financial setbacks.	17
Prayer		20
Certifi	cate of Compliance	22
Certifi	cate of Service	23

### INDEX OF AUTHORITIES

### Cases

Bendalin v. Delgado, 406 S.W.2d 897 (Tex. 1966)6, 9
City of Conroe v. San Jacinto River Auth., 602 S.W.3d 444 (Tex. 2020)12
City of Denton v. Rushing, 570 S.W.3d 708 (Tex. 2019)
Clear Creek Indep. Sch. Dist. v. Cotton Commercial USA, Inc., 529 S.W.3d 569 (Tex. App.—Houston [14th Dist.] 2017, pet. denied) 6
Dallas/Fort Worth Int'l Airport Bd. v. Vizant Techs., LLC, 576 S.W.3d 362 (Tex. 2019)6
Fischer v. CTMI, L.L.C., 479 S.W.3d 231 (Tex. 2016)passim
Fort Worth Indep. Sch. Dist. v. City of Fort Worth, 22 S.W.3d 831 (Tex. 2000)
Hydrocarbon Prod. Co. v. Valley Acres Water Dist., 204 F.2d 212 (5th Cir. 1953)15
Kirby Lake Dev., Ltd. v. Clear Lake City Water Auth., 320 S.W.3d 829 (Tex. 2010)
T.O. Stanley Boot Co., Inc. v. Bank of El Paso, 847 S.W.2d 218 (Tex. 1992)
<u>Statutes</u>
Tex. Gov't Code § 1202.006
Tex. Gov't Code § 1371.059
Tex. Loc. Gov't Code § 271.151

TEX. LOC. GOV'T CODE § 271.152	passim
TEX. WATER CODE § 6.012	1
TEX. WATER CODE § 49.184	3, 12
Other Authorities	
Act of 1937, 45th Leg., R.S., ch. 426, 1937 Tex. Gen. Laws 861, 861-69	16
Act of 1967, 60th Leg., R.S., ch. 547, § 1, 1967 Tex. Gen. Laws 1212, 121	416
Tex. Const. art. XVI, § 59	14, 15

### STATEMENT OF INTEREST OF AMICUS CURIAE

The Texas Water Development Board ("TWDB") is the agency of the state primarily responsible for water planning and for administering water financing. TWDB was created by the legislature in 1957 and is governed by the Texas Water Code.

Pursuant to Texas Water Code section 6.012, TWDB has general jurisdiction over the administration of the state's various water assistance and financing programs (including those created by the Texas Constitution), the development and implementation of the state water plan, and the administration of the National Flood Insurance Program.

TWDB has provided billions of dollars to Texas communities to ensure Texans have clean water, effective wastewater treatment, and progressive stormwater solutions—including more than \$400 million to the San Jacinto River Authority ("SJRA") for the Groundwater Reduction Plan ("GRP") project before the Court. The loans for the GRP project are based on SJRA's pledge of revenue received through the contracts at issue in this case ("GRP Contracts").

A decision in this case will impact other loans made by TWDB that are also based on a pledge of contract revenues and will impact whether TWDB continues to rely on long-term contracts as the basis for loan repayments.

### **SUMMARY OF ARGUMENT**

Amicus curiae TWDB makes two arguments in support of SJRA: (1) the GRP Contracts contain the essential terms necessary to waive sovereign immunity and permit SJRA's suit against the City of Conroe, Texas, and the City of Magnolia, Texas ("the Cities"); and (2) public policy, statute, and case law dictate that the GRP Contracts remain incontestable.

Section 271.152 of the Local Government Code, which is at the heart of the debate in this case, is the statutory waiver of sovereign immunity that permits SJRA's suit, as waivers of sovereign immunity are the legislature's to give. Section 271.152 requires that the GRP Contracts contain the "essential terms" to waive sovereign immunity. The Cities argue that without fixed pricing and volume terms, the GRP Contracts fail to contain the required essential terms to waive sovereign immunity. As SJRA, fellow amici curiae, and TWDB argue, the GRP Contracts meet the essential terms requirement to waive sovereign immunity even without these fixed terms and including fixed terms like these into multi-decades long contracts is both economically infeasible and contrary to industry practice.

TWDB also argues that the GRP Contracts are and should remain incontestable in Texas courts. Government Code section 1371.059(a) is unambiguous in its intent and language that the GRP Contracts, having been

approved by the Attorney General and registered by the Comptroller, are "incontestable in a court" and "valid, binding, and enforceable" according to their terms. Both this section and Water Code section 49.184(e) evidence the legislature's clear intent to make the GRP Contracts and the public bonds they secure dependable sources of revenue to the state and investors. Abandoning this long-held policy will chill future investment in water development projects, increase costs to utility providers, and put bond purchasers in serious financial risk.

### **ARGUMENT**

I. The GRP Contracts state the essential terms to waive sovereign immunity.

Section 271.152 provides that a local governmental entity that enters into a contract "subject to this subchapter" waives sovereign immunity to a breach of contract suit. Tex. Loc. Gov't Code § 271.152. To be "subject to this subchapter," the contract must (1) be in writing, (2) state the agreement's essential terms, (3) require the contractor to provide goods or services to the local governmental entity, and (4) be properly executed on the entity's behalf. *Id.* § 271.151(2); *see City of Denton v. Rushing*, 570 S.W.3d 708, 710 (Tex. 2019). The second requirement, whether the GRP Contracts contain the "essential terms" to waive the Cities' sovereign immunity, is in dispute here.

Although the GRP Contracts do not contain fixed price and volume terms, the contracts are not silent as to these terms. Instead, the GRP Contracts reference a specific formula or standard to determine the price and volume terms. The contracts provide a formula to determine the fee and set the SJRA rate order, which is determined using a statutory formula set by the Legislature, as the price in the formula. *See* Appellant Brief at 26-27, citing CR.396-98, 494-96. The parties also expressly agreed that the SJRA rate order "may be amended from time to time" by SJRA. *Id.* at 27, citing CR.398, 496 (§6.04). As to volume, the GRP Contracts

Appellants Brief at 51. A contractual amendment established the minimum quantity and Section 4.09 of the contract establishes the detailed criteria used by the GRP Administrator to establish the maximum amount. *Id.* The actual volume of water used by the Cities ultimately is used to calculate the fee. *Id.* 

The Cities contend there was no waiver of sovereign immunity because the GRP Contracts do not contain fixed price and volume terms, thus, failing to contain all essential terms as required by Section 271.152. The Cities' argument is without merit. Essential terms do not have to be fixed to waive sovereign immunity. The standard is whether a contract's essential terms are sufficiently definite to establish the parties' obligations. Here, they are, and, sovereign immunity has been waived.

# A. The GRP Contracts' price and volume terms are sufficiently definite because they contain a clear standard by which to determine the terms.

An agreement's essential terms are those that parties would reasonably regard as "vitally important ingredient[s]" of their bargain. *Fischer v. CTMI L.L.C.*, 479 S.W.3d 231, 237 (Tex. 2016). If a contract's essential terms are clear enough to establish the obligations of the parties, the essential terms requirement in Section 271.152 is satisfied. *See Kirby Lake Dev., Ltd. V. Clear Lake City Water Auth.*, 320 S.W.3d 829, 838-839 (Tex. 2010). To meet this standard, "[a] contract must state its essential terms with 'a reasonable degree of certainty and definiteness,' sufficient

to confirm that both parties actually intended to be contractually bound and to enable a court to understand and enforce the parties' obligation and provide an appropriate remedy when breached." *Dallas/Fort Worth Int'l. Airport Bd. v. Vizant Techs., LLC*, 576 S.W.3d 362, 369 (Tex. 2019), quoting *Fischer*, 479 S.W.3d at 237; *see also Fort Worth Indep. Sch. Dist. V. City of Fort Worth*, 22 S.W.3d 831, 846 (Tex. 2000).

The sufficiently definite standard set forth in the Supreme Court's *Fischer* opinion is consistent with longstanding Texas Supreme Court opinions interpreting what is required for a contract to be enforceable, and is frequently cited by Texas courts for the standard used to determine whether a contract meets § 271.152's essential terms requirement. See e.g., T.O. Stanley Boot Co., Inc. v. Bank of El Paso, 847 S.W.2d 218, 221 (Tex. 1992) ("In order to be legally binding, a contract must be sufficiently definite in its terms so that a court can understand what the promisor undertook."); Bendalin v. Delgado, 406 S.W.2d 897, 899 (Tex. 1966) ("to be enforceable, a contract must be sufficiently certain to enable the court to determine the legal obligations of the parties thereto."); Vizant, 576 S.W.3d 362 at 368-69; Clear Creek Indep. Sch. Dist. v. Cotton Commercial USA, Inc., 529 S.W.3d 569, 580-83 (Tex. App.—Houston [14th Dist.] 2017, pet. denied). In Fischer, the Supreme Court addressed whether a contract was sufficiently definite when there was no fixed amount as to future payments. See Fischer, 479 S.W.3d at 240-42. The contract provided that the future payments were to be determined by the completion percentages of projects pending in the future. Id. at 240-41. The Supreme Court noted that of course the parties could not specify the *amount* of the payments at the time of the contract because they could not know what projects would be incomplete and what completion percentages as to those projects would be in the future. Id. Nevertheless, the Supreme Court held that although the contract's payment term was not fixed as to amount, it was still sufficiently definite because the contract provided a clear formula and description of what the missing input price into the formula would be. Id. at 241. The Supreme Court distinguished the contract at issue from contracts that were *silent* as to pricing terms: "this is not a case in which the parties failed to reach some understanding as to price or provide an adequate way in which it can be fixed," but "[t]o the contrary, the agreement provided a clear formula or standard by which to determine the payments...." *Id.* (internal citations and quotations omitted). Thus, the formula and description of the input provided enough information to determine the obligations of the parties, and therefore, the term was sufficiently definite. Id.

The Supreme Court's reasoning in *Fischer* applies here. The GRP Contracts are not silent as to price or volume. The parties agreed to a formula for the price and identified the rate orders as the input that was to be determined in the future—a rate

order that is set by statutory criteria provided by the legislature. *See* Appellant Brief at 26-27, citing CR. 396-97, 494-95. Similarly, although there is no fixed maximum water volume, the Conroe contract provides a standard based on specified criteria to determine the maximum volume amount, and the actual amount consumed by the Cities is what it is ultimately used to calculate the fee for water. Accordingly, the terms of the GRP Contracts are sufficiently definite to provide the parties and a court analyzing the contracts enough information to determine the basic obligations of the parties, including the price and volume terms, and provide an appropriate remedy if the contracts are breached. Therefore, the GRP Contracts meet the essential terms requirement of § 271.152, and sovereign immunity is waived.

# B. Longstanding contract principles support finding that the GRP Contracts contain the required essential terms.

In analyzing whether a contract's terms are sufficiently definite, Texas courts rely upon guiding principles of contract interpretation. *See Fischer*, 479 S.W.3d at 238-40. These principles also support finding that the GRP Contract terms are sufficiently definite.

First, courts do not rewrite a parties' contract, but "construe the contract 'as a whole,' and 'evaluate the overall agreement to determine what purposes the parties had in mind at the time they signed' it." *Fischer*, 479 S.W.3d at 239, quoting *Kirby Lake*, 320 S.W.3d at 841.) Second, Texas law disfavors forfeitures; thus, courts "will

find terms to be sufficiently definite whenever the language is reasonably susceptible to that interpretation." Id. ("When the actions of the parties ... show conclusively that they have intended to conclude a binding agreement, even though one or more terms are missing or are left to be agreed upon[,] ... courts endeavor, if possible, to attach a sufficiently definite meaning to the bargain.") (internal citations and quotations omitted). Third, because contracts are to be construed to avoid forfeitures, courts "may imply terms that can reasonably be implied". Id. ("Expressions that at first appear incomplete or uncertain are often readily made clear and plain by the aid of common usage and reasonable implications of fact."), quoting Bendalin v. Delgado, 406 S.W.2d 897, 900 (Tex. 1966). Fourth, "a term that appears to be indefinite may be given precision by usage of trade or by course of dealing between the parties." Fischer, 479 S.W.3d at 239 (internal citations and quotations omitted). Lastly, partial performance under a contract removes uncertainty and establishes terms are sufficiently definite even when some terms are missing or left to be agreed upon. Id. at 240.

These guiding principles further support the conclusion that the GRP Contracts are sufficiently definite to waive sovereign immunity. Here, the parties entered the GRP Contracts in 2010. The terms were sufficiently definite that the parties performed under the contracts for years until the increase to the rate order

for 2017 was announced. The Cities do not and cannot reasonably suggest that they didn't understand what the terms were in the contracts, as their course of dealing from 2010-2016 shows otherwise. Although the terms are clear in the contract, if the Court finds the terms "appear to be indefinite," the terms "may be given precision ... by course of dealing between the parties." See Fischer, 479 S.W.3d at 239. Here, the partial performance by the parties removes any uncertainty as to the terms and establishes that the terms are sufficiently definite to enable performance. Lastly, the Cities chose to enter long-term contracts with SJRA understanding that the price and quantity terms would be adjusted and were dependent on criteria specified in the contracts. This is a case where the Cities are merely unhappy with the terms of the contracts and are asking the Court to rewrite the terms of the contracts and forfeit the contracts. This is exactly what Texas law disfavors. Accordingly, TWDB requests that the court hold the parties to the terms that they bargained for and find that the terms are sufficiently definite to waive sovereign immunity.

### II. The GRP Contracts are and should remain incontestable.

Significant risk can and will befall municipalities, river authorities, public bond investors, governmental investors, and Texas taxpayers if Appellees are permitted to breach their contracts securing bonds issued by the SJRA.

# A. Texas statutes and case law provide that the GRP Contracts are incontestable.

State law unambiguously makes the SJRA contracts at issue incontestable in this—or any other—court.

The language of Government Code section 1371.059(a) is plain and unambiguous:

If proceedings to authorize an obligation or credit agreement are approved by the attorney general and registered by the comptroller, each obligation or credit agreement, as applicable, or a contract providing revenue or security included in or executed and delivered according to the authorizing proceedings is incontestable in a court or other forum and is valid, binding, and enforceable according to its terms.

TEX. GOV'T CODE § 1371.059(a).

No party disputes that the contracts challenged here were submitted with bonds issued under chapter 1371 of the Texas Government Code that were approved by the Attorney General and registered by the Comptroller. Thus, they are incontestable. *Id. See also* Tex. Gov't Code § 1202.006 ("A public security and any contract the proceeds of which are pledged to the payment of the public security are valid and incontestable in a court or other forum" . . . [after the public security is approved by the attorney general and registered by the comptroller and the public security is issued].).

Moreover, the legislature has also made incontestable any contracts whose proceeds are pledged to the payments of bonds issued by a water district or water authority (such as SJRA) when, as here, the contracts were submitted to the Attorney General with the bond records and were reviewed and approved by the Attorney General. Tex. Water Code § 49.184(e).

These statutory bars—forbidding any party from contesting such approved contracts in court—reflect the legislature's priority in insuring that such contracts will not be subject to court challenges and may be relied upon as dependable sources of revenue, particularly for bonds issued by an authority such as SJRA.

Finally, in addition to the plain and unambiguous language of the applicable statutes, the Texas Supreme Court has recognized the incontestability of these very GRP contracts, stating:

To comply with several requirements of the Texas Government and Water Codes, SJRA obtained the Attorney General's approval of all the contracts and bonds, and it registered the bonds with the Comptroller. The contracts and bonds thus *became "incontestable"* and "valid, binding, and enforceable according to [their] terms."

City of Conroe v. San Jacinto River Auth., 602 S.W.3d 444, 448-49 (Tex. 2020) (emphasis added) (citing Tex. Gov't Code § 1371.059(a)).

The TWDB does not argue for the incontestability of contracts that do not secure the debts of bonds issued by other issuers or do not otherwise fall within the

narrow constraints of section 1371.059. But here, it cannot plausibly be disputed that the contracts at issue are incontestable.

# B. Abandoning incontestability will chill future investment in water development projects and increase costs on utility providers.

While the Cities contest the contract for the Groundwater Reduction Plan, similar contract structures are used across the state of Texas for a host of regional water projects. The decision in this case could therefore have substantial impact on numerous other water supply projects across the state. In fact, the TWDB is currently providing financial assistance to 13 regional projects that have pledged contract revenues for the repayment of their loans. These projects are vital to millions of Texans as they provide an affordable, reliable, and sustainable source of water that is critical for both current needs and further growth or the state.

Regional projects provide economies of scale to otherwise potentially costprohibitive projects such as reservoirs, treatment plants, and pipelines for the distribution of water. Not only do regional water projects make fiscal sense in terms of building infrastructure, they make sense for the economic sustainability and growth of the state. Water does not appear where people happen to settle, it needs to be pooled or moved and saved. These types of regional projects are the cornerstone to providing affordable infrastructure needed to sustain the economy and for the economy to grow. The Texas economy is not sustainable and will not continue to grow if reliable, affordable, and long-term sources of water are not available. Growth can only occur where water is available and consistent and if Texas cannot meet that need, then Texas will be at a severe disadvantage.

Texas has experienced recent rapid population growth and that growth is only expected to continue in the future. A recent report prepared by the Texas State Demographer estimates Texas's population grew by eighteen percent between 2010 and 2020 to a total of 29,677,668 and further estimates that growth of an additional fifty-nine percent by 2050, bringing the total state population to an estimated 47,342,105. This growth will simply go elsewhere if the state is unable to provide reliable, sustainable, and affordable water.

The legislature is keenly aware of the benefits to the state when water infrastructure is regionalized. Water security is so important to the state that the Texas Constitution provides a mechanism by which entities such as SJRA are enabled to implement regional water projects. Texas Constitution Article XVI, § 59, passed by the legislature and approved by the voters in 1917, provides authority to establish Conservation and Reclamation Districts for "[t]he conservation and development of all of the natural resources of this State, and development of parks and recreational facilities, including the control, storing, preservation and distribution of its storm and flood waters, the waters of its rivers and streams, for

irrigation, power and all other useful purposes, the reclamation and irrigation of its arid, semi-arid and other lands needing irrigation, the reclamation and drainage of its overflowed lands, and other lands needing drainage, the conservation and development of its forests, water and hydro-electric power, the navigation of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties." Tex. Const. Art. XVI § 59.

One of the purposes of Article XVI § 59 is to ensure that water preservation and conservation is recognized as fundamental to the development of the state. The Fifth Circuit recognized the importance of water preservation and conservation to the State of Texas as a "matter vital to the public welfare":

So proceeding in this case, we keep in mind the common knowledge that in large areas of the State of Texas the importance of conservation and proper use of water is a matter vital to the public welfare. This truth is recognized by the organic law of that State, as set forth in Article XVI, Section 59(a), Constitution of Texas...Subsection (b) thereof authorizes the creation of 'such number of conservation and reclamation districts as may be determined to be essential to the accomplishment of the purposes of this amendment to the constitution which districts shall be governmental agencies and bodies politic and corporate with such powers of government and with the authority to exercise such rights, privileges and functions concerning the subject matter of this amendment as may be conferred by law.'

Hydrocarbon Prod. Co. v. Valley Acres Water Dist., 204 F.2d 212, 217 (5th Cir. 1953).

Regional water projects enable reliable, sustainable, and secure sources of water; to cut off the most reliable funding mechanism of regional contracts will severely impede the ability to finance the infrastructure needed and execute these regional projects. For a court to hold that utility contracts referencing rate orders passed by river authority boards or contracts that reference external pricing terms, rather than contracts including fixed and predetermined terms, are void for lack of essential terms would be "catastrophic to Texas cities and their constituents," as Appellants contend. By determining that external rate orders are "essential terms" and their lack of inclusion is fatal to contract formation, the court would also expand the cities' sovereign immunity to contract, since the contracts would not fall within the scope of Local Government Code Section 271.151. The natural conclusion to this would be that cities would be immune from suit if they breached such a contract, and utility providers such as the SIRA would have strong disincentives from contracting with those government entities. Also, utility contracts with local governments, like the GRP contracts, are by their nature, long-term, commonly spanning many decades. If utility providers were required to use fixed-price terms in their contracts, the contracts would invariably be negotiated for shorter terms, likely leading to the municipalities' detriment by being more costly as well as increasing the administrative burden on the governmental entities of obtaining repeated approvals.

# C. If Appellees' ability to breach is upheld, TWDB and similarly-situated bond purchasers risk serious financial setbacks.

As SJRA points out in its Brief, the revenue from the GRP Contracts is "the sole source for repaying those bonds, more than \$400 million of which are held by the Texas Water Development Board, essentially the citizens of Texas," App. Brief at 54 (citations omitted), with a smaller portion of the bonds being held by other investors who may be less financially sophisticated than TWDB and almost certainly have less understanding of Texas water law. Critical to the function of water development projects and financing in the State of Texas is the certainty and financial faith that bond purchasers, like TWDB, have in the incontestability of GRP Contracts and the revenue generated from them. Granting Appellees a judicial reprieve from adhering to wholesale water supply contracts will create uncertainty in the government bond market space which will make financing large-scale infrastructure projects much more costly, if not wholly cost-prohibitive. General bond market principles indicate the larger the risk, the larger the yield. If regional project issued bonds are no longer the stable, low-risk investments that they historically have been, the yields required to attract investors could rise to unattainable levels and regional projects may no longer be feasible. Though other investors will also be affected, TWDB is the state agency charged with leading water development financing through the issuance of bonds and is uniquely situated to be

impacted by such a drastic and wholesale change to the nature of public finance in water development.

TWDB has, in fact, purchased the majority of SJRA's bonds in its role in funding water development projects across the state. The Legislature has empowered the TWDB to make loans to political subdivisions like SJRA for regional projects. The mechanism by which TWDB makes such loans is by purchasing the bonds of political subdivisions, such as those issued by SJRA. As this office argued previously to the 98th Judicial District Court of Travis County in a related matter, if the Court were to find the contracts void ab initio, and declaratory judgment operated to invalidate the remaining contracts of all similarly situated participants, SJRA's capacity to pay its obligations to TWDB would be reduced. SJRA's bonds are special obligations, limited to the Pledged Revenues. Because the fees comprising the Pledged Revenues are assessed pursuant to the contracts, voiding the contracts would impair the ongoing source of repayment to TWDB.

Without dependable revenue from contracts with municipalities and other users of the SJRA system, TWDB and other bond purchases will have higher investment risks. Higher investment risks for institutional and governmental investors, like TWDB, translate into lower likelihood of future investment and higher costs to river authorities who will not be able to raise sufficient capital to fund

the long-term projects necessary to meet growing water needs in the state of Texas. Large scale water projects cost millions and sometimes a billion dollars and to cut off the most reliable funding mechanism for regional projects will severely impede the ability to finance the necessary infrastructure. This appeal doesn't simply concern the repayment of loans made to one regional water project; it concerns the viability of the state's plan for meeting its long-term water needs.

# **PRAYER**

For the reasons expressed in this brief, the Ninth Court of Appeals should reverse the decision of the Montgomery County District Court granting the Appellees' plea to the jurisdiction and remand the matter for trial.

Respectfully submitted,

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# **CERTIFICATE OF COMPLIANCE**

I certify that this amicus brief complies with the type-volume limitation of Texas Rule of Appellate Procedure 9.4 and 9.2 because it contains 3,694 words, excluding any parts exempted by Texas Rule of Appellate Procedure 9.4.

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#### CERTIFICATE OF SERVICE

On April 30, 2021, in compliance with Tex. R. App. P. 9.5 and 9.2, served this Appellant's Brief on counsel of record for Appellees listed below by via EFile. Texas.gov.

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#### No. 09-20-00180-CV

# IN THE COURT OF APPEALS FOR THE STATE OF TEXAS 9TH JUDICIAL DISTRICT AT BEAUMONT, TEXAS

### SAN JACINTO RIVER AUTHORITY,

Appellant

v.

# CITY OF CONROE, TEXAS AND CITY OF MAGNOLIA, TEXAS Appellees

On Appeal from the 284th Judicial District, Montgomery County, Texas Cause No. 19-09-12611

# BRIEF OF AMICUS CURIAE HARRIS-GALVESTON SUBSIDENCE DISTRICT IN SUPPORT OF APPELLANT

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# TABLE OF CONTENTS

INDEX OF AUTHORITIES	ii
INTRODUCTION	1
STATEMENT OF INTEREST	2
SUMMARY OF ARGUMENT	3
ARGUMENT AND AUTHORITIES	4
1. ESSENTIAL TERMS OF CONTRACTS GENERALLYABSENCE OF FIXED PRICEABSENCE OF FIXED QUANTITY	4
2. ESSENTIAL TERMS OF CONTRACTS FOR WAIVER-OF-IMMUNITY PURPOSES	10
3. CONTROLLING PRINCIPLES IN INTERPRETING	13
CONCLUSION	17
CERTIFICATE OF COMPLIANCE	18
CERTIFICATE OF SERVICE	19

# **INDEX OF AUTHORITIES**

# CASES

Bendalin v. Delgado,
406 S.W.2d 897 (Tex. 1966)
City of Houston v. Williams,
353 S.W.3d 128 (Tex. 2011)1
Clear Creek ISD v. Cotton Commercial USA, Inc.,
529 S.W.3d 569 (Tex. App. – Houston [14 <sup>th</sup> Dist.] 2017, pet. denied) 12, 14
Dallas/Fort Worth Int'l Airport Board v. Vizant Techs., LLC,
576 S.W.3d 362 (Tex. 2019)
Fischer v. CTMI, LLC,
479 S.W.3d 231 (Tex. 2016)
Griffith v. State,
116 S.W.3d 782 (Tex. Crim. App. 2003)1
Houston Community College System v. HV BTW, LP,
589 S.W.3d 204 (Tex. App. – Houston [14 <sup>th</sup> Dist.] 2017, no pet.)
ISI Construction Co. v. Orangefield ISD,
339 S.W.3d 235 (Tex. App. – Beaumont 2011, no pet.)10
Kirby Lake Dev. Ltd. v. Clear Lake City Water Authority, 320 S.W.3d 829 (Tex.
2010)
LTTS Charter School, Inc. v. Palasota,
362 S.W.3d 202 (Tex. App. – Dallas no pet.)
Lubbock Cty. Water Control v. Church & Akin, LLC,
442 S.W.3d 297 (Tex. 2014) (Willett, J., dissenting)

<i>Marino v. Lenoir</i> , 526 S.W.3d 403 (Tex. 2017)13
McBride v. Clayton, 166 S.W.2d 125 (1942)13
National Surety Corp. v. Ladd, 115 S.W.2d 600 (Tex. 1938)16, 17
Sacks v. Haden, 266 S.W.3d 447 (Tex. 2008)4, 5
Sanmina Corp. v. BancTec USA, Inc., 2001 US Dist. LEXIS 206 *18-19 (N.D. Tex. Jan. 8, 2001), affm'd in relevant part at 94 Fed. Appx. 194 (5th Cir. 2004)
Shell Oil Co. v. HRN, 144 S.W.3d 429 (Tex. 2004)
Stewart & Stevenson v. Enserve, Inc., 719 S.W.2d 337 (Tex. App. – Houston [14 <sup>th</sup> Dist.] 1986, writ ref'd, n.r.e.)
STATUTES
TEX. BUS. & COM. CODE §2.204(c)
CONSTITUTIONAL PROVISIONS
TEX. CONST. art. XVI, § 59(a), (b)
OTHER AUTHORITIES
1 Corbin on Contracts §4.4 (Rev. ed. 2018)

#### No. 09-20-00180-CV

# IN THE COURT OF APPEALS FOR THE STATE OF TEXAS 9TH JUDICIAL DISTRICT AT BEAUMONT, TEXAS

### SAN JACINTO RIVER AUTHORITY,

Appellant

v.

# CITY OF CONROE, TEXAS AND CITY OF MAGNOLIA, TEXAS Appellees

On Appeal from the 284th Judicial District, Montgomery County, Texas Cause No. 19-09-12611

# BRIEF OF AMICUS CURIAE HARRIS-GALVESTON SUBSIDENCE DISTRICT IN SUPPORT OF APPELLANT

#### INTRODUCTION

The following is an amicus curiae brief filed in support of the Briefs filed by the Appellant, San Jacinto River Authority ("SJRA"). In so doing, the amicus curiae Harris Galveston Subsidence District intends to both summarize and supplement the central argument set forth in Appellant's Briefs, in the hopes of furthering this Court's understanding of the core underlying issue in the present lawsuit, which is whether "essential terms" required by statute should requires greater specificity than

would be required under Texas contract law generally. The underlying facts are set forth in Appellant's Briefs and adopted herein.

#### **STATEMENT OF INTEREST**

This amicus brief is presented by the Harris-Galveston Subsidence District ("HGSD"). HGSD is a political subdivision of the State of Texas that, like the Appellant, was created by the Texas Legislature to accomplish the purposes of Article XVI, Section 59 of the Texas Constitution.<sup>1</sup>

Carrying out the duties statutorily assigned to HGSD required converting existing groundwater users to alternative water supplies. Developing and distributing those supplies require that HGSD's permittees enter into long-term water supply contracts with various local government entities, and those contracts closely resemble the GRP Contracts involved in this lawsuit. Because of the impossibility of accurately predicting the vicissitudes of both water supply and water demand over such decades-long contractual periods, it is the common practice to utilize open-ended pricing terms in those long-term water supply contracts. As already attested to in the briefs submitted by SJRA and all other amici, such long-term and open-termed water supply contracts are similarly critical to HGSD's own ability to reliably regulate groundwater withdrawals and control subsidence over a planning timeframe spanning decades.

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<sup>&</sup>lt;sup>1</sup> See Tex. Const. art. XVI, § 59(a), (b); Tex. Spec. Dist. Loc. Laws Code § 8801.002.

#### SUMMARY OF ARGUMENT

Amicus curiae HGSD wishes to contest the validity of the position asserted by the Appellees City of Conroe, Texas and City of Magnolia, Texas (collectively, "Cities'), regarding the central issue in this lawsuit. In sum, the Cities assert that – because their water supply contracts with SJRA supposedly fail to state certain "essential terms"— the statutory waiver of the Cities' sovereign immunity (as provided for under Local Gov't Code §271.152) is not triggered, thereby denying the District Court jurisdiction to hear SJRA's breach of contract claims against the Cities.

Specifically, the Cities first assert that the essential term of "price" is absent from the GRP Contracts, and further argue that – as to the City of Conroe – its GRP Contract supposedly lacks the essential term of "quantity" as well. However, as demonstrated below, both these arguments fail because Texas law holds that the absence of rigidly fixed terms setting out the applicable "price" or "quantity" does not render a contract unenforceable. This is especially so where, as here, the terms are neither "simply neglected" nor "left for future negotiations" but are instead addressed by the parties' intentional decision to adopt contractual formulas providing for the future resolution of any open-ended terms.

Moreover, neither the text of §§271.151 - .152 nor the application to the GRP Contracts specifically provides any rational grounds for construing the statutory

phrase "essential terms" as requiring a higher standard-of-definiteness, in the §271.152 immunity context, than that necessary to render a contract enforceable under Texas law generally. In contrast, upholding the overly rigid interpretation favored by the Cities would severely interfere with water districts' ability across Texas to carry out the duties entrusted to them by the Legislature. As shown below, water districts commonly rely upon open-termed agreements – similar to the GRP Contracts – to finance their long-term commitments regarding building and operating water-related infrastructure, yet the Cities' interpretation of §271.151 - .152 would be fatal to the districts' ability to enforce those agreements against all local government customers.

### **ARGUMENT AND AUTHORITIES**

#### 1. ESSENTIAL TERMS OF CONTRACTS GENERALLY

**ABSENCE OF FIXED PRICE.** Texas law holds that a fixed price term is not necessary to render a contract enforceable and therefore does not constitute an "essential term" thereof. *Sacks v. Haden*, 266 S.W.3d 447, 450 (Tex. 2008). As stated in 14 TexJur 3d Contracts §64:

The failure to spell out a price does not necessarily render a contract unenforceable or indicate a failure of the parties to reach a meeting of the minds with regard to the essential terms of the contract. Generally, neither term, interest rate, nor a specific dollar amount is required to find the existence of a contract, written or oral. If an agreement provides a standard to be applied in determining a price, the

contract is sufficiently definite to be enforceable. Where the parties have done everything else necessary to make a binding agreement for services, their failure to specify a price does not leave the contract so incomplete that it cannot be enforced. In such a case, a presumption arises that a reasonable price was intended.

The law's presumption that the parties intended a reasonable price on a contract is particularly strong when the agreement specifies a formula or other basis on which a reasonable price may be determined.

Accord, Fischer v. CTMI, LLC, 479 S.W.3d 231, 237 (Tex. 2016); Sacks, 266 S.W.3d at 450; and Bendalin v. Delgado, 406 S.W.2d 897, 900 (Tex. 1966).

As noted by TexJur (citing to *Fischer*, 479 S.W.3d at 237) the terms of a contract will be deemed sufficiently definite, even in the absence of a fixed price term, where the parties have instead provided a formula or standard by which to calculate the operative price. SJRA, at pp. 47-49 of its Appellant's Brief, explained how Article 6 of the GRP Contracts set out just such a pricing formula. The Cities, however, object to the Article 6 formula because – within the various parameters set out there – the formula still leaves SJRA a significant degree of discretion in unilaterally determining the prices to be charged.

This is indeed true; the GRP Contracts do not treat future water rates as an unresolved matter requiring the Cities and SJRA to negotiate future rates bilaterally. In fact, had the Contracts required future bilateral negotiations, they would concededly lack an "essential term" for the purposes of the §271.152 waiver. See *Dallas/Fort Worth Int'l Airport Board v. Vizant Techs.*, LLC 576 S.W.3d 362, 371

(Tex. 2019). The *Vizant* result is wholly distinguishable from the current case, however, because pursuant to the formula set out at Article 6 of the GRP Contracts, future rates are – by agreement of the parties – unilaterally established by SJRA, utilizing the discretion contractually granted to it.

The Cities, however, argue that it is precisely this degree of discretion retained by SJRA – in unilaterally applying the Article 6 formula to set future rates – that is fatal to the GRP Contracts' enforceability. Specifically, on page 23 of their Appellees Brief, the Cities cite to 1 Corbin on Contracts §4.4 (Rev. ed. 2018) as holding that:

An agreement that provides that the price to be paid, or other performance to be rendered, shall be left to the will and discretion of one of the parties *has been held* not enforceable. (emphasis added).

While the above-quoted language is in itself technically accurate, the Cities' out-of-context utilization of the quote is entirely misleading. This Court's review of the full text of §4.4 will find instead that Corbin – in utilizing the past-tense phrase "has been held" – was merely referencing older caselaw that reached improper results. Immediately following the above-quoted language, Corbin then goes on to state the correct, modern rule as follows:

[b]ut the fact that one of the parties reserves the power of fixing or varying the price or other performance is not fatal if the exercise of this power is subject to prescribed or implied limitations, as that the variation must be in proportion to some objectively determined base or must be reasonable or in good faith. If the transaction is a contract for sale of goods, UCC §2-305(2) eliminates any doubt as to the validity of

such a contract by providing: "A price to be fixed by the seller or the buyer means a price for him to fix in good faith." (emphasis added).

An identical rule applies in Texas, which has likewise adopted the UCC provision upholding contracts permitting one party to unilaterally set prices in good faith, at TEX. BUS. & COM. CODE §2.305. See, in particular, *Shell Oil Co. v. HRN*, 144 S.W.3d 429, 436 (Tex. 2004), wherein the Texas supreme court – explicitly relying upon U.C.C. §2.305(b) 's "good faith" standard – enforced an "open pricing system" whereby Shell executed gasoline contracts with station owners whose price term was almost entirely open-ended; it consisted of no more than Shell's guarantee that a contracting owner would be charged the same, Shell-fixed rate as all other station owners. At page 431, the supreme court in *Shell Oil* noted that "open-price term contracts are commonly used in the gasoline refining and marketing industry due to price volatility."

The *Shell Oil* court further held at page 432 that when parties intentionally choose to adopt such an "open pricing arrangement," one party is free to fix a price unilaterally, so long as it performs its price-setting in "good faith," pursuant to §2.305(b). Citing to Official UCC Comment 3 accompanying §2.305, the *Shell Oil* court also held that the price-setting party's normal posted rate is *presumed* to constitute a good faith price absent evidence to the contrary. *Ibid.* at 433. At page 435, the supreme court noted that the intention of this presumption is "to minimize judicial intrusion into the setting of prices under open-price-term contracts," since

to hold otherwise would allow the non-price-setting party to endlessly challenge the prices set, despite having expressly agreed to just such an arrangement. *Shell Oil Co.*, 144 S.W.3d at 436, 438.

Under the Texas supreme court decisions in *Fischer* and *Shell Oil*, then, it is clear that the "essential terms" of a contract need not include a fixed price so long as the parties agree that future pricing is to be unilaterally set by one party, either 1) under an agreed-upon formula, or 2) through the good faith exercise of price-setting discretion entrusted to that party.

ABSENCE OF FIXED QUANTITY. The Cities also maintain that Conroe's GRP Contract with SJRA lacks a second "essential term" for §271.152 waiver purposes – this time regarding quantity – because Section 4.09 thereof permits SJRA to unilaterally determine the maximum amount of water Conroe can receive, as well as the minimum amount of water that Conroe is required to take. See Appellees' Brief at 20-23.

Amicus curiae HGSD is unaware of any reason the UCC would not apply to the City of Conroe's GRP Contract, and the UCC's embrace of open-price contracts also applies to quantity. Tex. Bus. & Com. Code §2.204(c). See, in particular, *Sanmina Corp. v. BancTec USA, Inc.*, 2001 US Dist. LEXIS 206 \*18-19 (N.D. Tex. Jan. 8, 2001), affm'd in relevant part at 94 Fed. Appx. 194 (5<sup>th</sup> Cir. 2004).

In Sanmina, the parties entered into an agreement allowing the buyer to purchase circuit boards from the seller in whatever quantity the buyer saw fit to request in subsequently-issued purchase orders. When the seller later questioned the validity of the agreement, "because it left the quantity entirely optional with" the buyer, the Sanmina court noted that "the term was deliberately left open by the parties with the intention of providing flexibility," and cited to §2.204(c), which provides that such an open-ended contract "does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy." Ibid. In particular, the Sanmina court likewise cited to the accompanying Official Comment regarding §2.204(c), which discusses the UCC's liberal approach toward incorporating "commercial standards" in enforcing contracts that intentionally leave open matters regarding performance, price, etc.<sup>2</sup> This Court is invited to note the similarity between the Official UCC Comment and the approach adopted by the Fischer court in the non-UCC context. Ibid. 479

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<sup>&</sup>lt;sup>2</sup> Section §2.204 Uniform Commercial Code Comment: "Subsection (3) states the principle as to 'open terms' underlying the later sections of this Article. If the parties intend to enter into a binding agreement, this subsection recognizes that agreement as valid in law, despite missing terms, if there is any reasonably certain basis for granting a remedy. The test is not certainty as to what the parties were to do nor as to the exact amount of damages due the plaintiff. Nor is the fact that one or more terms are left to be agreed upon enough of itself to defeat an otherwise adequate agreement. Rather, commercial standards on the point of "indefiniteness" are intended to be applied, this Act making provision elsewhere for missing terms needed for performance, open price, remedies and the like."

S.W.3d at 238-40. Accord, *Stewart & Stevenson v. Enserve, Inc.*, 719 S.W.2d 337, 346 (Tex. App. – Houston [14<sup>th</sup> Dist.] 1986, writ ref'd, n.r.e.).

### 2. ESSENTIAL TERMS OF CONTRACTS FOR WAIVER-OF-IMMUNITY PURPOSES

As shown above, the GRP Contracts are not – under standard Texas contractual law – lacking any essential terms regarding either price or quantity because the parties intentionally agreed to permit SJRA to set those terms according to the relevant formulae in the GRP Contracts. See *Fischer*, at 479 S.W.3d at 237.

Accordingly, the next question is whether – for Chapter 271 waiver-of-immunity purposes – a contract must satisfy a standard higher than the generally-applicable *Fischer* enforceability standard. Specifically, §271.152's waiver of immunity extends only to "contracts subject to this subchapter." "Contract" is defined at §271.151(2)(A) as a written document "stating the essential terms of the agreement for providing goods or services to the local government entity …."

Although the Cities assert at page 15 of their Appellees' Brief that *ISI* Construction Co. v. Orangefield ISD, 339 S.W.3d 235, 239 (Tex. App. – Beaumont 2011, no pet.) supports their position that determining "essential terms" for §271.152 purposes imposes a higher standard than that otherwise needed to enforce other contracts, this Court's review of the quoted portion of the *ISI* case will find little more than dicta musings as to whether 16 disparate documents could even be jointly construed as a constituting a "contract" much less an enforceable one.

Likewise, while page 16 of the Cities' Brief blithely cites to various cases holding that the "price to be paid" is an essential term for §271.152 purposes, a closer inspection will show that the actual rule is that "Texas courts generally construe essential terms of a contract to include ... the price to be paid" (emphasis added). Kirby Lake Dev. Ltd. v. Clear Lake City Water Authority, 320 S.W.3d 829, 839 (Tex. 2010). Such "general rule" entirely aligns with the Texas supreme court's holding in *Shell Oil*, which provides that while "most contracts for the sale of goods specify a price," an acceptable alternative exists where – as here – the parties intentionally choose to adopt an open-pricing arrangement. Accord, Fischer, 479 S.W.3d at 240. Indeed, although the Cities' Brief cites to LTTS Charter School, Inc. v. Palasota, 362 S.W.3d 202, 210-11 (Tex. App. – Dallas no pet.) in support of its assertion that, in the §271.152 context, a contract must state a fixed price, the LTTS court actually noted instead that the agreement in question failed to state "a price to be paid, or any term stating the amount or method of calculating the commission" (emphasis added). *Ibid.* at 210. As to the remaining cases cited at page 16 of Appellees' Brief, none address the effect of an intentional decision to utilize an openpricing mechanism.

Moreover, the Texas supreme court's use of the "general rule" language in *Kirby Lake* (which necessarily implies the existence of an exception thereto) is entirely consistent with the *Kirby Lake* court's overall liberal approach to

determining whether an agreement contains the requisite "essential terms" for §271.152 purposes. That is, in the sentence immediately preceding that describing price terms as being only generally required, the *Kirby Lake* court held that § 271.152's "essential terms" requirement was satisfied where "the names of the parties, property at issue, and basic obligations are clearly outlined".

This liberal approach adopted by the *Kirby Lake* court in the §271.152 context – requiring only that a written agreement set out the parties' "basic obligations" – is entirely consistent with that adopted by the Texas supreme court outside of the §271.152 context, in *Fischer*, 479 S.W.3d 238-40. See, in particular, *Clear Creek ISD v. Cotton Commercial USA, Inc.*, 529 S.W.3d 569, 580-82 (Tex. App. – Houston [14<sup>th</sup> Dist.] 2017, pet. denied), where the court, citing to both *Fischer* and *Kirby Lake*, held that to satisfy §271.152, a contract need only be sufficiently definite to establish the parties' intent to contract, and enable the court to 1) understand the parties' contractual obligations, and 2) provide an appropriate remedy if those obligations are breached. Accord, *Houston Community College System v. HV BTW, LP*, 589 S.W.3d 204, 212-13 (Tex. App. – Houston [14<sup>th</sup> Dist.] 2017, no pet.).

The GRP Contracts here easily meet the "low threshold" of specificity required to satisfy §271.152's "essential terms" requirement. See *Cotton Commercial*, 529 S.W.3d at 585, citing to *Lubbock Cty. Water Control v. Church & Akin, LLC*, 442 S.W.3d 297, 311 (Tex. 2014) (Willett, J., dissenting).

### 3. CONTROLLING PRINCIPLES IN INTERPRETING §271.151 - .152

Accordingly, we now examine just what arguments might possibly favor upholding the Cities' rigid reading of §271.152's immunity requirements in a way that would require the GRP Contracts to set out their price and quantity terms with a degree of specificity exceeding the standard applicable under Texas contract law. To begin with, all parties concede that the phrase "essential terms" is not defined in Chapter 271 itself. *City of Houston v. Williams*, 353 S.W.3d 128, 138 (Tex. 2011). In the absence of a statutory definition, this Court is required to presume that the term is to be interpreted consistent with the law as it existed at the time of its enactment. See *Marino v. Lenoir*, 526 S.W.3d 403, 409 (Tex. 2017), and especially *McBride v. Clayton*, 166 S.W.2d 125, 128 (1942), where the Texas supreme court stated:

In applying this statute to the facts before us we must assume that in the use of the term ... the Legislature intended it to mean what the courts of this State had theretofore said it meant.

There is no question that well before the 2005 enactment of §§271.151 and 271.152, Texas law held that that price is not an "essential term" for contractual enforceability. See *Bendalin v. Delgado*, 406 S.W.2d 897, 900 (Tex. 1966). As to "quantity," see *Sanmina Corp..*, 2001 US Dist. LEXIS 206 \*18-19, relying upon §2.204(c) of the Texas UCC.

Second, even in the §271.152 context agreements are to be construed to avoid forfeiture, which is precisely the result that the Cities seek here. *Kirby Lake*, 320 S.W.3d at 842.

Third, and perhaps most importantly, for §271.152 purposes, courts "consider each contract separately on a case-by-case basis to determine its essential terms," rather than through the rote application of a one-size-fits-all standard. *Cotton Commercial*, 529 S.W.3d at 580. As stated by the *Vizant* court, "what particular terms are essential generally depends on the specific contract at issue." *Ibid.*, 576 S.W.3d at 369, citing *Fischer*, 479 S.W.3d 237. As amply briefed by SJRA and the various water districts who have weighed in as amici, the specific GRP Contracts at issue here are unique in many respects, even as – by necessity – they closely resemble those supply contracts entered into by numerous other Texas water districts.

Among the unique features of our GRP Contracts, first and foremost, is that they are inordinately lengthy (here, of 35 and 79 years in length, respectively), and concern supplying a commodity (water) whose price will inevitably fluctuate during the term of the contract due to unforeseeable shifts in both supply and demand.<sup>3</sup> See

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<sup>&</sup>lt;sup>3</sup> By way of illustrating such unforeseeability, HGSD would point out that in the 79 years *prior* to 2020, Conroe's population (and attendant water needs) increased from 4,624 to 93,160.

Appellant's Brief at 19, 33-34. Essentially, then, the Cities are faulting the GRP Contracts for their failure to specify the unspecifiable.

Second, GRP Contracts are unique because their lack of traditionallyspecified terms such as "price" or "quantity" reflects an intentional choice to proactively respond to the uncertainty inherent in long-term water contracts by granting SJRA authority to unilaterally set such matters. In this respect, note the Texas supreme court's comment in Shell Oil that "open-price term contracts are commonly used in the gasoline refining and marketing industry due to price volatility." Ibid., 144 S.W.3d at 431. In their briefs, SJRA and the amici have attested to similar volatility regarding water supply and demand. Moreover, their briefs uniformly state that the long-term nature of the GRP Contracts reflects the equally long-term nature of the tasks assigned by the Texas legislature in financing, building, and operating the infrastructure necessary to develop and conserve this state's water resources. Under these circumstances, it is entirely unclear why – for §271.152 to apply – water supply contracts involving local government entities should be denied the flexibility otherwise granted under Texas law that allows them to address – through open-term arrangements – the uncertainty inherent in long-term water supply contracts. See Fischer, 479 S.W.3d at 240, upholding enforceability where a "contract [is] about as definitive and certain as the parties could have made it under the circumstances."

Applying the interpretative principles set forth above, amicus curiae HGSD is aware of precious little – in law or logic – favoring the Cities' rigid interpretation of the phrase "essential term," either in the §271.152 context generally, or as applied to the GRP Contracts specifically. This is hardly a case in which a private, for-profit entity seeks to gouge an unsuspecting municipality for its own enrichment. Rather, the GRP Contracts are instead between governmental entities, with SJRA's ratesetting ability closely circumscribed by the statutes creating it. See Appellant's Brief at 22-23. In that regard, it must also be noted that the Cities initially agreed to (and in the case of Conroe, extensively negotiated) the very same open-ended terminology that they now complain of. Thus, the Cities' current embrace of §271.152 smacks of little more than attempting to create a loophole for short-term gain. Conversely, SJRA and the other water district amici have amply testified regarding the vital importance of both long-term and open-termed supply contracts in financing the districts' accomplishment of the tasks set for them by the Legislature.

These ill-balanced equities between the Cities and SJRA bring us to the final rule of construction this Court is urged to consider. Where a statute may reasonably be interpreted in two different ways, a court may consider the consequences of differing interpretations in deciding which interpretation to adopt so as to avoid hardship, inconvenience, or prejudice to the public interest. *National Surety Corp.* 

v. Ladd, 115 S.W.2d 600, 603 (Tex. 1938); Griffith v. State, 116 S.W.3d 782, 785 (Tex. Crim. App. 2003). Here, the "public interest" unquestionably favors interpreting §§271.151 - 271.152 so as allow water districts to both 1) enter into open-termed supply contracts, and 2) later enforce those contracts against local government entities. Accordingly, in the §271.152 waiver context, the phrase "essential terms" should be construed in a manner consistent with Texas law governing contracts generally, so as to permit water districts to likewise exercise the flexibility needed to operate effectively, in carrying out their statutory duties.

### **CONCLUSION**

Accordingly, this Court should reject the Cities' "essential terms" argument, reverse the decision of the District Court, and remand this case for trial.

Respectfully submitted,

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### **CERTIFICATE OF COMPLIANCE**

I certify that this document complies with the typeface requirements of Texas Rule of Appellate Procedure 9.4(e) because it was prepared on a computer in a conventional typeface no smaller than 14-point for text and 12-point for footnotes. In reliance on the word count feature of the program used to create the brief, I also certify that the brief complies with the word-count limitation in Rule 9.4(i) as it contains 3,928 words, excluding any parts exempted by 9.4(i)(l).

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# **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document was served on all counsel of record identified below on February 8, 2021, electronically through the electronic filing manager in compliance with the Texas Rules of Appellate Procedure:

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