

FIRM WATER CONTRACT

by and between

LOWER COLORADO RIVER AUTHORITY

And

CITY OF AUSTIN

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## **FIRM WATER CONTRACT**

This Contract is entered by and between the LOWER COLORADO RIVER AUTHORITY (hereinafter, together with its successors and assigns, "LCRA") and the CITY OF AUSTIN (hereinafter, together with its successors and assigns as provided herein, "PURCHASER"), who, in mutual consideration of the provisions herein contained, agree as follows:

### **I. WATER SUPPLY**

#### **A. PERMIT REQUIRED**

**PURCHASER may not impound water under this contract unless PURCHASER, obtains and maintains in effect a permit from the Texas Commission on Environmental Quality that authorizes impoundment of water at the Point(s) of Impoundment consistent with the limitations set forth in Section I.B of this agreement for the term of this contract.**

#### **B. MAXIMUM ANNUAL QUANTITY.**

From and after the Effective Date hereof, PURCHASER shall have the right to a maximum of 165 acre-feet (53,765,415 gallons) of raw or untreated water per annum (the "Maximum Annual Quantity" or "MAQ") made available by LCRA. The term "made available" refers to the greatest of: (i) the amount of water released from LCRA firm supplies to allow for diversions by PURCHASER; (ii) the amount of water diverted by PURCHASER; or (iii) the amount of water impounded by PURCHASER. Notwithstanding the foregoing, PURCHASER and LCRA agree that the amount of water made available to PURCHASER will be calculated as the sum of:

- 1) The estimated losses from evaporation, evapotranspiration, seepage and other losses from the surface impoundments and bed and banks recirculation on Waller Creek, 38.1 acre-feet per year; plus
- 2) The amount of water diverted for irrigation purposes; plus
- 3) The amount of water used to fill or refill the Waller Creek Tunnel in the event the tunnel was initially filled or refilled during the relevant period, 87.5 acre-feet per filling or refilling; plus
- 4) Delivery losses to the Point of Availability on Lady Bird Lake, calculated as the sum of items 1 through 3 times 2.4 percent.

PURCHASER acknowledges that such amount represents the estimated impact to LCRA's water rights as a result of diversions from the Colorado River at Lady Bird Lake. PURCHASER agrees that the total annual diversion from the Colorado River at Lady Bird Lake for recirculation will not exceed 7,240 acre-feet per year.

PURCHASER agrees to provide LCRA with "as-built" drawings of the Waller Creek Tunnel Project. In the event the tunnel volume or surface impoundments, when full, exceed the amounts on which the MAQ was calculated, LCRA may amend this contract

to reflect such higher volumes in the calculation of water made available, and, if necessary, the MAQ.

PURCHASER and LCRA agree that the estimated firm yield impact of losses due to recirculating water through the tunnel and Waller Creek (from evaporation, evapotranspiration, seepage and other losses) is 38.1 acre-feet per year. PURCHASER agrees, within five years of the initial diversion of water under this contract, to undertake a detailed study to verify and/or update the estimated losses associated with recirculation and provide the study results to LCRA. PURCHASER agrees to coordinate and seek upfront input from LCRA on such a study. PURCHASER agrees that LCRA may use the results of such a study to amend the MAQ and calculation of amounts of water made available under this contract.

PURCHASER shall designate a point or points of diversion for such water on Lady Bird Lake, described and depicted in Exhibit "A" attached hereto (the "Point(s) of Availability"), said Exhibit depicting the location by reference to a corner of an original land survey and/or other survey point, giving course and distance and providing the latitude and longitude.

PURCHASER shall designate a point or points of impoundment for any water made available under this contract to be impounded on Waller Creek, described and depicted in Exhibit "B" attached hereto (the "Point(s) of Impoundment"), said Exhibit depicting the location by reference to a corner of an original land survey and/or other survey point, giving course and distance and providing the latitude and longitude.

C. EXCEEDANCE OF MAXIMUM ANNUAL QUANTITY.

If the amount of water made available to PURCHASER for any reason exceeds the Maximum Annual Quantity stated in PURCHASER's contract during two (2) consecutive years, or two (2) out of any four (4) consecutive years, LCRA shall have the right to require PURCHASER to negotiate a new standard form water contract for an increased MAQ to the extent LCRA has additional water supplies available.

D. SOURCE OF WATER SUPPLY.

- (1) The water made available for impoundment, diversion and/or use under this contract will be water provided from any source available to LCRA at the time PURCHASER uses water under this contract.
- (2) LCRA may make water available under this contract in accordance with LCRA's Water Management Plan, as may be amended in accordance with state law from time to time, from storage in Lakes Buchanan and/or Travis in accordance with water rights held by LCRA as set forth in Certificates of Adjudication No. 14-5478, as amended, and 14-5482, as amended.

- (3) LCRA may make water available under this contract from water rights owned by LCRA based on that certain water right previously owned by the Garwood Irrigation Company and identified as Certificate of Adjudication No. 14-5434 issued by the Texas Water Commission on June 28, 1989, as amended (herein, "Garwood's Right"). That portion of Garwood's Right that is owned by LCRA (and for which reference is made to Certificate of Adjudication No. 14-5434C issued by the Texas Natural Resource Conservation Commission) is referred to herein as "Garwood's Remaining Right."
- (a) PURCHASER acknowledges and agrees that LCRA may make water available for impoundment, diversion and/or use under this contract from Garwood's Remaining Right only following approval by the Texas Commission on Environmental Quality or its successors (hereafter, "TCEQ"), of amendments to allow use of Garwood's Remaining Right for the type of use authorized by this contract at the Point of Diversion.
- (b) In this event, this contract is subject to the commitments and conditions set forth in Section 7.08 of that certain Purchase Agreement, dated July 20, 1998, between Garwood Irrigation Company, as seller, and the Lower Colorado River Authority, as buyer (the "LCRA-Garwood Purchase Agreement"), and is further subject to all terms, provisions and special conditions contained within Garwood's Remaining Right, as amended. Copies of the LCRA-Garwood Purchase Agreement and Garwood's Remaining Right, as amended, are available at the following internet web-site address:

<http://www.lcra.org/water/contracts.html>

PURCHASER also may obtain copies of the LCRA Purchase Agreement and Garwood's Remaining Right, as amended, by request to LCRA's address for notices herein. By executing this contract, PURCHASER hereby acknowledges receipt of copies of the LCRA Purchase Agreement and Garwood's Remaining Right, as amended.

E. IRRIGATION AND RECREATION USE ONLY.

PURCHASER represents to LCRA and LCRA relies on such representation that all water made available under this contract will be impounded, diverted and/or used by PURCHASER for Irrigation and Recreation uses only as such terms are defined by the substantive rules for water rights of the TCEQ. In accordance with state law, any part of the water that PURCHASER impounds or diverts but does not use or consume for such uses in accordance with this contract shall be returned to the Colorado River or a tributary of the Colorado River.

F. SERVICE AREA.

Water made available under this contract shall only be used within that certain area consisting of a total of 6.1 acres, as described in Exhibit "C" attached hereto and depicted in Exhibit "D," attached hereto, together hereinafter called the "Service Area."

G. WATER CONSERVATION AND DROUGHT CONTINGENCY MEASURES.

- (1) PURCHASER agrees to implement the water conservation program contained in the water conservation plan (the “Water Conservation Plan”) described in Exhibit “E” attached hereto, PURCHASER further agrees that the water impounded and/or diverted by PURCHASER pursuant to this contract will be used in accordance with such Water Conservation Plan. LCRA, in accordance with applicable law, may from time to time adopt reasonable rules and regulations relating to water conservation measures. PURCHASER agrees to amend its Water Conservation Plan, as necessary, to reflect amendments in state law, regulations or LCRA’s water conservation rules and regulations. PURCHASER further agrees to do so within 180 days of the effective date of such amendments, provided that, if the amendments are adopted by LCRA (rather than, for example, TCEQ), the deadline for PURCHASER to make corresponding amendments to its Water Conservation Plan shall run from the date LCRA provides written notice of the amendments to PURCHASER. PURCHASER further agrees to submit its amended Water Conservation Plan to LCRA within 30 days after its adoption. In the event that PURCHASER 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, PURCHASER 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 consistent with PURCHASER’s Water Conservation Plan; and, b) amend its water conservation program to reflect amendments in state law, regulations or LCRA’s water conservation rules and regulations within the same timelines that apply to PURCHASER.
- (2) PURCHASER agrees to implement the drought contingency program contained in the drought contingency plan (the “Drought Contingency Plan”) described in Exhibit “F” attached hereto. PURCHASER further agrees that the water impounded and/or diverted by PURCHASER pursuant to this contract will be used in accordance with such Drought Contingency Plan. PURCHASER shall review and update the Drought Contingency Plan not less than once every five (5) years or following written request by LCRA consistent with any other schedule required by LCRA’s Water Contract Rules. PURCHASER further agrees to submit any amended Drought Contingency Plan to LCRA within 30 days after its adoption. LCRA, in accordance with applicable law, may from time to time adopt reasonable rules and regulations relating to drought contingency measures, including LCRA’s Water Management Plan. PURCHASER agrees to amend its Drought Contingency Plan, as necessary, to reflect amendments in state law or regulations or LCRA’s rules, regulations or Water Management Plan. PURCHASER further agrees to do so within 180 days of the effective date of such amendments, provided that, if the amendments are adopted by LCRA (rather than, for example, TCEQ), the deadline for PURCHASER to make corresponding amendments to its Drought Contingency Plan shall run from the date LCRA provides written notice of the amendments to PURCHASER. In the event that PURCHASER 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, PURCHASER agrees to include in its agreement with the third party provisions that obligate the third party to: a) develop and implement a drought contingency program

consistent with PURCHASER's Drought Contingency Plan; and b) amend its drought contingency program to reflect amendments in state law, regulations, or LCRA's rules, regulations, or Water Management Plan within the same timelines that apply to PURCHASER.

H. AVAILABILITY OF WATER.

The LCRA is committing to make available to PURCHASER under this contract a portion of LCRA's firm water supply, as defined in the LCRA's Water Contract Rules; provided, however, LCRA may interrupt or curtail the water supplied under this contract as required by state law or in accordance with LCRA's Water Management Plan, as such Plan and any amendments thereto have been approved and may be approved in the future by the TCEQ.

I. DELIVERY OF WATER.

LCRA is responsible for making water available under this contract only up to the MAQ. LCRA makes no guarantee that the water made available under this contract will be available at any particular time or place or that any LCRA owned/operated reservoir or the Colorado River will be maintained at any specific elevation or flow at any particular time. Furthermore, PURCHASER acknowledges and agrees that LCRA's obligations under this contract shall not require LCRA to make additional releases of water from LCRA firm water supplies beyond the MAQ or to make releases to raise the water elevations or flows at the Point(s) of Availability at a particular time sufficient for PURCHASER's intake and/or diversion facilities to operate.

J. STATE REGULATION OF LCRA WATER SUPPLIES.

PURCHASER acknowledges and agrees that the water LCRA makes available under this contract may be regulated in whole or in part by the State of Texas or local regulatory authorities. PURCHASER further acknowledges and agrees that LCRA's water rights are subject to regulation by the State of Texas, including but not limited to periodic review and amendment of the LCRA's Water Management Plan by the TCEQ. LCRA and PURCHASER acknowledge and agree that LCRA shall be obligated to exercise due diligence to manage its water supplies within such regulatory regimes to make water available to PURCHASER in accordance with the terms of this contract. PURCHASER acknowledges and agrees, however, that LCRA's obligations under this contract may be affected by orders of the State of Texas, its agencies or local regulatory authorities. Orders of the State of Texas, its agencies or local regulatory authorities may constitute a "force majeure" event in accordance with this contract.

K. OPERATIONS OF DAMS AND RESERVOIRS.

The right of LCRA to maintain and operate its several dams and their appurtenances on the Colorado River and its associated tributaries and at any and all times in the future to impound and release waters thereby in any lawful manner and to any lawful extent LCRA



may see fit is recognized by PURCHASER; and, except as otherwise provided herein, there shall be no obligation upon LCRA to release or not to release any impounded waters at any time or to maintain any waters at any specified elevation or flow. PURCHASER acknowledges that the elevations of said reservoirs and the Colorado River will vary as a result of hydrologic events, or lack thereof, (e.g. floods or droughts) in the watershed and LCRA's operations of its dams on the Colorado River.

L. QUALITY OF WATER.

LCRA makes no representation as to the quality of the water made available under this contract, and PURCHASER hereby releases LCRA and agrees to hold it harmless from any and all claims that PURCHASER or PURCHASER's customers or users have or may have against LCRA for any diminution in or impairment of the quality of water made available under this contract to the extent provided under section IV.C of this Agreement.

M. INTERBASIN TRANSFER.

Any surface water made available under this contract may not be transferred or used outside of the Colorado River basin unless such transfer or use is within LCRA's water service area or is otherwise in strict compliance with LCRA Board Policies, LCRA water rights and a final permit for interbasin transfer ("IBT") issued by the TCEQ. In the event that PURCHASER intends to transfer or use surface water made available under this contract outside of the Colorado River basin in accordance with this section, PURCHASER, by executing this contract, authorizes LCRA to apply to the TCEQ for the necessary authorization pursuant to Texas Water Code § 11.085 and 11.122 within forty-five (45) days of the Effective Date of this Agreement. LCRA shall diligently pursue such authorization after it is filed. PURCHASER shall pay for any filing and notice fees related to such application after LCRA bills PURCHASER for such fees in accordance with this contract.

N. REQUIRED NOTICES.

- (1) PURCHASER shall notify LCRA in writing of its intention to initiate diversions of water under this contract not more than eight (8) weeks, nor less than four (4) weeks, prior to PURCHASER's initiation of diversions. If impoundments or diversions of water are being continued from a previous contract or other right to divert no notice is necessary.
- (2) If PURCHASER's Point(s) of Availability are located downstream of Lake Travis or on a tributary which flows into the Colorado River downstream of Lake Travis, PURCHASER shall notify LCRA's River Operations Center (ROC) of its intent to impound and/or divert water under this contract and shall either (1) develop with the ROC a written process or mechanism for notifying the ROC of its intent to divert water under this contract; or (2) notify the ROC seven (7) days prior to making any impoundment and/or diversion of water under this contract. Notwithstanding any prior notifications, PURCHASER agrees to notify the ROC seven (7) days prior to turning the recirculating pumps on or off, or for any diversions for the purpose of filling or refilling the Tunnel.

- (3) In the event the PURCHASER is required by state law to obtain a water right permit or water right permit amendment – including but not limited to contractual, term, or temporary water right permits – from TCEQ related to water that is reserved or purchased pursuant to an LCRA water contract, PURCHASER shall provide LCRA: (i) a copy of the application for the water right permit or water right permit amendment within five (5) business days of its filing with TCEQ; (ii) a copy of any proposed notice related to the application; and (iii) a copy of the water right permit or water right permit amendment promptly following the issuance of the water right permit or water right permit amendment, PURCHASER shall incorporate LCRA’s comments into the application notice provided that: (i) LCRA provides its comments to PURCHASER within 10 business days of LCRA’s receipt of the draft notice, unless a shorter response period is required by the TCEQ; and (ii) TCEQ accepts LCRA’s comments in the final version of the notice. Applicant also shall provide LCRA two copies of any notice or action by TCEQ of a violation or termination of the water right permit or water right permit amendment within 10 days of Applicant receiving notice from TCEQ
- (4) PURCHASER shall notify LCRA in writing not more than eight (8) weeks, nor less than four (4) weeks, prior to implementing a program for reuse of water that is reserved or purchased pursuant to this contract and that falls within the type of use and Service Area provided in this contract. PURCHASER will make available to LCRA non-privileged documents regarding PURCHASER’s reuse program within a reasonable amount of time, not to exceed fifteen (15) business days, following a written request by LCRA staff. For all purposes of this contract, the term “reuse” means the authorized use of water, which water was diverted and used pursuant to this contract, but which water remains unconsumed and has yet to be either disposed of or discharged or otherwise allowed to flow into a watercourse, lake or other body of state-owned water.
- (5) PURCHASER shall notify LCRA in writing of its intentions to divert or deliver water for a Secondary Purchaser at least thirty (30) days prior to any diversions or deliveries from PURCHASER to the Secondary Purchaser.
- (6) Prior to the effective date of this contract, PURCHASER shall provide to LCRA a demand or use schedule that estimates PURCHASER’s annual usage, and any increases to it over time, of the water to be made available by LCRA under this contract (the “Demand Schedule”). PURCHASER shall review, update if needed, and provide to LCRA the Demand Schedule not less than once every five (5) years or following written request by LCRA consistent with any other schedule required by LCRA’s Water Contract Rules.

## **II. CONTRACT ADMINISTRATION**

### **A. TERM OF CONTRACT.**

This contract shall be for a term of 10 years commencing on the Effective Date, and ending on the year 2019 anniversary of the Effective Date, unless terminated earlier by either party as provided below.

B. PAYMENT.

- (1) PURCHASER agrees and covenants to pay LCRA – on a calendar year basis – an amount of money equal to the rate determined by the Board of Directors of LCRA to then be in effect for all sales of firm water for the same use as provided in this contract (“Water Rate”) multiplied by the amount of water made available to the PURCHASER during the previous year (“Annual Use”). For purposes of this section, the term “made available” refers to the greatest of: (i) the amount of water released from LCRA firm water supplies to allow for diversions by PURCHASER; (ii) the amount of water diverted by PURCHASER; or, (iii) the amount of water impounded by PURCHASER.

Notwithstanding the foregoing, PURCHASER and LCRA agree that the amount of water made available to PURCHASER during the previous year will be calculated as the sum of:

- 1) 38.1 acre-feet per year, the estimated losses from evaporation, evapotranspiration, seepage and other losses from the surface impoundments and bed and banks recirculation on Waller Creek; plus
- 2) The amount of water diverted for irrigation purposes; plus
- 3) The amount of water used to fill or refill the Waller Creek Tunnel in the event the tunnel was initially filled or refilled; plus
- 4) Delivery losses to the Point of Availability on Lady Bird Lake, calculated as the sum of items 1 through 3 times 2.4 percent.

In any year in which no water is diverted or used under this contract, the amount of water made available under this contract will be assumed to be zero. In such years, PURCHASER will remain responsible for the Reserved Water Charge as described below.

- (2) PURCHASER also agrees and covenants to pay LCRA – on a calendar year basis – an amount of money (“the Reserved Water Charge”) equal to the Water Rate multiplied by fifty percent (50%) of the “Reserved Water,” which shall be the excess of the Maximum Annual Quantity over the amount of water made available to PURCHASER during the previous calendar year (“Annual Diversion”).
- (3) PURCHASER further agrees and covenants to pay LCRA on a calendar year basis, an amount of money equal to the rate determined by the Board of Directors of LCRA to then be in effect for use of water in amounts in excess of the Maximum Annual Quantity (“Inverted Block Rate”) multiplied by any amount of water made available to PURCHASER in excess of the Maximum Annual Quantity during the previous calendar year. In the event the amount of water made available to PURCHASER is limited because of a curtailment imposed by LCRA or state law in accordance with this contract to an amount less than the MAQ, then PURCHASER shall pay a surcharge, in excess of the Water Rate, to

be set by LCRA's Board of Directors, multiplied by any amount of water made available to PURCHASER in excess of the amount PURCHASER is authorized to have available during the curtailment.

- (4) The Water Rate presently in effect is \$138.00 per acre-foot (\$0.42 per 1,000 gallons) of water. The Inverted Block Rate presently in effect is \$262.20 per acre-foot of water. LCRA reserves all rights that it may have under law to modify the Water Rate, the Reserved Water Charge or the Inverted Block Rate. PURCHASER understands and acknowledges that the Water Rate, Reserved Water Charge, and the Inverted Block Rate set forth in this contract have been approved by LCRA's Board of Directors, and that the Board may change all rates, fees and charges under the contract from time to time.
- (5) All charges under this contract shall be pro-rated as necessary to reflect the Effective Date of this Contract. For purposes of metering and billing, the "calendar year" may be based upon the 12-month period from the December meter reading date to the next December reading date.
- (6) On or before the thirtieth (30th) day of January in each calendar year, LCRA will mail an invoice to PURCHASER showing the amount of money owed by PURCHASER to LCRA in accordance with the Water Rate and any late payment charges, as specified herein.
- (7) The invoice mailed by LCRA to PURCHASER in the month of January each year, in addition to showing the amount of water made available to PURCHASER during the previous calendar year and the amount of money owed by PURCHASER to LCRA for such water, shall also show: (a) any amount of water remaining during the previous calendar year ("Reserved Water") that PURCHASER was authorized to have made available to it under this contract but failed to do so, as well as the corresponding amount of money owed by PURCHASER to LCRA in accordance with the Reserved Water Charge; or (b) any amount of water that PURCHASER had made available to it in excess of the Maximum Annual Quantity during the previous calendar year, as well as the corresponding amount of money owed by PURCHASER to LCRA in accordance with the Inverted Block Rate.
- (8) PURCHASER shall pay LCRA for water provided under this contract in the amount of each invoice submitted to PURCHASER by LCRA on or before thirty (30) days from the date of the invoice. PURCHASER shall mail checks for payments to the address indicated on the invoice. PURCHASER may pay by hand-delivery of checks or cash to LCRA's headquarters in Austin, Travis County, Texas, or by bank-wire if PURCHASER obtains LCRA's approval and makes arrangements for doing so prior to the due date. Payment must be received at the address provided on the invoice, or, if approved, at LCRA's headquarters or bank, not later than thirty (30) days from the invoice date in order not to be considered past due or late. In the event PURCHASER fails to make payment of

that invoice within thirty (30) days of the invoice date, PURCHASER shall then pay a late payment charge of five percent (5%) of the amount of the invoice. For each calendar month or fraction thereof that the invoice remains unpaid, PURCHASER shall pay at the rate of one and one-half percent (1.5%) per month. In the event PURCHASER attempts to pay LCRA by check, draft, credit card or any other similar instrument and the instrument is returned or refused by the bank or other similar institution as insufficient or non-negotiable for any reason, PURCHASER shall be assessed and must pay to LCRA, per each returned instrument, the LCRA's current returned instrument fee. If the invoice has not been paid within thirty (30) days of the invoice date, PURCHASER further agrees to pay all costs of collection and reasonable attorney's fees, regardless of whether suit is filed, as authorized by Section 271.159, Texas Local Government Code.

C. MEASURING WATER.

- (1) To measure the amount of water diverted by PURCHASER hereunder, PURCHASER agrees at PURCHASER's expense to install such measuring and recording devices or methods as are approved by LCRA (the "Meter"), such Meter to permit, within five percent (5%) accuracy, determination of quantities of raw water diverted from the reservoir or stream hereunder in units of 1,000 gallons. LCRA shall have the right to approve both the design of the meter as well as the location of its installation. PURCHASER must repair, replace or make necessary improvements to a meter that is not in compliance with this contract or LCRA's Water Contract Rules promptly after PURCHASER becomes aware of the deficiency that causes the meter to not comply with this contract or LCRA's Water Contract Rules.
  - (a) PURCHASER agrees to provide LCRA's representatives access across PURCHASER's property for inspection, testing and reading of the Meter. PURCHASER shall locate the meter in a manner that provides LCRA with reasonably safe access to the Meter for the purpose of making meter readings, testing, and/or periodic inspections.
  - (b) PURCHASER agrees that the Meter shall be tested for accuracy by qualified personnel as approved by LCRA and at the expense of PURCHASER once each calendar year at intervals of approximately twelve (12) months.
  - (c) PURCHASER shall furnish to LCRA a report of such test results. Readings within five percent (5%) of accuracy shall be considered correct.
  - (d) In the event PURCHASER fails to test the Meter for a period of fifteen (15) consecutive months, PURCHASER agrees to pay LCRA for the actual cost of testing the Meter plus a fifty dollar (\$50) administrative fee. LCRA will provide PURCHASER a written invoice of the cost of testing

the Meter, and said invoice will be subject to the payment terms provided in Section II.B of this contract.

- (e) If, at any time, LCRA provides PURCHASER a written notice that questions the accuracy of the Meter, PURCHASER promptly shall test the Meter and, in this event, the expense of such test will be paid by LCRA if the Meter is found to be correct and by PURCHASER if it is found to be incorrect.
- (f) Any party that tests the Meter shall provide written notice of the test to the other party at least five (5) business days in advance of the test and shall allow the other party to observe the test.
- (g) PURCHASER shall be required to take necessary steps to correct any inaccuracy in the Meter discovered during any test. LCRA may install, at its expense, check meters in or to any of PURCHASER's Meters at any time and may leave such check meters installed for such periods as is reasonably necessary to determine the accuracy of PURCHASER's Meters.
- (h) If, as a result of any test, the Meter is found to be registering inaccurately (i.e., in excess of five percent (5%) of accuracy), the readings of the Meter shall be corrected at the rate of its inaccuracy for any period which is definitely known and agreed upon or, if no such period is known and agreed upon, the shorter of the following periods shall be used as the basis for correction:
  - (i) a period extended back either sixty (60) days from the date of demand for the test or, if no demand for the test was made, sixty (60) days from the date of the test; or
  - (ii) a period extending back half of the time elapsed since the last previous test; and the records of reading shall be adjusted accordingly.
- (i) PURCHASER agrees, within five (5) years of the initial diversion of water under this contract, to perform a detailed study to evaluate the losses associated with the impoundments and recirculation of water diverted through the Tunnel which returns down Waller Creek. In order to reflect the impact on LCRA's firm water rights during a drought period, the study shall utilize data collected during dry months and shall be adjusted for the effect, if any, of rain events. In the event that the study reveals losses which exceed the value in Section I.B., LCRA may amend this contract to reflect such higher losses. PURCHASER agrees to coordinate and seek upfront input from LCRA on such a study.

- (2) In the event PURCHASER is charged based on water released from LCRA firm water supplies under this contract rather than the actual amount withdrawn from the reservoir or stream by PURCHASER, LCRA shall include the amount of such releases in the invoice provided to PURCHASER. LCRA shall make available information regarding its calculation of the amount of water released attributable to PURCHASER's actual diversions under this contract within a reasonable period following PURCHASER's written request.

D. TERMINATION OF CONTRACT.

This contract may be terminated as follows:

- (1) If PURCHASER is current on all payments due to LCRA under this contract, PURCHASER may terminate this contract at any time following the expiration of one (1) year, measured from the Effective Date, by providing at least three (3) months prior written notice to LCRA.
- (2) LCRA at its sole option, in accordance with the terms and conditions set forth in Section II.E., "NON-PAYMENT," may terminate this contract without recourse should PURCHASER fail to comply with the terms and conditions of this contract for the payment of moneys owed to LCRA pursuant to Section II.B. "PAYMENT."
- (3) If PURCHASER fails to comply with its Water Conservation Plan, its Drought Contingency Plan, or any applicable LCRA nonpoint source water pollution abatement ordinance, or if PURCHASER fails to amend its Water Conservation Plan or its Drought Contingency Plan to reflect changes in LCRA's Water Conservation Plan Rules, LCRA's Drought Contingency Plan Rules, or state law or rules, LCRA may terminate, at its sole option, this contract without recourse unless such default is cured within thirty (30) days (or, if the nature of such default is not susceptible of being cured within such thirty (30) day period, such longer period of time during which PURCHASER diligently prosecutes the cure of such default, not to exceed one hundred eighty (180) days) of PURCHASER's receipt of written notice of such default.
- (4) If PURCHASER fails to comply with the requirements of Sections III.A., "NONPOINT SOURCE POLLUTION ABATEMENT," III.B., "SEWAGE REGULATIONS," or III.C., "DOCUMENTATION OF COMPLIANCE; RIGHT OF ENTRY," LCRA may, at its sole option, terminate this contract without recourse unless such default is cured within thirty (30) days (or if the nature of such default is not susceptible of being cured within such thirty (30) day period, such longer period of time during which PURCHASER diligently prosecutes the cure of such default, not to exceed one hundred eighty (180) days) of PURCHASER's receipt of written notice of such default. For purposes of this section, LCRA shall not deem PURCHASER to be in default for so long as

PURCHASER is in compliance with any remedial or enforcement agreement authorized by an agency of appropriate jurisdiction.

- (5) If PURCHASER fails to comply with other requirements of this contract not specifically stated above, LCRA may, at its sole option, terminate this contract without recourse unless such default is cured within thirty (30) days (or, if the nature of such default is not susceptible of being cured within such thirty (30) day period, such longer period of time during which PURCHASER diligently prosecutes the cure of such default, not to exceed one hundred eighty (180) days) of PURCHASER's receipt of written notice of such default.
- (6) Subject to the requirements of applicable bankruptcy laws, including the rights of a trustee to assume contracts under applicable bankruptcy laws, this contract may be terminated immediately by the LCRA upon the declaration of bankruptcy by PURCHASER.
- (7) In the event TCEQ denies to PURCHASER, or terminates for any reason, a permit required by this contract, this contract shall terminate automatically upon such date as the TCEQ action is final and nonappealable, without further action by either party, and shall be of no further force or effect.

PURCHASER shall remain liable for all fees and charges accruing under the contract through the date the contract is terminated, including but not limited to a pro-rated Reserved Water Charge, which shall be calculated as the excess of the Maximum Annual Quantity, pro-rated to the date of termination, over the amount of water made available to PURCHASER through the date of termination. In the event LCRA terminates this Contract as provided herein, PURCHASER shall suspend immediately upon such termination all withdrawal of water from the Colorado River, or any tributaries thereof, under this Contract. LCRA may exercise any rights that it may have at law or in equity to prevent unauthorized withdrawals by PURCHASER or enforce the requirements of PURCHASER's Water Permit, if any.

E. NON-PAYMENT.

- (1) If LCRA determines that PURCHASER has not paid the full amount owed for any payment due under Section II.B., "PAYMENT", hereof within the time provided therefore, LCRA shall give written notice to PURCHASER stating the amount LCRA has determined is due and unpaid. If LCRA gives notice as provided herein and PURCHASER 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 PURCHASER terminate this contract without recourse; and/or, (2) request injunctive relief from a court of competent jurisdiction to prevent PURCHASER from impounding and/or diverting additional water pursuant to this contract.



- (2) If PURCHASER should dispute PURCHASER's obligation to pay all or any part of the amount stated in any invoice or notice, PURCHASER may, in addition to all other rights that PURCHASER 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 PURCHASER pending final resolution of such dispute in accordance with Section IV.H., "DISPUTE RESOLUTION." LCRA may not terminate this contract, or request injunctive relief to prevent additional impoundments and/or diversions, for failure to pay the amount stated in any invoice or notice if PURCHASER pays such amount under protest and until there is a final resolution of such dispute in accordance with Section IV.H., "DISPUTE RESOLUTION," favorable to LCRA.

F. EQUITABLE REMEDIES.

PURCHASER agrees that diversions or impoundments of water by PURCHASER without the authorization provided by this contract will result in damages to LCRA that cannot be adequately compensated by money alone. As a result, PURCHASER agrees that LCRA shall have available to it equitable remedies, including injunctive relief against additional diversions or impoundments by PURCHASER unless PURCHASER demonstrates that it is otherwise authorized to divert or impound water. In addition, PURCHASER agrees that the provisions of Section IV.H., "DISPUTE RESOLUTION," will not apply to any legal action brought by LCRA seeking equitable remedies under this contract except as expressly provided by Section II.E.(2) regarding "NON-PAYMENT."

G. NOTICE.

Any notice under this contract 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 PURCHASER shall be addressed to:

City of Austin, Dept. of Public Works  
One Texas Center  
505 Barton Springs Road, Suite 1300  
Austin, TX 78704

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

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

And

Lower Colorado River Authority  
Attn: River Operations Center  
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.

H. ASSIGNMENT OF CONTRACT.

PURCHASER shall have the right to assign this contract provided that: i) there is no change to the MAQ, source, type of use or Service Area provided in this Contract; ii) prior to such assignment, this contract is amended to be consistent with all terms of LCRA's then-current standard form contract for purchase of firm water from Lake Travis and LCRA's then-current Water Contract Rules as determined by LCRA; iii) the Water Conservation Plan and Drought Contingency Plan are updated as may be necessary in accordance with this contract as determined by LCRA; iv) PURCHASER provides LCRA at least sixty (60) days prior written notice of such assignment; and, v) PURCHASER is not in default under this contract at the time of such assignment.

I. COMPLIANCE WITH FILING REQUIREMENTS.

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

**III. ENVIRONMENTAL ISSUES RELATED TO WATER SUPPLY**

A. NONPOINT SOURCE WATER POLLUTION ABATEMENT.

If PURCHASER will use water under this contract to serve areas located within the jurisdictional area of LCRA Lake Travis Nonpoint Source Pollution Control Ordinance, the Upper Highland Lakes Nonpoint Source Pollution Control Ordinance, or any other LCRA water quality ordinance that has been adopted by the LCRA Board, PURCHASER agrees to comply with and shall comply with the provisions of that respective ordinance, which ordinance may require a permit and compliance with other applicable local, state, and federal rules and regulations pertaining to water quality protection. If PURCHASER will use water under this contract to serve areas wholly outside the jurisdiction of an LCRA water quality ordinance, PURCHASER agrees to comply with and shall comply with any applicable local, state, and federal rules and regulations pertaining to water quality protection. PURCHASER further agrees to

distribute to its customers in its service area water quality protection educational materials that LCRA provides to PURCHASER.

**B. SEWAGE REGULATIONS.**

PURCHASER agrees to obtain, or cause to be obtained, all approvals required by all applicable local, state or federal agencies for any sanitary sewage system or systems that collect sewage derived from water diverted herein or any sanitary sewage system whose effluent is discharged within the boundaries of LCRA's statutory district. Failure of PURCHASER to meet any standards imposed by such agencies for sanitary sewage systems, including on-site systems, shall subject PURCHASER under this contract to all remedies allowed by law including, without limitation, termination or suspension of this contract by LCRA. PURCHASER further agrees that if a sewage treatment plant is located within the Service Area, LCRA shall have reasonable access to such plant for the purpose of taking samples of sewage effluent from such plant for testing by LCRA to determine whether PURCHASER is in compliance with regulatory standards imposed by such agencies.

**C. DOCUMENTATION OF COMPLIANCE; RIGHT OF ENTRY.**

- (1) In addition to notices required by Section I of this Contract, PURCHASER shall provide LCRA copies of any approvals that PURCHASER has received from federal, state, or local agencies that relate to water reserved or purchased pursuant to PURCHASER's contract or to facilities intended to impound, divert, transport, or use water provided under PURCHASER's contract within a reasonable amount of time, not to exceed fifteen (15) business days, following a written request by LCRA staff.
- (2) PURCHASER agrees that LCRA employees and agents shall be entitled to enter any property where facilities impound or deliver water to the service area of PURCHASER at any reasonable time following a reasonable attempt at prior notification for the purpose of inspecting and investigating conditions relating to the quality of water; the compliance by PURCHASER with any rule, regulation, permit or other order of the state, its agencies, local regulatory authorities or LCRA; compliance by PURCHASER with the requirements of this contract; or, inspection of any of PURCHASER's facilities related to the use, diversion or impoundment of water under this contract. LCRA employees or agents acting under this contract who enter PURCHASER's property shall observe 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.

**IV. GENERAL PROVISIONS**

**A. EFFECTIVE DATE.**

"Effective Date" means the last date of execution of this Agreement by the Parties; provided all of the parties must execute this Agreement for it to be effective.

B. PREVIOUS CONTRACT.

PURCHASER and LCRA have previously entered into various water supply agreements. This contract does not affect the rights of either party under those agreements. Water made available under this contract shall not count as water made available or to be made available under the First Amendment to December 10, 1987 Comprehensive Water Settlement Agreement, dated October 7, 1999,

C. INDEMNIFICATION.

To the extent allowed by Texas law, PURCHASER agrees that it is responsible to the exclusion of any such responsibility of the LCRA for its own proportionate share of liability for its negligent acts and omissions for claims, suits, and causes of action, including claims for property damage, personal injury and death, arising out of or connected to this Agreement and as determined by a court of competent jurisdiction, provided that the execution of this Agreement will not be deemed a negligent act. PURCHASER's pumping and related facilities shall be installed, operated and maintained by PURCHASER at PURCHASER's sole risk. Nothing in this contract shall be construed as authorizing PURCHASER, or recognizing that PURCHASER has any right, to install any equipment or improvements on property owned by LCRA or third parties.

LCRA will save PURCHASER harmless from any and all claims or demands whatsoever to which LCRA may be subjected by reason of any injury to any person or damage 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.

D. FORCE MAJEURE.

The term "Force Majeure" as used herein, shall mean those situations or conditions that are beyond the control of LCRA or PURCHASER and that, after the exercise of due diligence to remedy such situation or condition, render LCRA or PURCHASER 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, excluding LCRA, 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 PURCHASER 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.

E. NO THIRD-PARTY BENEFICIARY.

The parties hereto are entering into this contract solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the parties hereto.

F. NO RIGHTS OR TITLE ACQUIRED.

PURCHASER agrees and acknowledges that it acquires by this contract no rights or title to the water that is the subject of this contract other than those rights explicitly set forth herein.

G. REPRESENTATIONS AND WARRANTIES.

Each of LCRA and PURCHASER represents and warrants to the other that this contract has been duly executed by an authorized officer and constitutes a valid and binding contract, enforceable against it in accordance with its terms (except as such enforceability may be limited by bankruptcy laws or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles).

H. DISPUTE RESOLUTION.

- (1) Settlement by Mutual Agreement. In the event any dispute, controversy or claim between or among the parties arises under this contract or is connected with or related in any way to this contract 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 effectiveness, validity, interpretation, implementation, termination, cancellation, or enforcement of this contract, 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 thirty (30) 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 thirty (30) day period, then any party may by notice to the other party, as the case may be, refer the Dispute or Controversy to senior management of the parties for resolution. Within thirty (30) days after delivery of any such notice by one party to the other referring such Dispute or Controversy to senior management of the parties for resolution, representatives of senior management of each of the parties 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 representatives of senior management of each of the parties for such purposes or should no such meeting take place within such thirty (30) day period (unless extended by mutual agreement), then any party may by notice to the other party, as the case may be, submit the Dispute or Controversy to binding arbitration in accordance with the provisions of subsection (2) and "Exhibit G." Upon the receipt of notice of referral to arbitration hereunder, and except as otherwise expressly provided by this contract, the parties shall be compelled to arbitrate the Dispute or Controversy in accordance with the terms of this Section H and Exhibit G without regard to the justiciable character or executory nature of such Dispute or Controversy.

- (2) Arbitration. Except as otherwise expressly provided by this contract, each party hereby agrees that any Dispute or Controversy that is not resolved pursuant to the provisions of subsection (1) may be submitted to binding arbitration hereunder and, if submitted timely according to this contract, shall be resolved exclusively and finally through such binding arbitration. Except as otherwise expressly provided by this contract, this Section H and Exhibit G constitute a written agreement by the parties to submit to arbitration any Dispute or Controversy arising under or in connection with this contract within the meaning of Section 171.001 of the Texas Civil Practice and Remedies Code.
- (3) Emergency Relief. Notwithstanding the parties' agreement to arbitrate Dispute and Controversies, 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.
- (4) Survival. The provisions of this Section H shall survive expiration or earlier termination of this contract.

I. 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 IV.I. shall have no effect on the party's indemnity obligations under Section IV.C.

J. AMENDMENT.

This contract may not be modified or amended except by an instrument in writing signed by authorized representatives of the parties.

K. BINDING EFFECT.

The terms of this contract shall be binding upon, and inure to the benefit of, the parties and their permitted successors and assigns.

L. COMPLETE CONTRACT.

This contract, together with all Exhibits attached hereto, constitutes the entire agreement of the parties relating to the subject matter of this contract and supersedes all prior contracts, agreements or understandings with respect to the subject matter hereof, both oral or written.

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.

M. COUNTERPARTS.

This contract 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.

N. 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 contract.

O. GOVERNING LAW.

This contract and the rights and duties of the parties arising out of this contract 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.

P. HEADINGS; TABLE OF CONTENTS.

The headings of the Articles and Sections of this contract and the Table of Contents are included for convenience only and shall not be deemed to constitute a part of this contract.

Q. INCORPORATION OF WATER CONTRACT RULES.

PURCHASER acknowledges receipt of LCRA's Water Contract Rules ("Rules"), and further acknowledges that, unless expressly stated otherwise in this Agreement, such

Rules, as may be amended by LCRA's Board of Directors from time to time, are incorporated herein by reference in their entirety and made a part hereof for all purposes.

R. INCORPORATION OF EXHIBITS.

All Exhibits attached to this contract are incorporated herein by this reference in their entirety and made a part hereof for all purposes.

S. INTERPRETATION AND RELIANCE.

No presumption will apply in favor of any party in the interpretation of this contract or in the resolution of any ambiguity of any provisions thereof.

T. RELATIONSHIP OF PARTIES.

This contract and the transactions contemplated hereunder are based upon the active participation of all parties.

Neither the execution nor delivery of this contract, nor the consummation of the transactions contemplated hereunder, shall create or constitute a partnership, joint venture, or any other form of business organization or arrangement between the parties, except for the contractual arrangements specifically set forth in this contract. Except as is expressly agreed to in writing in this contract, 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 contract 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 PURCHASER on the other hand, except for the contractual arrangements specifically set forth herein.

U. SEVERABILITY.

In the event that any provision of this contract 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 contract with the view to effecting, to the extent possible, the original purpose and intent of this contract, and the validity and enforceability of the remaining provisions shall not be affected thereby.

V. 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 contract, or of performance by the other parties of any duty or obligation under this contract, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances.



W. SHORT TERM SALES OF FIRM WATER TO THIRD PARTIES.

In accordance with LCRA Board Policy 501, Water Resources Management, LCRA and PURCHASER agree that LCRA may market and re-sell any portion of PURCHASER's Reserved Water to third parties on a limited term basis for a management fee and under terms mutually acceptable to LCRA and PURCHASER and in accordance with LCRA Board Policies.

**LOWER COLORADO RIVER AUTHORITY**

By: \_\_\_\_\_  
Karen Bondy, P.E.  
Manager, River Management Services

Date: \_\_\_\_\_

**PURCHASER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

DESCRIPTION OF POINT(S) OF AVAILABILITY

**EXHIBIT B**

POINT(S) OF IMPOUNDMENT

**EXHIBIT C**

DESCRIPTION OF SERVICE AREA

**EXHIBIT D**

DEPICTION OF SERVICE AREA

**EXHIBIT E**

WATER CONSERVATION PLAN

**EXHIBIT F**

DROUGHT CONTINGENCY PLAN

**EXHIBIT G**

ARBITRATION PROCEDURES



## **EXHIBIT G**

### **ARBITRATION PROCEDURES**

#### **Section 1. Arbitration.**

**1.1. Binding Arbitration.** Binding arbitration shall be conducted in accordance with the following procedures:

- (a) The party seeking arbitration hereunder shall request such arbitration in writing, which writing shall be delivered to the opposing party or parties and include a clear statement of the matter(s) in dispute. If a legal proceeding relating to the matter(s) in dispute has previously been filed in a court of competent jurisdiction (other than a proceeding for injunctive or ancillary relief) then such notice of election under this section shall be delivered within ninety (90) days of the date the electing party receives service of process in such legal proceeding. Otherwise, the legal proceeding shall be allowed to continue and binding arbitration shall not apply to the matter(s) in dispute in that legal proceeding.
- (b) Except to the extent provided in this Exhibit G, the arbitration shall be conducted in accordance with the commercial rules of the American Arbitration Association by a single arbitrator to be appointed as follows: (i) upon the issuance and receipt of a request for arbitration, the requesting and receiving party each shall designate a representative for the sole purpose of selecting, by mutual agreement with the other party's designee, the individual who shall arbitrate the Dispute or Controversy referred to arbitration hereunder; (ii) within twenty (20) days of their appointment, the two representatives shall designate a third individual who shall be the arbitrator to conduct the arbitration of the Dispute or Controversy; (iii) said individual shall be qualified to arbitrate the Dispute or Controversy referred to arbitration hereunder and have a schedule that permits him or her to serve as arbitrator within the time periods set forth herein. In order to facilitate any such appointment, the party seeking arbitration shall submit a brief description (no longer than two (2) pages) of the Dispute or Controversy to the opposing party. In the event the parties' two representatives are unable to agree on a single arbitrator of the Dispute or Controversy within the twenty (20) day period, then the arbitrator shall be appointed by the then-serving chief administrative district judge of Travis County, Texas, or any successor thereto within the next ten (10) day period. The party seeking arbitration shall make the parties' request for appointment of an arbitrator and furnish a copy of the aforesaid description of the Dispute or Controversy to said judge. Each party may, but shall not be required to, submit to said judge a list of up to three (3) qualified individuals as candidates for appointment as the arbitrator whose schedules permit their service as arbitrator within the time periods set forth herein. The arbitrator appointed by the judge need not be from such lists.
- (c) Within thirty (30) days of the date the arbitrator is appointed, the arbitrator shall notify the parties in writing of the date of the arbitration hearing, which hearing date shall be not less than one-hundred twenty (120) days from the date of the arbitrator's appointment. The arbitration hearing shall be held in Austin, Texas. Except as otherwise provided

herein, the proceedings shall be conducted in accordance with the procedures of the Texas General Arbitration Act, Tex. Civ. Prac. & Remedies Code § 171.001 et seq. (the "Texas General Arbitration Act"). Depositions may be taken and other discovery may be made in accordance with the Texas Rules of Civil Procedure, provided that (i) depositions and other discovery shall be completed within ninety (90) days of the appointment of the arbitrator, (ii) there shall be no evidence by affidavit allowed, and (iii) each party shall disclose a list of all documentary evidence to be used and a list of all witnesses and experts to be called by the party in the arbitration hearing at least twenty (20) days prior to the arbitration hearing. The arbitrator shall issue a final ruling within thirty (30) days after the arbitration hearing. Any decision of the arbitrator shall state the basis of the award and shall include both findings of fact and conclusions of law. Any award rendered pursuant to the foregoing, which may include an award or decree of specific performance hereunder, shall be final and binding on, and not appealable by, the parties, and judgment thereon may be entered or enforcement thereof sought by either party in a court of competent jurisdiction. The foregoing deadlines shall be tolled during the period that no arbitrator is serving until a replacement is appointed in accordance with this Exhibit G.

- (d) Notwithstanding the foregoing, nothing contained herein shall be deemed to give the arbitrator appointed hereunder any authority, power or right to alter, change, amend, modify, waive, add to or delete from any of the provisions of the contract.

**Section 2. Further Qualifications of Arbitrators; Conduct.** All arbitrators shall be and remain at all times wholly impartial and, upon written request by any party, shall provide the parties with a statement that they can and shall decide any Dispute or Controversy referred to them impartially. No arbitrator shall be employed by any party, the State of Texas, or have any material financial dependence upon a party, the State of Texas, nor shall any arbitrator have any material financial interest in the Dispute or Controversy.

**Section 3. Applicable Law and Arbitration Act.** The agreement to arbitrate set forth in this Exhibit shall be enforceable in either federal or state court. The enforcement of such agreement and all procedural aspects thereof, including the construction and interpretation of this agreement to arbitrate, the scope of the arbitrable issues, allegations of waiver, delay or defenses as to arbitrability and the rules (except as otherwise expressly provided herein) governing the conduct of the arbitration, shall be governed by and construed pursuant to the Texas General Arbitration Act. In deciding the substance of any such Dispute or Controversy, the arbitrator shall apply the substantive laws of the State of Texas. The arbitrator shall have authority, power and right to award damages and provide for other remedies as are available at law or in equity in accordance with the laws of the State of Texas, except that the arbitrator shall have no authority to award incidental or punitive damages under any circumstances (whether they be exemplary damages, treble damages or any other penalty or punitive type of damages) regardless of whether such damages may be available under the laws of the State of Texas. The parties hereby waive their right, if any, to recover punitive damages in connection with any arbitrated Dispute or Controversy.

**Section 4. Consolidation.** If the parties initiate multiple arbitration proceedings, the subject matters of which are related by common questions of law or fact and which could result in conflicting awards or obligations, then the parties hereby agree that all such proceedings may be consolidated into a single arbitration proceeding.

**Section 5. Pendency of Dispute; Interim Measures.** The existence of any Dispute or Controversy eligible for referral or referred to arbitration hereunder, or the pendency of the dispute settlement or resolution procedures set forth herein, shall not in and of themselves relieve or excuse either party from its ongoing duties and obligations under the contract or any right, duty or obligation arising therefrom; provided, however, that during the pendency of arbitration proceedings and prior to a final award, upon written request by a party, the arbitrator may issue interim measures for preservation or protection of the status quo.

**Section 6. Complete Defense.** The parties agree that compliance by a party with the provisions of this Exhibit shall be a complete defense to any Action or Proceeding instituted in any federal or state court, or before any administrative tribunal by any other party with respect to any Dispute or Controversy that is subject to arbitration as set forth herein, other than a suit or action alleging non-compliance with a final and binding arbitration award rendered hereunder.

**Section 7. Costs.** Each party shall bear the costs of its appointed representative to select the arbitrator of the Dispute or Controversy and its own attorneys' fees, while the costs of the arbitrator of the Dispute or Controversy incurred in accordance with the foregoing shall be shared equally by the parties. Additional incidental costs of arbitration shall be paid for by the nonprevailing party in the arbitration; provided, however, that where the final decision of the arbitrator is not clearly in favor of either party, such incidental costs shall be shared equally by the parties.