

SUPPLEMENTAL WATER SUPPLY AGREEMENT

By and Between

THE CITY OF AUSTIN

and

THE LOWER COLORADO RIVER AUTHORITY

Effective Date: _____

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~~September 19~~November 1, 2007

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SUPPLEMENTAL WATER SUPPLY AGREEMENT

This 2007 Supplemental Water Supply Agreement (“SWSA”) is made and entered into by and between the City of Austin (“Austin”) and the Lower Colorado River Authority (“LCRA”) (collectively, “Parties”).

1. RECITALS

- (a) As a conservation and reclamation district created under Section 59, Article XVI of the Texas Constitution, LCRA is charged with the control, storing, preservation, and distribution of the waters of the Colorado River and its tributaries within its boundaries for any useful purpose, and may use, distribute and sell such water for any such purpose, as authorized by state law. LCRA currently uses water rights it holds to store, divert and use water from the Colorado River to meet the water needs of its customers. These rights total more than 2.1 million acre-feet per year (AFY) and authorize use for multiple Beneficial Uses in various locations on a firm and interruptible basis throughout the LCRA service area, including some locations outside the Colorado River Basin.
- (b) Austin and the LCRA have entered into various contracts and agreements related to water supply and water management, including but not limited to the agreements dated February 5, 1938, December 15, 1966, December 10, 1987, September 17, 1998, as amended February 3, 2000, and October 7, 1999 (~~the~~ “1999 Agreement”) and January 1, 2000, as amended on November 17, 2004 (“FPP/SHEC Agreement”), (collectively, the “Existing Water Sale Agreements”). The 1999 Agreement is intended to provide up to 325,000 AFY from a combination of Austin’s and LCRA’s water rights for Austin’s municipal water supply needs and other Beneficial Uses, and additional supplies for steam electric purposes at Lady Bird Lake (previously known as “Town Lake”) and Decker Lake.
- (c) Austin holds significant run-of-river water rights to divert and use water from the Colorado River for municipal and steam electric purposes. The Austin Water Utility (AWU) currently serves a population of approximately 830,000 people and associated businesses and in recent years has diverted from the Colorado River approximately 165,000 AFY to meet the water demands of this population. In addition, Austin Energy (AE) currently owns all or part of five power plants that rely in whole or in part on water drawn from the Colorado River for steam electric purposes, in amounts up to 40,000 AFY. Austin also uses water for recreation purposes at Lady Bird Lake and for purposes of irrigating certain city-owned recreational facilities.
- (d) Austin and Central Texas continue to experience rapid population growth and development, therefore the Parties anticipate that Austin’s Municipal Water Demands and demand for water to meet other needs will continue to increase in the coming decades. Austin estimates that, by about 2050, it will need more water than it will have available from the Existing Water Sale Agreements and Austin’s Existing Water Rights.

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- (e) LCRA is developing a water supply resource plan that will help it manage and plan for the long-term water supply needs of its customers.
- (f) On June 18, 2007, the Parties entered into a Settlement Agreement Regarding Joint Water Resource Management and the Resolution of Certain Regulatory Matters Pending at the Texas Commission on Environmental Quality (“2007 Settlement Agreement”). In addition to establishing a process for resolving a number of pending regulatory matters, the 2007 Settlement Agreement also established a formal water resource management partnership (“Water Partnership”) to collaboratively manage water supplies and evaluate and implement strategies designed to optimize water supplies to meet water needs of the Parties, their customers, and the environment. Significantly, the 2007 Settlement Agreement is contingent on the execution of this SWSA. Once executed, the Parties may proceed to implement the remaining terms of the 2007 Settlement Agreement.
- (g) The Parties have executed this SWSA as part of the 2007 Settlement Agreement. Although this SWSA and the 2007 Settlement Agreement are two separate documents, this SWSA results from the same set of negotiations as the 2007 Settlement Agreement and the consideration provided by each Party under both agreements is intended to be applicable to and considered under both agreements.
- (h) The Parties recognize that planning for and providing the Supplemental Water as contemplated by this SWSA requires a concerted and collaborative effort of the Water Partnership and will likely require engineering, water availability, permitting and other studies to be performed. The Parties further recognize that, because of the very long-term nature of this effort, many unknowns may affect the decisions that must be made in the future regarding implementation of this SWSA. These unknowns may affect how the Parties decide to fund the studies and other expenses associated with the commitments made by the Parties under this SWSA. Accordingly, the Parties have by this SWSA established a framework that provides guidance and structure for the Parties yet allows the Parties to remain flexible in their decisionmaking and implementation so that unforeseen circumstances or changed conditions may be appropriately accommodated over time in a manner that is fair and reasonable to both Parties.

2. DEFINITIONS

- (a) **Acre-Foot:** The volume of water necessary to cover one acre of surface area to a depth of one foot, which is approximately 325,851 U.S. gallons.
- (b) **AE:** the City’s of Austin’s electric utility, known as Austin Energy.
- (c) **AFY:** Acre-feet per year or acre-foot per year.
- (d) **Austin:** The City of Austin and all of its affiliates, departments, or divisions thereof, and all of its respective representatives, successors, and assigns.

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- (e) **Austin’s Existing Water Rights:** The water rights to the Colorado River held by Austin as of the Effective Date of this SWSA, which total approximately 330,000 ~~acre feet of water per year (AFY)~~ and include Certificates of Adjudication (CA) Nos. 14-5471, as amended, and 14-5489, as amended.
- (f) **Austin’s Service Area:** Encompasses: 1) the area within the Impact Fee Service Area Boundary as amended from time to time by the Austin City Council; and 2) the area within the City of Austin Extraterritorial Jurisdiction and Municipal Boundaries as amended from time to time; and 3) all retail and wholesale service areas in which service is provided by the Austin Water Utility within Travis County or any County contiguous to Travis County; and 4) other facilities such as power plants, that are owned in whole or in part by the City of Austin and for which Austin is providing only its share of the water required for the facility wherever located within the Colorado River Basin.
- (g) **Austin’s Municipal Water Demands:** A specific quantity of water reasonably expected to be needed by Austin within Austin’s Service Area for its own municipal purposes over a specified period of time, after implementing Conservation.
- (h) **AWU:** Austin’s Water and Wastewater Utility.
- (i) **Beneficial Use:** Use of the amount of water that is economically necessary for a purpose authorized by law, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose, and shall include water provided for instream flows or freshwater inflows to the bays and estuaries.
- (j) **Conservation:** Those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, or improve the efficiency in the use of water so that a water supply is made available for future or alternative uses. For purposes of this SWSA, the term “Conservation” does not, however, include Direct Reuse or Indirect Reuse.
- (k) **Conveyance, Delivery or System Loss:** That amount of additional water needed to transport water downstream using the bed and banks of a stream or watercourse, through a canal system or other similar conveyance system to meet the requested or ordered amount of water at the Delivery Point(s) under the contract; or that amount of water that is reasonably expected to be lost due to evaporation, transpiration, recharge, seepage, leakage or other similar losses in the transportation of the water from the source of supply to the Delivery Point(s) under the contract.
- (l) **Demand Projection:** The projected schedule of Austin’s Municipal Water Demands, its other water needs, and estimated Conservation and Reuse, to be developed in accordance with Section 3.3.2.1 of this SWSA.
- (m) **Dispute or Controversy:** As defined in Section 5.7.1.

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- (n) **Direct Reuse:** The Beneficial Use of: (a) municipal wastewater or industrial wastewater or process water that is under the direct control of a treatment plant owner or operator or industrial facility; or (b) agricultural tailwater, before such wastewater, process water or agricultural tailwater is either disposed of, discharged, or otherwise allowed to flow into a watercourse, lake, or other body of state water.
- (o) **Diversion Point(s):** The point or points from which Austin diverts, pumps, or otherwise withdraws Supplemental Water from a reservoir, watercourse, stream or other water source, to be specified in accordance with Section 3.5 of this SWSA.
- (p) **Delivery Point(s):** The point or points where Austin accepts delivery of the water from LCRA as specified in Section 3.5 of this SWSA.
- (q) **Effective Date:** As specified in Section 5.27 of this SWSA.
- (r) **Existing Water Sale Agreements:** Collective name for those previously established contracts and agreements entered into by the Parties and relating to water supply and management, as identified in Section 1(b) of the recitals of this SWSA.
- (s) **Firm Water Supply:** A supply of water that could be provided during a repetition of the most severe historical drought for the lower Colorado River or other source of supply or combination of sources of supply from which water is available to Austin, as may be specified in the LCRA Water Management Plan, or other written determination by Texas Commission on Environmental Quality (TCEQ), the Texas Water Development Board, or applicable groundwater conservation district permit, water management plan and/or rules and regulations.
- (t) **FPP/SHC Agreement:** The water sale contract between the City of Austin and LCRA dated February 3, 2000, and amended November 17, 2004, wherein Austin has purchased from LCRA a Firm Water Supply to use for steam electric purposes at the Fayette Power Project (FPP) and Sand Hill Energy Center (SHC).
- (u) **Indirect Reuse:** The diversion of water from a watercourse, lake, or other body of state water, for Beneficial Use, including diversion into storage facilities, of a quantity of water that can be attributed to a specific quantity of Return Flows originating upstream of the Diversion Point.
- (v) **Interruptible Indirect Reuse:** Indirect Reuse by Austin, as allowed by the 2007 Settlement Agreement and this SWSA.
- (w) **LCRA:** The Lower Colorado River Authority and all of its affiliates, departments, or divisions thereof, and all of its respective representatives, successors, and assigns.
- (x) **LCRA's Existing Water Rights:** The water rights to the Colorado River held by LCRA as of the Effective Date of this SWSA, which total more than 2.1 million AFY and include the right to divert and use up to 1.5 million AFY from lakes Buchanan and Travis (CA Nos. 14-5478 & 14-5482), and another 636,750 AFY under

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downstream run-of-river water rights associated with the Gulf Coast (CA No. 14-5476, as amended), Lakeside (CA No. 14-5475, as amended), Garwood (CA No. 14-5434, as amended), and Pierce Ranch (CA No. 14-5477, as amended) operations, as well as several smaller water rights for Lakes Marble Falls, LBJ (including Ferguson Power Plant), and Inks (CA Nos. 14-5479, 14-5480, & 14-5481), the Lometa Reservoir (Permit No. 5715), interbasin transfer of water to the City of Leander (Permit No. 5677), and for its downstream power plant operations (CA Nos. 14-5474 & 14-5473).

- (y) **LCRA's Raw Water System:** All untreated water supplies owned and controlled by LCRA that are not specifically dedicated for use solely by one or more specific LCRA customer(s), and which may, at LCRA's sole discretion, include all or portions of any New LCRA Water Supply at any point in time after a New LCRA Water Supply is acquired or developed to the extent that such New LCRA Water Supply is not specifically dedicated for use solely by one or more specific LCRA customer(s).
- (z) **New Austin Water Supply:** a water supply to be acquired or developed by Austin, at its sole discretion, after the Effective Date of this SWSA and for which Austin has independently pursued and paid for all costs of acquisition, development, study, permitting, management, operation, and use of such supply, but does not include a supply obtained through an amendment to Austin's Existing Water Rights or any supply owned by LCRA. A New Austin Water Supply includes the Return Flows derived from such supply.
- (aa) **New LCRA Water Supply:** a water supply to be acquired or developed by LCRA, at its sole discretion, after the Effective Date of this SWSA, including any infrastructure required to increase the availability of Water Supply available from LCRA's Existing Water Rights as they may be amended in the future, and for which required LCRA Board approvals, if any, have already been received.
- (bb) **Potential LCRA Water Supply:** a water supply that LCRA may, at its sole discretion, acquire or develop after the Effective Date of this SWSA, including any infrastructure required to increase the availability of Firm Water Supply available from LCRA's Existing Water Rights as they may be amended in the future, and for which required LCRA Board approvals, if any, have not yet been received. Upon receipt of all required LCRA Board approvals, a Potential LCRA Water Supply shall then be a New LCRA Water Supply.
- (cc) **Parties:** Austin and the LCRA.
- (dd) **Return Flows:** Municipal wastewater or industrial wastewater or process water, or agricultural tailwater, that has been disposed of, discharged, or otherwise allowed to flow into a watercourse, lake, or other body of state water.
- (ee) **2007 Settlement Agreement:** The agreement between the Parties dated June 18, 2007, and entitled "Settlement Agreement by and between the City of Austin and the Lower Colorado River Authority Regarding Joint Water Resource Management and

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the Resolution of Certain Regulatory Matters Pending at the Texas Commission on Environmental Quality.”

- (ff) **Supplemental Water:** The water to be supplied by LCRA under this Agreement.
- (gg) **Supplemental Water Supply Agreement or SWSA:** This agreement.
- (hh) **Supply Decision:** The decision regarding the source(s) of supply to be used to satisfy a particular Supply Increment, as recommended by the Water Partnership under Section 3.4.1 of this SWSA and confirmed by written agreement as required by Section 3.4.4.
- (ii) **Supply Increment:** A volume of water equal to part or all of the Supplemental Water to be provided under this SWSA, and the projected timing of use and intended use(s) thereof, as determined by the Water Partnership under Section 3.3.2.2.
- (jj) **Water Management Plan:** A plan required in specific water rights held by LCRA and approved by the TCEQ that defines LCRA’s reservoir operations, water management program and policies under those water rights.
- (kk) **Water Partnership:** The collaborative relationship between the LCRA and Austin created by Section IV.A of the 2007 Settlement Agreement.
- (ll) **1999 Agreement:** An agreement between the Parties dated October 7, 1999, and entitled “First Amendment to December 10, 1987 Comprehensive Water Settlement Agreement Between City of Austin and Lower Colorado River Authority.”

3. CONTRACT TERMS

3.1. QUANTITY OF WATER

Subject to the terms and conditions contained in this SWSA, LCRA agrees to provide to Austin, and Austin agrees to purchase from LCRA, a quantity of firm Supplemental Water sufficient to meet Austin’s Municipal Water Demands through December 31, 2100, such quantity not to exceed 250,000AFY. Notwithstanding the foregoing, LCRA’s obligation to provide Supplemental Water under this SWSA shall be reduced by a volume equal to the volume of any New Austin Water Supply obtained by Austin at any time during the term of this SWSA. Further, the Parties understand and acknowledge that the Supplemental Water LCRA is obligated to provide under this SWSA may not be sufficient to meet all of Austin’s Municipal Water Demands and other water needs through December 31, 2100, and that Austin’s Demand Projection provided under Section 3.3.2.1 of this SWSA represents Austin’s best estimate of its water supply needs at the time it is provided and does not and is not intended to bind Austin to implement or adopt any particular policies concerning Conservation, Reuse, or water supply development and that Austin’s Demand Projection may change due to changes in policy, future needs for additional water for steam electric purposes, or other factors such as the

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rate of population growth, and Austin's implementation of ~~Water~~-Conservation, Direct Reuse, and Interruptible Indirect Reuse.

3.2. PURPOSE OF USE

The water supplied under this SWSA is intended to address ~~municipal water needs of Austin~~Austin's Municipal Water Demand through December 31, 2100 that exceed the amounts available under the Existing Water Sale Agreements or from New Austin Water Supplies. Austin represents to LCRA and LCRA relies on such representation that all water made available under this SWSA will be used by Austin to meet Austin's Municipal Water Demand. Further, the Supplemental Water under this SWSA may be used for steam electric and other power plant purposes, but only after first being considered by the Water Partnership consistent with Section VI of the 2007 Settlement Agreement, and approved by the Parties' governing bodies in the manner set forth in this SWSA.

3.3. TIMING OF USE

3.3.1. Relationship to 1999 Agreement

Unless by separate written agreement of the Parties, Austin may not use any Supplemental Water to be made available under the SWSA until its firm water demands exceed the amounts of water available for Austin's use under the Existing Water Sale Agreements. Nothing in this SWSA, however, is intended to prevent Austin from obtaining a New Austin Water Supply at any time.

3.3.2. Demand Schedule – Demand Projection and Supply Increment.

3.3.2.1. Demand Projection

- a. On or before December 31, 2010, Austin shall develop and submit to the Water Partnership a Demand Projection, to be updated every five years thereafter or on such other schedule as the Water Partnership may determine and that coincides with the water demand estimates developed as part of the State Water Plan and associated regional water planning process. The Demand Projection shall specify:
 - (i) Austin's Municipal Water Demands through December 31, 2100, by decade and estimated location of use;
 - (ii) Austin's estimated water needs through December 31, 2100, for industrial (including steam electric), irrigation/agricultural, and recreation purposes, by decade and estimated location of use;

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- (iii) Austin's estimate of Conservation to be implemented by decade through December 31, 2100; and
- (iv) Austin's estimate of the location, timing, and magnitude of any Direct Reuse or Interruptible Indirect Reuse project(s) that Austin plans to implement.
- b. For purposes of this SWSA, Austin shall consider estimates of projected water demand developed for the State Water Plan, but may provide a Demand Projection that differs from such estimates. To the extent that the Demand Projection differs from the estimates developed for the State Water Plan, Austin shall provide documentation supporting its Demand Projection, and shall seek conforming modifications to the State Water Plan as may be necessary or convenient for purposes of permitting or funding of the Supplemental Water Supply to be provided under this SWSA.
- c. Prior to development of the Demand Projection required by subsection (a) above, Austin agrees that it will cooperate with LCRA's efforts to develop its water supply resource plan referred to in Section 1(e) above by providing LCRA with preliminary information related to the components set forth in subsection (a) of this Section 3.3.2.1.

3.3.2.2. Timing of Supply Increment Determination

No later than June 1 in the year after Austin's Municipal Water Demand for the preceding year exceeded 225,000 AFY, and upon receipt of each updated Demand Projection received thereafter, the Water Partnership shall, within twelve months, determine:

- a. whether to initiate a process to decide a Supply Increment, and
- b. if the process is initiated, the quantity of water, timing, and purpose(s) of use of the Supply Increment, which such determination shall be included as part of the Supply Decision recommended by the Water Partnership under Section 3.4.

3.3.2.3. Acceleration of Supply Increment Decision Process

Notwithstanding Section 3.3.2.2 above, the Water Partnership may determine a Supply Increment at any time they deem necessary, in light of the water supply conditions that exist at that time, including any opportunities to partner with other LCRA customers that may arise related to a Potential LCRA Water Supply, as identified in the notice to be provided by LCRA under Section 3.10.2 of this SWSA ("Required Notices").

3.4. SUPPLY DECISION AND SOURCE OF SUPPLY

LCRA's obligation to reserve, acquire, develop, and make available Supplemental Water under this SWSA, if any, and Austin's obligation to pay for Supplemental Water will be triggered by the Supply Decision as set forth in this section.

3.4.1. Supply Decision

Upon a determination of the quantity, timing, and purpose(s) of use for each Supply Increment, and subject to the limitations on the source of supply as set forth under Section 3.4.2, the Water Partnership shall consider the possible source(s) of supply identified under Section 3.4.2 and make a recommendation to and seek appropriate authorizations from the Parties' appropriate governing body regarding which source(s) of supply should be used to fulfill the Supply Increment in accordance with this section.

3.4.1.1. If all or part of the water to satisfy the Supply Increment is legally and physically available to LCRA from LCRA's Raw Water System and not otherwise allocated for use by another LCRA customer, then the Water Partnership shall recommend that such supply be selected and reserved by LCRA in accordance with Section 3.4.4 below.

3.4.1.2. If all or part of the water needed to satisfy the Supply Increment is not legally and physically available to LCRA, then the Water Partnership will make a recommendation regarding the source or combination of sources of supply that would best satisfy Austin's Municipal Water Demand for the particular Supply Increment using the following criteria:

- a. The decisionmaking guidelines, including the Parties' mutual interests, as identified in Sections 5.C and 6 of Exhibit A of the 2007 Settlement Agreement;
- b. The magnitude of the Supply Increment and timing under which Austin will use such Supply Increment;
- c. The timing and magnitude of the cost necessary to ensure that the water supply needed for a Supply Increment will be legally and physically available for Austin's use, including but not limited to any studies, permitting, design, acquisition, construction, and infrastructure costs;
- d. Timing and cost required to acquire regulatory approvals;
- e. The existence of other water supply projects or water supply needs for any third party that may provide an opportunity for partnering or cost-sharing with those third parties, including but not limited to any opportunities related to a Potential LCRA

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Water Supply;

- f. The status of any water supply contract(s) between LCRA and any third parties;
- g. The impacts, if any, to other LCRA customers;
- h. The quality of the water supply and costs related to integrating the supply into Austin's system; and
- i. Any other factors the Water Partnership deems necessary and appropriate.

3.4.2. Possible Sources of Supply

The Supplemental Water to be provided by LCRA may only include a source of water that will be legally and physically available to LCRA on and after the date when Austin's actual use of the water is expected to occur, and is limited to:

- 3.4.2.1. water available, if any, under Austin's Existing Water Rights (including such rights as they may be amended in the future) consistent with the 1999 Agreement, as clarified by Section VII.B of the Settlement Agreement,
- 3.4.2.2. water legally and physically available from the LCRA Raw Water System that is not otherwise allocated for use by another LCRA customer,
- 3.4.2.3. any Return Flows derived from any water supplies made available to Austin under this SWSA that are determined to be available for Interruptible Indirect Reuse in accordance with Section 3.8 of this SWSA, or
- 3.4.2.4. A New LCRA Water Supply not specifically dedicated for the sole use of one or more of LCRA's other customers or otherwise limited in its use by LCRA Board Policy, or local, state, or federal law and which LCRA does not intend to incorporate into LCRA's Raw Water System; and
- 3.4.2.5. A Potential LCRA Water Supply, subject to approval from and at the sole discretion of the LCRA Board.

3.4.3. Use of Austin's Existing Water Rights

To the extent that Austin's Existing Water Rights (including such rights as they may be amended in the future) have not been fully used under the Existing Water Sale Agreements, then any amounts available for use under such rights to satisfy one or more Supply Increments (or portions thereof) shall be used first before using any other source

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of Supplemental Water made available under this SWSA, unless the Water Partnership determines that some other arrangement would serve to further optimize the water available to the Parties.

3.4.4. Contents and Effectiveness of Supply Decision

The Water Partnership's recommended Supply Decision shall include not only the source of supply to satisfy the Supply Increment, as selected pursuant to Section 3.4.1, but shall also include recommendations concerning those items contemplated by Sections 3.5.2.1, 3.5.2.3, 3.6(d), 3.7.1.2, 3.7.2, 3.7.3, 3.8.2, 3.9.2.3.c, 3.13, 5.2, and 5.4.1 of this SWSA, and any other matters the Water Partnership deems appropriate or required for consideration by the Parties' governing boards.

A Supply Decision of the Water Partnership shall be effective only upon receipt of any required approvals from the Parties' governing bodies necessary to implement the Supply Decision and upon execution by both Parties of a separate written agreement confirming such Supply Decision, which upon such execution shall hereby constitute an amendment to this SWSA and be incorporated by reference as an exhibit to this SWSA for all purposes. The Water Partnership shall have no authority to implement its recommended Supply Decision unless and until all necessary approvals have been received from the Parties' governing bodies and been confirmed by one or more executed written agreements, as contemplated by this section.

3.4.5. Supply Decision to Use LCRA Supply

Upon a Supply Decision that the Supply Increment (or portion thereof) should be provided from LCRA's Raw Water System, a New LCRA Water Supply, or a Potential LCRA Water Supply, LCRA shall take any and all actions necessary to ensure that such supply will be legally and physically available for Austin's use at the time Austin expects to use the Supply Increment, including reservation of water for Austin. Further, Austin shall begin to pay for such Supply Increment (or portion thereof) in accordance with Section 3.7 of this SWSA.

3.4.6. Relationship to New Austin Water Supply

Nothing in this Section 3.4 shall prevent Austin from using a New Austin Water Supply to fulfill all or part of the Austin Municipal Water Demand at any time. Once a Supply Decision to use Supplemental Water becomes effective, however, Austin may not replace any portion of that Supplemental Water with a New Austin Water Supply unless the Parties otherwise mutually agree.

3.5. DIVERSION POINT OR DELIVERY POINT

3.5.1. General

Austin may designate any reasonable Diversion Point(s) within Austin's Service Area, except as limited by this Section 3.5.2. Austin shall identify the Diversion Point(s) or

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Delivery Point(s), with such points to be identified coincident with the Water Partnership's identification of the particular Supply Increment (or portion thereof) from which such diversion or delivery will be made and the location within the Austin's Service Area where the water will be used. For Supplemental Water to be made available for diversion from the Colorado River or its tributaries, the Diversion Point(s) shall be deemed to be the Delivery Point(s) unless otherwise agreed to by the Parties.

3.5.2. Location Dependent Limitations

If the water to be made available under this SWSA is legally and physically available for diversion from Lake Travis, Lake Austin, Lady Bird Lake, or such other Diversion Point(s) along the Colorado River from Longhorn Dam downstream to the Travis/Bastrop County Line, Austin agrees:

- 3.5.2.1. the diversion rate from Lake Travis shall not exceed 300 MGD, unless the Water Partnership recommends a higher diversion rate as part of its Supply Decision;
- 3.5.2.2. any diversion must comply with any instream flow requirements set forth in the water rights under which such diversions are made; and
- 3.5.2.3. if the Diversion Point(s) will be located above the confluence of Onion Creek and the Colorado River (but below Walnut Creek Wastewater Treatment Plant), Austin will propose the new Diversion Point(s) to the Water Partnership and the Water Partnership will develop a mutually agreeable approach as part of its Supply Decision to address the following considerations:
 - a. Water quality concerns;
 - b. Streamflow conditions;
 - c. Accounting for the source of water for the proposed location; and
 - d. Any other accounting or environmental issues the Water Partnership deems appropriate.

3.5.3. Intake Elevations

Austin acknowledges and agrees that LCRA's obligations under this SWSA shall not require LCRA to make additional releases of water from LCRA's Raw Water System to raise the water elevations or flows at the Diversion Point(s) at a particular time sufficient for Austin's intake and/or diversion facilities to operate.

3.6. CONVEYANCE, DELIVERY OR SYSTEM LOSS

- (a) For all diversions of Supplemental Water from the Colorado River located below Longhorn Dam, Austin shall bear all Conveyance, Delivery or System Losses

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incurred in the transport of the water from Longhorn Dam to Austin's Diversion Point(s).

- (b) For all diversions of Supplemental Water upstream of Longhorn Dam, LCRA shall bear all Conveyance, Delivery or System Losses that cannot be allocated under Austin's Existing Water Rights.
- (c) For any Supplemental Water for which the Delivery Point is not located on the Colorado River, Austin shall bear all Conveyance, Delivery or System Losses.
- (d) The Water Partnership shall develop a mutually agreeable means for determining the amount of Conveyance, Delivery or System Losses attributable to Austin's water use under this SWSA and the LCRA shall include such calculation in its invoices to Austin.

3.7. AMOUNT AND TIMING OF PAYMENT

Austin shall pay all reasonable and necessary costs associated with Supplemental Water as set forth below. Further, Austin's obligations to pay shall continue upon Termination as may be set forth in any written agreement regarding a Supply Decision as contemplated by Sections 3.4.4 and 5.4.1 of this SWSA.

3.7.1. Supplemental Water from LCRA's Raw Water System

3.7.1.1. For Supply Increments (or portions thereof) to be provided from LCRA's Raw Water System, Austin's payments shall commence when the Supply Decision becomes effective as set forth under Section 3.4.4 and LCRA's reservation of such water for Austin's use.

3.7.1.2. Unless the Parties agree otherwise, Austin shall pay LCRA's then current and Board-approved rates, charges, and fees applicable to Firm Water Supply for any Supply Increment (or portion thereof) to be made available from LCRA's Raw Water System, after accounting for Conveyance, Delivery or System Losses, credits for Interruptible Indirect Reuse as set forth in Section 3.8 of this SWSA, and any reductions in reservation fees as may be determined appropriate based on the recommendation of the Water Partnership, as set forth herein:

For a particular Supply Increment (or portion thereof) to be provided from the LCRA Raw Water System, the Water Partnership shall include as part of its Supply Decision a recommendation regarding an appropriate reduction, if any, in the amount of reservation fees to be paid for the Supplemental Water. The Water Partnership shall base its recommendation, if any, on the following factors:

- a. implementation by Austin of Interruptible Indirect Reuse under

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the 1999 Agreement that could allow some portion of the reservation fees paid by Austin under the 1999 Agreement to be applied towards reservation of some portion of Supplemental Water from the LCRA's Raw Water System;

- b. implementation of a system operation of LCRA's and Austin's Existing Water Rights together, as they may be amended in the future, that may be recommended by the Water Partnership, and which increases the amount of Firm Water legally and physically available for diversion and use of water from the Colorado River, which increase is confirmed by TCEQ or other applicable regulatory authority;
- c. the status of LCRA's water sale contracts with existing customers at the time the Supply Decision is to be made; and
- d. any other factor the Water Partnership deems appropriate.

In any event, the Water Partnership ~~may not recommend~~ shall ensure that, as part of any reduction in reservation fees recommended Supply Decision to use water from the LCRA Raw Water System under this subsection if it would ~~Section 3.7.1.2, the amounts to be paid by Austin will not~~ result in an adverse impact on the firm water rates to be paid by LCRA's other customers.

3.7.2. Other Sources of Supplemental Water

In the event that the Supplemental Water for a particular Supply Increment (or portion thereof) will not be provided from the LCRA Raw Water System but will instead be provided from all or a portion of a Potential LCRA Water Supply or New LCRA Water Supply to be set aside and dedicated specifically for Austin's sole use, then, unless the Parties agree otherwise, Austin shall pay LCRA an amount necessary to cover its share of costs, such as those associated with the acquisition, development, study, design, construction, permitting, management, operation (including diversion, storage, and conveyance), maintenance, ~~and~~ use of the source of supply that will be used to satisfy the Supply Increment (or portion thereof); or such other costs as agreed to by the Parties. The schedule, manner of cost recovery, and the Parties' respective ownership interests shall be determined by the Water Partnership ~~and shall~~ in a manner that does not result in an adverse impact on the firm water rates to be paid by LCRA's other customers. Such determination shall be established prior to initiation of any action by LCRA that is required to develop the Supply Increment or that requires LCRA to incur any such costs. ~~Such determination shall be~~ and included in the Supply Decision recommended for implementation to the Parties' respective governing bodies.

3.7.3. New Austin Water Supply

If a New Austin Water Supply is incorporated into a system operation along with LCRA's water rights and Austin's Existing Water Rights, then the Water Partnership will

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determine whether such incorporation imposes additional expenses on LCRA that are uniquely attributable to Austin's use of the New Austin Water Supply. If the Water Partnership determines that such additional expenses will be incurred, it will also determine a schedule and manner by which Austin will pay such costs.

3.8. INTERRUPTIBLE INDIRECT REUSE

In calendar years when Austin accumulates a monetary credit through Interruptible Indirect Reuse that results in a total credit amount equal to the annual payment value for water deliveries under the Existing Water Sale Agreements pursuant to Section ~~IV(V.B)~~(4)(a) of the 2007 Settlement Agreement, Austin may receive a credit under this SWSA for any additional volumes of Interruptible Indirect Reuse in that calendar year as set forth in this section.

3.8.1. Colorado River Sources

3.8.1.1. Implementation

Where the Supplemental Water provided by LCRA under this SWSA originates from the Colorado River, implementation of Interruptible Indirect Reuse of Return Flows shall be governed by Sections V.A(1), V.B(1), and V.B(2) of the 2007 Settlement Agreement.

3.8.1.2. Credit Against Payments

Upon implementation of Interruptible Indirect Reuse under this section 3.8.1, LCRA agrees to provide Austin with a monetary credit on a per acre-foot basis at a one-to-one ratio, such that for each acre-foot of water diverted for Interruptible Indirect Reuse, LCRA shall provide a credit equivalent to the per-acre foot rate being paid by Austin for any Supply Increment(s) provided from LCRA's Raw Water System.

3.8.2. Other Sources

Implementation of Interruptible Indirect Reuse of Return Flows originating from Supplemental Water provided by LCRA under this SWSA that is not from the Colorado River shall be subject to Section V.A(1) of the 2007 Settlement Agreement. Further, the method for implementing and accounting for such Interruptible Indirect Reuse, including the appropriate environmental flow criteria and credit against payments to be provided, shall be developed by the Water Partnership prior to Austin initiating any such Interruptible Indirect Reuse of such Return Flows and shall give due consideration to:

- a. the source of supply;
- b. the environmental flow criteria in Exhibit B of the Settlement Agreement, as such criteria may be amended by the Water Partnership;
- c. any restrictions that may be imposed by local, state, or federal law in effect at the time the water is made available that may affect the overall availability of such Return Flows for Interruptible Indirect

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Reuse; and,

- d. for projects to be located above the confluence of Onion Creek and the Colorado River (but below Walnut Creek Wastewater Treatment Plant):
 - (i) Water quality concerns;
 - (ii) Streamflow conditions;
 - (iii) Accounting for the source of water for the proposed location; and
 - (iv) Any other accounting or environmental issues the Water Partnership deems appropriate.

The Parties agree to amend Exhibit B of the 2007 Settlement Agreement as needed to incorporate any new environmental criteria that may be developed by the Water Partnership under this Section 3.8.2 and that such criteria shall apply regardless of whether the return flows derived from this Supplemental Water are used to implement Interruptible Indirect Reuse under the Existing Water Sale Agreements or this SWSA.

3.8.3. New Austin Water Supplies

Return flows derived from a New Austin Water Supply are not subject to Section IV of the 2007 Settlement Agreement or this Section 3.8, except as follows:

3.8.3.1. Colorado River Supplies

Austin agrees that it will only implement Indirect Reuse of return flows derived from a New Austin Water Supply from the Colorado River after satisfying the environmental criteria contained in Exhibit B of the 2007 Settlement Agreement, as it may be amended from time to time by the Water Partnership.

3.8.3.2. Other Sources

Austin's Indirect Reuse, if any, of Return Flows derived from a New Austin Water Supply from a source other than the Colorado River shall be implemented consistent with any necessary local, state, or federal regulatory approvals to implement such Indirect Reuse. Further, Austin agrees to work through the Water Partnership to ensure that such Indirect Reuse will not unreasonably interfere with LCRA's management and operation of the Colorado River.

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3.9. LOCATION OF USE: SERVICE AREA AND INTERBASIN USE

3.9.1. Service Area

Austin shall use the Supplemental Water to be made available under the SWSA only within Austin's Service Area for its own purposes, as defined in Section 2(f) of this SWSA .

3.9.2. Use of Supplemental Water outside Colorado River Basin

3.9.2.1. General

Colorado River water made available under this SWSA may not be transferred or used outside of the Colorado River basin unless such transfer or use is within Austin's Service Area and is otherwise in strict compliance with LCRA Board Policies, LCRA water rights and a final permit, if required, for interbasin transfer (IBT) issued by the TCEQ.

3.9.2.2. Acquisition and Ownership of Interbasin Transfer Permit.

If all or part of any Supply Increment will be used by Austin outside the Colorado River Basin and all or part of that supply will derive from a water right owned by LCRA and requires an interbasin transfer permit to be obtained from the TCEQ, LCRA shall apply for and, if granted, use due diligence to maintain such interbasin transfer permit for the Term of this SWSA. To the extent that the Supplemental Water to be provided is derived from Austin's Existing Water Rights, Austin shall apply for and, if granted, use due diligence to maintain such interbasin transfer permit.

3.9.2.3. Rights Regarding Return Flows

a. Reliance by Third Parties

In any permit proceeding involving the interbasin transfer of Supplemental Water for use outside the Colorado River Basin, the Parties agree to use their best efforts to reduce third parties' reliance on any Return Flows derived from Supplemental Water that are discharged outside the Colorado River basin by seeking as part of the permit(s) the legal right to implement Direct Reuse in accordance with state law and indirectly reuse such Return Flows within Austin's Service Area or the lower Colorado River basin consistent with this SWSA and the 2007 Settlement Agreement.

b. Wholesale customers

Austin agrees that it will not supply Supplemental Water on a wholesale basis to any third party entity where the treated wastewater derived from such Supplemental Water is discharged to a receiving stream or other water in the state outside the Colorado River basin unless: (a) such transfer is authorized under state law; and (b) Austin includes in any contracts for new wholesale customers or any renewed wholesale contracts for entities that are existing wholesale customers on the Effective Date of the SWSA

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language giving LCRA the right to retrieve and return to the Colorado River basin, at its own expense, any Return Flows attributed to such transferred water.

c. Retail customers

In the event that ~~the Return Flows~~all or a portion of the treated wastewater derived from the Supplemental Water used by Austin to serve retail customers located outside the Colorado River basin but within ~~its~~Austin's Service Area will not be reused by Austin for its own purposes ~~within that portion of Austin's Service Area located outside of the Colorado River~~ and the treated wastewater will ~~not~~ be discharged by Austin ~~into~~outside the Colorado River, ~~Austin agrees that LCRA~~ basin, the Water Partnership shall develop as part of any Supply Decision the manner, terms, and conditions under which LCRA may secure the right to retrieve and return to the Colorado River basin any treated wastewater.~~have the right, but not the obligation, to: i) enter, place facilities within, and collect from Austin's facilities such Return Flows, and ii) make use of such Return Flows as may be permitted under any existing or future water rights granted by the TCEQ. In the event LCRA exercises its rights under this section, then:~~

- ~~(i) Austin shall provide to LCRA, at no charge or cost to LCRA, any easements reasonably necessary for LCRA to locate any collection facilities for such Return Flows within Austin's facilities;~~
- ~~(ii) LCRA shall submit to Austin plans for any collection facilities to be located within Austin's facilities to collect such Return Flows from Austin's facilities in advance of construction thereof; and~~

Under such conditions, Austin agrees to not oppose any permit application submitted by LCRA to the TCEQ related to use and reuse of ~~the~~such treated wastewater.

d. Interruptible Indirect Reuse of Return Flows returned to basin.

Return Flows returned to the Colorado River basin through the efforts of LCRA as contemplated under subsections (b) and (c) are not eligible for any credit for Interruptible Indirect Reuse by Austin unless the Return Flows are made available to Austin and Austin pays for such supply under this SWSA as Supplemental Water either from LCRA's Raw Water System or as a New LCRA Water Supply.

e. Relationship to Brushy Creek Regional Wastewater System

Notwithstanding subsections (b) and (c) of this section 3.9.2.3, the Parties agree that this SWSA does not override or amend any contractual rights Austin or LCRA may hold to treated wastewater from the Brushy Creek Regional Wastewater System (or any future configuration of such).

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3.10. REQUIRED NOTICES.

3.10.1. Austin Notices

3.10.1.1. Austin shall notify LCRA in writing of its intention to use water from any Supply Increment (or portion thereof) under this SWSA not more than six months, nor less than two months, prior to Austin's initiation of use, which such use shall not commence except in accordance with Section 3.3 above, or on a schedule that the Parties mutually agree will allow for the orderly and efficient implementation of all actions by either Party necessary to implement such use.

3.10.1.2. For any Diversion Point located downstream of Lake Travis from which Austin intends to divert water, Austin shall notify LCRA's River Operations Center prior to making any diversion under this SWSA to ensure that LCRA timely releases any necessary water from storage or otherwise conveys water downstream that may be used to honor LCRA's commitment under this SWSA.

3.10.1.3. If, at any time after the Effective Date of this SWSA, Austin staff has determined the need to acquire or develop a New Austin Water Supply, then Austin shall notify LCRA of such determination at the next regularly scheduled meeting of the Water Partnership unless approval regarding the acquisition or development of a New Austin Water Supply will be sought from the Austin City Council or its delegated authority prior to such meeting, in which case Austin shall give notice to LCRA at least thirty (30) days prior to seeking any such approvals, or as soon as is reasonably practicable.

3.10.2. LCRA Notice of Potential LCRA Water Supply

If, at any time after the Effective Date of this SWSA, LCRA is requested by a third party to acquire or develop a Potential LCRA Water Supply on its behalf, and such request is not considered confidential by law, or LCRA staff independently determines the need to acquire or develop a Potential LCRA Water Supply to meet needs of other LCRA Raw Water System customers, then LCRA shall notify Austin of such request or staff determination at the next regularly scheduled meeting of the Water Partnership unless approval(s) regarding the acquisition or development of a Potential LCRA Water Supply will be sought from the LCRA Board or its delegated authority prior to such meeting, in which case LCRA shall give notice to Austin at least thirty (30) days prior to seeking any such approvals, or as soon as is reasonably practicable.

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3.11. AVAILABILITY OF WATER IMPACTED BY OPERATION, DROUGHT, FLOOD, OR OTHER CAUSES

3.11.1. Lakes Buchanan and Travis

To the extent that Supplemental Water is to be provided from Lakes Buchanan or Travis, and notwithstanding any other provisions herein, LCRA does not represent or warrant that water will be available at any particular time or place or that Lakes Buchanan and Travis will be retained at any specific level at any particular time. It is fully understood by the Parties hereto that the level of said lakes will vary as a result of LCRA's operation of its dams on the Colorado River or other natural or manmade causes (such as weather or climate change).

3.11.2. Curtailment During Shortage of Supply

Austin acknowledges and understands that the Supplemental Water made available by LCRA is subject to applicable laws respecting the distribution and allocation of water during shortages of supply.

3.12. DIVERSION, TRANSPORTION AND TREATMENT FACILITIES

Unless the Parties otherwise agree in writing, all diversion facilities, pipelines, pumps, and other transportation or treatment facilities used for purposes of diverting and transporting the water from the Delivery Point and for treatment and distribution of water to and within Austin's Service Area shall be installed, operated and maintained by Austin at Austin's sole expense and risk. Where appropriate and available, the Water Partnership shall seek opportunities for Austin to partner with other LCRA customers and other third parties that may reduce the costs of such facilities.

3.13. WATER QUALITY

3.13.1. Quality of Source of Supply

For Supplemental Water derived from the Colorado River portion of LCRA's Raw Water System, LCRA makes no representation as to the quality of the Supplemental Water made available under this SWSA, and Austin hereby releases LCRA and agrees to hold it harmless from any and all claims that Austin or Austin's customers or users have or may have against LCRA for any diminution or impairment of the quality of water made available under this SWSA.

For Supplemental Water not derived from the Colorado River portion of LCRA's Raw Water System, the Water Partnership shall address any potential water quality issues, including but not limited to, compatibility with Austin's water treatment system, as part of its recommended Supply Decision.

3.13.2. Water Quality Monitoring and Evaluation

- (a) The Water Partnership will establish a process for monitoring water

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quality of the springs, streams, and lakes within the City of Austin that receive runoff from areas served by LCRA and for considering water quality impacts, if any, of Supply Decisions evaluated by the Water Partnership.

- (b) The Water Partnership will establish a process, to include public meetings (preceded by public notification) and the stakeholder process established under Section 4.1, for considering various strategies that may be available to address any adverse water quality impacts that might be identified prior to those water supply decisions being made.
- (c) The Water Partnership will evaluate available regulatory tools, incentives, or other mechanisms and regional approaches that may be available to help safeguard against any water quality impacts of concern that the Water Partnership might identify.
- (d) For these purposes, the Water Partnership will use, to the maximum extent possible, existing mechanisms and information, such as the Clean Rivers Program, interlocal agreements regarding nonpoint source pollution prevention, existing studies, and ongoing water quality monitoring and modeling efforts, to collect and assess relevant water quality information.
- (e) On or before the date on which Austin develops its first Demand Projection under this SWSA, the Water Partnership (or a subcommittee thereof) shall report to the Parties' respective governing bodies on its efforts, and shall include a summary of its findings, as well as any recommendations for further study or action.

3.14. REGULATORY APPROVALS REQUIRED

(1) Austin acknowledges and agrees that the Supplemental Water LCRA makes available under this SWSA may be regulated in whole or in part by the State of Texas or local regulatory authorities, including but not limited to periodic review and amendment of the LCRA's Water Management Plan by the TCEQ. LCRA and Austin acknowledge and agree that LCRA shall be obligated to exercise due diligence to manage its water supplies within such regulatory regimes to make Supplemental Water available to Austin in accordance with the terms of this SWSA. Austin acknowledges and agrees, however, that LCRA's obligations under this SWSA may be affected by orders of the State of Texas, its agencies or local regulatory authorities and that the water to be supplied by LCRA under this SWSA may be subject to interruption, limitation, or curtailment in accordance with such orders or regulatory requirements. Orders of the State of Texas, its agencies or local regulatory authorities may constitute a "force majeure" event in accordance with Section 3.17 of this SWSA.

(2) LCRA's commitment to supply Supplemental Water shall be conditioned upon LCRA and Austin obtaining and maintaining in good standing any and all regulatory and statutory authorizations, if any, that may be needed to allow LCRA to provide the

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Supplemental Water from any and all supplies the Water Partnership has identified as appropriate supply alternatives, including but not limited to appropriate authorizations needed to implement Section 3.8 of this SWSA (if any), new permits, or amendments to LCRA's Existing Water Rights or Austin's Existing Water Rights. The Water Partnership shall develop a plan for the Parties to coordinate as necessary on this activity and to obtain such authorizations, provided those authorizations shall not injure either Austin's or LCRA's Existing Water Rights or contravene the 2007 Settlement Agreement. The Parties hereby agree to cooperate and support each others' efforts as may be necessary to implement such plan.

(3) If the Parties fail to obtain the required regulatory approvals, both Parties will use their best efforts to take any necessary actions to otherwise implement the terms of the SWSA.

3.15. WATER CONSERVATION AND DROUGHT ~~CONTINGENCY PLANS~~

3.15.1. Evaluation of Water Conservation Strategies and Goals

3.15.1.1. By December 31, 2008, the Parties shall report to their governing bodies concerning recommendations regarding a firm commitment to water conservation strategies, taking into consideration the following factors:

- a. Existing water conservation goals of each organization;
- b. The Texas Water Development Board December (TWDB), Water Conservation Best Management Practices Guide (TWDB Report 32) (as it may be amended from time to time), or other similar guidelines; and
- c. Goals that can be measured in Gallons Per Capita Per Day (GPCD) or other appropriate metric.

In its evaluation under this Section 3.15.1, the Water Partnership shall use, to the maximum extent possible, existing mechanisms and information and results from ongoing efforts by the City, LCRA and others, to collect and assess relevant water conservation information.

3.15.1.2. The Water Partnership shall report on these water conservation strategies and other related matters, including the stakeholder process established under Section 4.1, at one of the public meetings to be held as set forth in Section 4.

3.15.1.3. LCRA will seek and consider, and the City will actively encourage, public input as part of the Water Supply Resource Planning effort referenced in Section 1(e) of this SWSA, especially the conservation component of this effort and LCRA's evaluation of and

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recommendations regarding water conservation strategies.

3.15.2. Consideration of Drought of Record and Drought Contingency Plans

The Water Partnership shall consider the Drought of Record and Drought Contingency Plans as they relate to incremental water supplies on or before the date on which the City of Austin develops its first Demand Projection under the Supplement Water Supply Agreement.

3.15.3. Water Conservation and Drought Contingency Plans Required For Use of Supplemental Water

(1) Prior to using any water to be supplied under this SWSA, Austin shall submit for review and approval by LCRA a water conservation plan and drought contingency plan that comply with any and all requirements of LCRA's rules and regulations in existence at such time and any other regulations regarding water conservation or drought contingency planning that apply to the use of the water to be provided under this SWSA. Austin further agrees that the water used pursuant to this SWSA will be used in accordance with such approved plans and that such approved plans shall thereafter be incorporated into this SWSA as if set forth fully herein.

(2) Austin acknowledges that LCRA, in accordance with applicable law, may require Austin to revise or update its plans on a periodic basis or in specific response to changes to LCRA's own rules and regulations or state law relating to water conservation measures and drought contingency planning. Austin agrees to amend its plans in accordance with such rules or regulations, as necessary, within the reasonable timeframes to be determined by LCRA.

(3) In the event that Austin agrees to furnish water or water services to a third party, who in turn will furnish the water or water services to an ultimate consumer, Austin agrees to include in its agreement with the third party provisions that obligate the third party to: a) develop and implement a water conservation program and drought contingency plan consistent with Austin's approved plans; and, b) amend its water conservation program and drought contingency plan to reflect amendments in state law, regulations or LCRA's rules and regulations within the same timelines that apply to Austin.

3.16. FUTURE REGULATIONS.

Austin agrees to comply with LCRA rules and any legal requirements applicable to raw water contracts that may be in effect when and after Austin begins to use water under the SWSA, including but not limited to any water conservation and drought contingency measures that may be required. The Parties agree and understand that LCRA will not enact regulations with the specific intent of imposing requirements on Austin that are more onerous than those imposed on its other customers unless LCRA is otherwise required to adopt such regulations by local, state, or federal law.

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3.17. FORCE MAJEURE.

The term “Force Majeure” as used herein, shall mean those situations or conditions that are beyond the control of LCRA or Austin and that, after the exercise of due diligence to remedy such situation or condition, render LCRA or Austin unable, wholly or in part, to carry out the covenants contained herein. Such force majeure includes, but is not limited to acts of God, strikes, lockouts, acts of the public enemy, orders of any kind of the government or agencies of the United States or of the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or dams, partial or entire failure of water supply insofar as each of the foregoing are beyond the reasonable control of the party in question. LCRA shall not be held liable or responsible for any damage that may be caused by its inability, after the exercise of due diligence, to make the supply of water available to Austin due to any force majeure. LCRA shall use reasonable and timely diligence to repair or recondition LCRA’s machinery, canals, or dams in the event such machinery, canals or dams are damaged or made unserviceable from any force majeure.

4. PUBLIC PARTICIPATION

Water is a critical component of this region's prosperity, therefore robust public participation in long-term water supply decisions is essential. It is the Parties' intent to provide the opportunity for substantive and meaningful public discourse at key junctures in the planning and decision-making process, especially the Demand Projection and Supply Decision/Source of Supply processes set forth in Sections 3.3 and 3.4, respectively. Using the public participation and stakeholder input provisions set forth below, the Parties intend to provide significant information and seek guidance from interested parties before making key water supply decisions.

4.1. STAKEHOLDER PROCESS

Within six months after convening the first meeting of the Executive Management Committee of the Water Partnership, the Water Partnership shall establish:

- (a) a stakeholder group comprised of organizations and individuals interested in the Parties’ water supply discussions; and
- (b) a process for keeping the stakeholder group informed of the Parties’ water supply discussions, and for receiving input from the group.

4.2. ANNUAL REPORT AND BRIEFINGS

(1) Beginning on November 1, 2008, the Parties will provide a written Annual Report on the status and direction of water supply discussions. The Annual Report will be widely disseminated and published on the City of Austin's and LCRA’s websites.

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(2) Annual oral briefings will be provided to the Austin City Council and updates will be provided to the LCRA Board.

(3) The Water Partnership shall also provide annual updates to the Lower Colorado Regional Planning Group (Region K) regarding the status of water supply discussions.

(4) Representatives from Austin and the LCRA shall report to the appropriate City of Austin board or commission at least once per year regarding the status of water supply discussions under the SWSA and 2007 Settlement Agreement. The Parties will report more often, if necessary, after beginning the process for making a Supply Decision under Section 3.3.2.2.

5. CONTRACT ADMINISTRATION

5.1. TERM OF CONTRACT.

This SWSA shall commence on the Effective Date, and end on December 31, 2100, unless terminated earlier by either party as provided below.

5.2. METHOD OF BILLING AND PAYMENT.

For each Supply Increment (or portion thereof), calculation of payments due and billing shall occur in accordance with the standard practices used by LCRA at the time the Supply Decision is made or in any other manner that is mutually agreed upon by the Parties to ensure that all of LCRA's reasonable and necessary costs are recovered as determined by Section 3.7 of this SWSA.

Austin understands and acknowledges that the standard rates, fees, and charges collected by LCRA for raw water provided from the LCRA system are set by LCRA Board of Directors, and that the Board may change such rates, fees and charges, or the underlying methodologies for determining them, under the SWSA from time to time.

5.3. MEASURING WATER.

For each Supply Increment (or portion thereof), the quantity of water used by Austin shall be measured by Austin using a measuring and recording devices or methods as are approved by LCRA (~~the~~ "Meter") that complies with any applicable LCRA rule, or other applicable state law or regulation in effect at the time such use occurs. Such Meter shall be installed at Austin's expense. LCRA shall have the right to approve both the design of the Meter as well as the location of its installation. The Parties further agree to comply with all other standard requirements related to Meters that are required by LCRA rules or Board policy, or other local, state or federal laws or rules that are in effect at the time Supplemental Water is used under this SWSA, including but not limited provisions related to repair, replacement, testing, and inspection of Meters.

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5.4. TERMINATION OF CONTRACT.

5.4.1. Termination After Supply Decision

- 5.4.1.1. As part of its recommended Supply Decision, the Water Partnership shall develop conditions under which termination of the Parties' obligations regarding a particular Supply Increment may occur, which conditions shall address, at minimum, appropriate mechanisms for cost recovery upon termination, and noncompliance with regulatory requirements related to the use or supply of the Supplemental Water
- 5.4.1.2. In the event TCEQ, other applicable regulatory body, or court of law denies or terminates for any reason a permit required to supply a particular Supply Increment under this SWSA, LCRA's obligation to provide such Supply Increment under this SWSA shall be suspended until such date as the TCEQ action is final and nonappealable and shall terminate thereafter without further action by either party, and shall be of no further force or effect.
- 5.4.1.3. Termination for nonpayment shall occur only in accordance with Section 5.5 of this SWSA.
- 5.4.1.4. Austin shall suspend all use of the Supplemental Water provided by LCRA for any Supply Increment that has been terminated under this SWSA immediately upon such termination. LCRA may exercise any rights that it may have at law or in equity to prevent unauthorized use of such Supplemental Water by Austin, including enforcement of any requirements of any water permit under which such use is being made.

5.4.2. Effect of Termination on 2007 Settlement Agreement

The 2007 Settlement Agreement shall remain effective notwithstanding the termination of this SWSA.

5.5. NON-PAYMENT.

(1) If LCRA determines that Austin has not paid the full amount owed for any payment due under Section 3.7 hereof within the time provided therefore, LCRA shall give written notice to Austin stating the amount LCRA has determined is due and unpaid. If LCRA gives notice as provided herein and Austin fails to pay within thirty (30) days the amounts claimed in such notice to be due and unpaid, LCRA may, at its sole option: (1) upon giving ten (10) days written notice to Austin terminate this SWSA without recourse; and/or, (2) request injunctive relief from a court of competent jurisdiction to prevent Austin from diverting additional water pursuant to this SWSA. Neither

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insolvency or bankruptcy shall excuse Austin from the obligation to pay amounts due under this SWSA.

(2) If Austin should dispute Austin's obligation to pay all or any part of the amount stated in any invoice or notice, Austin may, in addition to all other rights that Austin may have under law, pay such amount under protest in which case such amount shall be deposited by LCRA in an interest bearing account mutually acceptable to both LCRA and Austin pending final resolution of such dispute in accordance with Section 5.7. LCRA may not terminate this SWSA, or request injunctive relief to prevent additional diversions, for failure to pay the amount stated in any invoice or notice if Austin pays such amount under protest and until there is a final resolution of such dispute in accordance with Section 5.7 favorable to LCRA.

5.6. EQUITABLE REMEDIES.

Austin agrees that use of water by Austin without the authorization provided by this SWSA will result in damages to LCRA that cannot be adequately compensated by money alone. As a result, Austin agrees that LCRA shall have available to it equitable remedies, including injunctive relief against additional diversions or impoundments by Austin unless Austin demonstrates that it is otherwise authorized to divert or impound water. In addition, Austin agrees that the provisions of Section 5.7, will not apply to any legal action brought by LCRA seeking equitable remedies under this SWSA except as expressly provided by Section 5.5 regarding "NON-PAYMENT."

5.7. DISPUTE RESOLUTION.

5.7.1. Settlement By Mutual Agreement.

In the event any dispute, controversy or claim between or among the Parties arises under this SWSA or is connected with or related in any way to this SWSA or any right, duty or obligation arising hereunder or the relationship of the Parties hereunder (a "Dispute or Controversy"), including, but not limited to, a Dispute or Controversy relating to the validity, interpretation, implementation, termination, cancellation or enforcement of this SWSA, the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement in accordance with the terms of this subsection (1). In the event a Dispute or Controversy arises, any party shall have the right to notify the other party to such Dispute or Controversy that it has elected to implement the procedures set forth in this subsection (1). Within fifteen (15) days after delivery of any such notice by one party to the other regarding a Dispute or Controversy, the designated representatives of the Parties shall meet at a mutually agreed time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Should a mutual resolution and settlement not be obtained at the meeting of the Parties' designated representatives for such purpose or should no such meeting take place within such fifteen (15) day period, then any party may by notice to the other party, as the case may be, refer the Dispute or Controversy to the Executive Management Committee of the Water Partnership for resolution. Within fifteen (15) days after delivery of any such notice by one party to the other referring such Dispute or Controversy to the Executive

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Management Committee of the Water Partnership for resolution, the Executive Management Committee of the Water Partnership shall meet at a mutually agreed upon time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Should mutual resolution and settlement not be obtained at the meeting of the Executive Management Committee of the Water Partnership or should no such meeting take place within such fifteen (15) day period (unless extended by mutual agreement), then any party may by notice to the other party, as the case may seek any other remedy available in law or equity.

5.7.2. Emergency Relief.

Notwithstanding the Parties' agreement to resolve a Dispute or Controversy in accordance with the provisions set forth in Section 5.7.1 above, either party may seek injunctive relief or other form of emergency relief at any time from any state court of competent jurisdiction in Austin, Texas, the federal court for such district, or any state or federal regulatory agency of competent jurisdiction.

5.7.3. Survival.

The provisions of Section 5.7 shall survive expiration or earlier termination of this SWSA.

5.8. NOTICE. Any notices under this SWSA may be delivered by facsimile transmission or by certified mail, return receipt requested. If delivered by facsimile transmission, notice shall be effective upon receipt. If delivered by certified mail, return receipt requested, notice shall be deemed effective five (5) days after the date on which the notice is post-marked.

All notices and invoices to Austin shall be addressed to:

Director, Austin Water Utility
City of Austin
P.O. Box 1088
Austin, Texas 78767

and all notices and payment to LCRA shall be addressed to:

Lower Colorado River Authority
Attn: Executive Manager, River Services
P.O. Box 220
Austin, Texas 78767
(512) 473-3551 for facsimile transmission

And

Lower Colorado River Authority
Attn: Manager, River Operations Center

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P.O. Box 220
Austin, Texas 78767
(512) ~~473-3551~~ for facsimile transmission

Either party may change its address by giving written notice of such change to the other party.

5.9. ASSIGNMENT OF CONTRACT. Austin may not assign this SWSA.

5.10. COMPLIANCE WITH FILING REQUIREMENTS. LCRA agrees to file a copy of this SWSA with the Executive Director of the TCEQ, P.O. Box 13087, Capitol Station, Austin, Texas 78711, it being fully recognized by Austin hereunder that the effectiveness of this SWSA is dependent upon compliance with the substantive rules and procedural rules for water rights of the TCEQ.

5.11. ACTUAL DAMAGES. NEITHER PARTY SHALL BE LIABLE OR HAVE ANY RESPONSIBILITY TO THE OTHER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR DELAY-RELATED OR PERFORMANCE-RELATED DAMAGES INCLUDING, WITHOUT LIMITATION, LOST EARNINGS OR PROFITS. SUCH LIMITATION ON LIABILITY SHALL APPLY TO ANY CLAIM OR ACTION, WHETHER IT IS BASED IN WHOLE OR IN PART ON CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT, STATUTE OR ANY OTHER THEORY OF LIABILITY. The provisions of this Section shall have no effect on the party's indemnity obligations under Section 5.12.

5.12. INDEMNITY

(1) To the extent authorized by law, Austin will indemnify and save LCRA harmless from any and all claims and demands whatsoever to which LCRA may be subjected by reason of any injury to any person or damage to any property resulting from any and all actions and activities (or failure to act) of Austin under this contract except to the extent caused by LCRA's gross negligence or willful misconduct. Austin's pumping and related facilities shall be installed, operated and maintained by Austin at Austin's sole risk and expense. Nothing in this contract shall be construed as authorizing Austin, or recognizing that Austin has any rights, to install any equipment or improvements on property owned by LCRA or third parties.

(2) To the extent authorized by law, LCRA will save Austin harmless from any and all claims or demands whatsoever to which LCRA may be subjected by reason of any injury to any person or damages to any property resulting from or in any way connected with any and all actions and activities (or failure to act) of LCRA under this contract.

5.13. AMENDMENT. This SWSA may not be modified or amended except by an instrument in writing signed by authorized representatives of the Parties.

5.14. BINDING EFFECT. The terms of this SWSA shall be binding upon, and inure to the benefit of, the Parties and their permitted successors and assigns.

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5.15. COMPLETE CONTRACT. This SWSA, together with all Exhibits attached hereto, constitutes the entire agreement of the Parties relating to the Supplemental Water to be provided under this SWSA and supersedes all prior contracts, agreements or understandings with respect to such Supplemental Water, both oral or written, except to the extent such agreements are specifically referenced herein. The Parties agree that Section IV.B of the 2007 Settlement Agreement related to the negotiation and terms of a supplemental water supply agreement is hereby superseded by this SWSA.

Each party agrees that the other party (and its agents and representatives) has not made, and has not relied upon, any representation, warranty, covenant or agreement relating to the transactions contemplated hereunder other than those expressly set forth herein.

5.16. EXISTING WATER SALE AGREEMENTS

Nothing in this SWSA is intended to modify or amend any portion of the Existing Water Sale Agreements and such agreements remain in full force and effect, except as clarified by the 2007 Settlement Agreement.

5.17. COUNTERPARTS. This SWSA may be executed by the Parties in any number of separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts shall together constitute one and the same agreement. All signatures need not be on the same counterpart.

5.18. FURTHER ASSURANCES. Each party agrees to do all acts and things and to execute and deliver such further written instruments, as may be from time to time reasonably required to carry out the terms and provisions of this SWSA.

5.19. GOVERNING LAW. This SWSA and the rights and duties of the Parties arising out of this SWSA shall be governed by, and construed in accordance with, the laws of the State of Texas, without reference to the conflict of laws rules thereof.

5.20. HEADINGS; TABLE OF CONTENTS. The headings of the Articles and Sections of this SWSA and the Table of Contents are included for convenience only and shall not be deemed to constitute a part of this SWSA.

5.21. INCORPORATION OF EXHIBITS. All Exhibits attached to this SWSA are incorporated herein by this reference in their entirety and made a part hereof for all purposes.

5.22. INTERPRETATION AND RELIANCE. No presumption will apply in favor of any party in the interpretation of this SWSA or in the resolution of any ambiguity of any provisions thereof.

5.23. RELATIONSHIP OF PARTIES. This SWSA and the transactions contemplated hereunder are based upon the active participation of all Parties.

Neither the execution nor delivery of this SWSA, nor the consummation of the transactions contemplated hereunder, shall create or constitute a partnership, joint

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venture, or any other form of business organization or arrangement between the Parties, except for the contractual arrangements specifically set forth in this SWSA. Except as is expressly agreed to in writing in this SWSA, no party (or any of its agents, officers or employees) shall be an agent or employee of the other party, nor shall a party (or any of its agents, officers or employees) have any power to assume or create any obligation on behalf of the other party. Nothing contained in this SWSA shall create or constitute a partnership, joint venture, or any other form of business organization or arrangement among LCRA on the one hand and the Austin on the other hand, except for the contractual arrangements specifically set forth herein.

5.24. SEVERABILITY. In the event that any provision of this SWSA is held to be unenforceable or invalid by any court of competent jurisdiction, the Parties shall negotiate an equitable adjustment to the provisions of this SWSA with the view to effecting, to the extent possible, the original purpose and intent of this SWSA, and the validity and enforceability of the remaining provisions shall not be affected thereby.

5.25. NO ADDITIONAL WAIVER IMPLIED. No waiver or waivers of any breach or default (or any breaches or defaults) of any term, covenant, condition or liability under this SWSA, or of performance by the other parties of any duty or obligation under this SWSA, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances.

5.26. LEGAL RIGHTS TO OBJECT. The Parties agree and understand that:

(1) As set forth in Section 3.4, each Party's respective governing bodies maintains the legal right to approve or disapprove any particular recommendation from the Water Partnership on Supply Decisions; and

(2) Each Party retains any and all legal rights to contest or object to water rights permit requests or other regulatory approvals sought by either Party in the future related to water supply, except to the extent that those specific water rights permit applications are addressed in Section VIII of the 2007 Settlement Agreement or are otherwise required to implement a Supply Decision that is adopted by the Parties under the SWSA.

5.27. EFFECTIVE DATE. This SWSA shall be effective only when signed by both Parties. The Effective Date of this SWSA shall be the latest date on which Austin or LCRA has signed the SWSA.

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CITY OF AUSTIN

By: _____
Toby Hammett Futrell
City Manager

Date: _____

Attest: _____

Secretary: _____

LOWER COLORADO RIVER AUTHORITY

By: _____
Joseph J. Beal, P.E.
General Manager

Date: _____

Attest: _____

Secretary: _____