AUSTIN ENERGY'S TARIFF PACKAGE: 2015 COST OF SERVICE STUDY AND PROPOSAL TO CHANGE BASE ELECTRIC RATES	§ § § §	**BEFORE THE CITY OF AUSTIN IMPARTIAL HEARINGS EXAMINER**

PUBLIC CITIZEN AND SIERRA CLUB'S RESPONSE TO AE LOW INCOME CUSTOMERS' 1st SET OF REQUESTS FOR INFORMATION

Public Citizen and Sierra Club file this Response to AE Low Income Customer's First Request for Information submitted on May 17, 2016. Pursuant to agreement between these parties, this Response is timely filed.

Respectfully submitted,

Carol A. Birch

Carol S Birch
Texas Bar No. 02328375
Attorney for Public Citizen and Sierra Club

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this pleading has been served on all parties and the Impartial Hearing Examiner on the 26th day of May, 2016.

Carol A. Birch

Carol S. Birch

RESPONSES

AELIC has agreed that it is not seeking by these questions, legal opinions or information covered by the attorney/client privilege. Subject to that agreement, Public Citizen and Sierra Club answer as follows.

1-1. Does PC & SC agree that AE is a joint owner of Units 1 and 2 at the Fayette Power Project with the LCRA?

Yes.

Prepared: Kaiba White, Public Citizen
Sponsored: Paul Chernick and/or Cyrus Reed

1-2. If the answer to No 1-1 is yes, please answer the following:

A. Is it PC and SC's understanding that AE cannot retire FPP, Units 1 and/or 2 without an agreement with LCRA?

Without offering a legal opinion, yes. PC and SC fully recognize that as a jointly owned operation, AE and LCRA would need to revisit their agreement over the operation of Unit 1 and Unit 2.

The 2025 Generation plan approved by City Council on December 11th, 2014, clearly expresses this reality, but also suggests the potential for a renegotiation of the LCRA contract to allow Austin Energy ownership over one unit which would simplify retirement.

The Austin Energy, Austin Energy Resource, Generation and Climate Protection Plan to 2025 states:

"Austin Energy will strive to retire its share of the Fayette Power Project as soon as legally, economically and technologically possible. While Austin Energy should continue to talk with LCRA about retiring Units 1 and 2 as soon as economically and technologically feasible, Austin Energy will explore negotiation with LCRA for control of one unit to chart a path toward an early retirement of Austin Energy's share of Fayette starting in 2022."

Prepared: Kaiba White and Cyrus Reed
Sponsored: Paul Chernick and/or Cyrus Reed

B. Do you know whether AE and LCRA have entered into any agreements concerning the retirement of FPP Units 1 and/or 2? If so, please provide your understanding about each such agreement AE and LCRA have to retire FPP, Units 1 and/or 2; how you know this fact(s); and provide a brief description of each such agreement, if any.

We are not aware of any existing agreements between Austin Energy and the LCRA regarding the retirement of any portion of the Fayette Power Project. We are aware that Austin Energy staff have communicated with the LCRA about the city of Austin's interest in retiring Austin Energy's portion of the plant following adoption of the Austin Energy Resource, Generation and Climate Protection Plan to 2025.

In addition, on one occasion, members of Sierra Club, including Cyrus Reed, sat down with leadership in 2014 at LCRA to discuss the operation of the coal plant and communicated both an existing resolution from City Council to study the potential for retirement of Fayette, as well as the ongoing discussion at City Council and various commissions about the potential retirement of Fayette between 2020 and 2025. LCRA leadership were aware of the ongoing discussion with AE and at that time had not entered into formal discussions with AE although they had discussed it as a potential future discussion.

Prepared: Kaiba White and Cyrus Reed
Sponsored: Paul Chernick and/or Cyrus Reed

C. Do you know whether LCRA has any outstanding indebtedness related to FPP? If so, please explain your understanding of that indebtedness; how you know this fact; and to the extent known, please provide the amount of outstanding indebtedness that LCRA has related to FPP, if any.

We are aware that when the scrubber was added to the Fayette Power Project for Units 1 and 2, it was entered into as a joint expense, with each party paying approximately half for the unit. The cost for adding this "desulfurization" unit, more commonly called a scrubber, was reported in the press reports at the time as costing $400 million, with each party paying approximately half. It is our belief that LCRA does have outstanding debt connected to the Fayette Power Project in general and specifically to the scrubber, but we are not aware of the amount or the schedule for repayment or whether LCRA made the decision to finance the scrubber through debt or other means.

Prepared: Kaiba White and Cyrus Reed
Sponsored: Paul Chernick and/or Cyrus Reed

D. Do you know whether LCRA has created a decommissioning reserve for FPP? If so, please explain your understanding of LCRA's creation or non-creation of a decommissioning reserve for FPP; how you know this fact; and to the extent known, the level of reserves LCRA has targeted for decommissioning FPP, Units 1 and 2, if any.

We are not aware of whether or not LCRA has created a decommissioning reserve for the Fayette Power Project.

Prepared: Kaiba White
Sponsored: Paul Chernick and/or Cyrus Reed

1-3. Is it PC and SC's position that AE's "ending use of FPP" means retirement of AE's portion of FPP? If not, please explain.

Yes. There is a clear position that the city of Austin has a preferred option to retire Austin Energy's portion of the Fayette Power Project by 2023. There is also a recognition that the exact process for that retirement will require resolution of certain legal and financial issues.

The specific policy can be found in the Austin Energy Resource, Generation and Climate Protection Plan to 2025.

First, the Generation Plan states as its second main action:

"Supporting creation of a cash reserve fund for Fayette Power Project retirement. Reserves would be approved through the budgeting process and targeted to retire Austin's share of the plant beginning in 2022. Retiring Austin's portion of Fayette is contingent upon cash available to pay off debts and other costs associated with retirement while maintaining affordability."

Second, the Generation Plan states:

"Austin Energy will strive to retire its share of the Fayette Power Project as soon as legally, economically and technologically possible. While Austin Energy should continue to talk with LCRA about retiring Units 1 and 2 as soon as economically and technologically feasible, Austin Energy will explore negotiation with LCRA for control of one unit to chart a path toward an early retirement of Austin Energy's share of Fayette starting in 2022."

Prepared: Kaiba White and Cyrus Reed
Sponsored: Paul Chernick and/or Cyrus Reed

1-4. If the answer to No. 1-3 is yes, do PC and SC agree with the retiring of AE's portion of FPP? If so, please explain why you agree.

Yes, we strongly support the retirement of Austin Energy's portion of the Fayette Power Project by 2023 or sooner.

Fayette Power Project is the leading source of carbon dioxide emissions owned partially by the City of Austin. It is also a major water user and producer emissions of nitrogen oxide, sulfur dioxide, mercury and particulate matter, impacting the health of nearby residents. Since 2009, both of our organizations have been working on both the 2020 Generation Plan and the 2025 Generation Plan to end the use of coal in Austin Energy's portfolio. The creation of a reserve to pay off the debt is an important part of this effort.

Prepared: Kaiba White and Cyrus Reed
Sponsored: Paul Chernick and/or Cyrus Reed

1-5. If your answer No. 1-3 is yes; then does PC and SC agree that sale of AE's ownership share of FPP to LCRA in and of itself will not cause the operation of FPP Units 1 and 2 to cease? If so, is it PC and SC's position that regardless of this fact that AE should sell its share of FPP to LCRA or some other entity? Explain.

Yes, we agree that selling Austin Energy's portion of the Fayette Power Project would not necessarily cause operations to cease. And, no, we do not support the sale of Austin Energy's portion of the Fayette Power Project to the LCRA or any other entity. We do support an agreement between Austin Energy and the LCRA to change the ownership structure so that instead of the two entities jointly owning two units, they would each own a unit (LCRA would own a total of two units, because it already has sole ownership of unit 3).

In fact, when Austin Energy was, at one point, suggesting selling Fayette to LCRA to another owner as an option, both Public Citizen and Sierra Club took public positions against the option of selling the unit. These positions are well documented in editorials and public statements made by both organizations.

Prepared: Kaiba White and Cyrus Reed
Sponsored: Paul Chernick and/or Cyrus Reed

1-6. At page 23 of your Statement you provide a figure that shows AE reducing its usage of FPP production. If AE does reduce its usage as set out in Figure 1, do you know whether LCRA can increase its usage of FPP production to take advantage of AE's reduced usage? Please explain and in your explanation please identify the sources you are relying upon, if any, for your explanation.

Without offering a legal opinion, it is our understanding that no, the LCRA could not increase its utilization of the jointly owned units at the Fayette Power Project beyond its 50% ownership share. We do also know that per the agreement between LCRA and AE concerning the plant, there is a minimum amount of capacity at which the plant must operate during normal situations. This has been described as being 160 MWs, or 80 MWs per unit. Thus, Austin Energy has the right to use the coal plant less down to this minimum operations level per our agreement. This has been communicated by Austin Energy staff to the Austin City Council in public discussions.

Prepared: Kaiba White
Sponsored: Paul Chernick and/or Cyrus Reed

1-7. Are you aware of any barriers, (such as legal, regulatory, and economic) that AE must address before it can retire FPP Units 1 and/or 2? If so, please list each such barrier that you are aware of. (For example a barrier could be an ERCOT rule or protocol that would not allow AE and/or LCRA to retire the plant; the payment of outstanding indebtedness that LCRA may have regarding FPP; LCRA's unwillingness to cease FPP operations, and such other barriers.)

Regulatory: We are aware that Austin Energy and/or the LCRA would need to notify ERCOT of its intent to retire the Fayette Power Project in part or in whole and would need to follow ERCOT's procedure for doing so. We are aware that in certain circumstances, ERCOT can require that a plant remain online for reliability reasons, but that requirement comes with a cost to ERCOT and is not used as a long-term solution for reliability. The procedures for both mothballing a unit and permanently shutting down a unit are well established in ERCOT and happen frequently. The use of Reliability Must Run (RMR) agreements is rare and temporary. These procedures are available to the public at http://www.ercot.com/mktrules/nprotocols/current. We would suggest in particular reviewing Section 22, Appendix B and E, as well as Section 3.14, which cover the Reliability Must Run process. As an example only, CPS Energy recently formally announced their plans to retire the Deely Coal Plant in 2018 to ERCOT. ERCOT ran an analysis and announced they will allow that plant to retire without additional requirements.

Legal: Without offering a legal opinion, it is our understanding that negotiating a new ownership agreement with the LCRA in which Austin Energy retained ownership of one of the units, as described in 1-5, or obtaining an agreement from the LCRA to fully shut down units 1 and 2 would be necessary to actually retire a unit. This would involve a legal negotiation that would require approval by City Council.

The negotiations with LCRA over ownership, and retirement could involve financial costs beyond the cost of paying off existing debts and we are aware of this reality.

In addition, it is our understanding that the existing agreement with LCRA requires a minimum operation of 160 MWs total for the two units, meaning that Austin Energy can ramp down the use of FPP to this level legally, but any attempt to go below this level (except for maintenance purposes) could cause AE to be in breach of our existing agreement. A new agreement would need to be reach to reduce output below that level.

We are also aware that while AE has the right to decide its bidding strategy for FPP, AE is required to meet ERCOT protocols about withholding power as it pertains to market power prices.

Please see the attached memorandum from Andy Perny, Assistant City Attorney. Please also see documents provided by LCRA in 2012 to a Sierra Club attorney regarding the agreement between LCRA and AE over the use of Fayette.

Prepared: Kaiba White and Cyrus Reed
Sponsored: Paul Chernick and/or Cyrus Reed

LAW DEPARTMENT
MEMORANDUM

TO: **Mayor and Council**

FROM: **Andy Perny, Assistant City Attorney, Division Chief – Austin Energy**

DATE: **12/31/13**

SUBJECT: **Divestment or Retirement of Fayette Power Plant**

Mayor and Council:

In response to Resolution No. 20130627-066, this memo discusses the more significant legal issues concerning the elimination of the Fayette Power Plant coal-fired generating capacity from the City's generation portfolio, whether by divestment or retirement. The legal concerns discussed relate to the City's participation agreement with LCRA, ERCOT protocols, the City Charter, and outstanding bonds. Other issues such as potential environmental liabilities, which exist regardless, are not included.

THE PARTICIPATION AGREEMENT

The City's rights and obligations with respect to FPP are defined by the 1974 Participation Agreement between the City and the LCRA. Significant amendments to the 1974 agreement were made in 1980 and 1984, and several other minor letter amendments have also been made. Potential legal barriers to a sale, retirement or ramp-down of the City's share of FPP arise from (1) LCRA's right of first refusal regarding any sale to a third party, (2) obligations to maintain a minimum output of the City's share of the FPP facilities and to pay a fixed percentage of O&M regardless of the City's utilization of plant output, and (3) the prohibition against partition of the FPP facilities.

LCRA's Right of First Refusal

Article 23 of the 1974 Participation Agreement grants a right of first refusal to each party

with respect to any written contract entered into by the other party to sell its ownership interest in FPP (other than creation of a security interest or a merger or acquisition of a party's electric utility business). The provisions are mutual, but for purposes of this discussion it is assumed the City is the prospective seller. The right of first refusal provision contains several conditions that could be detrimental to any prospective sale transaction.

First, Section 23.2 would require the City to give the LCRA written notice of the proposed purchase price, terms, conditions and closing date for the proposed sale *seven months* in advance of the scheduled closing date. In other words, the City would need to negotiate a bona fide purchase offer with a closing date more than seven months after the execution of the contract, with notice to the potential buyer that LCRA has a right of first refusal, which if exercised, would result in the termination of the purchase contract. Upon delivery of the purchase offer to LCRA, pursuant to Section 23.3, LCRA would have *three* months to evaluate and determine whether to exercise its right of first refusal and match the offer. If LCRA chooses to purchase the City's interest, the sale to LCRA must be consummated within the seven month notice period provided for in Section 23.2. If LCRA fails to act within three months, it would be deemed to have waived its purchase option.

Should LCRA determine to pass on its purchase opportunity or not act within the three month period, the City and the third-party purchaser are required to close on the transaction within the initial seven month notice period in accordance with the terms and conditions of the contract presented to LCRA in the notice. Failure to do so results in the right-of-first-refusal clock resetting, and the City would be required to give LCRA a completely new seven month notice of intent to sell, with LCRA again having three months to re-evaluate whether to exercise its right of first refusal.

LCRA's right of first refusal presents two transactional obstacles to the City's successful solicitation and closing on a prospective sale of the City's ownership interest in FPP. First, the right of first refusal may discourage prospective buyers from investing the considerable time and resources required to perform the due diligence necessary to formulate a bona fide offer if they face the prospect of that offer simply being matched by LCRA, or it may cause prospective buyers to require a material break-up fee if LCRA exercises its right. Second, the seven month closing date and three month evaluation period granted to LCRA may chill offers altogether and reduce the possibility of receiving a fixed price offer because of the risk of changing energy and financial market conditions and environmental regulations that may occur during the waiting period.

Discontinuing or Ramping-Down use of City's Generating Capacity in FPP

The City Council resolution concerning FPP planning also requests an inquiry as to whether discontinuing or substantially ramping-down the use of the City's share of the energy and power output of FPP would be a feasible alternative. The short answer to this question is the City cannot unilaterally retire any part of the FPP facility, though it can potentially reduce usage of energy and power from its share of FPP, subject to certain minimum generation scheduling obligations. In either event, the City would have to continue to pay the costs of operating and maintaining FPP regardless

of the amount of usage of FPP by the City.

Because LCRA is both co-owner and project manager of FPP, and the City does not own an undivided share in any particular generator, the City does not have a contractual right to cause the shutdown of any part of FPP. Further, Section 7.3 of the 1974 Participation Agreement requires that each party schedule its Minimum Net Generation share, so that each unit runs at no less than the amount necessary for reliable operation. To the extent LCRA schedules less than its full share of the output of Units 1 and 2, the City could at any time be called upon to schedule whatever output amount LCRA deems necessary for the City to fulfill its Minimum Net Generation obligation.

Even if the City were able to reach an agreement with LCRA to exempt the City from the requirement to schedule Minimum Net Generation Share and in effect retire either Unit 1 or 2, there still remains the issue of operation and maintenance (O&M) costs for FPP. O&M costs are allocated to each party based upon generation entitlement share or percentage of nameplate capacity owned, and not on actual usage. Regardless of whether the City opts to dispatch its share of FPP, O&M costs will be allocated based upon a fixed ownership share. The City would remain liable for 50% of costs directly attributable to Units 1 and 2 and 33% of those costs attributable to FPP as a whole. Shutting down the City's share of FPP would result in significant on-going O&M costs with no offsetting revenue from power and energy sales.

An additional concern to be considered under a zero or reduced use scenario, is the argument that FPP would no longer be considered "used and useful" in the City's generation fleet or would have a significantly reduced "used and useful" allocation. This could cause a third party to argue that the City should not recover the O&M costs for FPP, or recover reduced O&M costs for FPP from ratepayers, which if sustained could shift the burden for payment of some or all of FPP O&M onto the City's general fund.

Re-structuring FPP Generation Unit Ownership Interests

Article 21 of the FPP 1974 Participation Agreement provides that each party waived its rights to partition any component of the Project. Accordingly, the City could not unilaterally seek to re-structure its undivided and split ownership interests in the FPP Generation Units. It would need the consent of LCRA to effectuate any such restructuring of its undivided interests in two generating units to a divided interest in one generation unit. LCRA may not have any incentive to agree to such restructuring absent exchange of other additional consideration from the City.

ERCOT REQUIREMENTS

Assuming the City is able to negotiate with LCRA to split FPP into two generation resources, those separated resources would have to obtain ERCOT approval to be registered separately. Assuming such approval were obtained, the City would then need to request approval from ERCOT to shut down the unit owned by the City. Procedurally, the City would need to notify ERCOT ninety

calendar days prior to the date it intends to cease operation of the resource.[1] The notification must include a City officer's attestation under oath that the resource is uneconomic to remain in service as currently designated.[2] There does not appear to be a mechanism to request a cessation of operation based solely on an owner's environmental protection determination. ERCOT would then study whether the resource needs to continue to generate to ensure reliable electric delivery throughout the ERCOT system grid. If ERCOT determines the resource is not necessary, it will give the City permission to shut it down. If ERCOT determines the resource is necessary, it will negotiate with the City to keep the facility running for a temporary period during which ERCOT pursues other ways to maintain reliability.

An agreement (a reliability-must-run (RMR) agreement) would state the terms on which the resource would continue to operate, and would normally have a term of between one month and one year. The City is not required to sign a RMR agreement, and may instead pursue an order from the PUC regarding whether the facility is necessary for reliability.[3] If the City does enter an RMR agreement with ERCOT, within ninety days thereafter ERCOT must report to its board outlining an exit strategy from the RMR agreement, which strategy may include transmission upgrades, voltage control devices and the acquisition of interruptible load.[4] ERCOT would reevaluate the necessity of any RMR generation annually.[5] The RMR agreement, which covers the generator's cost of operating the facility and includes an incentive payment equal to 10% of non-fuel costs, is not intended to be a permanent solution to grid reliability issues.[6] ERCOT's protocols call for it to minimize the use of RMR generation as much as practicable.[7]

THE CITY CHARTER

Article II, Section 7(b) of the Charter provides that:

> . . . the council shall have no power to, and shall not: . . .(b) Sell, convey, or lease all or any substantial part of the facilities of any municipally owned public utility, provided that the council may lease all or a substantial part of such facilities to any public agency of the State of Texas if the qualified voters of the city authorize such lease by adopting in a general or special election a proposition submitting the question and setting forth the terms and conditions under which such lease is to be

[1] PUCT Substantive Rule 25.502(e).
[2] ERCOT Nodal Protocols § 3.14.1.1(2).
[3] *Id.* at § 3.14.1(1)(g); PUCT Rule 25.502(e)(1)..
[4] *Id.* at §3.14.1.4.
[5] *Id.*
[6] *See id.* at §§ 3.14.1.10, 3.14.1.13.
[7] *Id.* at § 3.14.1(1)(c). ERCOT has encountered some resistance to the use of RMR agreements based on the premium paid to RMR owners for their continued operation. See Elizabeth Souder, *ERCOT might require, and pay, EFH to run coal plants slated to idle for the winter*, DALLAS MORNING NEWS, Sept. 26, 2012, available at: http://www.dallasnews.com/business/energy/20120926-ercot-might-require-and-pay-efh-to-run-coal-plants-slated-to-idle-for-the-winter.ece.

made.

This Charter provision is a flat prohibition against the sale of "all or any substantial part" of Austin Energy (or AWU). The difficulty is that the Charter does not define what is meant by the term "substantial part." This creates a question of interpretation as to whether the City's ownership interest in FPP would be considered a substantial part or not. Based upon dictionary references as well as the use of the word in other legal contexts it could mean "significant" or "material," in which case someone could argue that it should be interpreted to prohibit the sale of the City's FPP interest. The term could also mean, however, "almost all" or to a degree that would effectively result in a complete divestiture of the utility, which is also a common usage in other legal contexts. In the latter case, Section 7(b) would likely not be construed to prohibit the sale of FPP.

Legislative history is often used in interpreting legislative language. Section 7(b) appeared in its current form in the overhaul of the Charter that occurred in 1953. However, the restriction of the disposition of utility assets goes back much further. The first appearance of the restriction was in the Charter granted by the Legislature in 1899 (Charters were not adopted by vote until 1912). Article I, §1 of the 1899 Charter read that:

> ...the City shall not have power to dispose of any part of the water and light system of the City of Austin; the dam across the Colorado River, owned by the City, or any property now owned or used, or which may hereafter be owned of used as a part of said system, and which may be necessary or incident to the operation thereof.

This version stood in effect until 1938, when an election was held to modify the provision to allow the City to lease Tom Miller Dam to LCRA. The modified version read as follows:

> ...the City shall not have power to sell any part of the water and light system of the City of Austin, the dam across the Colorado River owned by the City, or any property now owned or used or which may hereafter be owned of used as part of said system, and which may be necessary or incident to the operation thereof; but the City Council shall have power on behalf of the City to lease to any public agency of the State of Texas, for such period and upon such terms and conditions, and subject to such provisions, including provisions as to improvement by the lessee of the property so leased and as to purchase by the City of improvements so erected, as the City Council may approve, all or any part of such electric light system, including such dam and the reservoir formed thereby and any other property desirable in the operation of the property so leased, provided, however, that the City shall not have power to lease the present steam generating plant of the City and any additions, the present electric distribution system for the distribution of electric current in the City of Austin, and any extensions thereof, and any transmission lines connecting said generating plant and said distribution system and the City shall not have power to lease its water purification plant and distribution system.

Both the 1899 and 1938 versions contained a clear prohibition of the sale of utility assets if they were "necessary or incident to the operation" of the utility. "Incident to" means simply that the asset is involved in operating the utility, so this is a fairly straight forward and broad prohibition. Further, the 1938 version expressly exempts "the existing steam generating plant" from the grant of leasing authorization, implying that the then-existing plant was considered to fall within the initial proscription of the council's powers to sell utility assets. Unfortunately, the legislative history does not provide a dispositive interpretation for the current Charter language.

Accordingly, neither dictionary references nor the historical record can give full clarity to the meaning of "substantial" as used in the Charter. Case law can also be informative as to particular uses of language. At least one case provided that the term "substantial" was a relative term susceptible to different meanings according to the circumstances of its use, and that it must be examined in relation to its context and its meaning gauged by circumstances surrounding the matter in reference.[8] In the case of *Prudholm v. State*,[9] the Court stated that:

> In common usage, "substantial" means "to a large extent"... Together with comparative words like "similar," "majority," or "probability," the combination with "substantial" or "substantially" means something significantly greater than the modified word, whereas with absolute words like "complete," "certain," or "all," the combination with "substantially" means something only slightly less than the modified word.

The *Prudholm* decision could lend support to the notion that "substantial," as used in the Charter, means "only slightly less than the modified word." In the Charter, the word "substantial", while not directly paired with the word "all," appears in the same clause. In fact, if the word were to mean only "material," it would be redundant to say "all" at the outset. The provision could simply read that the Council has no power to sell any material or significant part of the utility without reference to the entirety. On the other hand, if the intent of the provision is to prevent sale of the entire utility, it is reasonable to put in a qualifier like "or any substantial part" to prevent a sale that is less than the whole but nonetheless effectively amounts to a complete divestiture.

The Charter could be interpreted to mean "all or substantially all" rather than "all or any substantial part." Prior charter versions do clearly prohibit the sale of a generation plant. The question remains whether the 1953 revision to the sale prohibition was meant to be a substantive rewrite rather than a recodification or clarification. At least with respect to the lease provision, the 1953 enactment was a substantive revision. It could be argued that moving from a "necessary or incident to" standard to an "all or any substantial part" standard was substantive as well. The 1938 language was certainly clearer.

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[8] *Lone Star Gas Co. v. Howard Corp.*, 556 S.W.2d 372 (Tex.App. - Texarkana, 1977)
[9] 333 S.W.3d 590 (Tex.Crim.App. 2011)

The purpose of the above exercise is not to resolve what the Charter means in the context of a sale of the City's ownership interest in FPP, but to illustrate the inherent uncertainty surrounding the meaning of "substantial" when contemplating a sale of the City's FPP interest. Buyers want reasonable certainty when considering an investment of the magnitude of a purchase of the City's interest in FPP, particularly certainty that the City has the legal authority to sell its FPP interest. This kind of uncertainty may easily chill many potential buyers from considering a bid due to the risk that a court could either intervene to restrain a closing, or the worse risk that a court would undo the transaction after closing. Other potential buyers would certainly weigh the potential risk and impose a significant price reduction to compensate for assuming that risk.

Even if a buyer could be found that would make an acceptable offer to the City, such an offer may also leave open the door to a court challenge by parties interested in seeing that the City not sell off the project. Such potential challengers could include customers who view coal as a source of cheap energy, as well as environmental groups who want to see FPP shut down and recognize that a sale will likely result in the continued operation of FPP.

BOND ISSUES

The City currently has approximately $175 million of non-taxable debt outstanding and attributable to FPP, mainly due to the recent scrubber project. The majority of the debt was issued in the form of revenue bonds, while some is attributable to federally-subsidized Build America Bonds issued pursuant to the American Recovery and Reinvestment Act. All of these bonds are subject to IRS regulations concerning private use of the financed assets.

Private-use restrictions would likely trigger the need to defease the entirety of the debt issuances that were associated with FPP in the event FPP were sold to a non-governmental entity. These restrictions could also cause the forfeiture of $30.6 million in federal subsidies attributable to the Build America Bonds.

Retiring the City's share of FPP could impact Austin Energy's rates and may also create a need to defease debt. Under the Public Utility Regulatory Act[10], a utility may include invested capital in its rate base that is used and useful for the provision of electric service. In contrast, a plant that is no longer used and useful may be removed from rates and the utility not allowed recovery of its investment. Under the scenario in which the City were to shut down FPP during the 2015-2018 timeframe, the City would still be liable for the debt associated with the asset.

One potential alternative that would allow the City to meet those debt obligations and *possibly* obtain cost recovery would be a situation where the City defeases itself from the bonds underlying the debt. Under this scenario, the City would draw upon reserve funding equivalent to its outstanding debt. These funds would be provided to a trustee who would establish an escrow which

[10] PURA does not directly govern the City's retail electric rates, but which could be applied by the Public Utility Commission of Texas in the event of an appeal by outside ratepayers.

would fund payments on the bonds. Because the bonds are not callable, it would be necessary for them to be paid over their existing lives. Rates would then be adjusted to allow AE to replenish its reserves over an optimal period. This is a simplified and preliminary description of the scenario. There are many other factors that should be considered before proceeding. Notably, more research and analysis, including the impact of the tax-exempt status of the outstanding bonds, would need to be completed before determining whether this option is legally viable.

LCRA
ENERGY • WATER • COMMUNITY SERVICES

September 14, 2012

VIA HAND DELIVERY
Amanda Crawford - Chief
Open Records Division
Office of the Attorney General of Texas
Price Daniel Sr. Bldg. – Suite 600
209 West 14th Street
Austin, Texas 78701

Re: ***Request by Elena Saxonhouse for contracts executed between LCRA and City of Austin***

Dear Ms. Crawford:

On August 23, 2012[1], Lower Colorado River Authority (LCRA) received a request from Ms. Elena Saxonhouse, Staff Attorney for Sierra Club's Environmental Law Program, for "all current contracts executed between LCRA and the City of Austin, including Austin Energy, relating to the Fayette Power Project." Ms. Saxonhouse's request is attached as **Exhibit A**.

Certain responsive documents, including the Fayette Power Project Participation Agreement between the City of Austin and LCRA, are being provided to Ms. Saxonhouse. However, LCRA has determined that certain information requested by Ms. Saxonhouse may be excepted from disclosure under the *Texas Public Information Act (*the Act*)*, Chapter 552 of the *Texas Government Code*. In its letter submitted to your office on September 7, 2012, LCRA asserted "*all exceptions under the Act, including but not limited to, §§ 552.101, 552.104, and 552.133.*" (emphasis added). See **Exhibit B-1**. After conducting its search for responsive documents, LCRA is asserting exceptions pursuant to §§ 552.101, 552.104, 552.107, 552.111 and 552.133 of the Act as discussed below.

LCRA determined that information requested may impact the City of Austin (Austin or COA) and Austin Energy (AE). Therefore, LCRA notified those entities of Ms. Saxonhouse's request. The third-party notices are attached as **Exhibit B-2**. Documents responsive to Ms. Saxonhouse's request that may impact the noticed third parties are attached as **Exhibit C**.

[1] Please note that LCRA's offices were closed for the Labor Day holiday on September 3. This letter is timely submitted on September 14, 2012, the fifteenth business day from the receipt of the request.

Exhibit C (consists of Exhbits C-1 through C-4)

Exhibit C-1: Services Agreement between LCRA and the City of Austin, dba Austin Energy, relating to the desulfurization of Emissions from Fayette Power Project Units 1 & 2 and an amendment to that agreement, dated June 25, 2012. The Fayette Power Project Units 1 and 2 are jointly owned by LCRA and AE. The agreement relates to certain flue gas scrubber equipment to be used by Units 1 and 2 in order to reduce emissions of sulfur dioxide and other air contaminants from those units. The agreement in Exhibit C-1 describes sensitive operations regarding the desulfurization of emissions and includes cost allocation and compensation provisions for those services. The services agreement in Exhibit C-1 also discusses certain potential replacement and repair projects within the near future, in addition to how the parties to the agreement intend to pay for energy required for Existing Shared Equipment and New Shared Equipment, as defined in the agreement.

Exhibit C-1 is a representative sample of the type of information that is considered compeititve information protected from disclosure under §§ 552.133 and 552.104. The agreements contain cost and compensation provisions. These provisions include cost sharing formulas and calculations, the release of which would provide competitors in the public power market place with a competitive advantage over LCRA and the City of Austin. In addition, discussions within the agreement contain descriptions of certain sensitive operations that are related to critical infrastructure that could be used to identify particular vulnerabilities to an act of terrorism. In this specific instance, the agreement contains a schematic that outlines the scrubber unit. This schematic could be used to assess the vulnerabilities of that unit. Therefore, the information described and represented in Exhibit C-7 is the type of information protected from disclosure under § 552.101 and § 418.181 of the Government Code (The Texas Disaster Act).

Exhibit C-2: LCRA and City of Austin Joint Defense Agreement (JDA), dated March 14, 2011. The JDA is a representative sample of documents and information that is privileged under the attorney-client and work product privileges. LCRA and Austin entered into the JDA as part of their response to litigation filed on July 14, 2010 by the Einvironmental Integrity Project, Texas Campaign for the Environment (TCE) and Environmental Texas. The primary plaintiff in the litigation, which is still active, is the TCE. The JDA and other similar, responsive agreements/documents, that are subject to the attorney-client and/or the work product privileges, are they types of documents protected from disclosure under § 552.107.

> **Exhibit C-2-A**: July 14, 2010, Notice of Intent to Sue for Clean Air Act Violations at Fayette Power Project Located near La Grange, Fayette County, Texas. This exhibit is provided in support of LCRA's assertion of the attorney-client and work product privileges relating to a pending litigation regarding the Fayette Power Project.

Exhibit C-2-B: June 8, 2012, Notice of Intent to Sue for Clean Air Act Violations at Fayette Power Project in Fayette County, Texas. This exhibit is provided in support of LCRA's assertion of the attorney-client and work product privileges relating to a pending litigation regarding the Fayette Power Project.

Exhibit C-3: Interconnection Agreement between City of Austin, LCRA and Lower Colorado River Authority Transmission Services Corporation (LCRA TSC), dated November 10, 2004. This agreement sets out the requirements, provisions and methodology by which the City of Austin and LCRA TSC, collectively, Transmission Service Providers, shall interconnect the Fayette Power Project with the Transmission Service Providers' systems. The agreement is a representative sample of the type of responsive information and agreements that contain sensitive information relating to critical infrastructure. The agreement describes certain facilities and equipment, system protection provisions, operation and maintenance procedures and obligations of each Transmission Service Provider, provisions relating to the acquisition of data to realistically simulate the electrical behavior of system components, and certain operational processes and methodologies to be used by all parties involved. The agreement also contains exhibits that depict and describe sensitive critical infrastructure. The release of this type of information would jeopardize the plant facilities, transmission facilities of each Transmission Service Provider and the communication processes necessary to provide consistent power to the power grid. Therefore, the information described and represented in Exhibit C-3 is the type of information protected from disclosure under § 552.101 and § 418.181 of the Government Code (The Texas Disaster Act).

Exhibit C-4: 1997 Transmission and Communication Agreement Between The City of Austin and LCRA. Exhibit C-4 is representative sample of the type of information that is protected from disclosure under § 552.101 and those other laws that make certain information confidential under homeland security laws, including the Texas Disaster Act in Chapter 418, Texas Government Code. Specifically, the type of information in the represented agreement consists of information related to the location of fiber optic and communication lines and infrastructure. The fiber optic lines and infrastructure are used by emergency service providers across the region, including those providing service in the Austin and Travis County area. The release of the locations of those fiber optic lines and infrastructure could make them vulnerable to attack should a person wish to impact or prevent those communications from occurring during an emergency situation. Therefore, the information described and represented in Exhibit C-4 is the type of information protected from disclosure under § 552.101 and § 418.181 of the Government Code (The Texas Disaster Act).

Exceptions to Disclosure

Section 552.101 Exception - Information Confidential by Law

Section 552.101 excepts information from the requirements of Section 552.021 if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision. This section makes clear that the Act does not mandate the disclosure of information that other law requires be kept confidential. §552.352(a) states: "A person commits an offense if the person distributes information considered confidential under the terms of this chapter." A violation under §552.352 is a misdemeanor constituting official misconduct.[2] In its discretion, a governmental body may release to the public information protected under the Act's exceptions to disclosure but not deemed confidential by law.[3] On the other hand, a governmental body has no discretion to release information deemed confidential by law.[4] Because the Act prohibits the release of confidential information and because its improper release constitutes a misdemeanor, the attorney general may raise §552.101 on behalf of a governmental body, although the attorney general ordinarily will not raise other exceptions that a governmental body has failed to claim.[5]

By providing that all information a governmental body collects, assembles, or maintains is public unless expressly excepted from disclosure, the Act prevents a governmental body from making an enforceable promise to keep information confidential unless the governmental body is authorized by law to do so.[6] Thus, a governmental body may rely on its promise of confidentiality to withhold information from disclosure only if the governmental body has specific statutory authority to make such a promise. Unless a governmental body is explicitly authorized to make an enforceable promise to keep information confidential, it may not make such a promise in a contract[7] or a settlement agreement.[8] In addition, a governmental body may not pass an ordinance or rule purporting to make certain information confidential unless the governmental body is statutorily authorized to do so.[9]

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[2] Gov't Code §552.352(b), (c).

[3] *Id.* §552.007; see *Dominguez v. Gilbert*, 48 S.W.3d 789, 793 (Tex. App. – Austin 2001, no pet.).

[4] See Gov't Code §552.007; *Dominguez*, 48 S.W. 3d at 793. But see discussion of informer's privilege beginning on page 76 of the 2006 Public Information Handbook.

[5] See Open Records Decision Nos. 445 at 3 (1987), 325 at 1 (1982).

[6] Attorney General Opinion H-258 at 3 (1974); see Attorney General Opinions JM-672 at 1-2 (1987), JM-37 at 2 (1983); Open Records Decision Nos. 585 at 2 (1991), 514 at 1 (1988), 55A at 2 (1975).

[7] See Attorney General Opinion JM-672 at 2 (1987); Open Records Decision No. 514 at 1 (1988).

[8] See Open Records Decision No. 114 at 1 (1975).

[9] See *Indus. Found v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); *Envoy Med. Sys. v. State*, 108 S.W. 3d 333,337 (Tex. App. – Austin 2003, no pet.); Open Records Decision No. 594 at 3 (1991).

Protection of Critical Infrastructure Information

The 78th Legislature passed HB 9 which amended the Government Code by adding Chapter 421 – *Homeland Security* and adding §§ 418.176-418.183 to Subchapter H, Chapter 418 of the Government Code. §421.002(a), Government Code, authorizes the Governor of Texas to direct homeland security in Texas and to develop a statewide homeland security strategy that improves the state's ability to: 1) detect and deter threats to homeland security; (2) respond to homeland security emergencies; and (3) recover from homeland security emergencies.

Section 421.002(b), Government Code, states that "the governor's homeland security strategy shall coordinate homeland security activities among and between local, state, and federal agencies and the private sector and must include specific plans for... protecting critical infrastructure."

Section 418.181, Government Code, *Confidentiality of Certain Information Relating to Critical Infrastructure*, states that "[T]hose documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism." It is evident that the Texas Legislature and the Governor of Texas have placed the utmost importance upon the protection of critical infrastructure from potential acts of terrorism.

Chapter 421 defines an "agency" to mean "any governmental entity." "Governmental entity" is not defined. However, the LCRA is a conservation and reclamation district that was created by the Texas Legislature in 1934. LCRA is a local governmental entity and, as such, is within the purview of the provisions of Chapters 418 & 421 of the Government Code.

The representative samples of the type of information and content, as represented in Exhibits C-1, C-3 and C-4 are within the scope of Chapter 418 and are the type of critical infrastructure that is defined in §421.001(2), "Critical infrastructure," to include "all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation." The representative sample of responsive information included in Exhibits C-1, C-3 and C-4, requested by Ms. Saxonhouse, provide the type of detail and description of critical infrastructure and information related to critical infrastructure that could be used to detect and determine vulnerabilities of those critical infrastructure to a terrorist attack.

It is imperative that the the type of detail and description of critical infrastructure and information related to critical infrastructure be kept confidential. Should that information be released, it would be accessible to persons who may wish to attempt a terrorist act. Such a terrorist act could result in disabling power plant, resulting in imminent threat to the public health, safety and welfare, which could be disastrous for the security of many local communities and even the entire state. Therefore, LCRA seeks to withhold the

release of the type of representative information in Exhibits C-1, C-3 and C-4 pursuant to § 552.101 and Section 418.181, Government Code.

Section 552.107 Exception – Certain Legal Matters

Section 552.107 states that information is excepted from required public disclosure if: "(1) it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the *Texas Rules of Evidence*, the *Texas Rules of Criminal Evidence*, or the *Texas Disciplinary Rules of Professional Conduct*; or (2) a court by order has prohibited disclosure of the information."

Section 552.107 protects information within the attorney-client privilege and that a court has ordered to be kept confidential. The Attorney General has interpreted §552.107 to protect the same information as protected under *Texas Rule of Evidence* 503.[10] The standard for demonstrating the attorney-client privilege under the Act is the same as the standard used in discovery under Rule 503.

In order to meet the standard, a governmental body bears the burden of providing the necessary facts to demonstrate the elements of the attorney-client privilege. The governmental body must demonstrate that the information constitutes or documents a communication.[11] Secondly, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body.[12] Third, the governmental body must demonstrate that the communication was between or among clients, client representatives, lawyers, and lawyer representatives.[13] Fourth, the governmental body must show that the communication was confidential; that is, the communication was "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication."[14] The governmental body must finally demonstrate that the communication has remained confidential and that the client has not waived the attorney-client privilege.[15]

The privilege will not apply if the attorney or the attorney's representative was acting in a capacity "other than that of providing or facilitating professional legal services to the client." However, if an attorney, acting in a legal capacity in gathering facts because the

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[10] See Open Records Decision No. 676 at 4 (2002).
[11] *Id.* At 7.
[12] *Id.*
[13] Tex. R. Evid. 503(b)(1)(A), (B), (C), (D), (E); Open Records Decision No. 676 at 8-10 (2002).
[14] Tex. R. Evid. 503(a)(5); Open Records Decision No. 676 at 10 (2002); see *Osborne v Johnson*, 954 S.W. 2d 180, 184 (Tex. App. – Waco 1997, no pet.) (whether communication was confidential depends on the intent of the parties involved at the time the information was communicated).
[15] Open Records Decision No. 676 at 10-11 (2002).

ultimate purpose of the investigation in his or her capacity is to render legal advice, renders a report containing both factual information and the legal advice, that report is excepted from disclosure in its entirety pursuant to § 552.107(1).[16]

If a governmental body demonstrates that any portion of a communication is protected under the attorney-client privilege, then the entire communication will be excepted from disclosure under § 552.107.[17] The attorney-client privilege covers certain communications made in furtherance of the rendition of professional legal services, while the work product privilege covers work prepared for the client's litigation.[18] Therefore, documents covered by the attorney-client privilege are not required to be prepared for litigation.

As discussed above, Exhibit C-2 is a representative sample of agreements between LCRA and the City of Austin/Austin Energy that consist of attorney-client privileged communications and attorney work product as part of their joint defense in certain litigations. Specifically, Exhibit C-2 is a joint defense agreement between the City of Austin and LCRA as part of the defense in litigation filed on July 14, 2010 by the Einvironmental Integrity Project, Texas Campaign for the Environment (TCE) and Environmental Texas. The primary plaintiff in the litigation, which is still active, is the TCE.

LCRA has also included Exhibits C-2A and Exhibit C-2B as evidence of threats of litigation and pending litigation. The type of information in Exhibit C-2 represents communications made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body." The communication is by and between clients, client representatives, lawyers, and lawyer representatives was confidential and "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." Lastly, the communication has remained confidential and that LCRA and City of Austin clients have not waived the attorney-client privilege. Therefore, the type of information in Exhibit C-2 is protected from disclosure under § 552.107.

Section 552.111 Exception – Agency Memoranda

Section 551.111 excepts from required public disclosure information any "interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency..." This includes the deliberative process privilege and work

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[16] *Harlandale ISD v Cornyn*, 25 S.W. 3d 328 (Tex. App. – Austin 2000, pet. denied.)

[17] *See Hui v. DeShazo*, 922 S.W. 2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In Re Valero Energy Corp.*, 973 S.W. 2d 453, 457 (Tex. App. – Houston [14th Dist.] 1998, orig. proceeding) (privilege attaches to complete communication, including factual information).

[18] *See National Tank Company v. Brotherton*, 851 S.W. 2d 193, 200 (Tex. 1993); *Owens-Corning Fiberglas Corp. v. Caldwell*, 818 S.W. 2d 749, 750 (Tex. 1991).

product privilege. The deliberative process privilege protects from disclosure those intra-agency communications "consisting of advice, opinion or recommendations on policymaking matters of the governmental body at issue."[19] The work product privilege protects from disclosure "material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents;" or "a communication made in anticipation of litigation or for trial between a party and the party's representatives or among a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents."[20]

A. Section 552.111 – Deliberative Process

The deliberative process privilege protects from disclosure intra-agency and interagency communications consisting of advice, opinion or recommendations on policymaking matters of the governmental body at issue.[21] The purpose of withholding advice, opinion or recommendations under § 552.111 is "to encourage frank and open discussion" within the governmental entity as part of its decision-making process as it relates to policy matters.[22] An agency's policy-making functions do not encompass routine internal administrative and personnel matters but do include administrative and personnel matters of broad scope that affect the governmental body's policy mission.[23]

B. Section 552.111 – Work Product

Work product is defined in Section 192.5, Texas Rules of Civil Procedure to mean material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party's representatives, including the party's attorneys, consultants sureties, indemnitors, insurers, employees or agents; or a communication made in anticipation of litigation or for trial between a party and the party's representatives or among a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees or agents.

The work product of an attorney or an attorney's representative that contains the attorney's or the attorney's representative's mental impressions, opinions, conclusions, or legal theories is not discoverable.

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[19] *City of Garland* v. *Dallas Morning News*, 22 S.W. 3d at 361, 364 (Tex. 2000); *Arlington Indep. Sch. Dist.* v. *Tex. Attorney Gen.*, 37 S.W.3d 152, 158 (Tex. App. – Austin 2001, no pet.); Open Records Decision No. 615 at 5 (1993).

[20] Tex. R. Civ. P. 192.5(a).

[21] *City of Garland*, 22 S.W. ed at 361, 364; *Arlington Independent School District v. Texas Attorney General*, 37 S.W.3d 152, 158 (Tex. App. – Austin 2011, no pet.); Open Records Decision No. 615 at 5 (1993).

[22] *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App – San Antonio 1982, writ ref'd n.r.e.); *see also City of Garland*, 22 S.W.3d at 361; *Lett v. Klein Independent School District*, 917 S.W.2d 455, 457; *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 412 (Tex. App. – Austin 1992, no writ).

[23] Open Records Decision No. 615 at 5 (1993); *See City of Garland*, 22 S.W.3d at 364; *Lett*, 917 S.W.2d at 457; and Open Records Decision No. 631 at 3 (1995); *City of Garland v. Dallas Morning News* 969 S.W.2d 548, 557 (Tex. App – Dallas 1998), aff'd, 22 S.W.3d 551 (Tex. 2000).

The certain documentation represented in Exhibits C-2 evidences the type of documentation and information protected under the work product privilege and includes the type of agreements and discussions, by and among various LCRA and City of Austin attorneys and Staff, consultants and outside counsel, with a common interest, made in anticipation of litigation or pursuant to a pending litigation.

In addition, as discussed in more detail above, based on the information in Exhibits C-2-A and Exhibit C-2-B, it is reasonable for LCRA and the City of Austin to have reasonably anticipated litigation and/or determined that litigation is pending.

The documents represented in Exhibits C-2 were prepared in anticipation of, or in response to, pending or anticipated litigations. Specifically, the type of information in Exhibits C-2 was prepared for, or in anticipation of, litigation relating to matters regarding the Fayette Power Project. The type of information in Exhibits C-2 was prepared by LCRA and/or the City of Austin, including their respective attorneys. The information represented in that exhibit was communicated by and between LCRA and/or the City of Austin, including their attorneys. Those type of communications represented by Exhibit C-2 have not been published outside of LCRA and the City of Austin and, as applicable, their respective personnel and consultants involved in the defense of that litigation. Therefore, the information and documentation represented in Exhibits C-2 constitutes the type of information protected under the work product privilege in Section 552.111.

Section 552.133 Exception

Section 552.133(b) of the Act states that "Information or records are excepted from the requirements of Section 552.021 if the information or records are reasonably related to a competitive matter, as defined in this section. Information or records of a municipally owned utility that are reasonably related to a competitive matter are not subject to disclosure under this chapter, whether or not, under the Utilities Code, the municipally owned utility has adopted customer choice or serves in a multiple certificated service area. This section does not limit the right of a public power utility governing body to withhold from disclosure information deemed to be within the scope of any other exception provided for in this chapter, subject to the provisions of this chapter."

A "public power utility" is defined in §552.133(a) (1) as "an entity providing electric or gas utility services that is subject to the provisions of ..." Chapter 552, Texas Government Code.

Section 552.133(a-1) defines a "competitive matter" to mean "a utility-related matter that is related to the public power utility's competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors. The term means a matter that is reasonably related to the following categories of information:

(A) generation unit specific and portfolio fixed and variable costs, including forecasts of those costs, capital improvement plans for generation units, and generation unit operating characteristics and outage scheduling;
(B) bidding and pricing information for purchased power, generation and fuel, and Electric Reliability Council of Texas bids, prices, offers, and related services and strategies;
(C) effective fuel and purchased power agreements and fuel transportation arrangements and contracts;
(D) risk management information, contracts, and strategies, including fuel hedging and storage;
(E) plans, studies, proposals, and analyses for system improvements, additions, or sales, other than transmission and distribution system improvements inside the service area for which the public power utility is the sole certificated retail provider; and
(F) customer billing, contract and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies.

The definition of "competitive matter' also includes a list of 15 categories that may not be deemed competitive matters. (See, §552.133(a-1)(2), Texas Government Code.)

A representative sample of documents and representative information responsive to the requests received by LCRA is attached as Exhibit C-1. That representative sample of information relates to cost and compensation provisions. These provisions include cost sharing formulas and calculations, the release of which would provide competitors in the public power market place with a competitive advantage over LCRA and the City of Austin.

Per its enabling act, LCRA operates exclusively in a deregulated wholesale electric market, and by law, LCRA's rates are cost-based. (Texas Special District Local Laws Code 8503.011 (c)).

In order to claim the exception under §552.133, LCRA must demonstrate that the release of the requested information would give advantage to competitors or prespective competitors. LCRA is a governmental body, with the express authority to compete in the wholesale electric utility market. LCRA has specific marketplace interests in that market. Furthermore, the release of the requested information would result in specific harm to LCRA's marketplace interests.

1. LCRA Is a Governmental Body with Authority to Engage in Utility Competition

The Public Information Act, Chapter 552, Texas Government Code, defines a "governmental body" to mean:

(i) a board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members;
(ii) a county commissioner's court in the state;
(iii) a municipal governing body in the state;
(iv) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;
(v) a school district board of trustees;
(vi) a county board of school trustees;
(vii) a county board of education;
(viii) the governing board of a special district;
(ix) the governing body of a nonprofit corporation organized under Chapter 67, Water Code, that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code;
(x) a local workforce development board created under Section 2308.253;
(xi) a nonprofit corporation that is eligible to receive funds under the federal community services block grant program and that is authorized by this state to serve a geographic area of the state; and
(xii) the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds; and

(B) does not include the judiciary.[24]

LCRA is a river authority created under the authority of Article 16, §59, of the Texas Constitution. LCRA was created as a conservation and reclamation district by the Texas Legislature in 1934. Therefore, LCRA is a governmental body as defined in Chapter 552, Texas Government Code.

LCRA has the legislative and statutory authority to engage in competition in the electric utility markets. Pursuant to its enabling legislation, as amended[25], and authority granted to LCRA by laws other than its enabling act[26], LCRA is authorized "to develop and generate water power and electric energy within the boundaries of the district and to distribute and sell water power and electric energy, within or without the boundaries of the district..." LCRA's mix of hydroelectric, coal and natural gas generating plants provide wholesale power to about 800,000 people in more than 50 counties.

The Public Utility Regulatory Act in Chapter 31, Texas utilities Code defines an "electric utility" to mean:

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[24] Texas Government Code. Chapter 522, § 552.003((1)(A).
[25] Lower Colorado River Authority Act of 1934, Chapter 8503, Special District Local Laws Code, as amended.
[26] See, Title 2, Utilities Code (the Public Utility Regulatory Act); Chapters 26, 30, 49, 51 and 152, Texas Water Code; Title 9, Chapter 1371, Government Code; Section 51.121 and Chapter 71 Natural Resources Code; Chapter 366, Health and Safety Code; and Sections 31.092 and 62.082, Parks and Wildlife Code.

... a person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Subchapter C, Chapter 184, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:
(A) a municipal corporation;
(B) a qualifying facility;
(C) a power generation company;
(D) an exempt wholesale generator;
(E) a power marketer;
(F) a corporation described by Section 32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;
(G) an electric cooperative;
(H) a retail electric provider;
(I) this state or an agency of this state; or
(J) a person not otherwise an electric utility who:
(i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;
(ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or
(iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Subchapter C, Chapter 184.[27]

As such, LCRA is an "electric utility" as defined in the Public Utility Regulatory Act. Since 1995, wholesale electricity sales have been "deregulated" and are a competitive activity. In addition to its enabling act, LCRA has a number of other powers to help fulfill its mission. However, the original intent has remained the same: to serve as a steward of the land and water resources in its 10-county statutory district and to provide the people of Texas with a reliable supply of reliable, low-cost electric power.

Based upon the facts related above: 1) LCRA is a "governmental body" as defined in Chapter 552 of the Code[28]; 2) LCRA has the legislative and statutory authority to engage in competition in the electric utility markets; and 3) LCRA is a "public utility" under §31.002(6) of the Texas Utilities Code.

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[27] Texas Utilities Code, §31.002(6) (Vernon's 2010)
[28] Texas Government Code, §552.003(1) (Vernon's 2001).

2. LCRA Has Specific Electric Utility Marketplace Interests

As stated above, LCRA is authorized to develop and generate electric energy within its boundaries and to distribute and sell water, power and electric energy, within or without the boundaries of the district. Per its enabling act, LCRA's marketplace interests span its district boundaries and certain areas beyond its boundaries.

LCRA supplies electricity to more than a million residents who live in part or all of fifty-three counties in Central and Southeast Texas. The LCRA provides the electricity through forty-four wholesale electric customers, including thirty-three cities and eleven electric cooperatives. At a minimum, LCRA's electric utility marketplace interests cover these areas.

3. Possibility of Specific Harm to LCRA's Marketplace Interests If Requested Information Is Released

Exhibit C-1 contains a representative sample of information relating to contain cost and compensation provisions. These provisions include cost sharing formulas and calculations, the release of which would provide competitors in the public power market place, with a competitive advantage over LCRA and the City of Austin. This information describes certain LCRA contract terms, conditions, pricing, billing, customer usage and revenue as part of LCRA's competition in the wholesale power electric utility market. The release of the requested information would provide competitors and proposed competitors with advantageous information in LCRA's electric utility marketplaces. Specifically, the information contained in and represented in Exhibit C-1 provides intelligence useful for competitors to better tailor offers to current and potential LCRA customers and, again, would put LCRA at a competitive disadvantage in the wholesale power electric utility market if disclosed.

LCRA's wholesale customers have the option to obtain some of their electricity requirements from sources other than LCRA. The release of the information contained and represented in Exhibit C-1 would provide competitors with an unfair advantage, by enabling them to determine the price, terms and conditions necessary to beat LCRA's prices, terms and conditions and would pose a serious threat to LCRA's electric utility marketplace interests and jeopardize LCRA's competitiveness in the electric utility marketplace.

LCRA would be at a significant competitive disadvantage if competitors could discern exactly what terms or price they need to beat and any additional information they could use to impact LCRA's competitive stance in the wholesale power market. The representative sample of information contained and represented in Exhibit C-1 provides intelligence useful for competitors to better tailor offers, and, again, would put LCRA at a competitive disadvantage if disclosed.

The information included and represented in Exhibit C-1 is not within any of the 15 categories of information that may not be deemed competitive matters, and thereby excluded from exception, under §552.133(a-1)(2)(A-O). Therefore, the representative sample of documents and information included in Exhibit C-1 are the type of information that is protected from disclosure pursuant to § 552.133 of the Act.

Section 552.104 Exception – Information Relating to Competition or Bidding

Section 552.104 of the Act states that:

(a) Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.

(b) The requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under law does not apply to information that is excepted from required disclosure under this section.

As described above, the representative sample of documents and information included and represented in Exhibit C-1 is excepted from disclosure pursuant to the exception described in §552.104. Exhibit C-1 contains a representative sample of information relating to cost and compensation provisions. These provisions include cost sharing formulas and calculations, the release of which would provide competitors in the public power market place with a competitive advantage over LCRA and the City of Austin. This information relates to LCRA's wholesale power services contract terms, conditions, pricing, billing, customer usage and revenue as part of LCRA's competition in the wholesale power electric utility market.

In order to claim the exception under §552.104, LCRA must be a governmental body, with the express authority to compete in a certain market, in this case, the wholesale electric utility market. LCRA must also demonstrate that 1) it has specific marketplace interests; and 2) that there is a possibility of specific harm to these marketplace interests from the release of the requested information.[29]

1. LCRA Is a Governmental Body with Authority to Engage in Utility Competition

The Public Information Act, Chapter 552, Texas Government Code, defines a "governmental body" to mean:

[29] See Office of the Attorney General of State of Texas 2010 Public Information Handbook, p. 87.

(i) a board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members;
(ii) a county commissioner's court in the state;
(iii) a municipal governing body in the state;
(iv) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;
(v) a school district board of trustees;
(vi) a county board of school trustees;
(vii) a county board of education;
(viii) the governing board of a special district;
(ix) the governing body of a nonprofit corporation organized under Chapter 67, Water Code, that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code;
(x) a local workforce development board created under Section 2308.253;
(xi) a nonprofit corporation that is eligible to receive funds under the federal community services block grant program and that is authorized by this state to serve a geographic area of the state; and
(xii) the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds; and

(B) does not include the judiciary.[30]

LCRA is a river authority created under the authority of Article 16, §59, of the Texas Constitution. LCRA was created as a conservation and reclamation district by the Texas Legislature in 1934. Therefore, LCRA is a governmental body as defined in Chapter 552, Texas Government Code.

LCRA has the legislative and statutory authority to engage in competition in the electric utility markets. Pursuant to its enabling legislation, as amended[31], and authority granted to the LCRA by laws other than its enabling act[32], LCRA is authorized "to develop and generate water power and electric energy within the boundaries of the district and to distribute and sell water power and electric energy, within or without the boundaries of the district..." LCRA's mix of hydroelectric, coal and natural gas generating plants provide wholesale power to about 800,000 people in more than 50 counties.

The Public Utility Regulatory Act in Chapter 31, Texas utilities Code defines an "electric utility" to mean:

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[30] Texas Government Code. Chapter 522, § 552.003((1)(A).
[31] Lower Colorado River Authority Act of 1934, Chapter 8503, Special District Local Laws Code, as amended.
[32] See, Title 2, Utilities Code (the Public Utility Regulatory Act); Chapters 26, 30, 49, 51 and 152, Texas Water Code; Title 9, Chapter 1371, Government Code; Section 51.121 and Chapter 71Natural Resources Code; Chapter 366, Health and Safety Code; and Sections 31.092 and 62.082, Parks and Wildlife Code.

... a person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Subchapter C, Chapter 184, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:
(A) a municipal corporation;
(B) a qualifying facility;
(C) a power generation company;
(D) an exempt wholesale generator;
(E) a power marketer;
(F) a corporation described by Section 32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;
(G) an electric cooperative;
(H) a retail electric provider;
(I) this state or an agency of this state; or
(J) a person not otherwise an electric utility who:
(i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;
(ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or
(iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Subchapter C, Chapter 184.[33]

As such, LCRA is an "electric utility" as defined in the Public Utility Regulatory Act. Since 1995, wholesale electricity sales have been "deregulated" and are a competitive activity. In addition to its enabling act, LCRA has a number of other powers to help fulfill its mission. However, the original intent has remained the same: to serve as a steward of the land and water resources in its 10-county statutory district and to provide the people of Texas with a reliable supply of reliable, low-cost electric power.

Based upon the facts related above: 1) LCRA is a "governmental body" as defined in Chapter 552 of the Code[34]; 2) LCRA has the legislative and statutory authority to engage in competition in the electric utility markets; and 3) LCRA is a "public utility" under §31.002(6) of the Texas Utilities Code.

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[33] Texas Utilities Code, §31.002(6) (Vernon's 2010)
[34] Texas Government Code, §552.003(1) (Vernon's 2001).

2. LCRA Has Specific Electric Utility Marketplace Interests

As stated above, LCRA is authorized to develop and generate electric energy within its boundaries and to distribute and sell water power and electric energy, within or without the boundaries of the district. Per its enabling act, LCRA's marketplace interests span its district boundaries and certain areas beyond its boundaries.

LCRA supplies electricity to more than a million residents who live in part or all of fifty-three counties in Central and Southeast Texas. LCRA provides the electricity through forty-four wholesale electric customers, including thirty-three cities and eleven electric cooperatives. At a minimum, LCRA's electric utility marketplace interests cover these areas.

3. Possibility of Specific Harm to LCRA's Marketplace Interests If Requested Information Is Released

Exhibit C-1 contains a representative sample of information relating to cost and compensation provisions. These provisions include cost sharing formulas and calculations, the release of which, would provide competitors in the public power market place with a competitive advantage over LCRA and the City of Austin. This information describes certain LCRA contract terms, conditions, pricing, billing, customer usage and revenue as part of LCRA's competition in the wholesale power electric utility market. The release of the requested information would provide competitors and proposed competitors with advantageous information in LCRA's electric utility marketplaces. Specifically, the information contained in and represented in Exhibit C-1 provides intelligence useful for competitors to better tailor offers to current and potential LCRA customers and, again, would put LCRA at a competitive disadvantage in the wholesale power electric utility market if disclosed.

LCRA's wholesale customers have the option to obtain some of their electricity requirements from sources other than LCRA. The release of the information contained and represented in Exhibit C-1 would provide competitors with an unfair advantage by enabling them to determine the price, terms and conditions necessary to beat LCRA's prices, terms and conditions and would pose a serious threat to LCRA's electric utility marketplace interests and jeopardize LCRA's competitiveness in the electric utility marketplace. Therefore, the information included and represented in Exhibit C-1 is the type of information protected under the exception listed in §552.104.

Pursuant to §552.301 of the *Texas Government Code*, LCRA is exercising its right to request an opinion from your office and decline to release certain information requested for the purpose of requesting an Attorney General decision.

In accordance with §552.301(e), LCRA is submitting this brief containing written comments stating the reasons why the exceptions asserted apply allowing for certain

information requested to be withheld and providing copies of representative samples of the information requested. Accordingly, LCRA requests your decision under §§ 552.301(a), (b) and (e) & 552.305 of the *Texas Government Code*.

Please do not hesitate to contact me at (512) 473-3530 if you should have any questions. Thank you in advance for your attention to this matter.

Sincerely,

Vic Ramirez
Associate General Counsel

cc: Ms. Elena Saxonhouse (via email: *elena.saxonhouse@sierraclub.org*)
Sierra Club Environmental Law Program
85 Second Street, Second Floor
San Francisco, California 94105-3441

1977

RESOLUTION

WHEREAS, the City of Austin and the Lower Colorado River Authority entered into a Participation Agreement dated September 19, 1974, which provided for the construction, operation, and maintenance of jointly owned and operated electric generation facilities known as the Fayette Power Project; and,

WHEREAS, the Participation Agreement did not make provision for transmission facilities to enable the City of Austin and the Lower Colorado River Authority to receive their energy entitlements from the Project; and,

WHEREAS, a coordinated transmission system using both jointly owned transmission facilities and facilities solely owned by the City of Austin and the Lower Colorado River Authority will provide the most efficient and economical means of transferring the generation entitlement of the parties from the Project to their respective distribution systems and will assist the City of Austin in the transmission of power and energy from the South Texas Nuclear Project to its electrical system; and,

WHEREAS, the City of Austin is desirous of entering into an agreement with the Lower Colorado River Authority, which would provide for the construction of the necessary transmission facilities leading from the Fayette Power Project to the various substations; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That the City Manager is hereby authorized to enter into an agreement with the Lower Colorado River Authority entitled the "Fayette Power Project Transmission Agreement," which agreement will provide for the construction of necessary jointly and solely owned transmission facilities.

ADOPTED March 17, 1977. ATTEST: Grace Monroe
City Clerk

THE STATE OF TEXAS |

COUNTY OF TRAVIS |

I, Grace Monroe, City Clerk of the City of Austin, Texas, do hereby certify that the foregoing instrument is a true and correct copy of a Resolution adopted by the City Council of the City of Austin, Texas, at a regular meeting on the 17th day of March, 1977, and appears of record in Minute Book 53 of the Minutes of said City Council.

Grace Monroe

City Clerk
City of Austin, Texas

THE FAYETTE POWER PROJECT

TRANSMISSION AGREEMENT

I N D E X

THE FAYETTE POWER PROJECT

TRANSMISSION AGREEMENT

1. PARTIES: The parties to this Agreement are: CITY OF AUSTIN, hereinafter referred to as "Austin," and LOWER COLORADO RIVER AUTHORITY, hereinafter referred to as "LCRA."

2. RECITALS:

2.1 The parties have heretofore entered into a Participation Agreement dated September 19, 1974, (the Participation Agreement) providing for the construction, operation, and maintenance of jointly owned and operated electric generation facilities to be known as the Fayette Power Project (the Project), and each will be entitled to equal shares of the power and energy available at the Project Switchyard.

2.2 A coordinated transmission system using both jointly owned transmission facilities and facilities solely owned by each party will provide the most efficient and economical means of transferring the generation entitlement of the parties from the Project to their respective distribution

systems and will assist Austin in the transmission of power and energy from the South Texas Nuclear Project to its Electric System.

2.3 The purpose of this agreement is to provide for the timely acquisition, construction, installation, maintenance and operation of such a coordinated transmission system.

3. AGREEMENT: In consideration of the mutual benefits and covenants herein, the parties agree as hereinafter set forth.

4. GENERAL PRINCIPLES AND DEFINITIONS:

4.1 Exhibit "A" attached hereto is a schematic diagram showing transmission facilities and circuitry contemplated by this Agreement.

4.2 Exhibit "B" attached hereto is a schematic diagram showing the communication and control facilities contemplated by this Agreement.

4.3 In all instances when one party hereto has the responsibility of designing, planning, procuring, installing or constructing any facility hereunder and the facility will be jointly owned, the applicable provisions of the Participation Agreement shall be followed as though the performing party were the Project Manager and the facility would be a Project facility.

4.4 If economy or efficiency will be enhanced, the Management Committee of the Project may designate either party to act as agent for the other in acquiring specified equipment or services for any facility contemplated by this agreement, regardless of the final ownership and operating arrangement.

4.5 The scope, quality and frequency of maintenance of all jointly owned equipment and solely owned equipment located on or at jointly owned facilities or on or at solely owned facilities of the other party shall be determined by the Management Committee under applicable provisions of the Participation Agreement.

4.6 This Agreement relates to the Project and shall be considered a Project Agreement with the following specific understandings and conditions:

4.6.1 Except for that jointly owned property covered by this agreement and designated as Project Property, none of the properties, facilities or equipment contemplated by this Agreement, whether solely or jointly owned by the parties, shall be considered part of the Project as such is defined and described in paragraph 4.26 of the Participation Agreement.

4.6.2 Notwithstanding the provisions of 4.6.1 above, the Participation Agreement, where it is not inconsistent with the provisions of this Transmission Agreement, is incorporated herein, made a part hereof and shall bind LCRA and Austin with respect to their individual and collective rights, duties, and obligations in and to all of the jointly owned or maintained properties and facilities contemplated by this agreement.

4.6.3 The provisions for construction, installation and maintenance of equipment and facilities herein shall apply only to the equipment and facilities covered hereby and shall not be construed to cover any future additions by either party.

4.7 Termination of a transmission line includes circuit breakers; two (2) air disconnect switches per circuit breaker; bus from associated circuit breaker to the first contact point of the transmission line on the dead end structures; dead end structures; lightning arresters; wave

trap; coupling capacitor potential device; line insulators and hardware; associated foundations and supporting structures; relaying and supervisory control; tie line telemetering when required.

4.8 The term "breaker" as used in this agreement means circuit interruption devices which have the effect of permitting or not permitting the flow of power and energy through the device including air switches which are connected to each individual breaker.

4.9 The term "joint interest breaker" as used in this Agreement means a breaker the operation of which by one party could affect the functional integrity of the other party's electric system.

4.10 The term "operational supervision of a breaker" means the capability of operating the breaker.

4.11 The term "use of house and tower" as used in this Agreement means that the user may install equipment, run cables, use available AC and DC power and use available 19" relay rack space if any exists. The extent of tower use is limited by design strength.

4.12 Common substation facilities include control house and fence; main bus; potential transformation of main bus voltage for relaying and metering; station service; 125 Volt DC control power; grounding grid; control conduit system.

4.13 The term "wheeling of power" for the purposes of this agreement means the transmission of power belonging to one party through the transmission system belonging to another.

5. CONSTRUCTION AND INSTALLATION OF FACILITIES

5.1 PROJECT SWITCHYARD EQUIPMENT

5.1.1 Description

5.1.1.1 all equipment necessary to connect the high voltage terminals of generating units 1 and 2 step-up transformers to the first contact point of incoming 345KV transmission lines from the Fayetteville, Austrop and Holman Substations on the switchyard dead end structure as shown on Exhibit A.

5.1.1.2 single side band power line carrier equipment and protective relaying for the transmission line to Holman Substation including line trap, coupling capacitor, line tuner, four-channel single side band power line carrier and one terminal of protective relaying.

5.1.1.3 multiplex and interface equipment for microwave communication between LCRA System Operations Control Center and Lytton Springs Substation, Holman Substation and Fayette Power Project.

5.1.1.4 All equipment necessary to establish a point of interconnection between the parties at this location.

5.1.2 Installation

5.1.2.1 The equipment described in 5.1.1.1, 5.1.1.3 and 5.1.1.4 shall be provided and installed by LCRA.

5.1.2.2 The equipment described in 5.1.1.2 shall be provided and installed by Austin.

5.1.3 Ownership

5.1.3.1 All equipment described in 5.1.1 shall be owned and paid for jointly by the parties and, except the main microwave carrier system and its accessories which is owned and paid for solely by LCRA, shall be Project Property and part of the Project.

5.1.4 Maintenance: All switchyard equipment shall be maintained by LCRA at joint cost to the parties except the power line carrier, associated equipment and protective relaying for the line to Austrop Substation and the equipment described in 5.1.1.3 which shall be maintained by LCRA at its sole cost. The equipment described in 5.1.1.2 shall be maintained by Austin at its sole cost.

5.1.5 Breaker Operation: LCRA shall have sole control of the breakers terminating its 345 KV double circuit line to Fayetteville Substation and, as Project Manager, control of the breakers terminating Project

generators 1 and 2 into the 345 KV buses. The breakers terminating the 345 KV lines to Austrop and Holman Substations shall be joint interest breakers under the operational supervision of LCRA.

5.2 TRANSMISSION CORRIDOR

5.2.1 Description: A transmission line right-of-way of sufficient width to accommodate two (2) 345 KV double circuit transmission structures from the Project Switchyard to LCRA's existing 138 KV transmission line from Winchester to Fayetteville a distance of approximately five (5) miles.

5.2.2 Acquisition and Ownership: This right-of-way shall be acquired by LCRA for the joint ownership of the parties and shall be used for the Project to Fayetteville and Project to Austrop transmission lines.

5.2.3 Maintenance: This right-of-way shall be maintained by LCRA for the joint account of both parties.

5.3 TRANSMISSION LINE TO AND SUBSTATION EQUIPMENT AT FAYETTEVILLE SUBSTATION

5.3.1 Description: A new 345 KV bundled 795 MCM, ACSR transmission line with double circuit structures from the Project Switchyard to LCRA's Fayetteville Substation a distance of approximately seven and one-half (7-1/2) miles to be constructed on the jointly owned transmission corridor and on new right-of-way to be acquired and owned by LCRA; the equipment necessary to terminate such transmission line at such substation and a 600 MVA 345/138 KV auto-transformer and associated equipment.

5.3.2 Construction, Installation, Ownership and Maintenance: The transmission line and all substation equipment shall be constructed, installed, operated and maintained by LCRA at its cost and owned by it.

5.3.3 Control of Substation Equipment: All substation equipment shall be under the sole control of LCRA.

5.4 TRANSMISSION LINE TO AND SUBSTATION EQUIPMENT AT AUSTROP SUBSTATION

5.4.1 Description:

5.4.1.1 A new single circuit 345 KV bundled 795 MCM, ACSR transmission line from the Project Switchyard to the existing jointly owned Austrop Substation to be constructed on the jointly owned transmission corridor and on new right-of-way to be acquired and owned by Austin and which where practical will be parallel to and partially overlap existing LCRA right-of-way.

5.4.1.2 Equipment including power line carrier, associated equipment and protective relaying to terminate such transmission line on the Austrop Substation 345 KV bus according to plans furnished by Austin and approved by LCRA's Chief Engineer prior to construction.

5.4.2 Construction, Installation, and Ownership: The transmission line shall be constructed and all termination equipment shall be installed by Austin at its cost and be owned by it.

5.4.3 Breaker Operation: The breakers for this transmission line shall be joint interest breakers under the operational supervision of LCRA. Austin shall have the right to install supervisory control equipment for these breakers and in such event, the parties shall have joint operational supervision of them.

5.4.4 Maintenance: Austin shall maintain at its cost all the substation equipment except the power line carrier, associated equipment and protective relaying which shall be maintained by LCRA at its cost. Austin shall maintain at its own cost the transmission line and its right-of-way except as provided for under 5.2.3.

5.4.5 Additional Agreement of LCRA: LCRA consents to the use of the common substation facilities required for installation and operation of the termination equipment at Austrop Substation.

5.5 TRANSMISSION LINE TO HOLMAN SUBSTATION THENCE TO LYTTON SPRINGS SUBSTATION

5.5.1 Description: A new bundled 795 MCM, ACSR 345 KV transmission line with double circuit structures from the Project Switchyard to Holman Substation located approximately nine (9) miles south of the Project and from Holman Substation to Lytton Springs Substation, a distance of approximately fifty-five (55) miles. Only one circuit shall be installed initially.

5.5.2 Construction: The right-of-way for this line and the line itself shall be acquired and constructed by LCRA for the joint account of the parties.

5.5.3 Ownership: The structures and right-of-way shall be owned jointly by the parties and, until the installation of a second circuit, the initial circuit shall be jointly owned.

5.5.4 Maintenance: LCRA shall maintain the structures, conductors and right-of-way for the joint account of the parties.

5.6 SECOND CIRCUIT FROM THE PROJECT TO LYTTON SPRINGS SUBSTATION

Either party may elect to add a second 345 KV circuit to the transmission line structures from the Project

to Lytton Springs including any necessary changes at Lytton Springs Substation at its own cost. This second circuit shall bypass Holman Substation. If Austin elects to add such second circuit, LCRA shall elect either (i) to take over and own the entire second circuit by paying Austin one-half (1/2) the actual direct materials and labor costs of the initial circuit excluding structures and right-of-way in which event Austin would own the initial circuit and remain one-half owner of the structures and right-of-way; or (ii) to take only a one-half (1/2) interest in the second circuit at no cost and give up its interest in the initial circuit and remain one-half owner of the structures and right-of-way. If LCRA elects to add the second circuit, Austin shall pay LCRA one-half (1/2) of the cost of the initial circuit specified above excluding structures and right-of-way and take over and own the initial circuit but have no further interest in the second circuit. In any event after the installation of the second circuit, LCRA would have no further interest in Holman Substation.

5.7 SOUTH TEXAS NUCLEAR PLANT TO HOLMAN SUBSTATION TRANSMISSION LINE

5.7.1 Description: A single circuit bundled 795 MCM ACSR 345 KV transmission line from the South Texas Nuclear Plant to Holman Substation.

5.7.2 Installation, Ownership and Maintenance: This transmission line including right-of-way shall be procured, installed, paid for, owned, maintained and under the control of Austin solely.

5.8 HOLMAN SUBSTATION

5.8.1 Description:

5.8.1.1 A new substation including site and all equipment and facilities required to terminate and connect the 345 KV transmission line from the Project to Lytton Springs Substation and the 345 KV transmission line from the South Texas Nuclear Plant.

5.8.1.2 Single side band power line carrier equipment and protective relaying at this substation for the transmission line from Project to Lytton Springs Substation including line traps, coupling capacitors, line tuners, four-channel, single side band power line carrier with base band repeaters and local drop and two terminals of protective relaying.

5.8.2 Construction, Installation and Ownership: Austin shall acquire the site for and shall construct the substation and install all equipment for its own account.

5.8.3 Breaker Operation: The breakers for the 345 KV line from the Project to Lytton Springs installed for the first circuit shall be joint interest breakers under the operational supervision of Austin until the

second circuit which will bypass this substation is installed on such line; thereafter the breakers installed for the first circuit shall be under the sole control of Austin.

5.9 LYTTON SPRINGS SUBSTATION

5.9.1 Description:

5.9.1.1 A new substation to be located near the town of Lytton Springs on or near the right-of-way of LCRA's double circuit 345 KV transmission line between Austrop Substation and Zorn Substation, the purpose of which installation will be to terminate and connect one circuit of LCRA's 345 KV transmission lines from Austrop Substation and Zorn Substation (three circuit breakers), the jointly owned transmission line from Holman Substation (two circuit breakers) and Austin's 138 KV transmission line from Pilot Knob Substation. The substation will be arranged to have two main buses connected by tie buses for operation at 345 KV and two main buses connected by tie buses for operation at 138 KV. Each tie bus will have 2 or 3 circuit breakers connected in series along its length. The section of a tie bus between two circuit breakers will provide a circuit connection point. This substation arrangement is commonly known as a "breaker-and-a-half" arrangement. The 138 KV buses will be initially connected to the 345 KV buses through a single auto-transformer.

5.9.1.2 Single side band power line carrier equipment and protective relaying for the transmission line from Lytton Springs to Holman Substation including line trap, coupling capacitors, line tuner, four-channel single side band power line carrier and one terminal of protective relaying.

5.9.2 Construction, Installation, Allocation of Costs: Austin shall acquire the site for, construct

this substation and install all equipment at its cost except the costs associated with the termination of one circuit of LCRA's 345 KV transmission lines from Zorn and Austrop Substations; one-half of the cost associated with the termination of the jointly owned 345 KV transmission line from Holman Substation and one-half the cost associated with the communication and tie line telemetering equipment, all of which shall be paid by LCRA.

5.9.3 Ownership: Austin shall own the substation and all equipment except the termination facilities for LCRA's 345 KV transmission lines which will be owned by LCRA; the termination facilities for the initial circuit on the 345 KV line from Holman Substation which will be jointly owned until the second circuit is installed. When the second circuit is installed, an adjustment in the ownership of the termination facilities for the two circuits on the 345 KV line from Holman Substation including relaying and communication equipment shall be made so that LCRA will own the terminations associated with the second circuit and those associated with the initial circuit shall belong to Austin.

5.9.4 Additional Installations: LCRA may elect at its cost to terminate the second circuit on its 345 KV transmission line between Zorn and Austrop Substations at this substation with prior engineering approval of Austin. If LCRA has not elected to make this termination, then Austin may do so at its cost.

5.9.5 Breaker Operations:

5.9.5.1 The breakers terminating LCRA's 345 KV Austrop and Zorn lines and the jointly owned 345 KV line from the Project shall be joint interest breakers under the operational supervision of Austin. LCRA shall have the right to install supervisory control

equipment for these breakers and in such event, the parties shall have joint operational supervision of them.

5.9.5.2 The breakers terminating the 345/138 KV 480 MVA auto transformer and all 138 KV breakers shall be under the sole control of Austin.

5.9.5.3 In the event the second circuit is installed on the 345 KV line from the Project the breakers on the initial circuit shall be under the sole control of Austin. The parties shall exchange breaker ownership on this termination to the extent necessary to maintain metering and control integrity including telemetering, relaying communications and other termination equipment.

5.9.5.4 In the event the second circuit on the Zorn to Austrop 345 KV line is terminated at this substation by either party the breakers will be joint interest breakers under the operational supervision of Austin unless LCRA installs supervisory control equipment in which event the breakers will be under joint operational supervision.

5.9.6 Maintenance: Austin shall maintain at its cost all equipment at this substation except that the termination equipment of the transmission line from Holman Substation shall be maintained by Austin for the joint account of the parties and the switchyard equipment for the termination of the transmission lines from Lytton Springs Substation to Austrop and Zorn Substations shall be maintained by LCRA for its own account.

5.10 TRANSMISSION LINE FROM LYTTON SPRINGS SUBSTATION TO MONTOPOLIS SWITCHING STATION

5.10.1 Description: A new 138 KV transmission line with double circuit structures from Lytton Springs

Substation via Austin's proposed Pilot Knob Substation to Austin's Montopolis Switching Station to be built on an existing right-of-way of LCRA a distance of approximately fifteen (15) miles. One side of the structures will carry Austin's 138 KV bundled 795 MCM, ACSR circuit and the other side to carry LCRA's existing 69 KV line. The existing structures on such right-of-way shall be removed and LCRA's present conductors transferred to the new structures.

5.10.2 Installation and Allocation of Cost: The removal of existing structures, installation of new structures and transfer of existing conductors shall be done by Austin at its cost initially. After the new structures and foundations therefor are designed, Austin agrees to supply LCRA with those figures which represent the estimated cost of the design, construction and installation of the new structures. Further, Austin will supply LCRA with the actual cost figures for the design and installation of the new structures when installation of such structures is complete.

5.10.3 Subsequent Capacity Increase by LCRA: If subsequent to the installation of the new structures LCRA desires to increase the capacity of its present conductors, it may do so at its cost and shall pay Austin a sum equal to one-half of the installed cost of the double circuit structures.

5.10.4 Ownership and Maintenance:

5.10.4.1 Right-of-way: The right-of-way shall be jointly owned and LCRA shall execute such transfer of interest as may be required to establish such ownership of record. Maintenance of the right-of-way shall be by Austin for the joint account of the parties.

5.10.4.2 Conductors: Each party shall own and maintain their respective conductors.

5.10.4.3 Structures: The structures shall be owned and maintained by Austin for its account until LCRA increases the capacity of its conductors; thereafter the structures shall be jointly owned and Austin shall execute such transfer of interest as may be required to establish such ownership of record. Maintenance thereafter shall be by Austin for the joint account of the parties.

5.10.5 Salvage and Additional Right-of-way Expense: LCRA shall be entitled to all salvage resulting from the dismantling of its existing structures, and Austin shall reimburse LCRA for any right-of-way costs or damages it may be required to pay as a result of Austin's removal of the existing structures and installation of the new structures.

6. COMMUNICATION FACILITIES AGREEMENT

6.1 LCRA'S MICROWAVE SYSTEM

6.1.1 Austin grants LCRA for a period of thirty years or so long as LCRA maintains a microwave system, whichever is the lesser time, the right to use without cost one-half of Austin's Control House and use of existing microwave tower at Tom Miller Dam for LCRA's microwave system equipment. Austin will also install and maintain air conditioning equipment at the control house at its expense.

6.1.2 LCRA shall provide Austin, at no cost, channel space in its microwave system between its SOCC and the Project so that Austin may communicate with Lytton Springs and Holman Substations and the Project from LCRA's SOCC. LCRA shall provide and install for the joint account of the parties all multiplex and interface equipment necessary to perform this function.

6.1.3 Austin shall have access at LCRA's SOCC to all Project tie-line and generation quantities necessary for reliable operation of Austin's Electric system and to all telemetering and supervisory control channels for Lytton Springs and Holman Substations via the Project Switchyard. Such quantities shall be applied to leased pairs or a microwave radio link or both to Austin's Energy Control Center. Such pairs or microwave radio link are to be purchased, installed, operated and maintained by Austin at its cost. Austin shall have access to LCRA's microwave tower for installation of Austin's radio antenna to the extent design loading permits.

6.1.4 Austin shall reimburse LCRA for any future interface equipment at Austrop Substation necessary for connection of any future Austin microwave systems to LCRA's microwave system at base band frequencies. If Austin installs its own microwave system, LCRA will permit Austin the use of LCRA's house and tower at Austrop Substation at no charge to Austin.

6.1.5 Austin shall purchase and install the necessary equipment to provide Automatic Generation Control of its electric system as soon as practical but in no case later than the commercial operating date of Fayette Power Project Unit No. 1.

7. OPERATING AGREEMENTS

7.1 LINE LOSS DETERMINATION

Under the terms of the Participation Agreement the Net Energy Generation of the Project's Units 1 and 2 will be available to LCRA and Austin in equal amounts at the Project Switchyard. Power and energy scheduled to be taken by each

party for its account will be measured at the high voltage terminals of the generators' step-up transformers. Under the transmission system contemplated hereby a portion of the power and energy scheduled for Austin's account from the Project will flow through LCRA's transmission system and enter Austin's system at existing tie points between the two systems (Decker, Hi-Cross, McNeil and Austin Dam Substations) and at any future tie points such as Marshall Ford, Project Switchyard and Lytton Springs Substation and a portion of the power and energy scheduled for LCRA's account will flow through Austin's transmission system from the Project Switchyard to Lytton Springs Substation and enter LCRA's system there. Since the power will flow along diverse routes in accordance with the voltages and impedances existing at any given time and subject to constant change of these quantities as a function of time an exact calculation of line losses attributable to the scheduled quantities which flow in the respective systems is difficult, if not impossible, to precisely measure; consequently, the parties agree upon the following procedure to arrive at

a practical and realistic determination and allocation of such line losses and the sharing thereof:

7.1.1 Definition of Circuits and Assumed Flow:

7.1.1.1 All power scheduled from the Project for Austin's account will be assumed to flow on the circuits from the Project to Austrop Substation, thence through Austin's 345/138 KV auto transformer and thence on Austin's 138 KV transmission line to Austin's Decker Plant (the North Circuit) and from the Project on the joint 345 KV transmission line to Lytton Springs Substation (the South Circuit).

7.1.1.2 Fifty percent (50%) of all power scheduled from the Project for LCRA's account will be assumed to flow on the North and South circuits and shall be designated as KA.

7.1.1.3 The sum of 7.1.1.1 and 7.1.1.2 shall be the combined power flow on the North and South circuits.

7.1.2 Assumptions as to Load Level of the Two Circuits: The percentage of the combined power flow which is assumed to flow on the North Circuit (KN) is 60 and the percentage of the combined power flow which is assumed to flow on the South Circuit (KS) is 40. These values are based on the circuit configuration shown on Exhibit A and will be modified in accordance with 7.1.3.4 below in case of prolonged circuit outage. If significant changes are made in the circuit configuration from that shown on Exhibit "A" these values may require modification since they are derived solely from circuit configurations.

7.1.3 Calculation of Loss

7.1.3.1 The loss attributable to Austin because of power flow on the North Circuit shall be calculated at least hourly with the following formula:

$$CL = \frac{(AN+CN) \times CN \times LN}{100 \times 100}$$

$$AN = \frac{KN \times KA \times AT}{100 \times 100}$$

$$CN = \frac{KN \times CT}{100}$$

WHERE:

CL = the calculated losses in KILOWATTS attributable to Austin for the period;

AN = LCRA's calculated power flow in MW on the North circuit;

AT = LCRA's share of the total power in MW scheduled from the Project;

CN = Austin's calculated power flow in MW on the North circuit;

CT = Austin's share of the total power in MW scheduled from the Project;

LN = the base losses in Kilowatts on the North Circuit calculated for a power flow of 100 MW at a power factor of 0.85;

KA = 50

KN = 60

7.1.3.2 The loss attributable to LCRA because of power flow on the South Circuit shall be calculated at least hourly with the following formula:

$$AL = \frac{(AS + CS) \times AS \times LS}{100 \times 100}$$

$$AS = \frac{KS \times KA \times AT}{100 \times 100}$$

$$CS = \frac{KS \times CT}{100}$$

WHERE:

AL = the calculated losses in KILOWATTS attributable to LCRA for the period;

AS = LCRA's calculated power flow in MW on the South circuit;

CS = Austin's calculated power flow in MW on the South circuit;

LS = the base losses in Kilowatts on the South circuit calculated for a power flow of 100 MW at a power factor of 0.85;

KS = 40; and

AT, CT, KA, and KN have the values expressed in 7.1.3.1

7.1.3.3 The base losses on the North Circuit (LN) and on the South Circuit (LS) will be calculated when the design and routing of the transmission facilities are available in sufficient detail to allow accurate computation using techniques in general use by the electric utility industry.

7.1.3.4 Prolonged Outage Adjustment - In the case of prolonged outage lasting 72 hours or more, or

construction delay, the following values will be used for KA, KN and KS:

7.1.3.4.1 Contingency A: Unavailability of the circuit from the Fayette Power Project 345KV bus to the Authority's Fayetteville Substation 138KV bus. KA = 100 KN = 60 KS = 40

7.1.3.4.2 Contingency B: Unavailability of the South circuit. KN = 100 KA = 0 KS = 50

7.1.3.4.3 Contingency C: Unavailability of the North circuit. KA = 50 KN = 60 KS = 40

7.1.3.4.4 Contingency B and C: The constants are: KA = 0 KN = 250 KS = 0

7.1.3.4.5 Contingency A and C: The constants are: KS = 100 KA = 100 KN = 0

7.1.3.4.6 Contingency A and B: The constants are: KA = 100 KN = 100 KS = 0

The change in constants used for the loss calculations will be made only after 72 hours of operation with the new circuit configuration.

7.1.4 In scheduling power and energy from the Project under Section 7 of the Participation Agreement, each party shall include in addition to the quantity such party expects to receive into its electric system an allowance for anticipated line loss attributable to it under the foregoing provisions. This total shall not exceed the generating capacity and energy entitlement of such party when the other party is scheduling its maximum entitlement. As calculations of losses are made periodically as above provided, the quantity

scheduled from the Project by such party shall be adjusted to reflect the calculated loss attributable to it so that the net generation scheduled for the account of such party shall include the aggregate line loss attributable to such party.

7.2 OPERATION OF JOINT INTEREST BREAKERS

Except in the event of an emergency where injury to persons or serious damage to facilities is anticipated, no action with respect to a joint interest breaker shall be taken by a party having operational supervision of such breaker without giving at least two hours prior notice to the dispatcher of the other party so that such dispatcher shall have time to take any precautionary actions necessary to protect the security of his system.

7.3 OPERATION OF SOLE CONTROL BREAKERS

The operation of breakers under the sole control of a party shall be operated at the complete discretion of such party.

7.4 LINE CLEARANCES

Line clearances (other than emergencies as defined above) on the 345 KV lines between the Project and Austrop, Fayetteville and Holman Substations and between Holman and

Lytton Springs Substations shall be coordinated by the Management Committee.

7.5 COMPLETION PRIORITIES

7.5.1 The Project to Austrop Substation transmission line and terminations and the Project to Fayetteville Substation transmission line, terminations and autotransformer shall be completed in conjunction with Project Unit No. 1.

7.5.2 The Project to Holman Substation transmission line and terminations and the Holman to Lytton Springs transmission line and terminations shall be completed in conjunction with Project Unit No. 2.

7.5.3 The completion of the transmission line from the South Texas Nuclear Project to Holman Substation and the 138 KV double circuit transmission line from Lytton Springs Substation to Montopolis Switching Station shall be as soon as deemed practicable by Austin.

7.6 WHEELING CHARGES

No wheeling charges are to be assessed by either party for energy and power transfers from the Project to the other party under this agreement. This shall in no way limit separate agreements pertaining to mutually agreed upon wheeling and loss charges for either purchase or sales of power and energy by either party to or from a third party or transmission of power from the South Texas Nuclear Project.

The parties recognize that the problems of wheeling power are associated with the Texas Interconnected System and should be covered by guidelines adopted by the members of that system. Until such guidelines are developed and agreed to, interim problems shall be settled by mutual negotiation between the utility systems involved.

7.7 START-UP TRANSFORMER AND PUMPING POWER

The power and energy for the 138 KV start-up transformer to supply start-up power and energy to Project Units 1 and 2 and for pumping water for the Project shall be metered on the 138 KV side of the start-up transformer. The cost of such power and energy will be an operating cost of the Project and shall, in the absence of a formal agreement between the parties thereto, be provided in accordance with the standard rate tariffs of LCRA applicable to such loads.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the _____ day of _____ 1977.

CITY OF AUSTIN

ATTEST:

Grace Monroe
City Clerk ~~Secretary~~

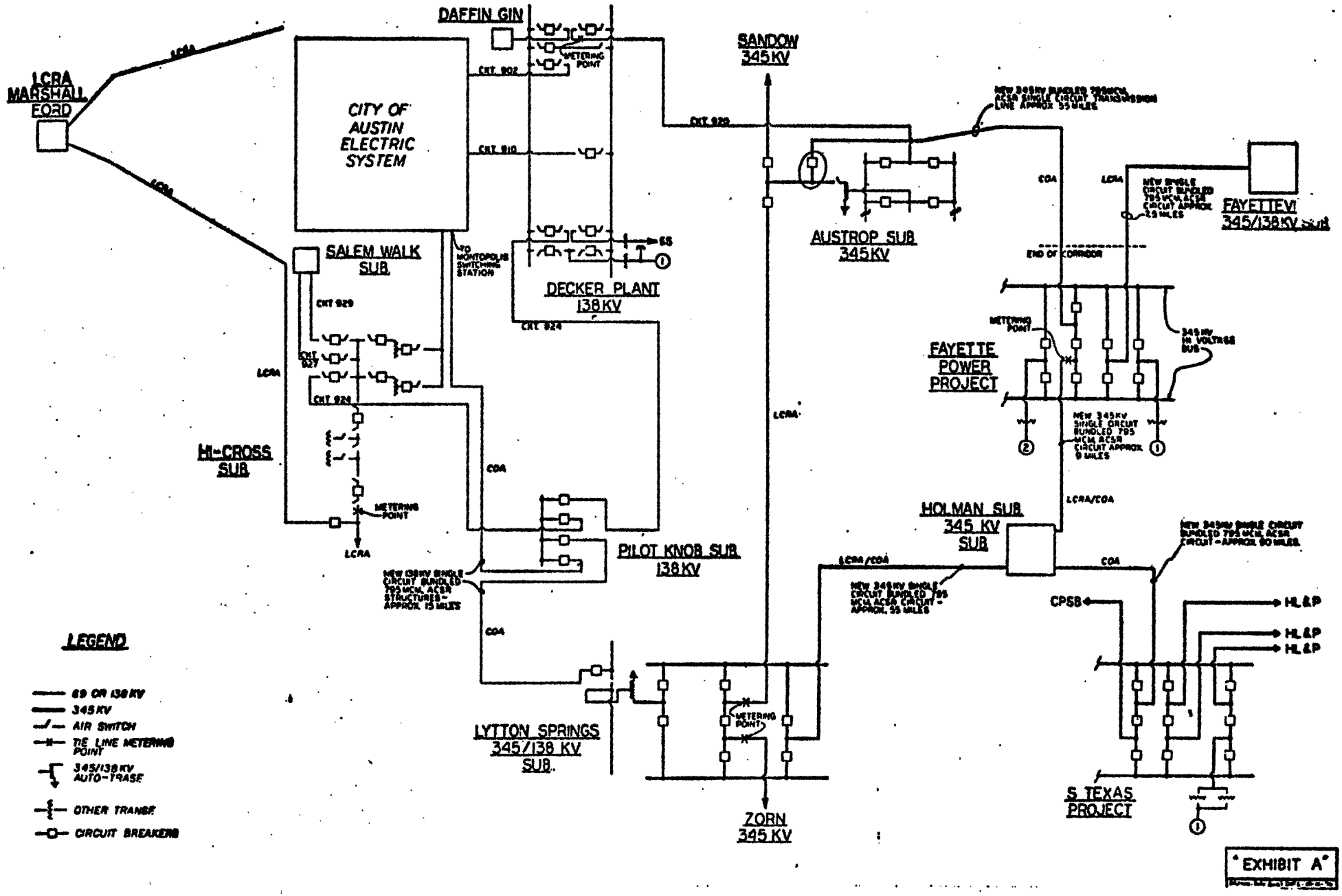
By Howard D. Rowland
City Manager

LOWER COLORADO RIVER AUTHORITY

ATTEST:

~~Secretary~~

By Le Hasa Lemmy
General Manager


LCRA MARSHALL FORD
LCRA
LCRA
CITY OF AUSTIN ELECTRIC SYSTEM
DAFFIN GIN
METERING POINT
CKT. 902
CKT. 910
SANDOW 345KV
CKT 929
NEW 345KV BUNDLED 795MCM ACSR SINGLE CIRCUIT TRANSMISSION LINE APPROX 55 MILES
AUSTROP SUB 345KV
COA
LCRA
NEW SINGLE CIRCUIT BUNDLED 795 MCM ACSR CIRCUIT APPROX 2.5 MILES
FAYETTEVI 345/138KV SUB
END OF CORRIDOR
SALEM WALK SUB
TO MONTOPOLIS SWITCHING STATION
DECKER PLANT 138KV
CKT 929
CKT 927
CKT 924
LCRA
METERING POINT
345 KV HI VOLTAGE BUS
FAYETTE POWER PROJECT
NEW 345KV SINGLE CIRCUIT BUNDLED 795 MCM ACSR CIRCUIT APPROX 9 MILES
HI-CROSS SUB
COA
LCRA
METERING POINT
LCRA
PILOT KNOB SUB 138KV
NEW 138KV SINGLE CIRCUIT BUNDLED 795 MCM ACSR STRUCTURES - APPROX 15 MILES
COA
HOLMAN SUB 345 KV SUB
LCRA/COA
NEW 345KV SINGLE CIRCUIT BUNDLED 795 MCM ACSR CIRCUIT - APPROX 90 MILES
LCRA/COA
NEW 345KV SINGLE CIRCUIT BUNDLED 795 MCM ACSR CIRCUIT - APPROX 55 MILES
COA
CPSB
HL&P
HL&P
HL&P
METERING POINT
LYTTON SPRINGS 345/138 KV SUB.
ZORN 345 KV
S TEXAS PROJECT
LEGEND
69 OR 138 KV
345 KV
AIR SWITCH
TIE LINE METERING POINT
345/138 KV AUTO-TRANS
OTHER TRANS
CIRCUIT BREAKERS
"EXHIBIT A"

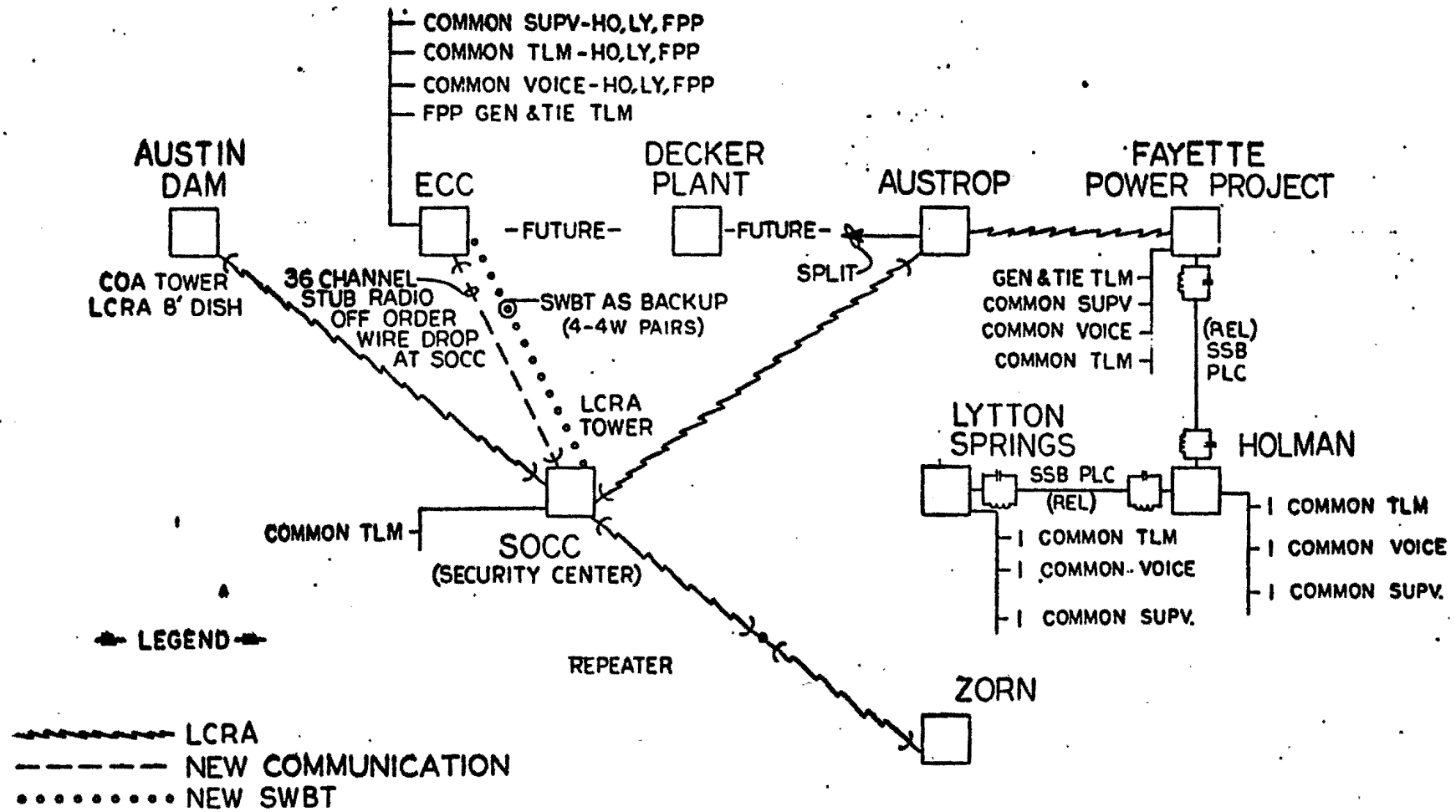

COMMON SUPV-HO,LY,FPP
COMMON TLM-HO,LY,FPP
COMMON VOICE-HO,LY,FPP
FPP GEN &TIE TLM
AUSTIN DAM
ECC
DECKER PLANT
AUSTROP
FAYETTE POWER PROJECT
-FUTURE-
-FUTURE-
SPLIT
COA TOWER
LCRA 8' DISH
36 CHANNEL STUB RADIO OFF ORDER WIRE DROP AT SOCC
SWBT AS BACKUP (4-4W PAIRS)
LCRA TOWER
GEN & TIE TLM
COMMON SUPV
COMMON VOICE
COMMON TLM
(REL) SSB PLC
LYTTON SPRINGS
HOLMAN
SSB PLC (REL)
1 COMMON TLM
1 COMMON VOICE
1 COMMON SUPV.
COMMON TLM
SOCC
(SECURITY CENTER)
1 COMMON TLM
1 COMMON VOICE
1 COMMON SUPV.
LEGEND
REPEATER
ZORN
LCRA
NEW COMMUNICATION
NEW SWBT

EXHIBIT B

1991
COPY

1991 TRANSMISSION EXCHANGE AGREEMENT BETWEEN THE CITY OF AUSTIN AND THE LOWER COLORADO RIVER AUTHORITY

APRIL, 1991

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THE STATE OF TEXAS }

COUNTY OF TRAVIS {

1991 TRANSMISSION EXCHANGE AGREEMENT BETWEEN THE CITY OF AUSTIN AND THE LOWER COLORADO RIVER AUTHORITY

This 1991 Transmission Exchange Agreement (Agreement) is entered into by and between the City of Austin (Austin) and the Lower Colorado River Authority (LCRA). Austin is a municipal corporation located in Travis County, Texas. LCRA is a river authority created by and operating pursuant to the Lower Colorado River Authority Act of 1934 as amended. By duly adopted Resolutions, the respective governing bodies of Austin and LCRA have authorized the execution of this Agreement.

WHEREAS, Austin owns its own retail public utility providing service to its customers within Austin's certified service area; and

WHEREAS, LCRA is a public utility providing service to its customers, primarily at the wholesale level; and

WHEREAS, integral to the provision of utility service by either Austin or LCRA, is the use by each of transmission facilities; and

WHEREAS, cooperation by Austin and LCRA in the planning, acquisition, and construction of transmission and transmission-related facilities is beneficial to the respective customers of each utility; and

WHEREAS, Austin and LCRA are of the opinion that the exchange, acquisition, and construction of the transmission facilities subject to this Agreement will enhance the reliability of the transmission system of each utility; and

WHEREAS, Austin desires to construct, own, and operate a 138 kV transmission line from Austin's Lytton Springs Substation to Austin's Slaughter Lane Substation; and

WHEREAS, LCRA owns and operates a 138 kV transmission line between the Buda Substation and to the Hi-Cross Substation, and said 138 kV transmission line is to be referred to in this Agreement as Line T-143; and

WHEREAS, Line T-143 exists within the boundaries of easements held by LCRA; and

WHEREAS, LCRA desires to utilize a spare circuit position on Austin's future Circuit 987 which will be between the Lytton Springs and Slaughter Substations, such utilization by LCRA to be between the Lytton Springs Substation and the point referred to herein as Point T-143; and

WHEREAS, Austin owns transmission easements between the Lytton Springs Substation and Point T-143; and

WHEREAS, the preferred route for a 138 kV transmission line between Austin's Lytton Springs Substation and Austin's Slaughter Lane Substation proposed by Austin parallels a portion of Line T-143 between the Buda Substation and the HiCross Substation;

WHEREAS, LCRA owns a 138 kV transmission line between the Austrop Substation and the McNeil Substation, said line referred to in this Agreement as Line T-178; and

WHEREAS, LCRA owns a 138 kV transmission line between the Wolf Lane Substation and the HiCross Substation, said line referred to in this Agreement as Line T-249; and

WHEREAS, shared easements, interconnections, substations, and other facilities will ultimately benefit the ratepayers of Austin and LCRA;

WHEREAS, Austin and LCRA have previously entered into various agreements (collectively referred to as the "Previous Agreements") regarding, inter alia, their respective transmission system and facilities.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements set forth in this Agreement, Austin and LCRA agree as follows:

I.

PREVIOUS AGREEMENTS

1.1 Unless specifically provided for in this Agreement, this Agreement is not intended to nor shall it be interpreted as in any way amending or otherwise affecting the rights and obligations of Austin and LCRA under the Previous Agreements.

II.

CONSTRUCTION OF FACILITIES

A. POINT T-143 TO LYTTON SPRINGS PROJECT

2.1 Austin shall construct at its sole expense, including preparation of right-of-way, one (1) 138 Kilovolt (kV) double-circuit transmission line beginning at Austin's Lytton Springs Substation and ending at or near Line T-143 between the Buda and HiCross Substations at a point to be mutually agreed to by Austin and LCRA, such point to be referred to in this Agreement as Point T-143 as shown on Exhibit A attached to this Agreement and made a part of this Agreement for all purposes. Such construction project shall be referred to in this Agreement as the T-143/Lytton Springs Project (T-143/LS Project).

2.2 Of the two (2) transmission circuits referred to in Section 2.1 above, Austin shall own the circuit on the north side of said Project and shall transfer ownership of all facilities directly associated with the circuit on the south side of said Project, including conductors, insulators, hardware and other appurtenances to LCRA when completed. Austin shall construct the circuit to be transferred to LCRA using a single 795 MCM ACSR drake conductor per phase.

2.3 The T-143/LS Project shall consist of double circuit 345 kV structures capable of supporting triple bundled (three wires per phase) 795 KCMIL ACSR Drake conductors, the foundations, anchor and down guy installations, insulators, wires, and all other hardware and appurtenances associated therewith. Austin shall construct the T-143/LS Project generally along an 8.7 mile portion of Austin's easement which is currently proposed to be utilized for Austin's future Circuit 987.

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2.4 Austin shall own all easements for the T-143/LS Project, including existing, new, or relocated easements, and shall be responsible for right-of-way maintenance costs. Any easements occupied solely by facilities owned by LCRA shall be obtained by LCRA at its sole expense and shall be owned and maintained solely by LCRA.

2.5 Austin shall make available to LCRA its easements from the Lytton Springs Substation to Point T-143. Austin shall obtain, correct, supplement, and amend said easements, if necessary, to allow the T-143/LS Project to be constructed as provided for in this Agreement, and shall bear any reasonable cost thereof; provided, however, that LCRA shall bear all costs, if any, required to relocate existing easements held by Austin if such relocation is requested or required by LCRA and directly related to the T-143/LS Project. Austin shall allow facilities owned by LCRA related to the T-143/LS Project to occupy Austin's easements for as long as said easements are integral to LCRA's transmission system. To the extent LCRA's facilities occupy right-of-way owned by Austin, Austin shall grant LCRA a license under separate documentation to use the easements held by Austin and comprising the right-of-way referred to in this section. Austin shall not modify, abridge, or abrogate, nor cause to be modified, abridged, or abrogated, any easements and/or rights under such easements, to be used for the T-143/LS Project, nor shall Austin do anything to forfeit its right to occupy said easements, without the prior written approval of LCRA.

2.6 Austin shall develop all plans and specifications for construction and perform all surveying reasonably necessary for design and construction of the T-143/LS Project. Austin shall also develop specifications for all materials used in construction of the T-143/LS Project and purchase all materials reasonably necessary for the T-143/LS Project. All structures and materials, if any, required to relocate existing transmission-line facilities owned by Austin as part of the T-143/LS Project shall be owned and provided by Austin at Austin's sole expense.

2.7 All support structures for the T-143/LS Project, including foundations, structures, static wires, and related appurtenances, shall be owned by Austin.

2.8 All facilities for the T-143/LS Project directly associated with the North circuit, including conductors, insulators, hardware, guy wires, anchors, and other appurtenances shall be owned by Austin.

2.9 Austin shall maintain at its sole expense all T-143/LS Project facilities owned by Austin. All T-143/LS Project facilities owned by LCRA shall be maintained by LCRA at its sole expense. Except in times of emergency, all maintenance on the T-143/LS Project facilities shall be scheduled with Austin and LCRA before such maintenance is performed.

2.10 LCRA shall construct at its expense any and all facilities necessary to integrate the south circuit of the T-143/LS Project into LCRA's transmission system.

B. POINT T-143 TO HICROSS PROJECT

2.11 Austin shall cause to be replaced at Austin's sole expense that portion of LCRA's existing Line T-143 beginning at a point near the intersection of the proposed Slaughter Lane and LCRA's right-of-way for Line T-143, said point to be more specifically identified and mutually agreed to by Austin and LCRA, and ending at Point T-143. Such replacement shall be done as a part of a comprehensive construction project which shall be referred to in this Agreement as the T-143/HiCross Project (T-143/HC Project).

2.12 The T-143/HC Project shall be constructed at Austin's sole expense and shall consist of double-circuit 138 kV structures capable of supporting bundled (two wires per phase) 795 KCMIL ACSR Drake Conductors, the foundations, anchor and down guy installations, insulators, conductors, and all other hardware and appurtenances associated therewith. The T-143/HC Project shall be constructed generally along a portion of LCRA's existing right-of-way currently utilized for Line T-143, which portion is more specifically shown on Exhibit B, attached hereto and made a part hereof for all purposes.

2.13 Of the two (2) 138 kV transmission circuits in the T-143/HC Project, Austin shall own the circuit on the east side of the Project, and LCRA shall own the circuit on the west side of the Project.

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2.14 LCRA shall own and maintain all easements for the T-143/HC Project, including existing, new, or relocated easements. Any easements occupied solely by facilities owned by Austin shall be obtained by Austin at its sole expense and shall be owned and maintained solely by Austin.

2.15 LCRA shall make available to Austin its easements from a point in the vicinity of the intersection of Austin's street known as Slaughter Lane, and LCRA's right-of-way currently used for Line T-143, which point shall be more specifically identified and mutually agreed to by Austin and LCRA and ending at Point T-143. If Austin requires an additional section of LCRA's right-of-way for the T-143/HC Project, then Austin shall pay LCRA for such right-of-way based on the fair market value determined by LCRA's appraisal of such right-of-way.

LCRA shall correct, supplement, and amend said easements, if necessary, to allow the T-143/HC Project to be constructed as provided for in this Agreement, and shall bear any reasonable cost thereof; provided, however, that Austin shall bear all costs, if any, required to relocate existing easements held by LCRA and directly related the T-143/HC Project or obtain for LCRA easements reasonably necessary for and directly related to the T-143/HC Project. LCRA shall allow facilities owned by Austin related to the T-143/HC Project to occupy LCRA's easements for as long as said easements are integral to Austin's transmission system. To the extent Austin's facilities occupy rights-of-way owned by LCRA, LCRA shall grant Austin a license under separate documentation to use the easements held by LCRA and comprising the right-of-way referred to in this section. LCRA shall not modify, abridge or abrogate, nor cause to be modified, abridged, or abrogated, any easements and/or rights under such easements, to be used for the T-143/HC Project, nor shall LCRA do anything to forfeit its right to occupy said easements, without prior written approval of Austin.

2.16 Austin shall develop all plans and specifications reasonably necessary for the construction of the T-143/HC Project and shall perform all surveying reasonably necessary for the design and construction of said Project. Austin shall develop specifications for all materials and equipment reasonably necessary for construction of the T-143/HC Project and shall purchase all materials and equipment reasonably necessary for said Project. All plans, designs, drawings, and proposed specifications for the purchase of materials and equipment directly related to the T-143/HC Project shall be submitted to LCRA for approval prior to purchase of materials or equipment or start of construction, which approval shall not be unreasonably withheld; provided, however, that LCRA shall have thirty (30) days from receipt of such plans, designs, drawings, and specifications, within which to grant or deny its approval. Failure by LCRA to grant or deny its approval within said 30-day period shall be deemed approval and acceptance by LCRA of such plans, designs, drawings, and specifications.

2.17 LCRA shall construct the T-143/HC Project in its entirety at Austin's sole expense. LCRA shall be responsible for complete management and control of all aspects of construction of the T-143/HC Project. Austin and LCRA shall inspect and approve all construction plans prior to commencement of construction of the T-143/HC Project. Prior to acceptance of said Project by Austin, LCRA and Austin shall inspect and approve all construction of the T-143/HC Project.

2.18 Austin shall bear the following costs related to the T-143/HC Project:

a. All survey, planning, design and engineering costs incurred by Austin personnel.

b. All reasonable and necessary material, construction and/or installation costs for structures and foundations.

c. All reasonable and necessary material, construction, and/or installation costs for Austin's and LCRA's circuit conductors and insulators, hardware, anchors, guy wires and appurtenances for support of Austin's and LCRA's respective circuit conductors.

d. All reasonable and necessary material and installation costs for static wires and associated hardware.

2.19 LCRA shall bear all right-of-way preparation costs, including clearing, installation of gates, roads, and trails, and correction of deficiencies in LCRA's easements, if any, for the T-143/HC Project.

2.20 If in the future LCRA elects to upgrade its conductor on its circuit of the T-143/HC Project to conductor greater than 336 MCM ACSR conductor, then LCRA shall reimburse Austin, at Austin's original cost for the items specified below. Upon such reimbursement LCRA shall have the option to acquire a one-half interest in such facilities for which LCRA reimbursed Austin. LCRA shall reimburse Austin one-half of the following costs for the T-143/HC Project at the time LCRA completes the entire upgrade from the Buda Substation to the HiCross Substation:

a. One-half of all material, construction and/or installation costs for structures and foundations.
b. All material for installation of LCRA's circuit conductors, insulators, hardware, anchors, guy wires appurtenances for support of LCRA's circuit conductors.
c. One-half of all costs of materials for static wires and associated hardware.

Austin shall maintain books and records regarding the above costs in accordance with applicable accounting requirements.

2.21 All support structures for the T-143/HC Project, including foundations, static wires, and related appurtenances, and all structures and facilities related to the T-143/HC Project and not directly associated with LCRA's circuit shall be owned by Austin.

2.22 LCRA shall, at Austin's sole cost, remove all existing structures, materials, and/or equipment from the T-143/HC project right-of-way. All such structures, materials, and/or equipment shall become the property of Austin, provided such structures, materials, and/or equipment are not re-used on LCRA's circuit on the T-143/HC Project.

2.23 All facilities related to the T-143/HC Project and directly associated with LCRA's circuit, including conductors, insulators, hardware, and other appurtenances shall be owned by LCRA.

2.24 LCRA shall own all existing and future right-of-way and shall maintain at its sole expense the T-143/HC Project right-of-way and all other T-143/HC Project facilities owned by LCRA. All T-143/HC Project facilities owned by Austin shall be maintained by Austin at its sole expense. Except in times of emergency, all maintenance on the T-143/HC Project facilities shall be scheduled with LCRA and Austin before such maintenance is performed.

C. WOLF LANE CONVERSION PROJECT

2.25 LCRA shall convert from 69 kV to 138 kV, a section of LCRA's 69 kV transmission lines T-100 and T-115. Such conversion shall begin at LCRA's Wolf

Lane Substation and shall end at a point north-northeast of Austin's Lytton Springs Substation, the exact location of said ending point to be mutually agreed to by Austin and LCRA prior to commencement of such conversion. Such conversion shall be referred to in this Agreement as the Wolf Lane Conversion Project.

2.26 LCRA shall convert its Wolf Lane, Garfield, and Colton Substations from 69 kV to 138 kV. LCRA shall make its best effort to complete such conversions by December 31, 1992.

2.27 LCRA shall construct the facilities necessary to connect the Wolf Lane Conversion Project to LCRA's circuit constructed as part of the T-143/L5 Project. LCRA shall make such connection within Austin's Lytton Springs Substation and in a manner which shall facilitate the construction of a future 345 kV/138 kV Substation as provided for in Section 5.1.

D. ADDITIONAL 345/138 kV TRANSFORMATION EQUIPMENT

2.28 If future events require the addition of 345/138 kV transformation equipment beyond 2400 MVA within Austin's transmission system, LCRA agrees to consider making a monetary or other contribution to accomplish such addition based on 138 kV interconnection flows at the Austrop Substation.

E. ADDITIONAL SUBSTATIONS

2.29 Neither Austin nor LCRA shall unreasonably withhold approval for the other to construct load-serving substations of a capacity of 50 MW or less on either Austin's or LCRA's transmission system; provided, however, that such construction is first determined to result in maximum utilization of either Austin's or LCRA's transmission facilities at minimum costs and minimum environmental impact to both Austin and LCRA.

2.30 Except for the right to require compensation for transmission-line energy losses associated with service provided pursuant to this section and section 2.29 Austin and LCRA agree not to charge for the service referred to in Section 2.31 above, provided that the difference between the peak load served by Austin for LCRA, and the peak load served by LCRA for Austin, is less than 50 megawatts (MW), and provided that the load served by such substation is within the area singly certified by the Public Utility Commission of Texas (Commission), of either Austin or an existing wholesale customer of LCRA as of January 1, 1990.

F. OPENING OF 138 kV INTERCONNECTIONS

2.31 Austin shall construct the facilities reasonably necessary in Austin's engineering judgment to permanently open in a reliable manner the 138 kV interconnections with LCRA at the HiCross Substation and at the McNeil Substation, by June 1, 1995.

III.

TRANSFERS OF FACILITIES BY AUSTIN AND LCRA

A. TRANSFERS OF FACILITIES BY AUSTIN

3.1 Following completion of the T-143/LS Project and under separate documentation, Austin shall transfer ownership of those components of said project to LCRA as provided in Section II.A of this Agreement.

3.2 Following completion of the T-143/HC Project and under separate documentation, Austin shall transfer ownership of those components of said project to LCRA as provided in Section II.B of this Agreement.

B. TRANSFERS OF FACILITIES BY LCRA

3.3 LCRA currently owns a 138 kV transmission line between the Austrop Substation and the McNeil Substation (referred to in this Agreement as Line T-178). LCRA shall put forth its best efforts to transfer ownership of Line T-178 and related equipment to Austin, including any and all easements associated with such line, by June 1, 1992, but in no event later than December 31, 1992. On July 1, 1992, and by the first day of every month thereafter, LCRA shall provide Austin with a written report including an explanation of the status of LCRA's progress in obtaining the requisite regulatory approvals associated with this Agreement, an estimate of the length of time remaining before a decision by the regulatory agency having jurisdiction will be forthcoming, an assessment by LCRA of the likelihood of receiving or not receiving the requisite regulatory approval, and any such other relevant information.

3.4 LCRA currently owns a 138 kV transmission line between the Wolf Lane Substation and the HiCross Substation (referred to in this Agreement as transmission Line T-249). LCRA shall put forth its best efforts to transfer ownership of Line T-249 and related equipment to Austin, including any and all easements associated with such line by June 1, 1992, but in no event later than December 31, 1992. On July 1, 1992, and by the first day of every month thereafter, LCRA shall provide Austin with a written report including an explanation of the status of LCRA's progress in obtaining the requisite regulatory approval associated with this Agreement, an estimate of the length of time remaining before a decision by the regulatory agency having jurisdiction will be forthcoming, an assessment by LCRA of the likelihood of receiving or not receiving the requisite regulatory approval, and any such other relevant information.

3.5 If LCRA fails to transfer both Line T-178 and Line T-249 to Austin by December 31, 1992, then Austin shall have the right to terminate this Agreement by giving LCRA a minimum of thirty days' prior written notice of Austin's intent to terminate this Agreement. Such notice shall specify the intended date of termination. Except as provided in Section 13.2, termination of this Agreement in such a manner shall make null and void any and all rights and/or obligations accruing under this Agreement to either Austin or LCRA. Before transferring any easements to Austin, LCRA shall take any and all steps reasonably necessary to

correct any and all discrepancies or deficiencies in any easements it is transferring to Austin under this Agreement which may materially affect the right and/or title being transferred by LCRA to Austin.

IV. SALE OF FACILITIES

4.1 If either party wishes to sell any or all of its wholly owned facilities related to either the T-143/LS or the T-143/HC Project, (excluding easements), the selling party shall first offer in writing to sell those facilities to the other party for the selling party's originally installed cost less accumulated depreciation. The other party shall then have one (1) year to accept or reject the offer in writing.

4.2 If LCRA wishes to sell its easements associated with the T-143/HC Project, LCRA shall first offer in writing to sell those easements to Austin for the fair market value of said easements. Austin shall then have one (1) year to accept or reject the offer in writing.

V. RESERVATION OF LAND BY AUSTIN FOR SUBSTATION PURPOSES TO BE USED BY LCRA

5.1 Austin shall reserve land within Austin's Lytton Springs Substation reasonably necessary for LCRA to establish a 345/138 kV substation on such land. LCRA shall pay any and all costs of whatever nature associated with the establishment of such 345/138 kV substation, including any and all expenses resulting from any required relocation of Austin's then existing facilities within the Lytton Springs Substation.

VI. RETENTION AND MAINTENANCE OF CERTAIN FACILITIES

6.1 Austin and LCRA shall retain and maintain facilities necessary to operate the interconnections at the McNeil Substation and the Hicross Substation normally closed, until such time as the interconnection at each substation has been operated open for a period of twelve (12) consecutive months; provided, however, that LCRA and Austin each shall have the right to remove their equipment at the McNeil or Hicross Substation at any time after the interconnection at that particular substation has operated open for twelve (12) consecutive months. The obligation to retain and maintain facilities, referred to above, extends only to facilities in place at the time such interconnection is first opened.

6.2 Beyond the Election Date referred to in Article VII of this Agreement, and as long as the interconnection facilities are available, Austin and LCRA shall each have the right to operate either of the 138 kV interconnections at the HiCross Substation and at the McNeil Substation closed; provided, however, that beginning on the Election Date such operation must be shown to be economical and reliably supported by the then existing facilities.

VII. PAYMENT FOR INTERCONNECTIONS BEGINNING JUNE 1, 1995

7.1 On or after June 1, 1995, if LCRA elects to operate open the 138 kV interconnections at the HiCross Substation and at the McNeil Substation, and Austin elects to operate such interconnection(s) closed, then for each year or

any part thereof that Austin elects to operate either of such interconnections closed, Austin shall pay in full to LCRA an annual payment in accordance with the following:

YEAR	AMOUNT
1995	$ 500,000.00
1996	600,000.00
1997	700,000.00
1998	800,000.00
1999	900,000.00
2000	$1,000,000.00

Such annual payment shall be in lieu of any other consideration for Austin and LCRA to remain interconnected at the 138 kV level and such payment, if any, shall be made by Austin to LCRA within thirty (30) days of any such election by Austin. As used in this Agreement, the term "Election Date" shall mean the date upon which LCRA notifies Austin of LCRA's election to operate the interconnections at the McNeil and HiCross Substations normally open.

7.2 If the interconnections at the McNeil and HiCross Substations remain closed from the Election Date through January 1, 2000, and are projected to remain closed beyond December 31, 2000, then payments by Austin, if any, to be made to LCRA for continuing to operate either of the interconnections closed at the HiCross Substation and at the McNeil Substation after December 31, 2000, are to be negotiated prior to June 1, 2000; provided, however, that such ending date (i.e., December 31, 2000) shall be moved forward in time to correspond to the amount of time the Election Date is moved forward in time as provided in Section 7.3 of this Agreement. Determination of such payments shall take into account factors including, but not limited to, the conditions of, and values that the 138 kV interconnections at the HiCross and McNeil Substations represent to Austin and LCRA after the year 2000.

7.3 For any month or part of any month beyond December 31, 1992, that LCRA delays effecting the transfer of Lines T-178 and T-249, and related equipment, including any and all easements associated with said lines, the Election Date shall move forward in time to the first day of the next full month. The initial payment due, if any, under Section 7.1 shall be for a seven-month period, said seven-month period to begin with the new Election Date. The first day of the month immediately following the end of the initial seven-month period, shall be the beginning of the second year of the payment schedule referred to in Section 7.1 above, and said date of such month shall serve as the beginning of each subsequent year of the payment schedule.

7.4 Beginning on the date upon which Austin first operates open the interconnections at the HiCross and McNeil Substations, Austin and LCRA shall from such date forward maintain their respective 138 kV transmission systems in such a state as to enable both Austin and LCRA to operate their respective 138 k transmission systems independent one from the other, including the ability to operate open either of the 138 kV interconnections at the HiCross Substation and at the McNeil Substation.

7.5 The payment provisions of Section 7.1 shall terminate twelve (12) months after the date upon which Austin has operated open the interconnections at both the HiCross and McNeil Substations for twelve (12) consecutive months without closing either interconnection, except for closing of either or both interconnections through mutual agreement between Austin and LCRA.

7.6 Except as provided in section 7.5 above, if the interconnections at the HiCross Substation and at the McNeil Substation are operated open as a matter of standard procedure and are operated open for a period of twelve (12) consecutive months, then such interconnections may only be operated closed at a later date upon written agreement between Austin and LCRA. Austin and LCRA hereby agree to negotiate the consideration to be paid to the non-requesting party, if after the twelve-month period referred to in Section 7.5, either Austin or LCRA requests that the interconnections at the HiCross Substation or the McNeil Substation be closed and the non-requesting party does not agree to close the interconnection, or agrees to do so under protest.

VIII. TRANSMISSION SYSTEM PLANNING

A. TRANSMISSION SYSTEM PLANNING BY AUSTIN

8.1 Until the 138 kV interconnections at the McNeil Substation and at the HiCross Substation are converted to an operational mode where such interconnections are maintained open as a matter of standard operating procedure, Austin shall limit its import of remote generation to a level which will minimize to the greatest extent possible, while in keeping with sound utility practices, the likelihood of overloads on LCRA's transmission system following any single contingency. Each year, prior to the summer peak season, Austin and LCRA shall determine by mutual effort such limits on remote generation imports.

B. TRANSMISSION SYSTEM PLANNING BY LCRA

8.2 For any deficiencies in LCRA system which exist or which may occur, after May 31, 1995, LCRA shall consider as a viable solution to such deficiencies limiting interconnection flows at the HiCross Substation and/or at the McNeil Substation by physical means.

IX. TRANSMISSION SYSTEM PLANNING BY AUSTIN AND LCRA

9.1 Beginning January 1, 1991, in all transmission-system planning studies for the period beginning June 1, 1995 to be used by the Electric Reliability Council of Texas (ERCOT), Austin and LCRA shall represent the interconnections at the HiCross and McNeil Substations operated open as a matter of standard procedure. Additionally, all transmission planning by LCRA for periods beyond June 1, 1995 shall assume the HiCross and McNeil interconnections to be open.

9.2 In evaluating the next increment of 345 kV transmission facilities from the Fayette Power Project (FPP), Austin and LCRA shall consider, among other relevant factors, the economics and reliability of such an addition to both Austin's and LCRA's transmission systems.

9.3 In determining the responsibility for payment by Austin and/or LCRA for future additions of 345 kV transmission facilities associated with FPP, Austin and LCRA shall consider, among other relevant factors, costs, benefits, need, and the then current respective uses by Austin and LCRA, of the then existing Austin and LCRA 345 kV transmission facilities.

X. INTERCONNECTIONS BETWEEN AUSTIN AND LCRA

10.1 Austin shall allow LCRA to remain interconnected at 138 kV to at least one of Austin's 345/138 kV autotransformers at the Austrop Substation.

10.2 Austin shall allow LCRA the right to connect at LCRA's sole expense to any 345 kV facilities owned by Austin which are in service as of June 1, 1990, and Austin shall not charge LCRA an interconnection fee.

10.3 Other than for transmission-line energy losses, and/or wheeling associated with economy-energy transfers, replacement-energy transfers, contract purchased-power, and future remote-generation resources, Austin and LCRA shall not charge each other for the use of 345 kV facilities that are in service or are added to 345 kV structures which are in service as of June 1, 1990.

10.4 Other than for transmission-line energy losses, Austin and LCRA shall not charge each other for transmission use caused by the addition of future generating units, provided that such units are used to directly serve native customer load and further provided that such units are directly connected via transformer to 345 kV facilities that are in service as of June 1, 1990 and which are owned by Austin or LCRA, or that are added to structures which are owned by Austin or LCRA and which are in service as of June 1, 1990.

10.5 LCRA shall allow Austin to connect to any 345 kV facilities owned by LCRA its successors and/or assigns, or over which LCRA has direct or indirect control, which are in service as of June 1, 1990, and LCRA shall not charge Austin any fee of any nature, except as required or allowed by this Agreement, for any such connection.

10.6 Austin shall allow LCRA to construct future substations, at LCRA's sole expense, on Lines T-178 and T-249 after ownership of said lines has been transferred to Austin; provided, however, that LCRA shall use such substations for the sole purpose of serving LCRA's internal load or the load of any of LCRA's wholesale customers.

10.7 Austin shall not charge LCRA an interconnection fee for interconnecting Lines T-178 and T-249 to such substations as may be constructed pursuant to Section 10.6 above.

10.8 The peak load served from all future substations constructed and connected to line T-178 or line T-249 pursuant to Section 10.6 above, shall not exceed 50 MW at any time on either line T-178 or line T-249.

10.9 Excluding transmission-line energy losses, Austin shall not charge LCRA for the use of transmission lines directly connected to such substations as may be constructed pursuant to Section 10.6 above.

XI. TRANSMISSION SERVICE

11.1 Austin and LCRA shall reassess the transmission-line energy loss formula associated with the FPP Transmission Agreement of 1977 at such times as system changes warrant such reassessment.

11.2 If LCRA so requests, Austin shall provide 138 kV transmission service up to a maximum of 50 MW of demand, to the University of Texas Balcones Substation, which at the time this Agreement is executed is being served by LCRA. Further, except for transmission-line energy losses, Austin shall not charge LCRA for providing such service.

11.3 Subject to the limitation provided in Section 11.2 and upon LCRA's request at a future date, Austin shall construct, at LCRA's sole expense, 138 kV facilities reasonably necessary to provide loop service to the existing University of Texas Balcones Substation.

11.4 Nothing in this Agreement shall amend, nor shall this Agreement be interpreted as amending in any way, the agreement, dated January 27, 1984, between Austin and LCRA regarding electric utility service provided to the University of Texas Balcones Research Center, entered in settlement of Docket No. 5284.

11.5 LCRA shall provide transmission service up to a maximum demand of 50 MW at no charge of any nature to Austin's Lakeway Substation. Except for transmission-line energy losses, LCRA shall not charge Austin for providing such service.

11.6 Subject to the limitation provided in Section 11.5 and upon Austin's request at a future date, LCRA shall construct, at Austin's sole expense, 138 kV facilities including transmission breakers and related appurtenances reasonably necessary to provide loop service to Austin's existing Lakeway Substation.

XII. BLACK-START SERVICE

12.1 Austin and LCRA shall each allow the other to use, at no charge other than an in-kind energy payback, any and all facilities, if available at the time of the need for the facilities, that are owned by either Austin or LCRA, as part of Austin's and LCRA's respective Black-Start plans.

12.2 The determination of whether and what facilities are available for either Austin's or LCRA's respective Black-Start plans, is left to the sole discretion and engineering judgment of the utility owning such the facilities which are to be used for the other's Black-Start plan.

XIII. ADDITIONAL CONSIDERATION

13.1 In addition to the mutual covenants contained in this Agreement, and as further consideration for the assets to be transferred by LCRA to Austin and for the services to be rendered under this Agreement, Austin shall pay LCRA the sum total of $12,000,000.00, said amount to be paid in two equal installments, the

first installment due thirty (30) days after transfer of ownership of Line T-178 to Austin, and the second installment due thirty (30) days after transfer of ownership to Austin of Line T-249. Said amount shall be exclusive of and additional to any other payments referred to in this Agreement.

13.2 In the event LCRA fails to obtain all requisite regulatory approvals for the construction of facilities and/or transfer of assets required under this Agreement, Austin and LCRA shall be deemed to be released from any and all obligations under this Agreement; provided, however, that if Austin elects to terminate this Agreement under the provisions of Section 3.5 of this Agreement, Austin shall nevertheless reimburse LCRA its regulatory expenses as provided in Section 13.3 of this Agreement.

13.3 In the event the Commission affirmatively denies approval of the transfer of transmission lines from LCRA to Austin and for the construction of facilities by LCRA pursuant to this Agreement, and to the extent LCRA cannot reasonably remedy the bases for such denial, Austin shall reimburse LCRA a maximum of $200,000.00 for any and all reasonable and necessary in-house and/or outside consultant and/or legal costs incurred by LCRA and directly attributable to any and all regulatory proceedings entered into by the LCRA pursuant to the provisions of this Agreement.

13.4 Austin shall have the right to audit LCRA's records associated with expenses incurred in securing any and all regulatory approvals required to effectuate this Agreement. Further, LCRA shall provide full accounting data and justification for any amounts for which reimbursement is requested from Austin.

XIV.

NOTICE

14.1 Any notice required under this Agreement shall be effected by certified mail, return receipt requested. Notice shall be sufficient if made or addressed to the person and address noted below respectively for Austin and LCRA. Each party may change the name of the person to whom a notice should be directed and the address for such notice by giving notice of such change in accordance with the provisions of this paragraph.

LCRA	CITY OF AUSTIN ELECTRIC UTILITY
GENERAL MANAGER	DIRECTOR, CEO
P.O. BOX 220	P.O. BOX 1088
AUSTIN, TX 78767	AUSTIN, TX 78767

XV.

FORCE MAJEURE

15.1 In the event that the performance by LCRA or Austin of any of its obligations or undertakings under this Agreement shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party to this Agreement, or by any occurrence beyond the reasonable control of either party,

whether such occurrence be an act of God or the common enemy, or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not a party or privy hereto, then such party shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

XVI.

ENTIRE AGREEMENT

16.1 This Agreement contains the entire agreement and understanding between the parties as to the subject matter of this Agreement. It merges and supersedes all prior or contemporaneous agreements, commitments, representations, writings, discussions between the parties, whether oral or written, as to the subject matter of this Agreement and has been induced by no representation, statements or agreements other than those expressed herein. Neither party shall be bound by any prior or contemporaneous obligations, conditions, warranties, or representations with respect to the subject matter of this Agreement.

XVII.

NON-SEVERABILITY

17.1 In case any one or more of the clauses, sections, or provisions of this Agreement are deemed invalid, illegal, or unenforceable for any reason, then this entire Agreement shall be null and void and the parties shall be returned to their respective positions immediately prior to having entered into this Agreement.

XVIII.

INDEMNIFICATION

18.1 To the extent permitted by law, LCRA shall save, defend, indemnify, and hold Austin harmless from and against any and all claims and damages of every kind, for injury to or death of any person or persons and for damage to or loss of property, arising out of or attributed, directly or indirectly, to the operations or performance of LCRA under this Agreement, including claims and damages arising in whole or in part from the negligence of LCRA.

18.2 To the extent permitted by law, Austin shall save, defend, indemnify, and hold LCRA harmless from and against any and all claims and damages of every kind, for injury to or death of any person or persons and for damage to or loss of property, arising out of or attributed, directly or indirectly, to the operations or performance of Austin under this Agreement, including claims and damages arising in whole or in part from the negligence of Austin.

XIX.

CANCELLATION

19.1 Except as otherwise provided in this Agreement, this Agreement may be canceled or modified, in whole or in part, only by mutual written consent of Austin and LCRA.

XX.

MAINTENANCE OF FACILITIES

20.1 Austin shall be responsible for maintenance of any and all facilities it owns and which are subject to this Agreement.

20.2 Before performing any maintenance of its facilities subject to this Agreement, Austin shall give LCRA reasonable notice of such maintenance and shall obtain LCRA's approval of the schedule to be followed in performing such maintenance. LCRA shall not unreasonably withhold such approval.

20.3 LCRA shall be responsible for maintenance of any and all facilities it owns and which are subject to this Agreement.

20.4 Before performing any maintenance of its facilities subject to this Agreement, LCRA shall give Austin reasonable notice of such maintenance and shall obtain Austin's approval of the schedule to be followed in performing such maintenance. Austin shall not unreasonably withhold such approval.

20.5 Any maintenance to be conducted under this Agreement shall be performed in accordance with standards common to the electric utility industry in Texas.

20.6 For the purposes of installing, removing, replacing, maintaining, or inspecting the owning party's equipment or facilities, Austin and LCRA shall each allow the other the right of reasonable access to the owning party's equipment or facilities where such equipment or facilities are on the other's property.

XXI.

OPERATION OF FACILITIES

21.1 Austin shall be solely responsible for the operation of its facilities and shall determine in its sole discretion how best to operate its facilities in the interests of its customers in keeping with its status as a municipally-owned utility.

21.2 LCRA shall be solely responsible for the operation of its facilities and shall determine in its sole discretion how best to operate its facilities in the interests of its customers in keeping with its status as a public utility.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this 5th day of May, 19 91.

ATTEST

Willie B. Lee

THE CITY OF AUSTIN

BY: John B. Moore
John B. Moore
Director, Electric Utility Dept.

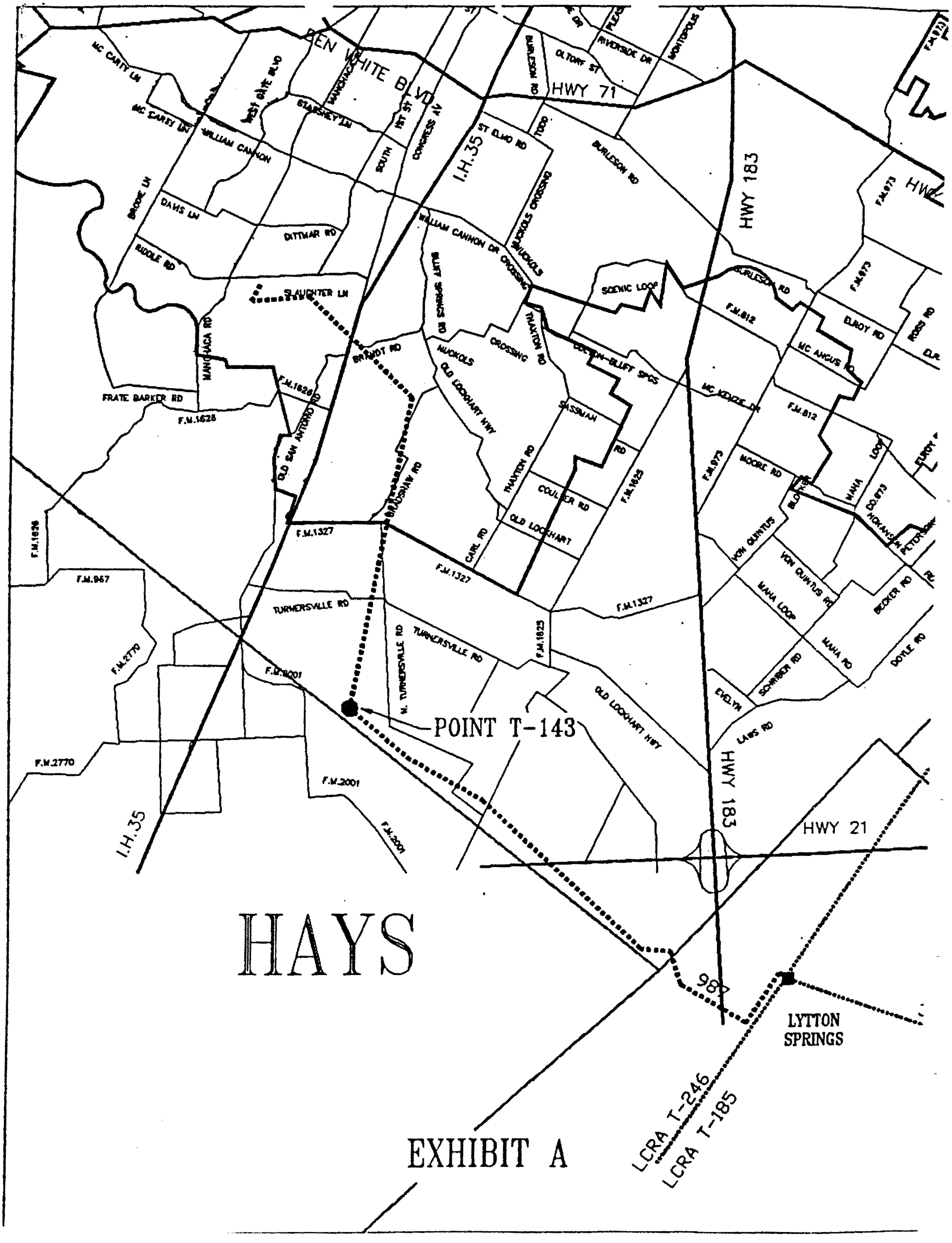
APPROVED AS TO FORM

BY: Alfred R. Herrera
Alfred R. Herrera
Assistant City Attorney

ATTEST

LOWER COLORADO RIVER AUTHORITY

BY:
Mark Rose
General Manager


BEN WHITE BLVD
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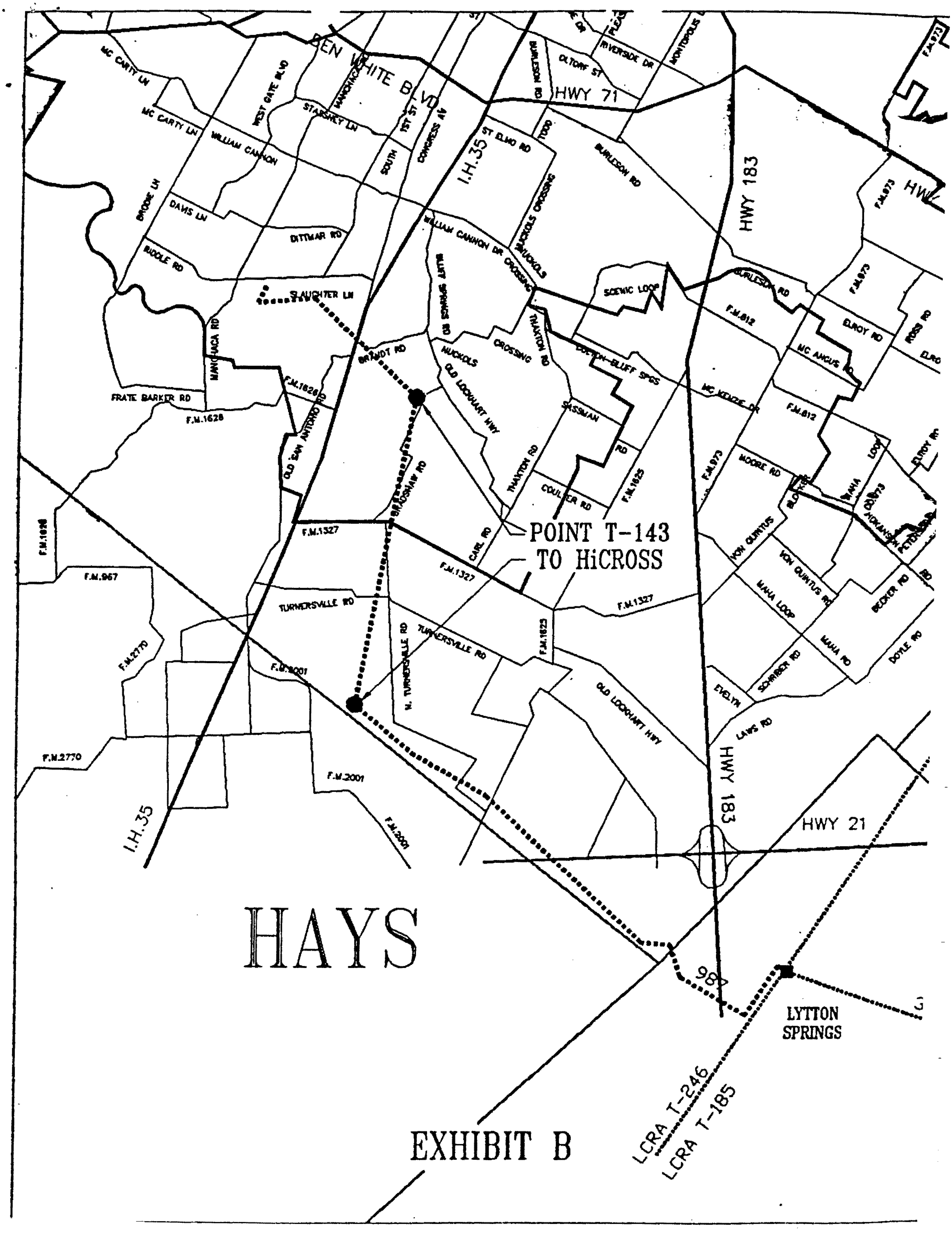
HWY 183
I.H.35
MC CARTY LN
WILLIAM CANNON
WILLIAM CANNON DR
BROOKE LN
DAVIS LN
DITTMAR RD
RIDDLE RD
SLAUGHTER LN
MANCHACA RD
FRATE BARKER RD
F.M.1626
OLD SAN ANTONIO RD
BRANDT RD
BRADSHAW RD
NUCKOLS CROSSING
BLUFF SPRINGS RD
OLD LOCKHART HWY
THAXTON RD
SASSMAN
SCENIC LOOP
BURLESON RD
F.M.812
F.M.973
ELROY RD
MC ANGUS RD
MC KENZIE DR
MOORE RD
VON QUINTUS
MAHA LOOP
COULTER RD
OLD LOCKHART
CARL RD
F.M.1327
F.M.1625
TURNERSVILLE RD
W. TURNERSVILLE RD
F.M.967
F.M.2770
F.M.2001
POINT T-143
EVELYN
LAWS RD
SCHRIBER RD
MAHA RD
BECKER RD
DOYLE RD
HWY 21
HAYS
987
LYTTON SPRINGS
LCRA T-246
LCRA T-185

EXHIBIT A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SLAUGHTER LN
BRANDT RD
NUCKOLS CROSSING
BURLESON RD
SCENIC LOOP
F.M.812
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TURNERSVILLE RD
F.M.2001
F.M.2770
F.M.967
F.M.1625
F.M.973
OLD LOCKHART HWY
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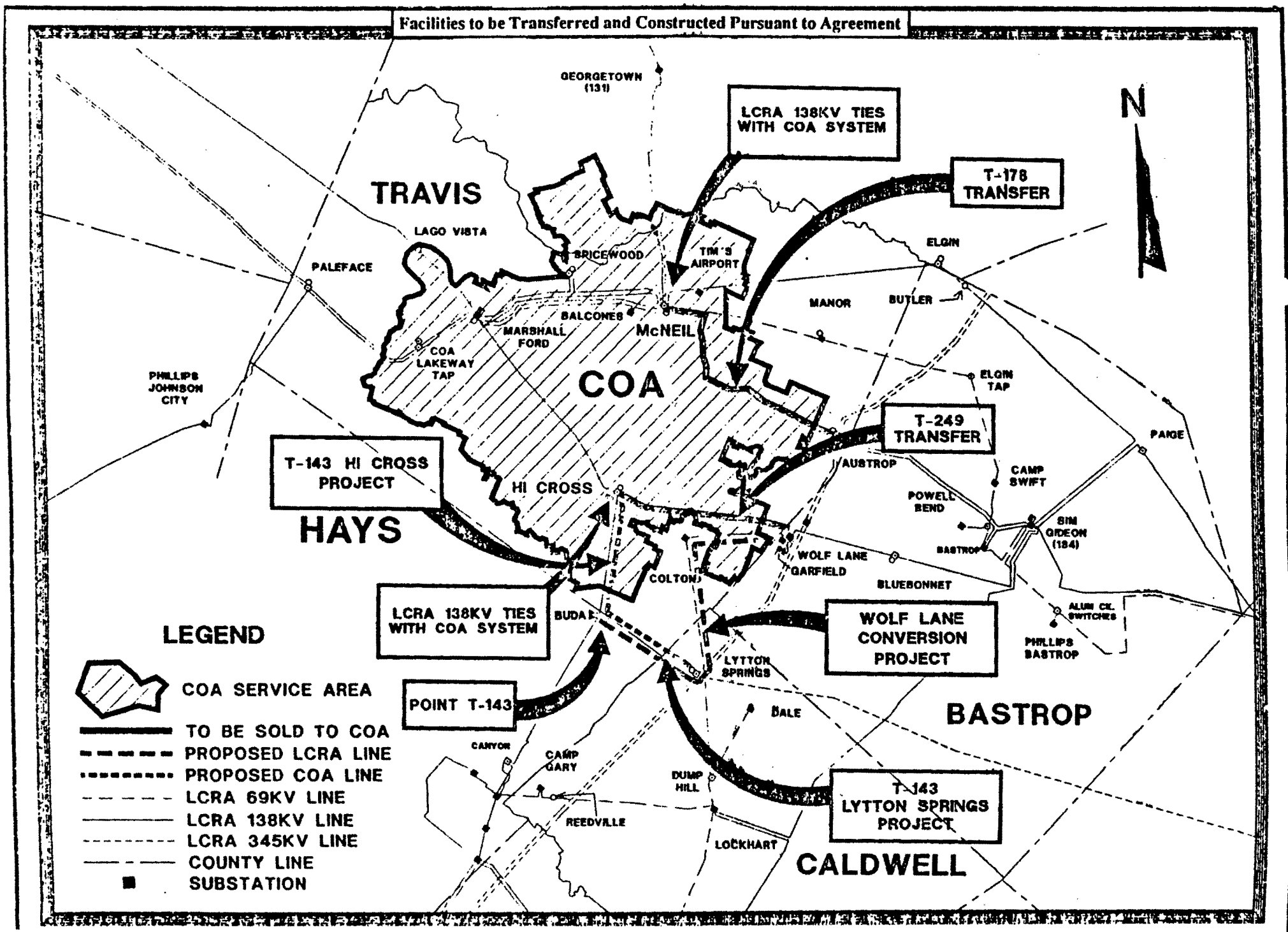
TO HiCROSS
HWY 21
HAYS
987
LYTTON
SPRINGS
LCRA T-246
LCRA T-185

EXHIBIT B


Facilities to be Transferred and Constructed Pursuant to Agreement
GEORGETOWN (131)
LCRA 138KV TIES WITH COA SYSTEM
T-178 TRANSFER
N
TRAVIS
LAGO VISTA
PALEFACE
BRICEWOOD
TIM'S AIRPORT
ELGIN
MANOR
BUTLER
BALCONES
MARSHALL FORD
McNEIL
COA LAKEWAY TAP
COA
PHILLIPS JOHNSON CITY
ELGIN TAP
T-249 TRANSFER
PAIGE
T-143 HI CROSS PROJECT
HI CROSS
AUSTROP
CAMP SWIFT
POWELL BEND
SIM GIDEON (154)
HAYS
BASTROP
WOLF LANE
GARFIELD
BLUEBONNET
COLTON
LCRA 138KV TIES WITH COA SYSTEM
BUDA
ALUM CK. SWITCHES
WOLF LANE CONVERSION PROJECT
PHILLIPS BASTROP
LYTTON SPRINGS
LEGEND
COA SERVICE AREA
POINT T-143
BASTROP
BALE
TO BE SOLD TO COA
PROPOSED LCRA LINE
PROPOSED COA LINE
LCRA 69KV LINE
LCRA 138KV LINE
LCRA 345KV LINE
COUNTY LINE
SUBSTATION
CANYON
CAMP GARY
DUMP HILL
T-143 LYTTON SPRINGS PROJECT
REEDVILLE
LOCKHART
CALDWELL

LCRA T-254/255
AE LCRA 01 03
50%/50% on Easement

City of Austin
Austin's Municipally Owned Electric Utility

Town Lake Center 721 Barton Springs Road • Austin, Texas 78704-1194 • (512) 322-9600

June 10, 2003

Mr. Ross Phillips
Vice President and Co-Chief Operating Officer
LCRA Transmission Services Corporation
3700 Lake Austin Boulevard
Austin, Texas 78703

Re: The Fayette Power Project Transmission Agreement dated March 17, 1977

Dear Mr. Phillips:

Section 5.6 of the referenced Agreement between the City of Austin ("Austin Energy") and the Lower Colorado River Authority ("LCRA") provides that either party may elect to add a second 345 kV circuit to the transmission line structures from the Fayette Power Project ("Project") to Lytton Springs Substation ("Lytton Springs") including any necessary changes at Lytton Springs at its own cost. Pursuant to the Agreement, if LCRA elects to add the second circuit, (1) Austin Energy is to pay LCRA "one-half (1/2) of the cost of the initial circuit" excluding structures and right-of-way and take over and own the initial circuit but have no further interest in the second circuit, and (2) after the installation of the second circuit, LCRA will have no further interest in Holman Substation. The LCRA Transmission Services Corporation (Corporation) is the successor in interest to the LCRA in the above Agreement, effective January 1, 2002.

LCRA elected to build and own such second circuit as described above, which was completed and placed in service June 2000. Accordingly, within fifteen (15) days of the date of this letter agreement, Austin Energy shall pay the Corporation one-half (1/2) of the cost of the initial circuit from the Project to Lytton Springs excluding structures and right-of-way. Based on the foregoing, Austin Energy shall pay the Corporation the amount shown on the table attached as Exhibit A, which includes the cost of a recent transmission improvement project on the initial circuit. Effective upon the Corporation's receipt of Austin Energy's payment of the Exhibit A amount, Austin Energy shall take over and own 100% of the initial circuit, and the Corporation shall continue to own 100% of the second circuit. A list of the equipment to be transferred to Austin Energy is attached as Exhibit B. Each Party, and its affiliates, shall execute such releases or other documents necessary to effect the transfer of ownership set forth herein.

Each party shall maintain or provide maintenance for its respective circuit. Section 5.5.4 of the referenced Agreement is amended to provide as follows: "Maintenance: The

Corporation shall maintain the structures and right-of-way for the joint account of the parties."

Except to the extent amended hereby, to the extent any of the terms of this letter agreement are inconsistent with the terms of the referenced Agreement dated March 17, 1977, the terms of the referenced Agreement dated March 17, 1977 shall control.

If the foregoing is your understanding of the agreement between us, please execute two (2) originals of this letter agreement in the space provided below, and return one original to us.

Sincerely,

Austin Energy

By _____
Juan Garza
General Manager

LAW
DEPT

Agreed to and accepted as of the ___ day of June 2003.

LCRA Transmission Services Corporation

By _____
Name Ross Phillips
Title Chief Operating Officer

EXHIBIT A

To Letter Agreement dated June 10, 2003

Table Showing Austin Energy Payment Amount

Asset ID	Descr	Acq Date	FERC Code	Location	Cost
03023091	Conductor, Wire, Acsr #795 Mcm	1982-01-01	10180356)	TL117	1,334,886.95
03023092	Conductor, Acsr #9	1982-01-01	10180356)	TL117	131,174.37
03023093	Wire, Steel 3/8" 7 Str. Hs	1982-01-01	10180356)	TL117	26,224.66
	Transmission Improvement Project				$178,733.31
					$1,671,019.29

EXHIBIT B

To Letter Agreement dated June 10, 2003

Description of the FPP to Holman to Lytton Springs 345 kV Transmission Line

The FPP to Holman to Lytton Springs transmission line consists of two sections; FPP to Holman (approximately 10.98 miles) and Holman to Lytton Springs (approximately 50.20 miles), for a total length of approximately 61.18 miles.

The FPP to Holman section is a 345 kV transmission line section located within Fayette County. The line begins at the FPP 345 kV Yard #2 which is located four miles west of the City of Fayetteville at the Fayette Power Plant. The line continues southwest for 10.98 miles to the AE Holman Substation located near the intersection of FM 1965 and FM 3233.

The Holman to Lytton Springs section is a 345kV transmission line section located in Fayette, Bastrop and Caldwell Counties. The line proceeds west from Holman Substation and continues to the AE Lytton Springs Substation located on Barth Road one mile west of Mendoza in Caldwell County.

The following is a list of inventoried facilities to be transferred to Austin Energy:

FPP to Holman Section (Conductors, shield wire and related appurtenances)

ITEM	QUANTITY	DESCRIPTION
Conductor, 795 ACSR/SD "Condor"	173,292ft	Condor Self Damping Conductor
Conductor Splice	15	Splice for 795 ACSR/SD Condor
Tangent V-string Insulator Assembly	129	Drawing #T254-S-1
Angle V-string Insulator Assembly (2-10) Inside Angle	3	Drawing #T254-S-2
Deadend Insulator Assembly	6	Drawing #T254-S-6
Deadend Insulator Assembly	3	Drawing #T254-S-7
Substation Deadend Insulator Assembly	6	Drawing #T254-S-8
7str,#9 Alumoweld	57,764 ft	Aluminum Clad Steel Shield Wire
Shield Splice	5	Splice for 7str,#9 Alumoweld
Shield Tangent Assembly	43	Drawing #T254-S-9
Shield Deadend Assembly (Angle)	1	Drawing #T254-S-10
Shield Deadend Assembly (Station)	2	Drawing #T254-S-10

Note: All assemblies from FPP to Lytton Springs are labeled as T254, circuit number is designated T401.

Holman to Lytton Springs Section (Conductors, shield wire and related appurtenances)

ITEM	QUANTITY	DESCRIPTION
Conductor, 795 ACSR/SD "Condor"	795,720ft	Condor Self Damping Conductor
Conductor Splice	69	Splice for 795 ACSR/SD Condor
Tangent V-string Insulator Assembly	555	Drawing # T254-S-1
Angle V-string Insulator Assembly (2-10) Inside Angle	6	Drawing #T254-S-2
Angle V-string Insulator Assembly (2-10) Inside Angle	24	Drawing #T254-S-3
Angle V-string Insulator Assembly (10-25) Inside Angle	9	Drawing #T254-S-4
Angle V-string Insulator Assembly (10-25) Inside Angle	3	Drawing #T254-S-5
Substation Deadend Insulator Assembly	6	Drawing #T254-S-8
7str,#9 Alumoweld	265,240ft	Aluminum Clad Steel Shield Wire
Shield Splice	23	Splice for 7str,#9 Alumoweld
Shield Tangent Assembly	199	Drawing #T254-S-9
Shield Deadend Assembly (Station)	2	Drawing #T254-S-10

Note: All assemblies from FPP to Lytton Springs are labeled as T254, circuit is designated T254.

LCRA AND CITY OF AUSTIN
FPP ACID RAIN COMPLIANCE AGREEMENT

This agreement ("Agreement") is entered into by and between the Lower Colorado River Authority ("LCRA") and the City of Austin doing business as Austin Energy ("the City"), collectively referred to as the "Parties", for the purpose of enabling LCRA and the City to comply with the federal Acid Rain Program ("Program"), incorporated herein by reference, as amended from time to time and currently promulgated by the Environmental Protection Agency ("EPA") in 40 CFR Parts 72, 73, 75, 76, 77, and 78, as mandated by the federal Clean Air Act, regarding Fayette Power Project ("FPP") [aka "Sam Seymour Power Plant"] Units 1 and 2, coal-fired electric generating facilities; and as such Program may be implemented in whole or in part by the Texas Natural Resource Conservation Commission ("TNRCC"). This agreement is supplemental of and is subject to the FPP Participation Agreement, except as provided herein, and shall be deemed to be a "Project Agreement" as defined in 4.22 of the Participation Agreement. This agreement supersedes the previous "LCRA and City of Austin Acid Rain Compliance Agreement" effective January 8, 1996, and that agreement is hereby terminated by the parties in favor of this agreement.

1. Designated Representative and Alternate Designated Representative

LCRA and the City hereby agree that LCRA shall appoint the Designated Representative ("DR") and the Alternate Designated Representative ("ADR") for FPP Units 1 and 2, and their successors, subject to the written approval of the City, for all purposes under the Program, as amended from time to time by federal and state authorities except as otherwise stated herein.

The DR and the ADR are hereby delegated all necessary authority to perform their duties and responsibilities under the Program on behalf of the Parties. All certifications made in the EPA Certificate of Representation, attached as "Attachment A" and incorporated in full as if reproduced herein, and all other actions of the DR and ADR in matters related to the Program are hereby authorized by the Parties as binding. Any changes in the responsibilities of the DR or ADR required by federal or state statutes or regulations are hereby incorporated by reference as of the date such subsequent requirements become effective. The Parties agree to be bound by any lawful order concerning the Program issued to the DR, ADR, or LCRA by EPA, TNRCC, or a court having competent jurisdiction regarding FPP Units.

2. Monitoring and Reporting

LCRA, as Project Manager of FPP, shall be responsible for compliance with all monitoring and reporting requirements of the Program for FPP Units 1 and 2. LCRA shall be responsible for installation, maintenance, and operation of all necessary continuous emission monitoring ("CEM") equipment and associated computer and other ancillary facilities related to Program compliance, and all required periodic testing and maintenance requirements of the Program. In addition to all rights granted to the City under the Participation Agreement, the City shall have the right to inspect CEM equipment, data, reports, test analyses, and other information gathered or generated by LCRA related to Program compliance for FPP Units 1 and 2, together with the right to audit. Data generated by LCRA shall be the basis for matters of compliance with the Program and for the Provisions of this Agreement.

The DR or ADR shall be responsible for transferring FPP Units 1 and 2 Allowances required for each compliance year from Unit subaccounts into EPA compliance subaccounts on behalf of the Parties in accordance with each Party's SO2 emissions, as required by the Program, but not exceeding the ownership interests of each Party in Unit subaccounts for that compliance year, except as provided herein. Actual transfer into compliance subaccounts need not take place until sixty (60) days following the compliance year.

Each Party shall have the right to direct the DR or ADR to transfer Allowances owned by that Party at any time, except as provided herein. Allowances allocated for a certain year that are not required for compliance in that year shall be held by LCRA according to the ownership interests of each Party as "surplus Allowances." The City may elect to allow LCRA to keep the City's surplus Allowances in FPP Allowance accounts on the City's behalf or the City may direct the DR or ADR to transfer such Allowances to other Allowance accounts or offer the Allowances for sale or transfer or as otherwise agreed in writing by the parties. LCRA may direct the DR and ADR to maintain LCRA surplus Allowances in Unit accounts or transfer them to other Allowance accounts or according to other arrangements.

5. Allowance Data Management

For the first three quarters of the year, LCRA shall submit a report to the Parties of the estimated number of Allowances consumed by each Party the preceding quarter according to each Party's generation from FPP Units 1 and 2. This report will be due by the 25th day of the month subsequent to the end of the preceding quarter. For the fourth calendar quarter, these reports will be on a monthly basis and will also be due by the 25th day of the subsequent month. The report shall include an analysis of the rate of consumption of Allowances for the compliance year to date and make recommendations regarding shortfalls or overages in the estimates of anticipated Allowance requirements for the compliance year. The report shall also include monthly generation consumption amounts for each Party.

6. Annual Allowance Accounting

By January 30 of each year, LCRA shall provide a year-end report to the Parties containing operation, emissions, and compliance data for each Unit, including a statement of the total SO2 emissions, in tons, attributable to each Party, for the previous compliance year. By February 15 of each year, each Party must provide for transfer of Allowances in excess of Allowances held for that Party in the Unit accounts for the preceding compliance year if required for that Party's generation. By February 20 of each year, LCRA shall do all things reasonably practicable to provide all Allowances needed for compliance for the preceding year into the appropriate compliance subaccounts for FPP Units 1 and 2, provided the City does not have any Allowance shortfalls that have not been cured.

If there is a dispute concerning the annual allowance accounting between the Parties, the City may audit the annual allowance accounting and receive credits as appropriate.

7. Allowance Shortfalls

If at any time LCRA determines Unit accounts for FPP Unit 1 and/or Unit 2 for the current compliance year, accounting for transfers for that year's unit subaccounts authorized by the Parties, will not be adequate to meet compliance needs of the Parties, LCRA shall provide notice to the Parties of such shortfall and estimate the number of Allowances needed for compliance from each Party. Each Party shall be obligated to provide the DR or ADR Allowances sufficient to cover its share of actual SO2 emissions and cooperate with the DR or ADR in transferring those Allowances to the appropriate Compliance Subaccounts by February 20 of the year following the compliance year.

In order to provide the City with a source of available allowances for compliance purposes at the lowest cost, the LCRA, at its discretion, shall make available options on blocks of LCRA excess allowances at a price to be negotiated between the parties. The option on these allowances, if LCRA provides one, will be made available before November 1st of each compliance year. The City will inform LCRA whether it intends to purchase the offered option by November 30th of that compliance year.

If the City fails to procure sufficient Allowances for compliance to support its share of generation for a compliance year by February 20 following that compliance year, LCRA, after notifying the City and, at its discretion, may procure Allowances on the City's behalf or use surplus LCRA Allowances to cover the City's shortfall. If LCRA purchases Allowances on behalf of the City, LCRA shall seek to obtain the best possible price using good faith and due diligence. The City shall bear all direct costs reasonably incurred by LCRA to obtain such allowances in accordance with the Participation Agreement. If LCRA elects to supply LCRA surplus Allowances to make up for the City's shortfall, LCRA shall charge the City, and the City shall pay, the fair market price for such allowances on the day LCRA transfers such Allowances into the appropriate compliance subaccounts.

In the event a Party fails to provide sufficient Allowances for compliance with the Program for any compliance year or is otherwise responsible for any violations of Program requirements, that Party shall be responsible for all costs of such non-compliance, including loss of future Allowances allocated to Units 1 and 2. The non-compliant Party shall pay:

1) all fines and interest associated with such non-compliance;

2) actual costs reasonably incurred by the DR, ADR, the City, and LCRA, including general and administrative costs, in connection with penalties and other enforcement measures, procedures, and other requirements;

3) actual costs, expenses, and other penalties reasonably incurred by the DR, ADR, the City, and LCRA, including general and administrative costs, in connection with efforts to obtain Allowances required to satisfy Allowance shortfalls and Allowance penalties under the Program; and

4) actual costs reasonably incurred to prepare and implement an excess emission plan and any other penalty measures directly caused by the non-compliant Party's non-compliance in accordance with the Program requirements and this agreement, including actual costs reasonably incurred by the DR, ADR, the City, and LCRA, and including all general and administrative costs directly attributable to the non-compliance.

Nothing herein shall limit the rights of either Party to contest or appeal any finding or determination of an alleged violation of, or non-compliance with, the program or the imposition of any fine or penalty attributable to such alleged violation or non-compliance, to the full extent permitted by, and in accordance with, applicable law or regulation. The DR, ADR, the City, and LCRA shall reasonably cooperate with the Party pursuing such contest or appeal, who shall be solely responsible for all costs attributable thereto. If LCRA and the City are jointly pursuing a contest or appeal, the costs thereof shall be divided in accordance with their respective generation shares in FPP.

8. General Terms

This agreement shall be effective upon execution by both Parties and shall be binding on all successors and assigns of the Parties provided that neither party may transfer or assign its rights or obligations hereunder without the prior written consent of the other party, which shall not be unreasonably withheld.

This agreement shall continue to be in effect unless the parties agree to amend or terminate this Agreement. A party may terminate this Agreement by written notice to the other party given at least thirty (30) days in advance of termination.

The Parties hereto agree and intend that all disputes which may arise from, out of, under or respecting the terms and conditions of this agreement, or concerning the rights or obligations of the parties hereunder, or respecting any performance or failure of performance by either Party hereunder, shall be governed by the laws of the State of Texas and shall be brought in Travis County, Texas, except as provided under federal law.

The Parties agree that any dispute involving the construction or application of any of the terms, covenants, or conditions of this Agreement shall be resolved pursuant to the provisions of Sections 28 and 29 of the FPP Participation Agreement.

This Agreement sets forth the entire understanding and agreement of the Parties relating to the subject matter hereof. Any alteration, modification, or waiver of this agreement, or any portion thereof, must be agreed upon in writing, in advance, by both Parties. If any provision of this agreement is held by a governmental agency or court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

A Party's failure to enforce any provision or provisions of this agreement shall not in any way be construed as a waiver of any such provisions or provisions in the future, nor prevent that Party from enforcing each and every other provision of this agreement at such time or an other time. All rights and remedies under this Agreement are cumulative and shall not be deemed to be exclusive of any rights or remedies provided by law, or in the FPP Participation Agreement.

This Agreement is effective this 29th day of Nov., 2000.

Lower Colorado River Authority

ATTEST: Thomas G. Mason

Title: General Counsel

Joe Beal, General Manager

Date: Nov. 9, 2000

LCRA LEGAL

City of Austin d/b/a Austin Energy

ATTEST:

Title: VP Legal Services

Charles B. Manning, General Manager

Date: 11/28/00

LAW DEPT

COAL PURCHASE AND SALE AGREEMENT
BETWEEN AUSTIN ENERGY AND
THE LOWER COLORADO RIVER AUTHORITY

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Austin, a Texas home-rule municipal corporation acting through its Electric Utility Department ("Austin Energy") and the Lower Colorado River Authority, a conservation and reclamation district of the State of Texas ("LCRA")

RECITALS

LCRA and Austin Energy jointly own the Common Project Site Facilities, the Generating Unit Common Facilities, and generating units 1 and 2 at the Fayette Power Project ("FPP"), and LCRA also is the sole owner of FPP generating unit 3; and

As provided in the Fayette Power Project Participation Agreement (the "Participation Agreement"), LCRA, as Project Manager of FPP, is responsible to procure fuel supplies for FPP; and

From time to time, certain supplies of coal may become available for purchase on an expedited basis which does not allow for traditional FPP coal procurement procedures, but which LCRA may lawfully purchase in accordance with the laws, rules and regulations applicable to LCRA; and

From time to time, LCRA or Austin Energy may have excess inventories of coal which it is willing to sell to the other; and

The parties desire to create a means whereby the participants can purchase and sell coal to each other for use at FPP;

NOW, THEREFORE in consideration of the premises, and the mutual covenants and agreements set forth below, and other good and valuable consideration, Austin Energy and LCRA agree as follows:

AGREEMENT

1. Project Agreement

This Agreement shall be deemed to be a Project Agreement under section 35 of the Fayette Power Project Participation Agreement (the "Participation Agreement") between the parties. Unless otherwise specified, the terms used in this Agreement shall be defined as provided in the Participation Agreement.

2. Term.

This Agreement shall be effective on the first day of the month following approval by the governing bodies of both Austin Energy and LCRA (the "Effective Date"), and shall remain in force throughout the remaining term of the Participation Agreement until terminated by either participant upon sixty days' prior written notice to the other participant.

3. **Opportunity Purchases.**

3.1 If LCRA becomes aware of an opportunity to purchase a supply of coal on an expedited basis which does not allow for traditional FPP coal procurement procedures, but which LCRA may lawfully purchase in accordance with the laws, rules and regulations applicable to LCRA (an "Opportunity Purchase"), which meets the minimum quality specifications for Units 1 and 2 as set forth in Appendix A, attached hereto and incorporated herein, LCRA shall notify Austin Energy's fuel staff. Such notice may initially be oral, but shall be confirmed in writing by fax, e-mail, U.S. mail or hand delivery within one business day. The notice shall (to the extent such information is available) state the total quantity available, the purchase price, the source, heating value, and probable date(s) of delivery, and a reasonable time period (considering the requirements of the seller) in which Austin Energy must respond. If Austin Energy becomes aware of a coal purchase opportunity in which it may be interested in participating, it may notify the Project Manager of such opportunity and request that the Project Manager pursue such potential Opportunity Purchase on its behalf.

3.2 Austin Energy shall have the right to participate in all Opportunity Purchases up to its Generation Entitlement Share in the Project. Austin Energy may request to purchase a greater proportion of the Opportunity Purchase than its Generation Entitlement Share, but LCRA may deny such request in its sole discretion. LCRA shall have the right to participate in all potential Opportunity Purchases identified by Austin Energy up to LCRA's Generation Entitlement Share in the Project. LCRA may request to purchase a greater proportion of the Opportunity Purchase than its Generation Entitlement Share, but AE may deny such request in its sole discretion.

3.3 Within the period of time specified in LCRA's initial notice of availability, or such extensions thereof as LCRA may reasonably grant, Austin Energy shall respond to LCRA stating whether it wishes to participate in the Opportunity Purchase, and what amount of coal it wishes to purchase. Austin Energy may request additional information concerning the Opportunity Purchase, which LCRA shall not unreasonably deny or delay in providing. Austin Energy's response may be oral, but shall be confirmed in writing by fax, e-mail, U.S. mail or hand delivery within one business day. A failure by Austin Energy to timely respond to LCRA's notice of availability shall be deemed to be a decision not to participate in the Opportunity Purchase.

3.4 Upon receipt of notice of participation from Austin Energy, LCRA, as Project Manager, shall purchase the applicable quantity of coal on behalf of Austin Energy, and Austin Energy shall pay for such coal as provided in section 5.1, below. To the extent permitted by the Constitution and laws of the State of Texas, Austin Energy shall indemnify and hold LCRA harmless from any liability that LCRA may incur by procuring Opportunity Purchase coal on Austin Energy's behalf with respect to third party claims for death, bodily injury, or property damage.

3.5 Opportunity Purchase Coal shall be dumped in accordance with the FPP Coal Train Cross Dumping Program.

4. Inventory Transfers.

4.1 If at any time, one participant has a surplus of coal in its inventory, and is willing to sell all or a portion of such surplus to the other participant, it shall notify the other participant. The other participant shall respond in a timely manner, stating whether, and how much, coal it is interested in purchasing. Nothing herein shall be deemed to obligate a participant to ever offer its surplus inventory for sale to the other participant, or to create any right on the part of one participant to any portion of the other participant's coal inventory.

4.2 Coal that is transferred between the inventories of the participants shall be sold and purchased at such price and on such terms as the participants may mutually agree upon.

4.3 The Project Manager shall prepare a memorandum of sale that states the quantity, price, heating value, and effective date of transfer. Both parties shall execute the memorandum of sale.

4.4 Payment for transfers of surplus inventory shall be as provided in section 5.2.

5. Invoicing and Payment.

5.1 Austin Energy shall remit payment to the Project Manager for that volume of Opportunity Purchase coal it agreed to purchase in the same manner as it makes payments for fuel purchases under other coal contracts.

5.2 In the event of a transfer of surplus inventory between the participants, the Project Manager shall adjust the next monthly coal billing to the Participants by an amount equal to the total sales cost of the coal as reflected on the signed memorandum of sale to effect payment for the exchange between the Participants, and the Project Manager shall revise the respective coal inventories of the buyer and the seller accordingly.

6. Notices

Any notice required to be in writing may be delivered in person, via facsimile transmission, or by mail, and shall be effective upon receipt. Notices shall be sufficient if made or addressed to the person and address noted below respectively for Austin Energy and LCRA. Each party may change the name of the person to whom a notice should be directed and the address for such notice by written notice made in accordance with this section.

LCRA
Manager, Fuel and Risk Management
3701 Lake Austin Blvd.
P. O. Box 220
Austin, Texas 78767-0220
Telephone: 473-4025
Fax: 473-4026

AUSTIN ENERGY
Manager, Fuels and Marketing Services
721 Barton Springs Road

Austin, Texas 78704
Telephone 322-6295
Fax: 322-6083

7. Assignment

A party may not assign or otherwise transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other party, except that a party may without such prior consent assign and transfer this Agreement to an entity which acquires its interest in the Fayette Power Project substantially as an entirety.

8. Miscellaneous

8.1 This Agreement constitutes the entire understanding of the parties relating to the subject matter hereof; and there shall be no modification or waiver hereof except by writing, signed by the party asserted to be bound thereby. This Agreement shall be binding upon and inure to the benefit of the parties, and their respective permitted successors and assigns, and to no one else. The parties intend that there be no third party beneficiaries to this Agreement.

8.2 No failure or delay on the part of a party to exercise any right or remedy shall operate as a waiver of such right or remedy, nor shall any single or partial exercise of any right or remedy preclude any further or other exercise of any such right or remedy. All rights and remedies under this Agreement are cumulative and shall not be deemed exclusive of any other rights or remedies provided by law.

8.3 If any section or part of this Agreement is declared invalid by any Court of competent jurisdiction, such decree shall not affect the remainder of this Agreement, and such shall remain in full force and effect with the deletion of the part declared invalid.

8.4 This Agreement is made under the laws of the State of Texas, and all disputes which may arise from, out of, under or respecting the terms and conditions of this Agreement, shall be governed by the laws of the State of Texas, without regard to conflicts of laws principles. Venue shall be proper and shall lie exclusively in Travis County, Texas.

8.5 Each party hereto represents and warrants to the other that the person executing this Agreement on its behalf is authorized to do so, and upon approval by its governing body, this Agreement will be a valid and binding obligation of such party.

IN WITNESS WHEREOF, the undersigned have executed this Agreement by their duly authorized representatives as of the date first above written.

Approved as to form:

General Counsel

LOWER COLORADO RIVER AUTHORITY

By: _____

Name: Dudley C. Piland, Jr.

Title: Manager of GenCo

Date: March 3, 1999

Approved as to form:

City Attorney

THE CITY OF AUSTIN

By:

Name: Andy Ramirez

Title: Vice President of Power Production

Date: 2/12/99

CONFIDENTIALITY AGREEMENT
Electric Service

This agreement is entered into by and between the Lower Colorado River Authority ("LCRA") and the City of Austin acting by and through its Electric Utility Department ("Austin Energy") as Parties, to establish procedures for sharing certain information that may be exempt from disclosure under the Texas Public Information Act, Tex. Gov. Code Ch. 552, (the "Act") including proprietary, confidential, or privileged information and trade secrets regarding the generation, transmission and distribution of electricity, ("Protected Information"). Nothing herein shall limit or waive one party's access to information of the other party to which it is entitled under the Fayette Power Project Participation Agreement, or other agreement between the Parties.

Protected Information shared by the Party who owns or creates Protected Information (the "Originating Party") with the other Party (the "Custodial Party"), shall be treated as confidential and privileged by the Custodial Party and not as official records of the Custodial Party. Protected Information may be stored or transferred in any media, including electronically, but shall not include information which is in the public domain, or which was not acquired by the Custodial Party subject to confidentiality covenants. Where feasible, Protected Information shall be marked as "CONFIDENTIAL." It is understood and agreed that Protected Information shared by the Parties under this agreement is provided in furtherance of the statutorily and constitutionally authorized activities of both LCRA and Austin Energy in regards to providing electric utility services, and use of Protected Information is limited to such activities.

Protected Information shared between the Parties is for the limited purposes of this agreement and in furtherance of the Parties' authorized purposes; and release to a Party of such information for these limited purposes is not to be construed as any waiver of any exceptions to the Act's disclosure requirements that may apply to Protected Information. The Custodial Party agrees that if it receives any request for Protected Information it shall immediately, but in no more than three (3) calendar days, notify and provide the Originating Party a copy of the request. If requested by the Originating Party, the Custodial Party shall assert the appropriate exceptions to disclosure under the Act, or otherwise endeavor to provide the Originating Party with the opportunity to intervene in the proceeding to prevent disclosure of the Protected Information in

accordance with applicable law. The Originating Party shall be primarily responsible for developing arguments asserting exceptions to disclosure of its Protected Information. The Custodial Party shall reasonably cooperate with the Originating Party, and shall be responsible for asserting its own confidentiality interests, if any, in the Protected Information.

In the event the Custodial Party is directed or ordered by the Texas Attorney General or a court of competent jurisdiction to release Protected Information, the Custodial Party shall notify the Originating Party within three (3) business days of such direction or order. The Parties shall reasonably cooperate in appealing such direction or order until all appeals and other legal remedies to protect such Protected Information are exhausted, should either Party determine to pursue such appeals and/or other legal remedies. In pursuing such appeals or other legal remedies, each Party shall bear the responsibility of preparing pleadings, arguments, and other documentation and support necessary for its interests in the confidentiality of Protected Information.

In consideration of having access to each other's Protected Information, the Parties hereby agree to the following:

(A) The Custodial Party shall treat Protected Information received from the Originating Party with the same degree of care and confidentiality as it treats its own Protected Information, but not less than a reasonable degree of care.

(B) All data, information, plans, analysis, recommendations, or other documentation of any kind or nature which reproduces Protected Information, or is directly derived from Protected Information and from which the original Protected Information can be readily replicated, shall be considered and treated as Protected Information under the terms of this agreement and should be clearly marked, regardless of media, "CONFIDENTIAL" on every page of every document or as otherwise appropriate for the media.

(C) After use of Protected Information, all copies of Protected Information shall be returned to the Originating Party upon request or immediately destroyed and shall not be considered the records of the Custodial Party.

(D) Protected Information shall not be divulged to any agent, representative, consultant, contractor, or any other third party, without the written consent of the originating Party except as provided herein.

(E) Each of the Parties' officers, employees, agents, representatives, consultants, contractors, or any third party (authorized by the Parties to receive Protected Information) who receives Protected Information shall execute the Confidentiality Acknowledgment, attached as Attachment A and shall thereby be bound by the terms of this agreement.

(F) Protected Information shall only be revealed, communicated, and used as absolutely necessary for the purposes of this agreement, and only to the extent necessary to fulfill the purposes of this agreement, and according to these terms.

This agreement constitutes the entire agreement and understanding of the parties regarding the subject of this agreement and shall be binding and inure to the benefit of the successors and assigns of the Parties; provided, however, that a Party may not assign all or any part of this agreement without the written consent of the other Party.

Any substantial alteration, modification, or waiver of this agreement, or any portion thereof, must be agreed upon in writing by both parties. If any provision of this agreement is held by a governmental agency or court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

The agreement is hereby executed by authorized representatives of the Parties:

LOWER COLORADO RIVER AUTHORITY

By: _____
Name: Mark Rose
Title: General Manager
Date: 5/15/98

CITY OF AUSTIN

By: _____
Name: Hilton B. Lee
Title: General Manager, Austin Energy
Date: 5/5/98

LAW DEPT

LCRA MW LEGAL

ATTACHMENT A
CONFIDENTIALITY ACKNOWLEDGMENT

The undersigned hereby agrees to abide by the terms and requirements of the CONFIDENTIALITY AGREEMENT -- Electric Service executed on 13th day of May, 1998 by the Lower Colorado River Authority and the City of Austin.

Signature: _____

Printed Name: _____

Title: _____

Employer: _____

Address: _____

Date: _____

AMENDMENT TO FAYETTE POWER PROJECT PARTICIPATION AGREEMENT

Whereas, the City of Austin, Texas ("Austin"), a municipal corporation chartered under the Constitution and the laws of the State of Texas, and the Lower Colorado River Authority ("Authority"), a river authority incorporated under the laws of the State of Texas, previously have entered into the Fayette Power Project Participation Agreement dated the 19th day of September 1974 and as since amended (Participation Agreement), and

Whereas, Austin and the Authority desire to amend certain provisions of the Participation Agreement,

Now, therefore, in consideration of the mutual promises contained herein, Austin and the Authority hereby amend the Participation Agreement as follows:

1. Exhibit A entitled "Common Station Facilities" is hereby deleted Section 4.7 - "Common Station Facilities" is hereby deleted and in its stead is inserted the following as a new section 4.7:

> 4.7 - COMMON PROJECT SITE FACILITIES: Those components of the Project that are used in common by all Generating Units at the Plant Site. The question whether any real property or improvement thereto, or any personal property, machinery or equipment is a Common Project Site Facility shall be determined with reference to the operation, rather than the construction of the Generating Units. Without limiting the generality of the foregoing, the Plant Site, the cooling lake (or lakes), dam and spillway, and the river pumping

plant and pipeline, together with any additions or enlargements to the above, shall always be considered to be Common Project Site Facilities.

2. Section 4.8 - "CONSTRUCTION WORK" is hereby amended to read as follows:

4.8 - CONSTRUCTION WORK: All environmental impact studies, site and evaluation, acquisition of the Plant Site, engineering, design, construction, contract preparation, supervision, expediting, inspection, accounting, testing and start-up for Generating Units, Generating Units Common Facilities and Common Project Site Facilities up to the time of firm operation and the decommissioning, dismantling, removal and final disposition of all components of the Project, including, but not by way of limitation, all related engineering, design, contract preparations, purchasing, supervision, expediting, inspection, accounting, testing, management and protection.

3. Section 4.14 - "Generating Unit" is hereby amended to to read as follows:

4.14 - GENERATING UNIT: An electric generating unit, including the components thereof (steam supply system, turbine, and generator including step-up transformers and other associated equipment), located on the Plant Site. A Generating Unit does not include Common Project Site Facilities or Generating Units Common Facilities but does include that portion of the real estate encompassed within the boundaries of the Plant Site on which the Generating Unit sits. In addition, a Generating Unit includes all associated property and equipment used solely in conjunction with that electric generating unit.

4. There shall be inserted a new Section 4.15 to read as follows:

4.15 - GENERATING UNITS COMMON FACILITIES: Those components of the Project that are for the common use of two or more, but less than all Generating Units consisting of, but not limited to, for example, railroad loops, coal dumpers, coal handling facilities, ash handling facilities, ash disposal facilities, ash ponds, coal piles, switchyards and storage buildings and the land associated therewith.

Ownership of Generating Units Common Facilities shall be in the same proportion as ownership of the Generating Units to which the components are common.

5. Sections 4.15, 4.16, 4.17, 4.18, 4.19 will be renumbered and Section 4.20 will be deleted in its entirety. The new Section Numbers and their headings are as follows:

4.16 - MANAGEMENT COMMITTEE
4.17 - MINIMUM NET GENERATION
4.18 - NET EFFECTIVE GENERATING CAPABILITY
4.19 - NET ENERGY GENERATION
4.20 - PARTICIPANT

6. Section 5.1 is hereby deleted and the following paragraph 5.1 is inserted in its stead. In addition, new paragraphs 5.2, 5.3 and 5.4 are added, as follows:

5.1 - Regardless of the Participants' respective expenditures for the construction and operation of the Plant Site and the Common Project Site Facilities, each Participant shall own an undivided fifty percent (50%) interest in the Plant Site and the Common Project Site Facilities as a tenant in common with the other Participant. Except as otherwise provided in this Section 5, the Participants shall not reimburse each other with respect to construction expenditures for Common Project Site Facilities.

5.2 - Either Participant may propose Capital Additions and Capital Betterments to the Common Project Site Facilities not associated with the construction of any particular Generating Unit. Upon approval of the proposed project and its construction budget by the Management Committee, the Project Manager shall undertake the construction of the proposed Capital Additions or Capital Betterments to the Common Project Site Facilities in accordance with the general procedures established for construction pursuant to this Agreement. In the absence of an agreement between themselves to the contrary, the Participants shall pay for the Capital Betterments and Capital Additions in the same proportion that each Participant's aggregate Generation Entitlement Share in each Generating Unit

then in commercial operation bears to the sum of the nameplate ratings of each such Generating Unit.

5.3 - Either Participant may propose Capital Additions and Capital Betterments to the Common Project Site Facilities which, though of use to the operation or construction of all Generating Units, are required by the construction or operation of one or more, but less than all generating units in existence or under construction. Upon approval of the proposed project and its construction budget by the Management Committee, the Project Manager shall undertake the construction of the proposed Capital Additions or Capital Betterments to the Common Project Site Facilities in accordance with the general procedures established for construction pursuant to this Agreement. In the absence of an agreement between themselves to the contrary, the Participants shall pay for the project in the same proportion that each Participant's aggregate Generation Entitlement Share in each Generating Unit whose operation or construction requires the construction of the Capital Additions or Capital Betterments bears to the sum of the nameplate ratings of all such Generation Units.

5.4 - Notwithstanding any other provision of this Agreement to the contrary, the Project cooling reservoirs (Cedar Creek Reservoir and the proposed Baylor Creek Reservoir) shall always be characterized as Common Project Site Facilities. If and when the Management Committee decides that the construction of an Additional Generating Unit will require the construction and use of Baylor Creek Reservoir for proper cooling of the existing or proposed Generating Units, the construction of Baylor Creek Reservoir and any associated water use facilities shall be paid for by the Participants in proportion to their respective ownership interests in the Additional Generating Unit which occasioned the construction of Baylor Creek Reservoir. Should any subsequent Additional Generating Units cooled from Baylor Creek Reservoir be built, the Participants shall, within 90 days after the date of commercial operation of any such Additional Generating Unit, make such payments among themselves as may be required so that each Participant's investment (including reimbursements here required) in the Baylor Creek Reservoir and associated water use facilities bears the same proportion to the total of all construction costs for such reservoir and facilities as

the sum of each Participant's Generation Entitlement Share in each Generating Unit cooled from Baylor Creek Reservoir bears to the sum of the nameplate ratings of all Generating Units cooled from Baylor Creek Reservoir.

7. Section 6 is hereby amended to read as follows:

6. ADDITION OF GENERATING UNITS:

6.1 - A Participant may propose the construction of an Additional Generating Unit by written notice to the other Participant setting forth:

6.1.1 A general description of the proposed Additional Generating Unit and of proposed Capital Additions and Capital Betterments to the existing Common Project Site Facilities and Generating Units Common Facilities, describing the design features of the Unit, the designed gross and net capacity, and the proposed fuel and fuel source, identifying all Common Project Site Facilities, Generating Units Common Facilities and all associated facilities of existing Generating Units proposed for use in connection with the proposed Additional Generating Unit or with respect to which Capital Additions or Capital Betterments are proposed.

6.1.2 A plat of the Plant Site depicting the location of the proposed Additional Generating Unit.

6.1.3 An estimate of the respective costs of the proposed Additional Generating Unit, Capital Additions and Capital Betterments, all in reasonable detail.

6.2 - Within forty-five (45) days after service of the written notice given pursuant to Section 6.1 hereof, the Project Manager shall furnish to each Participant a statement, in reasonable detail, of all actual costs (without depreciation) of all Construction Work attributable to the Generating Units Common Facilities and to facilities associated with existing Generating Units identified in Section 6.1.1 hereof, as shown on the books of such Project Manager.

6.3 - The non-proposing Participant may elect to participate in the proposed Additional Generating Unit, Capital Additions and Capital Betterments up to a maximum 50% ownership share by means of a written election served upon the proposing Participant within three (3) months after service of the written notice given pursuant to Section 6.1 hereof. Failure of a Participant to exercise said election as provided in this Section 6.3 within the time period specified shall be conclusively deemed to be an election not to participate.

6.4 - Should the non-proposing Participant elect to participate in the proposed Additional Generating Unit, the proposed Additional Generating Unit, Capital Additions and Capital Betterments shall be constructed, operated and maintained in accordance with the provisions of this Participation Agreement and the Project Agreements, and shall be owned by the Participants (subject to adjustments as provided herein) in the proportion established in the non-proposing Participant's notice of election given pursuant to paragraph 6.3 above, and shall become a part of the Project.

6.5 - Should the non-proposing Participant elect not to participate in the proposed Additional Generating Unit, the proposing Participant shall construct, and shall pay all costs of Construction Work, and the Project Manager shall operate and maintain the Additional Generating Unit, Capital Additions and Capital Betterments proposed pursuant to Section 6.1 hereof. The Additional Generating Unit shall be owned by the proposing Participant, and shall become part of the Project.

6.6 - Within two months after the proposing Participant has determined the actual costs of the Capital Additions and Capital Betterments to the previously existing Common Project Site Facilities, Generating Units Common Facilities, and facilities associated with previously existing Generating Units undertaken in conjunction with the Additional Generating Unit, the Project Manager shall furnish to each Participant a statement showing the following:

6.6.1 each item of all actual costs of all Generating Units Common Facilities incurred to

date. This list shall include each item of all actual costs of Common Project Site Facilities and facilities previously associated solely with an individual Generating Unit which, with the operation of the Additional Generating Unit, have become items of Generating Units Common Facilities.

6.6.2 the total of all expenditures for Generating Units Common Facilities identified above incurred by each Participant to date;

6.6.3 a proration among the Participants of the costs of each item of Generating Units Common Facilities identified above according to their respective ownership interests in the Generating Units to which the items of Generating Units Common Facilities are common;

6.6.4 a comparison of each Participant's expenditures for Generating Units Common Facilities identified in 6.6.2 above with the sum of each Participant's prorated costs identified in 6.6.3 above.

If the Participants' actual expenditures and prorated costs of Generating Units Common Facilities are not equal, the Participant whose expenditures are less than its prorated cost shall, within 30 days of receipt of the information called for in this paragraph, pay to the other Participant the difference between its expenditures and its prorated costs. For the purpose of any future calculations to be made with reference to the Participants' expenditures for Generating Units Common Faciltiies, the Participants' actual expenditures shall be debited or credited for the amount of any payment made pursuant to this paragraph.

8. Section 9.4 is hereby amended to read as follows:

9.4 - All matters coming under the authority of the Management Committee shall be decided by majority vote of the members of the Committee with each member having equal voting rights; provided, however, that representatives of a Participant with no ownership interest in a particular Generating Unit shall not vote on matters relating solely to the construction or

operation of that Generating Unit, and not materially affecting other Generating Units. All decisions reached by the Management Committee on matters concerning the Project and properly before the Management Committee for decision pursuant to the terms of this Participation Agreement or the Project Agreements shall be binding upon all Participants.

9. Section 10.2 is hereby amended to read as follows:

10.2 - Austin hereby appoints the Project Manager as its agent with respect to those Generating Units and Generating Units Common Facilities in which Austin has an ownership interest and for Common Project Site Facilities. The Project Manager shall undertake as Austin's agent for the Generating Units and Generating Units Common Facilities in which Austin has an ownership interest and for Common Project Site Facilities and as principal on its own behalf, the responsibility for the performance and completion of Construction Work and Station Work required by this Participation Agreement.

10. A new Section 10.4 is added, as follows:

10.4 - The books of account and the financial records of the Project Manager and the affairs of the Project as a whole shall be kept and conducted on a fiscal year ending June 30 of each year.

11. Section 12.1.6 is hereby amended to read as follows:

> 12.1.6 All costs of Construction Insurance, all costs of any loss, damage or liability arising out of or caused by Construction Work which are not satisfied under the coverage of Construction Insurance, and the expenses incurred in settlement of injury and damage claims, including the costs of labor and related supplies and expenses incurred in injury and damage activities (all as referred to in FPC Account 925), because of any claim arising out of or attributable to the past or future performance or nonperformance of Construction Work, including but not limited to any claim resulting from death or injury to persons or damage to property.

12. Section 14.2 is hereby amended to read as follows:

14.2 - The expenses described in paragraph 14.1.1 above relating to Common Project Site Facilities shall be borne by the Participants in the same proportion as the sum of each Participant's Generation Entitlement Share in each Generating Unit bears to the sum of the nameplate rated capacity of all Generating Units. Those expenses associated with the operation of the Generating Units and the Generating Units Common Facilities shall be apportioned to each of the Generating Units and allocated among the Participants according to their respective ownership interests in the Generating Unit to which the cost is attributed, to allow Austin and LCRA, as near as practical and in keeping with sound utility practices, to pay for their proper portion of such costs and expenses.

13. Section 14 3 is hereby amended to read as follows:

14.3 - Expenses described in Section 14.1.2 hereof shall be charged directly to each Generating Unit, Generating Units Common Facilities or the Common Project Site Facilities, as the case may be. The expenses so charged directly to the Common Project Site Facilities shall be allocated to each Generating Unit in the proportion that each Unit's nameplate rated capacity bears to the sum of all Generating Units nameplate rated capacities, so that, in keeping with sound utility practices, the Participants may pay for their proper proportion of such costs and expenses.

14. Sections 16.3 and 16.4 are amended to read as follows:

16.3 - The Management Committee shall establish a minimum amount for the Operating Account so that the Project Manager will have Operating Funds to pay for expenditures or obligations incurred by the Project Manager pursuant to this Participation Agreement. Such minimum amount may be revised by the Management Committee at any time. The original minimum amount and any increase therein shall be allocated among the Participants as described in Section 14.2 and shall be due and payable within fifteen (15) business days following notification of the establishment of the Operating Account or the date on which any increase in such minimum amount shall become effective. In the event the Management Committee authorizes a decrease

in such minimum amount, then each Participant shall receive a credit which shall be equal to its proportionate share of the minimum amount.

16.4 - Each Participant shall advance Operating Funds to the Operating Account on the basis of bills it receives from the Project Manager which reflect such Participant's share of costs and expenses determined in accordance with this Participation Agreement as follows:

16.4.1 Costs incurred in the acquisition of fuel (excluding separately billed transportation charges) and Project Insurance shall be billed in a Request for Funds. Such a Request shall be based on invoices or statements from vendors and shall be due prior to the date of payment on invoices.

16.4.2 The Management Committee shall set an amount to be advanced weekly to cover invoices for fuel transportation charges. The advance for the first week of the month shall include an adjustment for the difference between amounts advanced and actual transportation costs incurred in the prior month.

16.4.3 All other costs and expenses incurred in the operation and maintenance of the Common Project Site Facilities, Generating Units Common Facilities and Generating Units, including costs recorded in FERC accounts 107 and 108, shall be billed to the Participants after the close of the books for the month.

16.4.4 To the extent that the minimum amount described in Section 16.3 will not cover monthly costs and expenses billed pursuant to Section 16.4.3, the Project Manager may request payment of additional funds based on actual invoices or estimated amounts. Such an advance shall be due within five business days from the date of submittal of the request and shall be credited to the Participants when calculating costs and expenses billed pursuant to Section 16.4.3.

15. Section 18.1 is hereby amended to read as follows:

18.1 - The Project Manager shall solicit and obtain bids and contract proposals for a proposed supply of fuel for Generating Units in which both LCRA and Austin shall have an interest and shall submit such bids and proposals to the Management Committee for review and approval. With respect to additional Generating Units, such proposed fuel supply arrangements shall be consistent with the fuel and fuel source identified in the notice required by Section 6.1.1. Any fuel supply contracts approved by the Management Committee shall be then submitted to the Participants. Both Participants shall execute fuel contracts pertaining to Generating Units in which LCRA and Austin have a joint participation.

16. Section 19.1 is hereby amended to read as follows:

19.1 - The cost of purchasing a reserve supply of fuel shall be apportioned to the Participants to allow Austin and LCRA, as near as practical and in keeping with sound utility practices, to pay for their proper proportion of such costs and expenses.

17. Section 19.2 is hereby amended to read as follows:

19.2 - In the event of more than one coal-fired Generating Unit, it shall be the responsibility of the Project Manager to assure that the coal moving to the bunkers of each coal-fired Unit shall be weighed and sampled separately. The cost of coal burned in each respective coal-fired unit in each calendar month as reflected by invoices submitted by the fuel suppliers and related costs chargeable to FPC Account 501 shall be in accord with the quantity of coal weighed and sampled during the movement into the bunkers of the respective Units.

18. Section 24 is hereby amended to read as follows:

24.1 - If a Generating Unit or Generating Units Common Facilities should be damaged or destroyed to the extent that the estimated cost of repairs, replacement or reconstruction is not more than one hundred percent (100%) of the aggregate amount of the proceeds from property damage insurance carried and covering the cost of the repairs, replacement or reconstruction of such Generating Unit or Generating Units Common Facilities, the Participants, unless otherwise unanimously

agreed, shall repair, replace or reconstruct such Generating Unit or Generating Units Common Facilities to substantially the same general character or use as the original. The Participants shall share the cost of such repairs, replacements or reconstruction in proportion to their respective ownership interest in the Generating Unit or Generating Units Common Facilities so destroyed.

24.2 - If a Generating or Generating Units Common Facilities should be damaged or destroyed to the extent that the estimated cost of repairs, replacement or reconstruction is more than one hundred percent (100%) of the aggregate amount of the proceeds from property damage insurance carried and covering the cost of the repairs, replacement or reconstruction of such Generating Unit or Generating Units Common Facilities, the Participants shall, upon agreement, repair, replace or reconstruct such Generating Unit or Generating Units Common Facilities to substantially the same general character or use as the original; provided, however, that should the Participants not agree to repair, replace or reconstruct such Generating Unit or Generating Units Common Facilities, then any Participant who does not agree to repair, replace or reconstruct shall sell its interest in such Generating Unit or Generating Units Common Facilities to the Participant desiring to repair, replace or reconstruct such Generating Unit or Generating Units Common Facilities for a price equal to the selling Participant's proportionate interest in the salvage value of such Generating Unit plus such Participiant's proportionate cost, less depreciation at the maximum straight line rates then applicable to like properties under the Federal income tax law, in the interest in the Generating Units Common Facilities so sold.

24.3 - If any of the Common Project Site Facilities should be destroyed, the Participants shall, unless otherwise agreed, repair or reconstruct same to substantially the same character or use as the original. The Participants shall share the costs of such repair or reconstruction in proportion to the ownership of the Project as set forth in Section 5 above.

19. Section 26.1 is amended to read as follows:

26.1 - Each Participant shall protect, indemnify, and hold the other Participant, and its directors,

officers and employees, free and harmless from Construction Work Liability arising out of construction of an Additional Generating Unit in which the other Participant has no ownership interest. Except as provided in the previous sentence, Participants shall have no remedies against the other Participant for tortious conduct arising out of the ownership of the Project, or any portion thereof, or out of Construction Work or Station Work except when the claim results from Willful Action.

20. Austin and the Authority expressly agree that any term, condition, covenant or agreement set forth in this 1984 amendment shall control over any term, condition or covenant in the Participation Agreement that may be in conflict.

IN WITNESS WHEREOF, the parties hereto have caused this amendment to the Participation Agreement to be executed as of the 30th day of March, 1984.

CITY OF AUSTIN

Attest:

James E. Aldridge
City Clerk

By: Jorge Carrasco
Jorge Carrasco
Acting City Manager

LOWER COLORADO RIVER AUTHORITY

Attest:

Asst Secretary

By: Elof Soderberg
Elof Soderberg
General Manager

THE FAYETTE POWER PROJECT

PARTICIPATION AGREEMENT

BETWEEN

THE CITY OF AUSTIN

&

LOWER COLORADO RIVER AUTHORITY

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THE FAYETTE POWER PROJECT

PARTICIPATION AGREEMENT

1. PARTIES: The parties to this agreement are: CITY OF AUSTIN, hereinafter referred to as "Austin," and LOWER COLORADO RIVER AUTHORITY, hereinafter referred to as "LCRA."

2. RECITALS: The parties, having completed a feasibility study, desire to enter into this Participation Agreement providing for the construction, operation and maintenance of jointly owned and operated electric generation facilities to be known as the Fayette Power Project, hereinafter referred to as the Project.

3. AGREEMENT: In consideration of the mutual covenants herein, the parties agree as follows:

4. DEFINITIONS: The following terms, when used herein, shall have the meanings specified:

4.1 ADDITIONAL GENERATING UNIT: The second or any subsequent Generating Unit to be located on the Plant Site.

4.2 CAPACITY: Electrical rating expressed in megawatts (mw) or megavolt-amperes (mva) and based on manufacturer's nameplate electrical ratings where available.

4.3 CAPITAL ADDITIONS: Any Units of Property, land or interests in land which are added to the Project and which are not in substitution for any existing Units of Property, land or interests in land constituting a part of the Project, and which in accordance with accounting practice should be capitalized.

4.4 CAPITAL BETTERMENTS: Any improvements to the Project, including any enlargement or improvement of any Units of Property constituting a part of the Project or the substitution therefor, where such substitution constitutes an enlargement or improvement as compared with that for which it is substituted, and which in accordance with accounting practice should be capitalized.

4.5 CAPITAL IMPROVEMENTS: All or any Capital Additions, Capital Betterments, or Capital Replacements.

4.6 CAPITAL REPLACEMENTS: The substitution of any Units of Property for other Units of Property constituting

a part of the Project, where such substitution does not constitute an enlargement or improvement of that for which it is substituted, and which in accordance with accounting practice should be capitalized.

4.7 COMMON STATION FACILITIES: Those components of the Project identified in Exhibit A as being for the common use of the initial Generating Unit and for the common use of any Additional Generating Units hereafter comprising the Project.

4.8 CONSTRUCTION WORK: All environmental impact studies, site evaluation, acquisition of the Plant Site, Engineering, design, construction, contract preparation, supervision, expediting, inspection, accounting, testing and start-up for Generating Units and Common Station Facilities up to the time of Firm Operation and the decommissioning, dismantling, removal and final disposition of all components of the Project, including, but not by way of limitation, all related engineering, design, contract preparation, purchasing, supervision, expediting, inspection, accounting, testing, management and protection.

4.9 CONSTRUCTION WORK LIABILITY: Liability of a Participant for damage suffered by anyone other than a Participant which arises out of Construction Work and is not discharged by Project Insurance, and is not the result of Willful Action.

4.10 ENERGY: Kilowatt-hours (kwh).

4.11 FIRM OPERATION: The state of completion at which a Generating Unit of the Project is determined by the Management Committee to be reliable and at which such unit can reasonably be expected to operate continuously at its rated Capacity.

4.12 FPC ACCOUNTS: The accounts prescribed by the Federal Power Commission's "Uniform System of Accounts Prescribed for Public Utilities and Licensees (Class A and Class B)" in effect as of July 1, 1974, as such system of accounts may be amended from time to time as maintained in accordance with generally accepted accounting principles.

4.13 GENERATION ENTITLEMENT SHARE: The percentage entitlement of each Participant in a particular Generating Unit of the Project. Each Participant's percentage entitle-

ment shall be equal to such Participant's percentage ownership in the particular unit at the applicable time as contemplated by this Participation Agreement.

4.14 GENERATING UNIT: An electric generating unit, including the components thereof (steam supply system, turbine and generator including step-up transformers and other associated equipment), located on the Plant Site. A Generating Unit does not include Common Station Facilities but does include that portion of the Plant Site allocated thereto in Exhibit B hereto, and in the case of an Additional Generating Unit, that portion selected by the Participant proposing the Additional Generating Unit and approved by the Management Committee.

4.15 MANAGEMENT COMMITTEE: The committee composed of representatives of each Participant established pursuant to Section 9.1 hereof.

4.16 MINIMUM NET GENERATION: The lowest net Power output at which each Generating Unit can be reliably maintained in service on a continuous basis.

4.17 NET EFFECTIVE GENERATING CAPABILITY: The maximum continuous ability of each Generating Unit to produce power

which is available to the Participants at the high voltage terminals of the generator step-up transformers.

4.18 NET ENERGY GENERATION: The Energy generated by a Generating Unit which is available to the Participants at the high voltage terminals of the generator step-up transformers less the portions of station service requirements attributable to such Unit.

4.19 PARTICIPANT: A party hereto or other entity acquiring an interest in the Project in accordance with this Participation Agreement.

4.20 PLANT OWNERSHIP INTEREST: The percentage interest of the participants in the Project. Each Participant's percentage interest shall be equal to such Participant's ownership in the Common Station Facilities at the applicable time as contemplated by this Participation Agreement.

4.21 POWER: Kilowatts (kw) or megawatts (mw).

4.22 PROJECT AGREEMENTS: This Participation Agreement, any construction agreements, agreements for fuel and water supply and such other agreements relating to the Project, as the Participants find necessary or desirable to designate as

Project Agreements, as each of such agreements is originally executed or as any of same may thereafter be supplemented or amended.

4.23 PROJECT INSURANCE: Policies of insurance to be procured and maintained in accordance with Section 25 hereof.

4.24 PROJECT MANAGER: The Participant responsible for the planning, construction and operation of the Project in accordance with this Participation Agreement and the Project Agreements.

4.25 PLANT SITE: A parcel of land in Fayette County, Texas, consisting of approximately 6,400 acres and being generally depicted on Exhibit B hereto.

4.26 PROJECT: The Plant Site and, as initially contemplated, one coal or lignite fueled steam electric generating unit, having a Capacity of approximately 600 mw and all facilities and structures used therewith or related thereto and to be constructed on or adjacent to the Plant Site. The Project is generally described in Exhibit A hereto. Said definition shall also include any Additional Generating Unit located on the Plant Site pursuant to this

Participation Agreement or any of the Project Agreements and all facilities and structures used therewith or related thereto and constructed on or adjacent to the Plant Site.

4.27 STATION WORK: Operation, maintenance, use or repair of the Project subsequent to the time of Firm Operation, including, though not by limitation, all related engineering, contract preparation, purchasing, supervision, expediting, inspection, accounting, testing, management and protection.

4.28 STATION WORK LIABILITY: Liability of one or more Participants for damage suffered by anyone other than a Participant which arises out of Station Work, and is not discharged by Project Insurance, and is not the result of Willful Action.

4.29 UNIT 1: The initial Generating Unit contemplated for the Project.

4.30 UNITS OF PROPERTY: Units of property as described in the Federal Power Commission's "List of Units of Property for Use in Connection with Uniform System of Accounts prescribed for Public Utilities and Licensees" in effect from time to time.

4.31 WILLFUL ACTION:

4.31.1 Action taken or not taken by a Participant at the direction of its governing body or board, which action is knowingly or intentionally taken or not taken with intent to cause injury or damage to another.

4.31.2 Action taken or not taken by an employee of a Participant, which action is intentionally taken or not taken with intent to cause injury or damage to another and which action or non-action is subsequently ratified by the Participant employing such employee at the direction of its said governing body or board.

4.31.3 Willful Action does not include intentional acts or omissions of a Participant for which a Participant is legally responsible solely because of the master-servant relationship between such Participant and its employees.

5. OWNERSHIP OF PROJECT:

5.1 Each Participant shall acquire and, subject to adjustments as provided herein, shall initially own an undivided fifty percent (50%) interest in the Plant Site, the Common Station Facilities and Unit 1 as a tenant in common with the other Participant.

6. ADDITION OF GENERATING UNITS:

6.1 A Participant may propose the construction of an Additional Generating Unit by written notice to the other Participant setting forth:

6.1.1 A general description of the proposed Additional Generating Unit and of proposed Capital Additions and Capital Betterments to the existing Common Station Facilities, all in the same form and detail as Generating Unit 1 is shown in Exhibit A hereto, identifying all Common Station (1) Facilities proposed for use in connection with the proposed Additional Generating Unit or with respect to which Capital Additions or Capital Betterments are proposed.

6.1.2 A plat of the Plant Site depicting the location of the proposed Additional Generating Unit.

6.1.3 An estimate of the respective costs of the proposed Additional Generating Unit, Capital Additions and Capital Betterments, all in reasonable detail.

6.2 Within forty-five (45) days after service of the written notice given pursuant to Section 6.1 hereof, the Project Manager shall furnish to each Participant a statement, in reasonable detail, of all actual costs (without depreciation) of all Construction Work attributable to the Common Station Facilities identified in Section 6.1.1 hereof, as shown on the books of such Project Manager.

6.3 The non-proposing Participant may elect to participate in the proposed Additional Generating Unit, Capital Additions and Capital Betterments to the extent of its Plant Ownership Interest by written election served upon the proposing Participant within three (3) months after service of the written notice given pursuant to Section 6.1 hereof. Failure of a Participant to exercise said election as provided in this Section 6.3 within the time period specified shall be conclusively deemed to be an election not to participate.

6.4 Should the non-proposing Participant elect to participate in the proposed Additional Generating Unit, the proposed Additional Generating Unit, Capital Additions and Capital Betterments shall be constructed, operated and maintained in accordance with the provisions of this Participation Agreement and the Project Agreements, shall be owned (subject to adjustments as provided herein) by the Participants in proportion to their Plant Ownership Interests, and shall become a part of the Project.

6.5 Should the non-proposing Participant elect not to participate in the proposed Additional Generating Unit, the

proposing Participant shall construct, and the Project Manager shall operate and maintain the Additional Generating Unit, Capital Additions and Capital Betterments proposed pursuant to Section 6.1 hereof on the following basis:

6.5.1 The Additional Generating Unit shall be owned by the proposing Participant.

6.5.2 Within two (2) months after the proposing Participant has determined the actual costs of the Capital Additions and Capital Betterments to the previously existing Common Station Facilities undertaken in conjunction with the Additional Generating Unit, the Project Manager shall furnish to each Participant a statement, supplemental to the statement furnished pursuant to Section 6.2 hereof, setting forth the costs shown in the statement furnished pursuant to Section 6.2 hereof and the actual costs of said Capital Additions and Capital Betterments. Within one (1) month after receiving the statement called for in this Section 6.5.2, the Participant owning the Additional Generating Unit shall make a cash payment to the other Participant equal to the amount, if any, by which: (i) the product of the total costs shown in the statement called for in this Section 6.5.2 times a fraction, the numerator of which is the nameplate rating of the Additional Generating Unit and the denominator of which is the sum of the nameplate ratings of all Generating Units including those agreed upon, under construction, completed and the Additional Generating Unit; exceeds (ii) the actual costs of said Capital Additions and Capital Betterments. Thereafter, the Plant Site (exclusive of the portions thereof allocated to all Generating Units theretofore agreed upon or permitted under this Participation Agreement or

any of the Project Agreements or allocated to the Additional Generating Unit) and the Common Station Facilities shall be owned by the Participants, as tenants in common, in the proportion that the sum of the interests of each Participant in all Generating Units (including the Additional Generating Unit) bears to the sum of the interests of both Participants in all Generating Units (including the Additional Generating Unit) and appropriate transfers of interests shall be made.

6.5.3 The Participant proposing the Additional Generating Unit and the Capital Additions and Capital Betterments to existing Common Station Facilities shall provide as needed the construction costs of the Additional Generating Unit and of said Capital Additions and Capital Betterments and the operation and maintenance costs of the Additional Generating Unit. The operation and maintenance costs of the Common Station Facilities to which said Capital Additions and Capital Betterments relate shall be shared and paid by the Participants in proportion to their adjusted Plant Ownership Interest resulting from the Additional Generating Unit.

7. GENERATING CAPACITY AND ENERGY ENTITLEMENTS:

7.1 The Capacity entitlement of each Participant in each Generating Unit of the Project shall be the product of its Generation Entitlement Share in such Generating Unit and the Net Effective Generating Capability of such Generating Unit.

7.2 Each Participant shall be entitled to schedule for its account Power and Energy from any Generating Unit up to the amount of its available Capacity entitlement in such Generating Unit.

7.3 When a Participant requests operation of a Generating Unit, each Participant shall, unless otherwise mutually agreed, schedule for its account its share of Minimum Net Generation which shall be the product of its Generation Entitlement Share in said Generating Unit and the Minimum Net Generation established for such Generating Unit. At any time a Participant has scheduled from any Generating Unit an amount of Power in excess of its share of Minimum Net Generation, then the other Participant shall only be obligated to schedule for its account an amount of Power equal to the product of its Generation Entitlement Share and the remaining amount of Minimum Net Generation established for such Generating Unit provided that such reductions do not result in economic detriment to any Participant.

7.4 Operation of any Generating Unit by the Project Manager shall be subject to scheduled outages or curtailments, operating emergencies and unscheduled outages or curtailments of such Generating Unit.

8. DELIVERY AND TRANSMISSION:

8.1 Power and Energy shall be metered and delivered to the transmission systems of the Participants at the Project switchyard and shall be accounted for in accordance with the scheduling of the respective Participants.

8.2 Each Participant shall design, construct, own, operate and maintain the transmission facilities necessary to connect its system to the high voltage bus in the Project switchyard, with the objective of permitting each Participant to transmit under normal operating conditions its Generation Entitlement Share from units of the Project to its system in a manner which will not unreasonably affect the operation of the electric system of the other Participant or the interconnected systems of others.

8.3 Each Participant shall be entitled to the exclusive use of so much of the Plant Site as may be necessary to construct and connect its transmission facilities to the high voltage bus in the Project switchyard as generally shown in Exhibit A hereto, provided the actual location and construction schedule of such transmission facilities shall be subject to approval of the Management Committee.

9. ADMINISTRATION:

9.1 As a means of securing effective cooperation and interchange of information and of providing consultation on a prompt and orderly basis among the Participants in connection with various administrative and technical problems which may arise from time to time in connection with the terms and conditions of this Participation Agreement or the Project Agreements, the Participants hereby establish the Management Committee.

9.2 The Management Committee shall be composed of two representatives of each Participant and one alternate for each such representative who shall be designated by the Participant represented by written notice to the other Participant.

9.3 The Management Committee shall:

9.3.1 Provide liaison among the Participants at the management level and between them and the Project Manager;

9.3.2 Exercise general supervision over the Committees established pursuant to Section 9.8 hereof;

9.3.3 Consider and act upon matters referred to it by the committees established pursuant to Section 9.8 hereof;

9.3.4 Perform such other functions and duties as may be assigned to it in this Participation Agreement or in the Project Agreements;

9.3.5 Review, discuss and act upon disputes among the Participants arising under this Participation Agreement or the Project Agreements;

9.3.6 Review and act upon the Project Manager's recommendations concerning:

9.3.6.1 Bids and proposals for water supply, water rights and fuel other than coal and the furnishing of engineering services and studies, bids and proposals from vendors for the purchase and procurement of the equipment, apparatus, machinery, materials and supplies and bids and proposals from contractors for the performance and completion of Construction and Station Work if the obligation to be incurred exceeds the sum of $15,000;

9.3.6.2 The Project Insurance to be procured and maintained, including insurance values, limits, deductibles, retentions and other special terms;

9.3.6.3 The annual capital expenditures budget, annual manpower table and budget, and annual operation and maintenance budget, including guidelines for the utilization of Project Manager's employees;

9.3.6.4 The planned outages, schedules for maintenance and the manner of selection of any maintenance contractor for contract maintenance included in the annual operation and maintenance budget;

9.3.6.5 The policies for establishing the inventories for spare parts, materials and supplies;

9.3.6.6 The written statistical and administrative reports, written budgets, and information and other similar records, and the form thereof, to be kept by the Project Manager (excluding accounting records used internally by the Project Manager for the purpose of accumulating financial and statistical data, such as books of original entry, ledgers, work papers, and source documents);

9.3.6.7 The procedures for determining Net Effective Generating Capability, Minimum Net Generation and other Capacities of each Generating Unit and several Generating Units;

9.3.6.8 The procedures for determining capital expenditures;

9.3.6.9 The procedures for performance and efficiency testing;

9.3.6.10 The procedures for maintaining complete and accurate fuel, Power and Energy accounting;

9.3.6.11 The written statement of operating practices and procedures;

9.3.6.12 The list of transportation and motorized equipment to be owned or leased by the Project Manager for Station Work;

9.3.6.13 The establishment of practices and procedures for keeping each Participant advised of the Net Effective Generating Capability and for the delivery of Power and Energy from the Project in accordance with the Participants' schedule (such practices

and procedures to provide for modifying said schedules to meet the needs of day-to-day or hour-by-hour operation, including emergencies on a Participant's system);

9.3.6.14 The establishment of procedures for the operation of the Project during periods of curtailed operations which reduce or may reduce the Net Effective Generating Capability;

9.3.6.15 The establishment of criteria for determination of date of Firm Operation;

9.3.7 Either Participant through its representatives on the Management Committee may request a recommendation or report from the Project Manager on any matter relating to the Project. Such recommendation or report shall be furnished within a reasonable time;

9.3.8 Arrange for annual audits of the records maintained by the Project Manager in its performance of Construction Work and Station Work and other company records maintained by the Project Manager in support of its billings to the Participants; and

9.3.9 Arrange for certification by a nationally recognized firm of Independent Certified Public Accountants to the Participants that the Project Manager's accounting methods and records, including any allocations for Construction Work and Station Work, as the case may be, are in accordance with this Participation Agreement, the Project Agreements and sound accounting practice.

9.4 All matters coming under the authority of the Management Committee shall be decided by majority vote of the members of the Committee with each member having equal voting rights. All decisions reached by the Management

Committee on matters concerning the Project and properly before the Management Committee for decision pursuant to the terms of this Participation Agreement or the Project Agreements shall be binding upon all Participants.

9.5 The Management Committee shall designate one of its members as Chairman and another as Vice Chairman, and shall appoint a Secretary and an Assistant Secretary, neither of whom need be a member of the Management Committee, and the Committee shall keep such minutes of its meetings as the Committee shall determine, provided a written record shall be made by the Committee of all of its actions and decisions.

9.6 Neither the Management Committee nor any of its appointed committees shall have any authority to modify any of the terms, covenants or conditions of this Participation Agreement or of the Project Agreements.

9.7 Each Participant shall give prompt written notice to the other Participant of any change in the designation of its representatives on the Management Committee. Any representative appearing at a committee meeting shall be deemed to have authority to act on behalf of the Participant

he represents unless the Participant represented has designated another representative as provided in Section 9.2 hereof.

9.8 The Management Committee shall have the right to establish temporary or permanent committees. The authority and duties of any such committee shall be set forth in writing and shall be subject to the provisions of this Participation Agreement and the Project Agreements.

10. PROJECT MANAGER:

10.1 The Project Manager for the Project shall be LCRA.

10.2 Austin hereby appoints the Project Manager as its agent and the Project Manager shall undertake as Austin's agent and as principal on its own behalf the responsibility for the performance and completion of Construction Work and Station Work required by this Participation Agreement.

10.3 Subject to this Participation Agreement, the Project Manager shall:

10.3.1 Provide for and obtain all studies (including environmental impact studies and preliminary safety analyses), permits and licenses necessary for the construction and operation of the Project.

10.3.2 Acquire the Plant Site in accordance with the parameters set forth in Section 31 hereof, such acquisition to be for the initial benefit, and at the cost, of the Participants in the proportions set forth in Section 5.1.

10.3.3 Supply the Participants with copies of all studies made, license and permit applications filed and licenses and permits obtained.

10.3.4 Obtain bids and negotiate proposals for the furnishing of engineering services and studies necessary for the performance and completion of Construction Work.

10.3.5 Obtain bids and negotiate proposals from vendors for the purchase and procurement of the equipment, apparatus, machinery, materials, tools and supplies necessary for the performance and completion of Construction Work.

10.3.6 Obtain bids and negotiate proposals from contractors for the performance and completion of each component of Construction Work.

10.3.7 Review with the Management Committee all bids and proposals obtained under 10.3.4, 10.3.5, and 10.3.6 above and execute such contracts and accept bids and proposals as authorized by the Management Committee in the name of the Project Manager, acting as principal on its own behalf and as agent for Austin, except that Project Manager is authorized to execute contracts and accept bids involving expenditures of less than $15,000 without authorization of the Management Committee, subject to all legal requirements in respect to competitive bidding.

10.3.8 Transmit as received from consultants, contractors or vendors all correspondence, studies, specifications and drawings related to the Project to the Management Committee for review and comment.

10.3.9 Furnish Participants with duplicate original copies of all contracts with the contractors, subcontractors and vendors.

10.3.10 Arrange for the placement of Project Insurance pursuant to Section 25 hereof.

10.3.11 Determine what contractors, if any, shall be required to furnish any portion of Construction Insurance, other insurance and faithful performance and payment bonds.

10.3.12 Investigate, adjust, and settle claims arising out of or attributable to Construction Work or Station Work, the past or future performance or nonperformance of the obligations and duties of either Participant (including the Project Manager) under or pursuant to this Participation Agreement, or the past or future performance or nonperformance of Construction Work and Station Work, including but not limited to any claim resulting from death or injury to persons or damage to property for which payment shall not be made on account of valid and collectible Project Insurance or other valid and collectible insurance carried by either Participant, and present and prosecute claims against any insurer or other party for losses and damages in connection with Construction Work or Station Work. The terms of this Section 10.3.12 shall not include claims involving Willful Action by the Project Manager. The authorization from the Management Committee shall be obtained by the Project Manager before any claim or combination of claims arising out of the same transaction or incident is settled for more than One Hundred Thousand Dollars ($100,000.00), or the amount of any Project Insurance deductible, whichever may be greater.

10.3.13 Assist any insurer in the investigation, adjustment and settlement of any loss or claim.

10.3.14 Administer and enforce contracts in the name of the Project Manager, acting as principal on its own behalf and as agent for Austin.

10.3.15 Comply with (i) any and all laws and regulations applicable to the performance of Construction Work or Station Work, and (ii) the terms and conditions of any contract relating to Construction Work or Station Work.

10.3.16 Expend the funds advanced to the Project Manager in accordance with the terms and conditions of this Participation Agreement.

10.3.17 Keep and maintain records of monies received and expended, obligations incurred, credits accrued, estimates of Construction Costs (excluding ad valorem taxes and interest during construction) and contracts entered into in the performance of Construction Work, and make such records available for inspection by the other Participant at reasonable times and places.

10.3.18 Not suffer any liens in connection with Construction Work or Station Work to remain in effect unsatisfied against the Project (other than liens permitted under the Project Agreements liens for taxes and assessments not yet delinquent, liens for workmen's compensation awards, and liens for labor and material not yet perfected); provided, however, that the Project Manager shall not be required to pay or discharge any such lien as long as the Project Manager in good faith shall be contesting the same which shall operate during the pendency thereof to prevent the collection or enforcement of such lien so contested.

10.3.19 As soon as practicable after the Date of Firm Operation of Unit 1, provide each Participant with a summary of the estimated construction costs applicable to such unit and the

common facilities in a form which will allow each such Participant to classify such Construction Costs to appropriate accounts and by Units of Property.

10.3.20 Provide each Participant with all necessary and required records and information pertaining to the performance of Construction Work, including a monthly progress report.

10.3.21 Keep each Participant fully and promptly informed of any known default under the provisions of this Participation Agreement.

10.3.22 As soon as practicable after the commencement of Construction Work, furnish each Participant with a detailed forecast of total Construction Costs. Said forecast shall be revised and furnished to each Participant every three (3) months thereafter until completion of Construction Work, provided, that any significant changes in said forecast shall be submitted to each Participant as soon as practicable after such changes become evident. In addition, and as soon as practicable after commencement of Construction Work, furnish each Participant a detailed monthly forecast of each Participant's estimated expenditures for the succeeding month for Construction Work, which said forecast shall be furnished each Participant monthly thereafter until completion of Construction Work.

10.3.23 Furnish each Participant any information reasonably available pertaining to Construction Work that will assist said Participant in responding to a request for such information by any federal, state or local authority.

10.3.24 Use its best efforts in the performance of its responsibilities hereunder to

effect the completion of Construction Work in accordance with the scheduled Date of Firm Operation.

10.3.25 Keep each Participant fully and promptly advised of the major developments in connection with the performance and completion of Construction Work.

10.3.26 Prepare and distribute the Final Completion Report to each Participant within eighteen months after the date of Firm Operation of Unit 1.

10.3.27 Conduct tests to verify that specified characteristics of equipment items have been achieved and, if necessary, make or arrange for final equipment modifications to meet the specified requirements thereof.

10.3.28 Obtain and enforce any and all customary warranties on equipment, facilities, and materials furnished for the Project.

10.3.29 Perform the Station Work in accordance with generally accepted practices in the electric utility industry as such practices may be affected by the design and operational characteristics of the Generating Unit and the Common Facilities, the quality and quantity of fuel available, the rights and obligations of the Participants under the Project Agreements, and any other special circumstances affecting the Station Work.

10.3.30 Execute, enforce, and comply with all contracts entered into in the name of the Project Manager, acting as principal on its own behalf and as agent for the other Participant, in connection with the performance of Station Work which has been authorized by the Management Committee.

10.3.31 Furnish and train the necessary personnel for performance of Station Work.

10.3.32 Comply with any and all laws and regulations applicable to the performance of Station Work.

10.3.33 Purchase and procure, with the approval of the Management Committee, the equipment, apparatus, machinery, tools, materials and supplies and spare parts necessary for the performance of Station Work, however, the Project Manager shall not need such approval for any purchase costing less than $15,000.

10.3.34 Keep and maintain records of monies received and expended, obligations incurred, credits accrued, and contracts entered into in connection with the performance of Station Work and make such records available for inspection by the other Participant at reasonable times and places.

10.3.35 Keep each Participant fully and promptly advised of major changes in conditions or other major developments which affect the performance of Station Work, and furnish each Participant with copies of any notices given or received pursuant to the Project Agreements.

10.3.36 Determine Net Effective Generating Capabilities, Minimum Net Generation and other capacities for each Generating Unit and several Generating Units.

10.3.37 Upon the request of either Participant, provide such Participant a copy of any report, record, list, budget, manual, accounting or billing summary, classification of accounts or other documents or revisions of any of the aforesaid items, all as prepared in accordance with this Participation Agreement.

10.3.38 Administer and enforce all Project Agreements with Third Parties relating to Station Work.

10.3.39 Accept and supervise deliveries of fuel for the Project in accordance with the applicable agreements.

10.3.40 Keep each Participant fully and promptly informed of any known default of the Project Agreements.

10.3.41 Periodically test or arrange for testing of all meters used to measure Power and Energy. Either Participant may ask for a test of such meters, and it will be the duty of the Project Manager to inform the other Participant in advance so it may have representatives present at such test. Any such test shall be held at a reasonable time and each Participant shall bear its own Costs therefor.

10.3.42 Maintain plant charts and operating records as may be required for reporting to regulatory agencies having jurisdiction.

10.3.43 Establish, periodically review and from time to time, revise and submit to the Management Committee for review and approval the following information:

10.3.43.1 Manning requirements and manning table including administrative, engineering, operating and maintenance personnel.

10.3.43.2 Safety procedures for the protection of personnel, for removing equipment and systems, including clearance procedures for removing equipment from service for inspection, test and maintenance.

10.3.43.3 A book of "Plant Operation Orders" listing all permanent or semipermanent instructions to operating personnel.

10.3.43.4 A book of "Equipment Operating Instructions" outlining standard procedures for equipment and systems startup, operation and shutdown.

10.3.43.5 A book of "Preventative Maintenance Instructions and Schedules" outlining standard procedures, schedules and testing for performing mechanical, electrical, and instrument maintenance.

10.3.43.6 Procedures for training operating and maintenance personnel.

10.3.44 Prepare and submit to the Management Committee recommendations for the acquisition of necessary water supply and water rights.

11. CONSTRUCTION SCHEDULES:

11.1 Construction of the Project has been planned with the objective of having Unit 1 available for Firm Operation by April 1978.

12. CONSTRUCTION COSTS:

12.1 Construction Costs shall consist of payments made and obligations incurred (other than obligations for interest during construction) for the account of Construction Work and shall consist of, but not be limited to, the following:

12.1.1 All costs of labor, services and studies performed in connection with Construction Work, if authorized and approved as provided herein.

12.1.2 Payroll and other expenses of the Project Manager's employees while performing Construction Work, including properly allocated labor loading charges, such as department overhead, time-off allowances, payroll taxes, workmen's compensation insurance, retirement and death benefits and employee benefits.

12.1.3 All components of Construction Costs, including overhead costs associated with construction (including the allowance for the Project Manager's administrative and general expenses described in Section 12.4 hereof), costs of temporary facilities, land and land rights, structures and improvements, and equipment for Unit 1, in accordance with FPC Accounts.

12.1.4 All costs and expenses, including those of outside consultants and attorneys, incurred by the Project Manager for construction and operating certificates, licenses and permits, and with respect to environmental laws, rules and regulations, to land and water rights, to fuel requirements and supply and the acquisition thereof, and to the preparation of agreements relating to Construction Work with entities other than the Participants.

12.1.5 Applicable costs of materials, supplies, tools, machinery, equipment, apparatus, initial Spare Parts, construction power and construction water in connection with Construction Work, including rental charges.

12.1.6 All costs of Construction Insurance, all costs of any loss, damage or liability arising

out of or caused by Construction Work which are not satisfied under the coverage of Construction Insurance, and the expenses incurred in settlement of injury and damage claims, including the costs of labor and related supplies and expenses incurred in injury and damage activities (all as referred to in FPC Account 925), because of any claim arising out of or attributable to the construction of Unit 1 and the Common Station Facilities, or the past or future performance or nonperformance of Construction Work, including but not limited to any claim resulting from death or injury to persons or damage to property.

12.1.7 All federal, state or local taxes of any character imposed upon Construction Work, except any tax assessed directly against an individual Participant unless such tax was assessed to such individual Participant on behalf of both Participants.

12.1.8 All costs and expenses of enforcing or attempting to enforce the provisions of Construction Insurance policies, payment and performance bonds, contracts executed as Project Manager and warranties extending to Project Facilities.

12.2 In cases where the allocation of a cost item is made between Construction Work and any other work, such allocation shall be made on a fair and equitable basis in accordance with established accounting procedures.

12.3 The Project Manager shall use the FPC Accounts to account for Construction Costs in the Final Completion Report and any supplement thereto.

12.4 The allowance for the Project Manager's administrative and general expenses to cover the costs of services rendered by it in the performance of Construction Work and Capital Improvement shall be allocated monthly at the rate of one percent (1%) of Construction Costs and Capital Improvement Costs incurred during the preceding month, excluding from such costs:

12.4.1 Any allowance for administrative and general expenses provided for in this Section 12.4.

12.4.2 Expenses described in Sections 12.1.6 and 12.1.7 hereof.

until the end of the Project Manager's fiscal year. After the end of such fiscal year, such allowance shall be subject to review and adjustment as recommended by the Independent Certified Public Accountants selected by the Management Committee under Section 9.3.8 hereof. The rate of such allowance shall be adjusted to actual at the end of each fiscal year and the adjusted rate shall be used in preparation of revised billings to the Participants and as the

basis for allocating such administrative and general expense during the next succeeding fiscal year.

13. ADVANCES DURING CONSTRUCTION:

13.1 The Participants shall, during the course of and until the final completion of Construction Work, advance to the Project Manager such funds as shall enable it to pay estimated Construction Costs (including estimated administrative and general expenses) in order that the Project Manager in its capacity as such will not have to advance funds on behalf of the other Participant.

13.2 During the course of Construction Work, each Participant shall advance funds to the Construction Account to cover estimated Construction Costs in proportion to its percentage of ownership in the Construction Work being performed.

13.3 Funds shall be advanced by the Participants to the Project Manager in response to a Request for Funds,

within five (5) working days after receipt by such Participant of the Request for Funds. Funds on hand will be invested to the maximum extent possible. Net earnings or losses will be allocated to the Participants on the basis of funds advanced. Funds shall be requested as near to the date such funds are required by the Project Manager as is practical under the circumstances.

13.4 The sum of the advances by the Participants hereunder shall not exceed 100 percent of the total Construction Costs estimated to be expended during the period specified in the Request for Funds.

13.5 Funds not advanced to the Project Manager on or before the due date specified in Section 13.3 hereof shall be payable with interest, if any, accrued as provided in Section 27.3 hereof.

13.6 If a Participant shall dispute any portion of any amount specified in a Request for Funds, the disputant shall make the total payment specified in the Request for Funds under protest as provided in Section 27.4 hereof.

13.7 When the total and final Construction Costs have been incurred and calculated, each Participant shall pay any

deficit between total advances made by it and its share of said total and final Construction Costs or shall be reimbursed for any credit between said total advances made by it and its share of said total and final Construction Costs by the other Participant.

14. OPERATION AND MAINTENANCE EXPENSES:

14.1 In determining the expenses of Station Work, the Project Manager shall include the following expenses, to the extent that they are chargeable to the project, in accordance with FPC Accounts:

14.1.1 The operation expenses chargeable to FPC Accounts 500, 502, 503, 504, 505, 506, 507, 556, 557 and 563 and related expenses which shall include overhead expenses, labor loading charges (which shall include, but not be limited to, time off allowance, employee payroll taxes chargeable to FPC Account 408, employee pensions and benefits chargeable to FPC Account 926 and workmen's compensation insurance chargeable to FPC Account 925), and administrative and general expenses. The related expenses as provided for herein shall be charged to the FPC accounts referred to in the manner set out in 14.1.3 hereinbelow.

14.1.2 The maintenance expenses chargeable to FPC Accounts 510 through 514 and 571 and related expenses which shall include overhead expenses, labor loading charges (which shall include,

but not be limited to, time off allowance, employee payroll taxes chargeable to FPC Account 408, and employee pensions and benefits chargeable to FPC Account 926 and workmen's compensation insurance chargeable to FPC Account 925). The related expenses as provided for herein shall be charged to the FPC accounts referred to in the manner set out in 14.1.3 hereinbelow.

14.1.3 Overhead expenses, labor loading charges and administrative and general expenses referred to in 14.1.1 and 14.1.2 above shall be charged in the following manner:

14.1.3.1 Unemployment and FICA taxes, costs of pension benefits and workmen's compensation and public liability insurance costs which are directly related to labor costs incurred which are chargeable to the FPC accounts referred to in this Section 14 shall be charged as a part of direct labor costs.

14.1.3.2 Costs of time off pay for holidays, annual and sick leave, military leave, and jury service applicable to individuals whose labor costs are chargeable to the FPC accounts referred to in this Section 14 shall be charged to the above accounts as a percentage of the direct labor costs of such individuals which are chargeable thereto. Not less frequently than once a year a study shall be made of such time off pay costs and a revised percentage basis for such charges shall then be established.

14.1.3.3 Administrative and general expenses shall be calculated and charged monthly as a percentage of costs of Station Work performed by the Project Manager. Such percentage shall be determined annually as of March 31

by an overhead and indirect cost study of the Project Manager's costs for administrative and general expenses for the year then ended, which study shall be subject to review and approval by the firm of Independent Certified Public Accountants as provided in Section 9.3.8 hereof. Appropriate adjustments based on such study and review will be made in the amounts charged each of the Participants for administrative and general expenses prior to the end of the Project Manager's fiscal year in which the amount of the adjustment is determined.

14.2 In the event additional Generating Units are constructed, expenses described in Section 14.1.1 hereof shall be apportioned to each of the units, including Common Station Facilities, in the ratio that the Net Effective Generating Capability of each Unit bears to the Aggregate Net Effective Generating Capability of the Project.

14.3 Expenses described in Section 14.1.2 hereof shall be charged directly to Unit 1 and to each Additional Generating Unit or the Common Station Facilities, as the case may be. The expenses so charged directly to the Common Station Facilities shall be apportioned between Unit 1 and each Additional Generating Unit, if any there be, in the ratio that the Net Effective Generating Capability of Unit 1 and of each Additional Generating Unit bears to the aggregate Net Effective Generating Capability of the Project.

14.4 Either Participant may request that the method used to determine the Project Manager's payroll tax expenses, employee workmen's compensation insurance expenses, employee pensions and benefits expenses, and administrative and general expense be submitted to the Management Committee for review if such Participant believes that such method results in an unreasonable burden on it; provided, that such review may be requested only after one year from the Date of Firm Operation, and thereafter at intervals of not less than two (2) years each. After any such request the Management Committee shall review said method and shall attempt to determine whether or not said unreasonable burden does exist. If after such review the Management Committee determines that the application of said method does result in an unreasonable burden on either of the Participants, the Management Committee shall determine and recommend a modified method to the Project Manager so that such unreasonable burden would be eliminated if such modified method is adopted by the Project Manager. If after such review the Management Committee is unable to agree on whether or not such unreasonable burden does exist or is unable to agree on said modified

method for eliminating said unreasonable burden, the Management Committee shall submit the entire matter to a nationally recognized firm of Independent Certified Public Accountants for decision and recommendation of a modified method if one is found to be justified.

14.5 Any modified method adopted by the Management Committee or determined through arbitration shall not be retroactive and shall become effective on the first day of the Project Manager's fiscal year next following such adoption or determination. Said modified method shall stay in effect no less than two years.

15. INITIAL TRAINING EXPENSES:

15.1 The initial training expenses shall consist of labor, material, transportation, services and any other costs applicable to hiring and training, including any relocation of personnel, for Station Work.

15.2 Initial training expenses shall also include departmental overheads, time-off allowances, payroll taxes, employee pensions and benefits, Workmen's Compensation, and

administrative and general expenses determined in accordance with Section 14 hereof.

15.3 The Project Manager shall accumulate the initial training expenses up to but not beyond the Date of Firm Operation in a manner to provide identification, but such expenses shall be included in Construction Work billing.

16. ADVANCEMENT OF OPERATING FUNDS:

16.1 Not less than thirty (30) days prior to incurring any operating cost on behalf of the Participants pursuant to this Participation Agreement, the Project Manager shall establish the Operating Account. The Project Manager shall notify the Participants in writing of the establishment of the Operating Account not later than five (5) days following its establishment.

16.2 All Operating Funds required to be advanced by the Participants in accordance with this Participation Agreement shall be paid into the Operating Account, or may be credited to the Operating Account by interbank transfers. All Operating Funds shall be deposited in the Operating Account, and the Project Manager shall, unless otherwise

agreed to by both Participants, make disbursements from the Operating Account only for expenditures or obligations incurred by it in the performance of Operating Work.

16.3 Not less than sixty (60) days prior to the establishment of the Operating Account, the Management Committee shall establish a minimum amount for the Operating Account so that the Project Manager will have Operating Funds to pay for expenditures or obligations incurred by the Project Manager pursuant to this Participation Agreement. Such minimum amount may be revised by the Management Committee at any time. The original minimum amount and any increase therein shall be allocated among the Participants in accordance with their Common Station Facilities Ownership Shares and shall be due and payable within fifteen (15) business days following notification of the establishment of the Operating Account or the date on which any increase in such minimum amount shall become effective. In the event the Management Committee authorizes a decrease in such minimum amount, then each Participant shall receive a credit which shall be equal to its Common Station Facilities Ownership Share.

16.4 Each Participant shall advance Operating Funds to the Operating Account on the basis of bills it receives from the Project Manager which reflect such Participant's share of costs and expenses determined in accordance with this Participation Agreement as follows:

16.4.1 Expenses described in Sections 14, 15, and 19 hereof for the current month shall be billed on an estimated basis on or before the first business day of each such month and payment shall be due and payable by the 15th day of such month; provided, that adjustments for actual expenses incurred for such month shall be reflected in the bill for the month which follows the date of determination of such actual expenses.

16.4.2 Expenses described in Sections 20 and 25 (excluding workmen's compensation insurance), hereof shall be billed not less than eight (8) business days prior to their due date and shall be due and payable within three (3) business days following receipt of the invoice. If such expenditures or obligations do not have a specified due date, they shall be billed within a reasonable time following the incurrence of such expenditures or obligations and shall be due and payable within five (5) business days following receipt of the bill.

16.4.3 The expenditures or obligations described in Section 19 hereof, for coal consumed, shall, if necessary, be billed on an estimated basis, to be adjusted in the next monthly billing. Advances to cover billings for coal shall be made as close to the due date of the coal suppliers' billing as practicable.

16.5 Operating Funds not advanced to the Project Manager on or before the due date specified shall be payable with interest, if any, accrued as provided in Section 27 hereof.

16.6 If a Participant shall dispute any portion of any amount specified in a request for Operating Funds, the disputant shall make the total payment specified in the request for Operating Funds under protest as provided in Section 27 hereof.

16.7 Within forty-five (45) days following the end of each calendar year the Project Manager shall submit to each of the Participants a final accounting for such calendar year showing all amounts deposited into and expended from the Operating Account and the apportionment of such expenditures among the Participants. Adjustments shall be made among the Participants, if required, so that all costs incurred in the performance of Station Work shall have been shared by each Participant in accordance with this Participation Agreement.

17. ANNUAL BUDGETS:

17.1 At least one hundred twenty (120) days before the commencement of the initial training period for the personnel that will perform Station Work, the Project Manager shall prepare and submit to the Management Committee for its review and approval a budget (manning and dollars) for training such personnel. The Management Committee shall approve a training budget not less than sixty (60) days prior to the commencement of said initial training period.

17.2 Not less than one hundred sixty (160) days prior to the Date of Firm Operation of Unit 1, and by July 1st of the year preceding each calendar year thereafter, the Project Manager shall prepare and submit to the Management Committee for its review and approval the proposed annual capital expenditures budget, annual manpower budget, and annual operating and maintenance budget for Station Work for the initial year of operation and for each succeeding calendar year, respectively.

17.3 Not less than sixty (60) days prior to the Date of Firm Operation of Unit 1 and by August 1st of the year preceding each calendar year thereafter, the Management

Committee shall approve an annual capital expenditures budget, annual manpower budget, and annual operating and maintenance budget. If these budgets or any one of them are not approved by the Management Committee in final form prior to the beginning of the next calendar year, the Project Manager shall nevertheless continue to perform Station Work in accordance with Section 29 hereof until such time as a budget has been approved or otherwise determined in accordance with the Project Agreements.

17.4 Any information required from the Participants by the Project Manager in preparing the aforesaid proposed budgets shall be supplied by the Participants, if possible, within thirty (30) days following a request by the Project Manager.

17.5 The Management Committee may at any time during the year approve revisions to the annual capital expenditures budget, annual manpower budget, and the annual operating and maintenance budget for Station Work.

18. FUEL SUPPLY AND WATER SUPPLY:

18.1 The Project Manager shall solicit and obtain bids and contract proposals from coal suppliers to supply coal to the Project and shall submit such bids and proposals to the Management Committee for review and approval. Any fuel supply contracts approved by the Management Committee shall be then submitted to the Participants. Both Participants shall execute any fuel contracts.

18.2 Each Participant, in the absence of other agreement, shall have the option to furnish its share of all necessary water supply from independent sources including existing water rights or rights which may be obtained.

19. FUEL COST ALLOCATION:

19.1 The cost of purchasing a stockpile of coal shall be apportioned to the Participants in proportion to their cost responsibility for Common Station Facilities.

19.2 In the event of more than one Generating Unit, it shall be the responsibility of the Project Manager to assure that the coal moving to the bunkers of each Unit shall be weighed and sampled separately. The cost of coal burned in each respective unit in each calendar month as reflected by invoices submitted by the coal suppliers and related costs chargeable to FPC Account 501 shall be in

accord with the quantity of coal weighed and sampled during the movement into the bunkers of the respective Units.

19.3 The cost of coal allocated to each respective Unit pursuant to Section 19.2 and the cost of other fuel shall be apportioned to each Participant in the ratio that each Participant's monthly Net Energy Generation scheduled from such Unit bears to the total monthly Net Energy Generation scheduled from such Unit.

19.4 The costs of ash disposal chargeable to FPC Account 501 shall be apportioned to the Participants in the same proportions as the apportionment of monthly coal costs.

20. TAXES:

20.1 To the extent the same may be taxable, each Participant shall render for ad valorem taxation its undivided interest in the jointly owned property comprising the Project and shall otherwise use its best efforts to have any taxing authority imposing any such taxes or assessments on the Project, or any interest or rights therein, assess

and levy such taxes or assessments directly against the ownership or beneficial interest of each Participant.

20.2 To the extent of any taxes or assessments collectible against or with respect to each Participant's interest in, or pro rata share of, the purchase, use, ownership or beneficial interest in the Project, the same shall be the sole responsibility of, and shall be paid by, the Participant upon whose purchase, use, ownership or beneficial interest said taxes or assessments are levied.

20.3 If any property taxes or other taxes or assessments are legally and properly levied or assessed other than against each Participant as contemplated in Sections 20.1 and 20.2 hereof (that is, are levied or assessed in such a way as to be disproportionately collected from one or both Participants), such taxes or assessments shall be apportioned between the Participants in accordance with their respective ownership interest or Power or Energy entitlement or take, whichever is appropriate to the incidence of the tax.

20.4 The Participant claiming exemption from any taxes or assessments shall be responsible for and shall pay all

expenses in connection with the sustaining or determination of such claims and the other Participant, the Management Committee and the Project Manager shall lend all reasonable cooperation in connection with the filing of tax renditions and reports and in connection with the making of protest and payment under protest as may be requested by each Participant claiming an exemption.

21. WAIVER OF RIGHT TO PARTITION:

21.1 Each Participant hereto agrees to waive any rights which it may have to partition any component of the Project, whether by partition in kind or by sale and division of the proceeds, and further agrees that it will not resort to any action in law or in equity to partition such component, and it waives the benefits of all laws that may now or hereafter authorize such partition for a term (i) which shall be coterminous with the co-tenancy agreement for such component, or (ii) which shall be for such lesser period as may be required under applicable law.

22. MORTGAGE AND TRANSFER OF INTERESTS:

22.1 Each Participant shall have the right at any time and from time to time to mortgage, pledge, create or provide for a security interest in or convey in trust all or a part of its ownership share in the Project, together with an equal interest in this Participation Agreement and the Project Agreements, to a trustee or trustees under deeds of trust, mortgages or indentures, or to secured parties under a security agreement, as security for its present or future bonds or other obligations or securities, and to any successors or assigns thereof, without need for the prior written consent of the other Participant, and without such mortgagee, trustee or secured party assuming or becoming in any respect obligated to perform any of the obligations of the Participant arising prior to such time as such mortgagee, trustee or secured party obtains possession of or assumes the right to exercise such Participant's rights in respect of such ownership share, or after such possession or assumption ceases.

22.2 Any mortgagee, trustee or secured party under present or future deeds of trust, mortgages, indentures or

security agreements of either of the Participants and any successor or assign thereof, and any receiver, referee or trustee in bankruptcy or reorganization of either of the Participants, and any successor by action of law or otherwise, and any purchaser, transferee or assignee of any thereof may, without need for the prior written consent of the other Participant, succeed to and acquire all of the rights, titles and interests of such Participant in the Project and in this Participation Agreement and the Project Agreements, and may take over possession of or foreclose upon said property rights, titles and interests of such Participant.

22.3 Each Participant shall have the right to transfer or assign all its ownership share in the Project, together with a proportionate part of its rights under this Participation Agreement and the Project Agreements, to any of the following without the need for prior written consent of the other Participant:

22.3.1 To any entity acquiring all or substantially all of the electric utility properties and business of such Participant; or

22.3.2 To any entity merged or consolidated with such Participant; or

22.3.3 To any entity which is wholly-owned by such Participant.

22.4 Except as otherwise provided in Sections 22.1 and 22.2 hereof, any successor to the rights, titles and interests of a Participant in the Project shall assume and agree in writing to fully perform and discharge all of the obligations hereunder of such Participant, and such successor shall notify the other Participant in writing of such transfer, assignment or merger, and shall furnish to the other Participant evidence of such transfer, assignment or merger.

22.5 No Participant assigning or transferring an interest under this Section 22 or Section 23 shall be relieved of any of its obligations under this Participation Agreement or the Project Agreements but shall remain liable and obligated for the performance of all of the terms and conditions of this Participation Agreement and the Project Agreements, unless otherwise agreed by the remaining Participant.

23. RIGHT OF FIRST REFUSAL:

23.1 Except as provided in Section 22 hereof, should either Participant, prior to the expiration of the period described in Section 21.1 hereof, desire to transfer its ownership in the Project to any person or entity, ready, able and willing to acquire same, the Participant desiring to make such transfer shall obtain a written offer from the prospective transferee, setting forth the consideration and other terms of the offer, and the other Participant shall have the right of first refusal to acquire such interest on the basis of the following consideration:

23.1.1 If the offer is in cash, whether payable in one payment or in installments, the amount of the bona fide written offer from the prospective transferee, payable as specified in the offer; or

23.1.2 If the offer is not in cash but is in securities having a readily ascertainable market value, the fair market value of the securities offered by the prospective transferee; or

23.1.3 If the offer is neither in cash nor in securities having a readily ascertainable market value, the fair market value of the ownership interest to be transferred.

23.2 At least seven (7) months prior to the date on which the intended transfer is to be consummated, the Participant desiring to transfer shall serve written notice of its intention to do so upon the other Participant. Such notice shall contain the proposed date of transfer and the terms and conditions of the transfer.

23.3 The other Participant shall have the option to acquire the interest to be transferred and shall exercise said option by serving written notice of its intention upon the Participant desiring to transfer within three (3) months after service of the written notice of intention to transfer given pursuant to Section 23.2 hereof. Failure of a Participant to exercise said option as provided herein within the time period specified shall be conclusively deemed to be an election not to exercise said option.

23.4 When the option to acquire said ownership has been exercised, the Participants shall thereby incur the following obligations:

23.4.1 The Participant desiring to transfer the ownership interest and the Participant having exercised the option to acquire such ownership

interest shall be obligated to proceed in good faith and with due diligence to obtain all required authorizations and approvals of such acquisition.

23.4.2 The Participant desiring to transfer such ownership interest shall be obligated to obtain the release of any lien encumbering the ownership interest which is the subject of the transfer at the earliest practicable date.

23.4.3 The Participant having exercised the option to acquire such ownership interest shall be obligated to perform all of the terms and conditions required of it to complete the acquisition of said ownership interest.

23.5 The acquisition of the ownership interest by the Participant having elected to acquire the same shall be fully consummated within seven (7) months following the date upon which all notices required to be given under this Section 23 have been duly served.

23.6 If the Participant receiving notice of the proposed transfer fails to exercise its option to acquire the ownership interest to be transferred, the Participant desiring to transfer such interest shall be free to transfer such interest, to the party that made the offer referred to in said bona fide written offer. If such transfer is not consummated by the proposed date of transfer referred to in

Section 23.2 hereof, the Participant desiring to transfer said ownership interest must give another complete new right of first refusal to the other Participant pursuant to the provisions of this Section 23 before such Participant shall be free to transfer said ownership interest to another party.

23.7 The Participant who acquires an ownership interest pursuant to this Section 23 shall receive title to and shall own the interest as a tenant in common, subject to the same rights, duties and obligations as are applied by this Participation Agreement and by the Project Agreements to the interest being transferred in the hands of the transferring Participant.

23.8 Any party who may succeed to an ownership interest pursuant to this Section 23 shall specifically agree in writing with the remaining Participant at the time of such transfer that it will not transfer or assign all or any portion of such ownership interest without complying with the terms and conditions of this Section 23.

24. DESTRUCTION OR ABANDONMENT:

24.1 If a Generating Unit should be damaged or destroyed to the extent that the estimated cost of repairs, replacement or reconstruction is not more than one hundred percent (100%) of the aggregate amount of the proceeds from property damage insurance carried and covering the cost of the repairs, replacement or reconstruction of such Generating Unit, the Participants, unless otherwise unanimously agreed, shall repair, replace or reconstruct such Generating Unit to substantially the same general character or use as the original. The Participants shall share the costs of such repairs, replacement or reconstruction in proportion to their Generation Entitlement Shares in the Generating Unit so destroyed.

24.2 If a Generating Unit should be damaged or destroyed to the extent that the estimated cost of repairs, replacement or reconstruction is more than one hundred percent (100%) of the aggregate amount of the proceeds from property damage insurance carried and covering the cost of the repairs, replacement or reconstruction of such Generating Unit, the Participants shall, upon agreement, repair,

replace or reconstruct such Generating Unit to substantially the same general character or use as the original; provided, however, that should the Participants not agree to repair, replace or reconstruct such Generating Unit, then any Participant who does not agree to repair, replace or reconstruct shall sell its interest in such Generating Unit together with the corresponding interest in the Common Station Facilities to the Participant desiring to repair, replace or reconstruct such Generating Unit for a price equal to the selling Participant's proportionate interest in the salvage value of such Generating Unit plus such Participant's proportionate cost, less depreciation at the maximum straight line rates then applicable to like properties under the Federal income tax law, in the interest in the Common Station Facilities so sold.

24.3 If any of the Common Station Facilities should be destroyed, the Participants shall, unless otherwise agreed, repair or reconstruct same to substantially the same character or use as the original. The Participants shall share the costs of such repair or reconstruction in proportion to their Plant Ownership Interests.

25. PROJECT INSURANCE:

25.1 The Project Manager shall recommend to the Management Committee, and the Management Committee shall determine, the insurance coverages, including the insurable values, limits, deductibles, retentions and other special terms, and the insurance carriers from which such insurance is to be obtained during the periods covered by and with respect to Construction Work and Station Work or any phases thereof.

25.2 All policies of Project Insurance shall:

25.2.1 Provide insurable values, limits, deductibles, retentions and other special terms as determined by the Management Committee;

25.2.2 List as loss payees or additional insureds (as their interests may appear) such mortgagees, trustees or secured parties as a Participant, by written notice to the Project Manager, may designate;

25.2.3 Contain endorsements providing for positive notice of cancellation to all parties listed as named or additional insureds;

25.2.4 Contain endorsements providing that the insurance is primary insurance for all purposes; and

25.2.5 Contain cross-liability endorsements for comprehensive bodily injury liability and property damage liability coverages.

25.3 The following procedures shall be observed in connection with the procurement of Project Insurance and Changes in Project Insurance:

25.3.1 The Project Manager shall give prompt written notice to the Management Committee of the procurement of all insurance binders.

25.3.2 The Project Manager shall furnish each Participant with either a certified copy of each of the policies of the insurance procured or a certified copy of each of the policy forms therefor, together with a line sheet therefor (and any subsequent amendments) naming the insurers and underwriters and the extent of their participation.

25.3.3 No policy of Project Insurance obtained pursuant to decision of the Management Committee shall be materially changed without the prior written consent of the Management Committee.

25.3.4 Any changes in policies of Project Insurance shall be promptly reported to the Management Committee by the Project Manager.

25.4 Each Participant, at its expense, shall have the right to secure such additional or different insurance coverage as may be required under any mortgage or contract provision, and, to the extent practicable, such additional or different insurance coverage may be effected through endorsements on policies of Project Insurance.

26. LIABILITY OF PARTICIPANTS TO EACH OTHER:

26.1 Participants shall have no remedies against the other Participant for tortious conduct arising out of the ownership of the Project, or any portion thereof, or out of Construction Work or Station Work except when the claim results from Willful Action.

26.2 Remedies of a Participant with respect to a claim against the other Participant shall be unimpaired by this Participation Agreement when the claim does not arise out of ownership of the Project or any portion thereof, or out of Construction Work or Station Work.

26.3 Each Participant shall protect, indemnify, and hold the other Participant, and its directors, officers and employees, free and harmless from and against any and all claims, demands, causes of action, suits or other proceedings (including all costs in connection therewith and in connection with the defense thereof, including attorneys' fees) of every kind and character arising in favor of any of that Participant's electric customers (or anyone claiming through that Participant's electric customers) on account of bodily injuries, death, damage to property or economic loss

in any way occurring, incident to, arising out of or in connection with the furnishing of, or failure to furnish, electric service to such customers, it being the intention of this Section 26.3 to impose on each Participant the sole responsibility for the defense and discharge of such claims, demands, causes of action, suits or other proceedings brought against one or both Participants by a Participant's customers even when caused by the sole fault of the other Participant. Nothing in this Section 26.3 shall impair the remedies of a Participant against the other Participant preserved by Sections 26.1 and 26.2 hereof.

26.4 The terms "Participant" and "Participants," as used in this Section 26, shall include the Project Manager in its capacity as such.

27. DEFAULTS AND COVENANTS REGARDING OTHER AGREEMENTS:

27.1 Each Participant hereby agrees that it shall pay all monies and carry out all other duties and obligations agreed to be paid or performed by it pursuant to all of the terms and conditions set forth and contained in the Project

Agreements, and a default by either Participant in the covenants and obligations to be by it kept and performed pursuant to the terms and conditions set forth and contained in any of the Project Agreements shall be an act of default under this Participation Agreement.

27.2 In the event of an alleged default by either Participant in any of the terms and conditions of the Project Agreements concerning the advancement of funds, then, within ten (10) days after written notice has been given by the nondefaulting Participant to the defaulting Participant of the existence and nature of the default, the nondefaulting Participant shall remedy such default by advancing the necessary funds or commencing to render the necessary performance.

27.3 In the event of an alleged default by either Participant in any of the terms and conditions of the Project Agreements and the giving of notice as provided in Section 27.2 hereof, the defaulting Participant shall take all steps necessary to cure such default as promptly and completely as possible and shall pay promptly upon demand to the nondefaulting Participant the total amount of money or

the reasonable equivalent in money of nonmonetary performance, if any, paid or made by such nondefaulting Participant in order to cure any default by the defaulting Participant, together with interest on such money or the costs of nonmonetary performance at the commercial prime rate then in effect at the First National City Bank in New York, or at the maximum rate of interest legally chargeable, whichever is the lesser, from the date of the expenditure of such money or the date of completion of such nonmonetary performance by such nondefaulting Participant to the date of such reimbursement by the defaulting Participant, or such greater amount as may be otherwise provided in the Project Agreements.

27.4 In the event that either Participant shall dispute an asserted default by it, then such Participant shall pay the disputed payment or perform the disputed obligation, but may do so under protest. The protest shall be in writing, shall accompany the disputed payment or precede the performance of the disputed obligation, and shall specify the reasons upon which the protest is based. A copy of such protest shall be mailed by such Participant

to the other Participant. Payments not made under protest shall be deemed to be correct, except to the extent that periodic or annual audits may reveal over or under payments by Participants, necessitating adjustments. In the event it is determined by arbitration, pursuant to the provisions of this Participation Agreement or otherwise, that a protesting Participant is entitled to a refund of all or any portion of a disputed payment or payments or is entitled to the reasonable equivalent in money of nonmonetary performance of a disputed obligation theretofore made, then, upon such determination, the nonprotesting Participant shall pay such amount to the protesting Participant, together with interest thereon at the commercial prime rate of interest then in effect at the First National City Bank in New York or at the maximum legal rate, whichever is the lesser, from the date of payment or of the performance of a disputed obligation to the date of reimbursement.

27.5 Unless otherwise determined by a board of arbitrators, in the event a default by either Participant in the payment or performance of an obligation under the Project

Agreements shall continue for a period of six (6) months or more without having been cured by the defaulting Participant or without such Participant having commenced or continued action in good faith to cure such default, or in the event the question of whether an act of default continues for a period of six (6) months following a final determination by a board of arbitrators or otherwise that an act of default exists and the defaulting Participant has failed to cure such default or to commence such action during said six (6) month period, then, at any time thereafter and while said default is continuing, the nondefaulting Participant may, by written notice to the defaulting Participant, suspend the right of such defaulting Participant to receive all or any part of its proportionate share of the Net Effective Generating Capability, in which event:

27.5.1 During the period that such suspension is in effect, the nondefaulting Participant shall bear all of the operation and maintenance costs, insurance costs and other expenses otherwise payable by the defaulting Participant under the Project Agreements.

27.5.2 The defaulting Participant shall be liable to the nondefaulting Participant for all costs incurred by such nondefaulting Participant together with interest as provided in Section 27.3 hereof.

27.6 In addition to the remedies provided for in Section 27.5 of this Participation Agreement, the nondefaulting Participant may, in submitting a dispute to arbitration in accordance with the provisions of Section 28 hereof, request that the board of arbitrators determine what additional remedies may be reasonably necessary or required under the circumstances which give rise to the dispute. The board of arbitrators may determine what remedies are necessary or required in the premise, including but not limited to the conditions under which the Project may be operated economically and efficiently during periods when the defaulting Participant's right to receive its proportionate share of the Net Effective Generating Capability is suspended.

27.7 The rights and remedies of the Participants set forth in this Participation Agreement shall be in addition to the rights and remedies of the Participants set forth in any other of the Project Agreements.

28. ARBITRATION:

28.1 If a dispute between the Participants should arise under this Participation Agreement or the Project Agreements, which is not resolved by the Management Committee, either Participant may call for submission of the dispute to arbitration, which call shall be binding upon the other Participant. Except as specifically provided in this Participation Agreement or in the Project Agreements, the arbitration shall be governed by the Texas General Arbitration Act of 1965, as same may be amended at the time of the call for arbitration. The costs and expenses of the arbitrators shall be shared equally by the Participants, unless otherwise decided by the arbitrators.

28.2 A Participant calling for arbitration shall make such call by written notice to the other Participant, naming in such notice one arbitrator. Upon receipt of a written demand for arbitration, the other Participant shall appoint one arbitrator. The arbitrators so appointed shall elect one additional arbitrator. The initial meeting of the arbitrators shall be at a place in Texas named by the Participant making the demand for arbitration. Thereafter, the

arbitrators shall meet at such place or places in Texas as they deem appropriate. The decision of a majority of the arbitrators so appointed shall be binding on all Participants, and the Participants hereby consent to the entry of a judgment in any court of competent jurisdiction confirming and implementing the decision of the arbitrators.

29. ACTIONS PENDING RESOLUTION OF DISPUTES:

29.1 Pending the resolution of any dispute by arbitration or judicial proceedings, the Project Manager shall proceed with the Construction Work or Station Work in a manner consistent with this Participation Agreement and the Project Agreements and with the best judgment of the Project Manager, and the Participants shall advance the funds required to perform such Construction Work or Station Work in accordance with the applicable provisions of this Participation Agreement or the Project Agreements.

30. RELATIONSHIP OF PARTICIPANTS:

30.1 The covenants, obligations and liabilities of the Participants shall be several and not joint or collective.

Each Participant shall be individually responsible for its own covenants, obligations and liabilities as herein provided and as provided in the Project Agreements. It is not the intention of the parties to create, nor shall this Participation Agreement nor any of the Project Agreements be construed as creating, a partnership, association, joint venture or trust, as imposing a trust or partnership covenant, obligation or liability on or with regard to either of the Participants, or as rendering the Participants liable as partners or trustees. No Participant shall be under the control of or shall be deemed to control the other Participant. A Participant as such shall not be the agent of or have a right or power to bind the other Participant.

31. ACQUISITION OF REAL PROPERTY INTERESTS:

31.1 The Project Manager shall acquire, or cause to be acquired, in its own name, or in the name of the other Participant, or both, the Plant Site by purchase or eminent domain proceedings, for a cash consideration. The tracts of land constituting the Plant Site shall be acquired in fee

simple absolute unless a lesser title is approved by the Management Committee. Acquisition of the Plant Site shall be based upon: (i) title opinions by counsel, title insurance, or other title showings or combinations of showings; and (ii) such survey work and title curative work as the Project Manager in its judgment, reasonably exercised, shall deem necessary; provided that title opinions by counsel approved by the Management Committee shall be procured on all of the Plant Site (except any portions as to which title opinions may be waived by the Management Committee) prior to commencement of the Construction Work. The purchase price for all lands acquired for the Plant Site and all costs and expenses incurred in connection with the acquisition of said lands, including, but not by limitation, title insurance premiums, abstracters, attorneys, surveyors, nominees and land agents fees, title curative work, court costs and recording fees, shall be Construction Costs and borne by the Participants as such. The purchase price for all land acquired through voluntary conveyance shall be approved by the Management Committee.

32. FORCE MAJEURE:

32.1 In the event of any Participant being rendered unable, wholly or in part, by force majeure to perform any of its obligations under this Participation Agreement or the Project Agreements (other than obligations to pay costs and expenses due), upon such Participant giving notice and full particulars of such force majeure in writing or by telephone to the other Participant as soon as reasonably possible after the occurrence of the cause relied upon, the obligations of the Participant giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of any inability of performance so caused, but for no longer period. Telephone notices given under the provisions of this Section 32.1 shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the force majeure, the time and date when the force majeure occurred and when the force majeure ceased. This Participation Agreement shall not be terminated by reason of any such cause but shall remain in full force and effect. The term "force majeure" shall mean

any cause beyond the control of the Participant affected, including, but not restricted to, failure or threat of failure of facilities or fuel supply, flood, earthquake, storm, fire, lightning, epidemic, war, acts of the public enemy, riot, civil disturbance or disobedience, strike, lockout, work stoppages, other industrial disturbance or dispute, labor or material shortage, sabotage, restraint by court order or other public authority and action or non-action by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by the exercise of due diligence such Participant could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed so as to require a Participant to settle any strike, lockout, work stoppage or other industrial disturbance or dispute in which it may be involved. A Participant rendered unable to fulfill any of its obligations under this Participation Agreement or any of the Project Agreements by reason of force majeure shall exercise due diligence to remove such inability with all

reasonable dispatch. The term "Participant" as used in this Section 32.1 shall include the Project Manager in its capacity as such.

33. GOVERNING LAW:

33.1 This agreement shall be governed by the laws of the State of Texas, except as to matters exclusively controlled by the Constitution and statutes of the United States of America.

34. BINDING OBLIGATIONS:

34.1 All of the respective covenants, undertakings and obligations of each of the Participants set forth in this Participation Agreement and in each of the Project Agreements shall bind and shall be and become the respective covenants and obligations of each such Participant and, to the extent permitted by law and the existing contracts of the applicable Participant, shall apply to and bind:

34.1.1 All mortgagees, trustees and secured parties under all present and future mortgages, indentures and deeds of trust, security agreements

and other financing arrangements which are or may become a lien upon any of the properties of such Participant;

34.1.2 All receivers, assignees for the benefit of creditors, bankruptcy trustees and referees of, or having control or jurisdiction over, such Participant;

34.1.3 All other persons, firms, partnerships, corporations or entities claiming by, through or under any of the foregoing; and

34.1.4 Any successors or assigns of any of those mentioned above in this Section 34.1;

and shall be covenants and obligations running with each Participant's respective rights, titles and interests in the Project and with all of the rights and interests of each Participant under this Participation Agreement and the Project Agreements, and shall be for the benefit of the respective rights, titles and interests of the Participants and their respective successors and assigns, in and to the Project. It is the specific intention of this provision that all such covenants and obligations shall be binding upon any party which acquires any of the rights, titles and interests of a Participant in the Project or in, to and under this Participation Agreement or any of the Project

Agreements and that all of the above-described persons and groups shall be obligated to use such Participant's rights, titles and interests in the Project or in, to or under this Participation Agreement or any of the Project Agreements for the purpose of discharging the covenants and obligations under this Participation Agreement and the Project Agreements.

35. PROJECT AGREEMENTS:

35.1 The Participants hereto agree to negotiate in good faith and to proceed with diligence to obtain and agree upon all of the Project Agreements among the Participants and between the Participants and other entities.

35.2 It is acknowledged by the Participants that one or more of the Project Agreements may contain provisions which are in conflict with or contrary to the terms of this Participation Agreement, and any such provision in a Project Agreement executed subsequent to the execution of this Participation Agreement shall be deemed to supersede, amend or modify any conflicting or contrary provision contained

herein. The mutual agreement of the Participants to supersede, amend or modify the terms hereof shall constitute the legal consideration to support such change in the legal rights and obligations of the Participants.

36. REMOVAL OF PROJECT MANAGER:

36.1 The Project Manager shall serve during the term of and pursuant to this Participation Agreement or until it resigns by giving written notice to the other Participant at least one (1) year in advance of the date of resignation or until receipt of notice of its removal following a determination that it is in default of this Participation Agreement as provided in Section 36.2 hereof.

36.2 The following provisions shall apply solely in regard to violations or allegations of violations of this Participation Agreement by the Project Manager on the basis of which removal is sought:

> 36.2.1 In the event the other Participant shall be of the opinion that an action taken or failed to be taken by the Project Manager constitutes a violation of this Participation Agreement, it may give written notice thereof together

with a statement of the reasons for its opinion to the other Participant. Thereupon, the Project Manager may prepare a rebutting statement of the reasons justifying its action or failure to take action. In the event that agreement is not reached between it and the Participant which gave such notice, the matter shall be submitted to arbitration in the manner provided in Section 28 hereof. During the continuance of the arbitration proceedings, the Project Manager may continue such action taken or failed to be taken in the manner it deems most advisable and consistent with this Participation Agreement.

36.2.2 If it is determined that the Project Manager is violating this Participation Agreement, it shall act with due diligence to end such violation, and in any event within six (6) months or within such lesser time following the decision as may be prescribed in the decision, shall take action in good faith to terminate such violation. In the event that the Project Manager has either failed to correct or commence action to correct the violation within such allowed period (which itself may be a subject of dispute for determination as above provided) it shall be deemed in default under this Participation Agreement and shall be subject to removal upon receipt of the notice referred to in Section 36.1 hereof signed by the other Participant.

36.2.3 The provisions of Section 27 hereof shall not apply to disputes as to whether or not an action or nonaction of the Project Manager, in its capacity as such, is a violation of or a default under this Participation Agreement.

36.3 Upon the effective date of resignation or removal, as provided in this Section 36, the Project Manager shall

vacate said position and prior thereto the other Participant shall become the new Project Manager. Assumption of duties by the new Project Manager shall constitute its agreement to perform the obligations of said position pursuant to this Participation Agreement.

37. ENVIRONMENTAL PROTECTION:

37.1 In recognition of the need to provide for the greatest feasible degree of environmental protection, the Participants hereby covenant with one another that in the construction and operation of the Project they shall install and operate air quality control equipment and water quality control equipment.

37.2 The Participants, in recognition of all applicable Federal, State and local laws, orders and regulations relating to environmental protection with which they intend to and shall fully comply, and the continuing need for the greatest feasible degree of environmental protection, hereby affirm their understanding and further agree as set forth in Sections 37.3 through 37.5 hereof.

37.3 The Participants shall install and diligently operate in Unit 1 and any additional Units facilities or equipment to comply with applicable Federal, State, or local laws, regulations or standards for the removal of particulate, removal of oxides of sulphur, control of oxides of sulphur and nitrogen and the design of such Units will, to the extent practicable, provide for the future installation of any equipment or facilities required to comply with said Federal, State, or local laws, regulations, or standards.

37.4 The Participants shall install and diligently operate as part of the Project such waste water and waste material control, and sewage control and disposal facilities as are necessary to comply with all applicable Federal, State, and local laws, orders and regulations.

37.5 The Participants shall take appropriate measures to minimize the effect of the plant on the environment and shall recognize and consider the ecology of the area in the design of the Project. In developing plans for Unit 1 and any Additional Generating Units, appurtenant buildings,

substations, and coal and water handling facilities, due consideration will be given to minimizing adverse effects to the terrain on which they are located.

38. TERM:

38.1 This Participation Agreement shall become effective when it has been duly executed and delivered on behalf of the parties hereto and shall remain in force and effect, subject to prior termination by unanimous agreement by the Participants, until the abandonment of the Project or such later date as may become the termination date of the last one of the Project Agreements to terminate.

39. INTERESTS ACQUIRED IN THE NAME OF AN INDIVIDUAL PARTICIPANT:

39.1 Any Participant which acquires in its name an interest in any real or personal property or a contractual right which is part of the Project shall acquire and hold same subject to this Participation Agreement and any applicable Project Agreement, and shall transfer and assign an undivided interest therein to the other Participant so that

the ownership and rights of the Participants in such property or contract shall be as provided in this Participation Agreement or in the applicable Project Agreements.

40. NOTICES:

40.1 Any notice, demand or request provided for in this Participation Agreement or in the Project Agreements shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid, to the Participants at the addresses specified below:

City of Austin
P. O. Box 1088
Austin, Texas 78767
Attention: City Manager

Lower Colorado River Authority
P. O. Box 220
Austin, Texas 78767
Attention: Office of the General Manager

40.2 A Participant may, at any time, by written notice to the other Participant, designate different or additional persons or different addresses for the giving of notices hereunder.

40.3 The Project Manager shall provide to each Participant a copy of any notice, demand or request given or

received by it in connection with this Participation Agreement or any of the Project Agreements.

41. MISCELLANEOUS PROVISIONS:

41.1 Each Participant agrees, upon request by the other Participant, to make, execute and deliver any and all documents and writings of every kind reasonably requested or required to implement this Participation Agreement and the Project Agreements.

41.2 The captions and headings appearing in this Participation Agreement and in the Project Agreements are inserted merely to facilitate reference and shall have no bearing upon the interpretation thereof.

41.3 Each term, covenant and condition of this Participation Agreement and of the Project Agreements is deemed to be an independent term, covenant and condition, and the obligation of any Participant to perform all of the terms, covenants and conditions to be kept and performed by it is not dependent upon the performance by the other Participant of any or all of the terms, covenants and conditions to be kept and performed by it.

41.4 In the event that any of the terms, covenants or conditions of this Participation Agreement or of any of the Project Agreements, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction in the premises, the remainder of such agreement, and the application of its terms, covenants or conditions to such persons or circumstances shall not be affected thereby.

41.5 The Participants do not intend to create rights in or to grant remedies to any third party as a beneficiary of this Participation Agreement or a Project Agreement or of any duty, covenant, obligation or undertaking established therein.

41.6 Any waiver at any time by a Participant of its rights with respect to a default or any other matter arising in connection with this Participation Agreement or any Project Agreement shall not be deemed a wavier with respect to any subsequent default or matter.

IN WITNESS WHEREOF, the parties hereto have caused this Participation Agreement to be executed as of the 19 day of September 1974.

CITY OF AUSTIN

By _____
City Manager

ATTEST:

_____
City Clerk ~~Secretary~~

LOWER COLORADO RIVER AUTHORITY

By _____
General Manager

ATTEST:

_____
Secretary

Signatures of Counsel for Purposes of
The Texas General Arbitration Act:

_____
City Attorney, Austin, Texas

_____
General Counsel, Lower Colorado
River Authority

FAYETTE POWER PROJECT
PARTICIPATION AGREEMENT
BETWEEN CITY OF AUSTIN & LCRA

EXHIBIT "A"

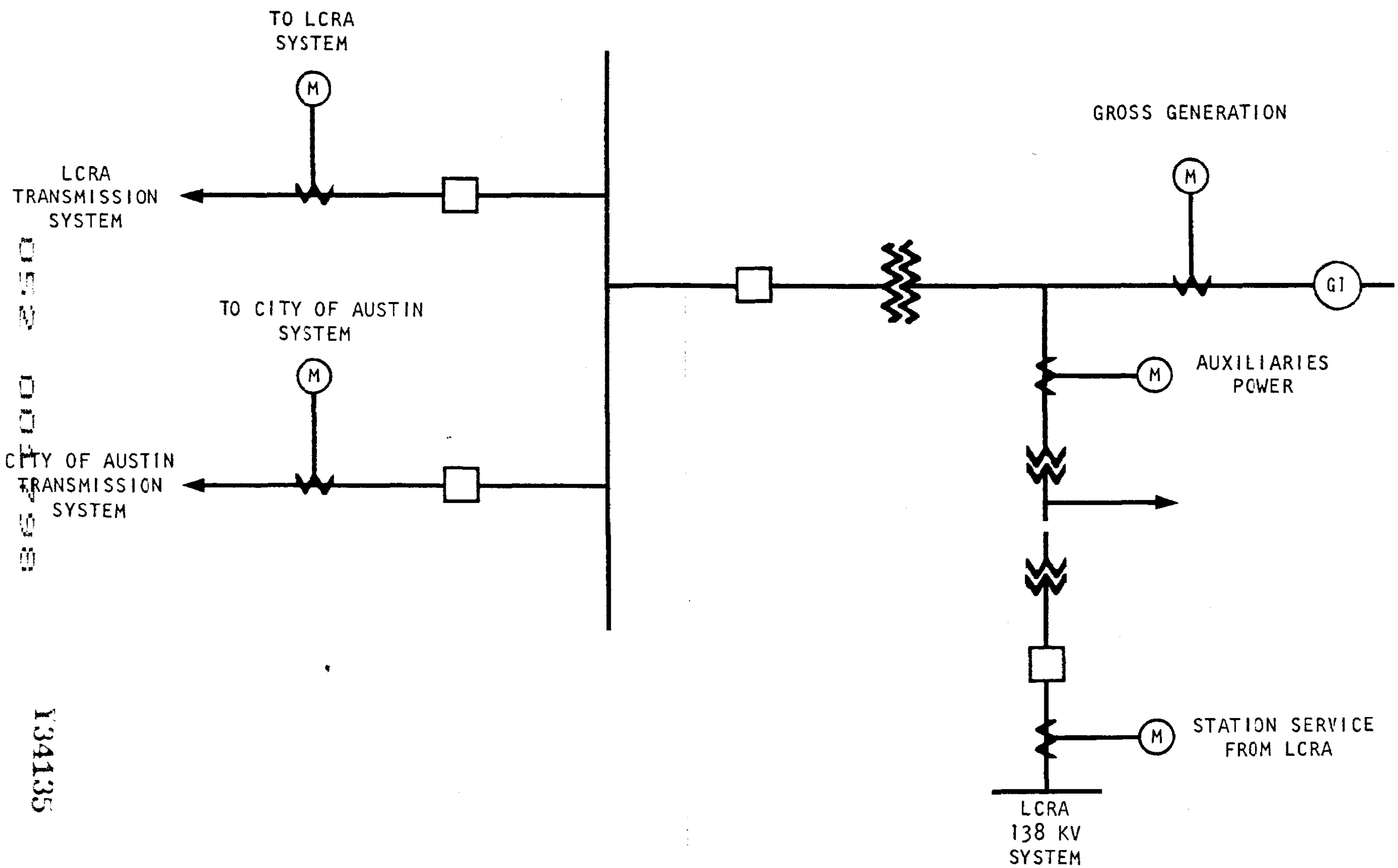


EXHIBIT A

COMMON STATION FACILITIES

The Fayette Power Project will consist of, but not limited to, the following items that will be common to all generating units to be installed at the chosen site:

A. Land for Plant Site and Cooling Lake

The land requirement for the dam, cooling lake, pumping plant, and coal and ash storage is estimated to be 6400 acres. This site will accommodate an ultimate plant capacity of 3000 Mw and will be common for all units.

B. Cooling Lake, Dam and Spillway

The cooling lake is planned to be a staged development in that the initial reservoir will be designed to provide a 2500 acre lake that will accommodate approximately 2200 Mw. The second stage of the development will create approximately 1000 to 1200 acres that will increase the allowable plant capacity to an excess of 3000 Mw.

C. River Pumping Plant and Pipeline

The pumping plant will be constructed on the banks of the Colorado River and a pipeline constructed for a distance of approximately four miles to the plant site and cooling reservoir. This will supply the water for the reservoir and necessary plant use.

D. Railroad Spur

The railroad spur will be constructed from the existing railroad into and out of the plant site for delivery of coal and plant construction material.

E. Coal Handling Facilities

A coal handling system will be provided which will consist of a car dumping facility, underground storage hoppers, stackout tower, a crusher house, and belt conveyor systems. There will also be an area designated for coal storage for the ultimate capacity of the plant.

F. Ash Handling Facilities

Facilities will be constructed consisting of the pump and piping to transport the ash to a disposal area designed to accommodate the total capacity of the plant.

G. Fuel Oil Systems

A fuel oil system will be included consisting of a 20,000 barrel storage tank, burner ignitors and start-up guns using a light "No. 2" fuel oil for start-up of the boiler.

H. Miscellaneous Plant Equipment

Other common facilities will consist of an administrative building, a machine shop, a warehouse, a maintenance shop, sanitary sewage and waste water treatment, and roadways.

EXHIBIT A

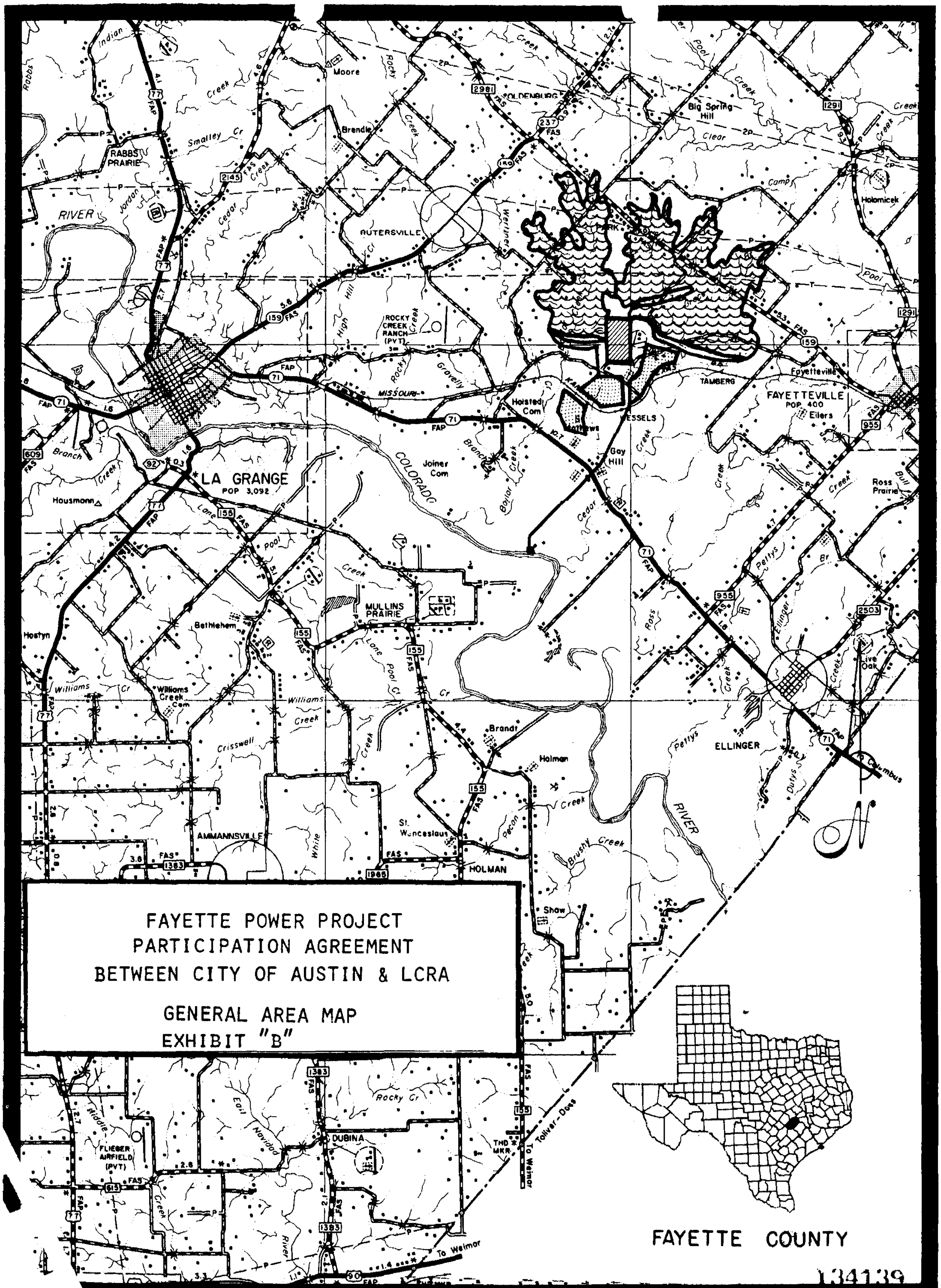
FAYETTE POWER PROJECT UNIT 1

GENERAL DESCRIPTION

Fayette Power Project Unit No. 1 will consist of a 683,700 kva electric generator driven by a 3600 rpm, tandem compound, four-flow reheat, condensing steam turbine having a nameplate rating of 551,922 Kw when supplied with steam at 2400 psig, 1000° F., with reheat to 1000° F., and 3.5" Hg. Abs. exhaust pressure. Steam for the turbine will be supplied from an outdoor western coal/lignite controlled circulation steam-generator having a rating of 4,200,000 pounds per hour. A stacked electrostatic precipitator will allow the unit to meet or exceed all federal and state air pollution regulations while firing sub-bituminous western coal. The plant will be arranged to accommodate future SO_2 removal equipment in the event lignite firing becomes a reality. All associated equipment necessary for an operable coal fired plant will be included as a part of the unit. The turbine generator building and office building will be of rigid frame steel design.

FAYETTE POWER PROJECT
PARTICIPATION AGREEMENT
BETWEEN CITY OF AUSTIN & LCRA

GENERAL AREA MAP
EXHIBIT "B"



134139

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That the City of Austin enter into a participation agreement with Lower Colorado River Authority providing for the construction, operation and maintenance of jointly owned and operated electric generation facilities, to be known as the Fayette Power Project; Lower Colorado River Authority and the City of Austin each owning an undivided fifty percent (50%) interest in said Project, with the Lower Colorado River Authority to act as project manager; and the City Manager is hereby authorized and directed to do such things as may be necessary to effect said participation agreement and to execute same for and on behalf of the City of Austin.

ADOPTED: September 19, 1974. ATTEST: Grace Monroe
City Clerk

19AUG74
DRB:bn

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

I, Grace Monroe, City Clerk of the City of Austin, Texas, do hereby certify that the foregoing instrument is a true and correct copy of a Resolution adopted by the City Council of the City of Austin, Texas, at a regular meeting on the 19th day of September, 1974, and appears of record in Minute Book 50 of the Minutes of said City Council.

Grace Monroe
City Clerk
City of Austin, Texas

CLARIFICATION OF SECTION 19.2 OF THE PARTICIPATION AGREEMENT

The purpose of this document is to clarify the meaning of certain provisions of Section 19.2 of the Fayette Power Project Participation Agreement (the Agreement) between the City of Austin and the Lower Colorado River Authority.

Section 19.2 of the Agreement requires the Project Manager to assure that coal moving into the bunkers of each Generating Unit is separately weighed and sampled. However, the Agreement does not specify precisely where the coal must be sampled. The Participants agree that sampling at the mines that produce coal used in the Project Generating Units meets the requirements of Section 19.2, provided that the Project Manager uses the combined monthly weighted average of mine samples for Units 1 and 2 and keeps them separate and distinct from mine samples of coal for Unit 3.

Coal will continue to be weighed using the gravimetric feeders for each Unit consistent with current practice.

The Participants, through the Management Committee, agree that this clarification does not constitute an amendment of the Agreement, but only clarifies ambiguous language in the Agreement.

IN WITNESS WHEROF, the undersigned have agreed to this Clarification by their duly authorized representatives as of August 27, 2004.

LOWER COLORADO RIVER AUTHORITY

By: _____

Name: Dudley C. Piland, Jr.

Title: Executive Manager, Wholesale Power Services

Date: 8/19/04

By: _____

Name: John Meismer

Title: Deputy General Manager, LCRA

Date: 8/24/04

Approved as to form:

By: _____
General Counsel

CITY OF AUSTIN d/b/a AUSTIN ENERGY

By: _____

Name: Andy Ramirez

Title: Senior Vice President, Power Production

Date: 8/12/04, 2004

By: _____

Name: Clyde Canady

Title: Director of Nuclear and Coal Generation

Date: 8/16/2004, 2004

Approved as to form:

By: _____
Assistant City Attorney

214135

SETTLEMENT AGREEMENT BY AND BETWEEN THE CITY OF AUSTIN AND THE LOWER COLORADO RIVER AUTHORITY REGARDING JOINT WATER RESOURCE MANAGEMENT AND THE RESOLUTION OF CERTAIN REGULATORY MATTERS PENDING AT THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

EFFECTIVE DATE: JUNE 18, 2007

TABLE OF CONTENTS

The City of Austin ("Austin") and the Lower Colorado River Authority ("LCRA") enter into this Settlement Agreement Regarding Joint Water Resource Management and the Resolution of Certain Regulatory Matters Pending at the Texas Commission on Environmental Quality ("Settlement Agreement").

I. RECITALS

A. General Recitals

(1) Austin and LCRA (the "Parties") enter into this Settlement Agreement to carry out a new, collaborative management structure to jointly administer each entity's individual water rights as an integrated management system so as to optimize the utilization of available water supplies for both organizations and the Lower Colorado Basin (the "Basin").

(2) The Parties also wish to resolve disagreements over certain regulatory matters now pending at the Texas Commission on Environmental Quality ("TCEQ"), and to establish how the Parties will share the Beneficial Use of Return Flows discharged from Austin's current and future wastewater treatment plants.

(3) The Parties also wish to clarify the Parties' existing contractual commitments related to water supply to resolve uncertainty and reduce the potential for future disputes regarding such commitments.

(4) The Parties believe that optimizing the utilization of the Parties' available water supplies will also work to benefit other interests in the Basin, especially downstream water users and the environmental flow needs of the Colorado River and the Matagorda Bay system.

B. Recitals Regarding the Parties

(1) Austin holds water rights to the Colorado River totaling approximately 330,000 acre-feet of water per year (AFY). These include Certificates of Adjudication (COA) Nos. 14-5471, as amended, and 14-5489, as amended (collectively, "Austin's Existing Water Rights.").

(2) The Austin Water Utility currently serves a population of approximately 830,000 people and associated businesses; currently diverts from the Colorado River approximately 165,000 AFY under Austin's Existing Water Rights and LCRA's Existing Water Rights for treatment at three separate water treatment plants; and currently discharges approximately 100,000 AFY of Return Flows to the Colorado River from two separate wastewater treatment plants.

(3) Austin is currently planning and designing a fourth water treatment plant ("WTP 4") that will draw its water directly from Lake Travis.

(4) Austin Energy 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. These include the steam electric needs for generating facilities located on Town Lake and Decker Lake; and at the Sand Hill Energy Center; the Fayette Power Project; and the South Texas Project nuclear operating plant. Depending on climate and plant operations, Austin's water demands for these existing facilities can reach about 40,000 AFY.

(5) Austin also uses raw water diverted from the Colorado River for purposes of irrigating certain city-owned recreational facilities, such as the sports fields located at Zilker Park in central Austin. Diversion and use of 150 acre-feet raw water is authorized to be used for these purposes on a perpetual basis by Certificate of Adjudication No. 14-

5471, with an additional amount of 1000 acre-feet authorized for use only through December 31, 2011, under COA No. 14-5471A.

(6) LCRA holds water rights to the Colorado River totaling more than 2.1 million AFY. These include the right to divert and use up to 1.5 million AFY from lakes Buchanan and Travis (COA Nos. 14-5478 & 14-5482), and another 636,750 AFY under downstream run-of-river water rights associated with the Gulf Coast (COA No. 14-5476, as amended), Lakeside (COA No. 14-5475, as amended), Garwood (COA No. 14-5434, as amended), and Pierce Ranch (COA No. 14-5477, as amended) operations. LCRA also holds several smaller water rights for Lakes Marble Falls, LBJ (including Ferguson Power Plant), and Inks (COA 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 (COA Nos. 14-5474 & 14-5473) (collectively, "LCRA's Existing Water Rights").

(7) 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. Currently, LCRA has existing contractual commitments and Board resolutions committing about 510,000 AFY on a firm basis and has supplied approximately 118,500 AFY of stored water and 244,178 AFY of run-of-river water on an average interruptible basis to irrigation customers within the Gulf Coast, Lakeside, and Garwood operations and Pierce Ranch over the last eleven years. These commitments include 63,900 AFY reserved for steam electric purposes at LCRA's own power plants (Ferguson Power Plant, Sim Gideon, Lost Pines, and the Fayette Power Project). From

LCRA's Lake Buchanan and Lake Travis rights, LCRA has dedicated approximately 33,400 AFY to providing water for instream flows and freshwater inflow needs on a firm basis and has provided an average of 71,100 AFY of interruptible water supply for such purposes over the past eleven years. Further, LCRA is currently studying the feasibility of developing up to 150,000 AFY of firm water supply for the San Antonio Water System ("SAWS"). LCRA is a party to a number of agreements that also affect LCRA's management and operation of its water rights, including agreements with Austin (as identified in this Agreement), the Federal Emergency Management Agency, the Colorado River Municipal Water District, Brown County Water Improvement District No. 1, the City of San Angelo, and the STP Nuclear Operating Company.

(8) LCRA is also charged with managing the waters of the lower Colorado River basin to prevent or aid in the prevention of damage to person or property from flooding of the Colorado River and its tributaries, and may provide for the study, correcting, and control of both artificial and natural pollution of all groundwater or surface water of the Colorado River and its tributaries within its boundaries.

C. Recitals Regarding Water Rights and Collaborative Water Supply Management

(1) Austin and Central Texas continue to experience rapid population growth and development, therefore the Parties anticipate that water supply demands will continue to increase in the coming decades.

(2) Although the Parties have contractual relationships related to water supply and water management dating back to the 1930s, LCRA and Austin have more recently sought to employ independent water management strategies to meet their respective projected water supply needs. These recent efforts have given rise to a number of disputes between the Parties concerning the existing contractual relationships, the scope

and magnitude of the Parties' Existing Water Rights and new water rights being requested by the Parties.

(3) Recent studies indicate that collaborative management of LCRA's and Austin's water rights as part of an integrated system offers the Parties the opportunity to optimize the availability of the Parties' water supplies for meeting the water needs of the Parties' customers and the environment, while honoring others' existing water rights. The Parties believe this approach will, in the long-term, maximize the available water supplies and offer cost savings for the Parties' customers by increasing the flexibility available to the Parties in managing water supplies.

(4) Austin and LCRA agree that the best method for pursuing collaborative management of the Parties' water rights is to establish a formal water resource management partnership ("Water Partnership") that will evaluate and implement strategies that will optimize water supplies to meet water needs of the Parties' customers and the environment.

(5) While collaboratively managing these rights in the manner contemplated by this Settlement Agreement, the Parties shall retain full legal ownership of their respective water rights.

D. Recitals Regarding Resolution of Certain Regulatory Matters

(1) Recent regulatory activities concerning water rights have led to legal conflicts between the Parties, primarily regarding ownership and control of Return Flows.

(2) Austin and LCRA wish to resolve these pending legal conflicts so that the Parties will no longer pursue competing objectives, but will instead work in cooperation with each other to the benefit of both Parties and the Basin as a whole.

(3) The Parties agree that the measures identified in this Settlement Agreement will allow the Parties to resolve these legal conflicts.

E. Recitals Regarding Existing and Future Contracts Between the Parties

(1) 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").

(2) 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 purposes, and additional supplies for steam electric purposes at Town Lake and Decker Lake.

(3) The Parties agree that clarification of the obligations set forth in the Existing Water Sale Agreements is needed to ensure the success of the Water Partnership and to avoid future disputes.

(4) Except as clarified by this Settlement Agreement, this Settlement Agreement is not intended to amend any of the Existing Water Sale Agreements.

(5) Austin will need supplemental water supplies above those contemplated by the Existing Water Sale Agreements, beginning in approximately 2050. An important component of this Settlement Agreement is securing future water supplies to meet Austin's projected needs of up to 250,000 AFY over and above the water supply contemplated by the Existing Water Sale Agreements, as set forth in Section IV.B.

II. ELEMENTS OF SETTLEMENT AGREEMENT

In consideration of the foregoing recitals and of the mutual benefits, covenants and provisions contained in this Settlement Agreement, and to resolve their existing legal conflicts and address their mutual interest in optimizing the available water supplies and addressing future water supply needs by, the Parties agree to:

(1) establish the Water Partnership;

(2) develop a means to share the Beneficial Use of Return Flows;

(3) take certain actions at the Texas Commission on Environmental Quality;

(4) clarify the Parties' existing contractual commitments related to water supply; and

(5) enter into a water supply agreement for supplemental water for the City of Austin.

III. 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. AFY: Acre-feet per year or acre-foot per year.

C. Austin's Existing Water Rights: Defined at Paragraph I.B(1).

D. 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.

E. 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 conserved water and water provided for instream flows or freshwater inflows to the bays and estuaries.

F. Carriage Losses: 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 point of discharge or release to a point downstream where diversion for Beneficial Use occurs.

G. 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 Settlement Agreement, the term "Conservation" does not, however, include Direct Reuse or Indirect Reuse.

H. Demand Schedule: The projected schedule of Austin's 100-year water demands, as agreed upon under Section IV.B(2)(a)(iii) of this Settlement Agreement.

I. 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.

J. Effective Date: As specified in Section IX.K.

K. Existing Water Sale Agreements: Collective name for all previously established contracts and agreements entered into by the Parties and relating to water supply and management, as identified in Section I.E(1) of this Settlement Agreement.

L. FPP/SHEC 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 (SHEC).

M. 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.

N. LCRA's Existing Water Rights: Defined at Paragraph I.B(6).

O. Parties: The City of Austin ("Austin") and the Lower Colorado River Authority ("LCRA").

P. 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.

Q. Supplemental Water Supply Agreement: The agreement described by Section IV.B.

R. Water Partnership: The partnership created by Paragraph IV.A. of this Settlement Agreement.

S. 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."

IV. WATER RESOURCE MANAGEMENT PARTNERSHIP AND SUPPLEMENTAL WATER SUPPLY AGREEMENT.

A. Water Partnership

(1) LCRA and Austin, as the two largest water right holders in the lower Colorado River basin, have agreed to develop a cooperative management structure, as outlined in **Exhibit A** of this Settlement Agreement. Through this new approach, the Parties will jointly evaluate and implement strategies to optimize water supplies to meet the long-term water needs of all of their customers and the environment.

(2) The Water Partnership will be organized and carried out under the terms of **Exhibit A** of this Settlement Agreement. The Water Partnership will engage in joint water supply planning and management of both entities' individual raw water supplies as an integrated system, including all existing raw surface water supplies, including Return Flows, of each party and any future water supplies the Water Partnership approves for inclusion. When developing future water supplies, the Parties will consider the needs of their customers and the environment.

(3) The Parties acknowledge and agree that day-to-day management and coordination of the river system will remain LCRA's responsibility. Day-to-day water/wastewater utility planning and operations will remain the responsibility of each party.

(4) The Parties agree that **Exhibit A** may be amended from time to time by written agreement of the Parties without the need to amend this Settlement Agreement.

(5) The Parties shall retain full legal ownership of their respective water rights while collaboratively managing these rights in the manner contemplated by this Settlement Agreement.

B. Supplemental Water Supply Agreement

(1) To address Austin's future water supply needs while also considering other anticipated long-term water supply needs of LCRA's customers, the Parties agree to negotiate a more detailed Supplemental Water Supply Agreement for up to 250,000 acre-feet per year wherein LCRA would agree to develop and make available to Austin and Austin would agree to pay for a supplemental firm water supply. The Parties acknowledge that such detailed agreement is subject to final approval by the Austin City Council and LCRA Board, which shall be sought on or before August 31, 2007, or at such later date if the LCRA General Manager and Austin City Manager agree in writing to a later time period for obtaining such approval.

(2) The Supplemental Water Supply Agreement must contain specific language reflecting the following general concepts, which the Parties may modify by mutual agreement prior to presenting such agreement to their respective governing bodies:

(a) *Quantity, Purpose, and Location of Use*

(i) LCRA agrees to work within the Water Partnership to make available to Austin an additional firm water supply for municipal, steam electric, and other beneficial purposes to supplement the water supply provided under the Existing Water Sale Agreements. Use of this supply for steam electric and other power plant purposes shall first be considered by the Water Partnership consistent with Section VI of this Agreement.

(ii) Unless otherwise agreed to by the Parties, Austin may not use the supplemental water to be made available under the Supplemental Water Supply Agreement until its firm water demand exceeds 325,000 AFY.

(iii) The timing and quantity of supplemental water that LCRA will

make available and that Austin will purchase shall be limited by an agreed upon schedule of Austin's projected 100-year water demands ("Demand Schedule"), which shall be developed by the Water Partnership on or before December 31, 2010, and updated every five years thereafter.

(iv) Austin shall use the supplemental water supply to be made available under the Supplemental Water Supply Agreement only within Austin's Service Area; however, Austin agrees that it will not supply such water on a wholesale basis to any third party entity where the wastewater derived from such water is discharged outside the Colorado River basin unless: (a) such transfer is authorized under state law; and (b) Austin includes in any contracts for new customers or any renewed contracts for entities that are existing customers on the effective date of the Supplemental Water Supply Agreement 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.

(b) *Payments*. Austin shall pay for the supplemental water supply to be made available according to the following conditions:

(i) Payments Upon Initial Use. Upon initial use of water by Austin under the Supplemental Water Supply Agreement, Austin shall pay the applicable LCRA firm water rate in effect at the time Austin begins to use water under the Demand Schedule, including any charges then in effect and applicable to: (1) diversion and use of the water up to the quantities made available in accordance with the Demand Schedule; (2) setting aside water for Austin's use in accordance with the Demand Schedule, or (3) the

use of water in excess of the amount made available in accordance with the Demand Schedule.

(ii) Payment Prior to Initial Use. The Supplemental Water Supply Agreement shall set forth the circumstances under which Austin would make payments, if any, prior to the initial use of water under the Supplemental Water Supply Agreement.

(c) Regulatory Approvals Required; Future Regulations.

(i) LCRA's commitment to supply water shall be conditioned upon LCRA obtaining any and all regulatory and statutory authorizations, if any, that may be needed to allow LCRA to provide the supplemental water supply from any and all supplies the Water Partnership has identified as appropriate supply alternatives consistent with Section IV.B(2)(d). Austin shall support LCRA's efforts to obtain any such authorizations.

(ii) Notwithstanding the foregoing, the Parties shall also acknowledge and agree that, the failure to secure the legal right to divert and use Return Flows as contemplated by Section V.A of this Agreement will not serve to excuse performance of the Parties' obligations under the Supplemental Water Supply Agreement to be developed and executed, except as such obligations relate to any credit for Indirect Reuse contemplated thereby. In addition, if the Parties fail to obtain the required regulatory approvals, both Parties will use their best efforts to take any necessary actions to effectuate the terms of the Supplemental Water Supply Agreement.

(iii) Further, Austin shall agree 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 Supplemental Water Supply Agreement, including but not limited to any additional water conservation and drought contingency measures that may be required by state law.

(d) Source of Supply. Consistent with the 1999 Water Sale Agreement, the water supply to be provided by LCRA may include any source of firm water supply legally and physically available to LCRA at the time Austin's actual demand for the water arises, and may include water available, if any, under Austin's water rights and may also include any Return Flows derived from any water supplies made available to Austin, wherever located, but only as set forth by Section V.B. Water supplies to be provided shall be limited to only those which the LCRA Board has specifically approved for consideration in meeting future water needs within the LCRA service area.

(e) Austin's water rights shall be used first to supply Austin's needs under the Supplemental Water Supply Agreement, unless the Water Partnership determines that some other arrangement would serve to further optimize the water available to the Parties.

(3) No Agreement. Should the Parties fail to reach agreement on or obtain the approvals from their respective governing bodies of the Supplemental Water Supply Agreement as contemplated herein, this Settlement Agreement shall become null and void and of no further effect. In such event of termination, each party retains all rights and duties that existed prior to entering into this Settlement Agreement.

V. SHARED RIGHTS TO THE BENEFICIAL USE OF RETURN FLOWS.

Subject to obtaining any required regulatory approvals as may be necessary, the Parties agree to share rights to the Beneficial Use of Return Flows as part of the Parties' collaborative water

resource management system as set forth in this Section IV.A. If the Parties fail to obtain the required regulatory approvals, both Parties agree to use their best efforts to take any necessary actions to effectuate the terms of this Section.

A. Regulatory Approvals Regarding Ownership and Control of Return Flows

(1) Type of Authorization. To implement the Return Flows sharing arrangement contemplated by this Section V, the Parties agree and acknowledge that water rights permits or permit amendments may be required pursuant to Chapter 11 of the Texas Water Code. Within thirty (30) days after the Effective Date of the Supplemental Water Supply Agreement, the Parties agree to initiate efforts to seek from the Texas Commission on Environmental Quality (TCEQ) the permits, amendments or approvals necessary to allow the sharing arrangement for Return Flows as set forth in this Settlement Agreement. The type of regulatory approval the Parties seek shall be determined after further consultation with the TCEQ. The Parties shall mutually agree on the type of regulatory approval that will most effectively and expeditiously carry out the Return Flows sharing agreement set forth in this Section V. The types of regulatory approvals may include (in order of preference) one or more of the following:

(a) Issuance of a new water rights permit to divert and use Return Flows whereby LCRA and Austin hold an undivided interest in such permit;

(b) Confirmation by the TCEQ that Return Flows are state water that may be diverted and used by LCRA and Austin under LCRA's and Austin's water rights, as they exist today or may be amended in the future or hereafter obtained, and specifically including LCRA's Water Management Plan and any water rights permit ultimately issued to LCRA under Application No. 5731; or

(c) Any other mutually agreeable means identified, upon consultation with the

TCEQ, including any contract between the Parties.

(2) Incorporation into Water Management Plan. The Parties further agree that, regardless of the regulatory mechanism ultimately used to secure the legal rights to implement the Return Flows sharing arrangement set forth in this section, such sharing arrangement will be incorporated as appropriate into LCRA's Water Management Plan, and will include any projected allocation and Beneficial Use of Return Flows by LCRA under its water rights, any dedicated use of Return Flows to meet environmental flow needs, any interruptible Indirect Reuse of such Return Flows by Austin, and an assessment of the anticipated impact of such sharing arrangement on the Combined Firm Yield of Lakes Buchanan and Travis.

B. Interruptible Indirect Reuse by Austin

Austin agrees that its Indirect Reuse of Return Flows will be on an interruptible basis as follows:

(1) Environmental Flow Criteria and Carriage Losses.

Austin shall only divert an amount of water from the Colorado River that can be attributed to Return Flows discharged by Austin upstream of the diversion point, less Carriage Losses, only when the specific environmental flow criteria as set forth in **Exhibit B** are satisfied. These environmental flow criteria are designed to assure that Austin's Indirect Reuse does not directly cause adverse impacts to instream flows or freshwater inflows to Matagorda Bay. To the extent that the Return Flows are dedicated to meeting the environmental flow criteria for bay and estuary inflows set forth in **Exhibit B** when Austin is implementing an Indirect Reuse project, such Return Flows shall not be available to either party for diversion. If, however, the Return Flows are dedicated to meeting only an instream flow criteria set forth in **Exhibit B**, such flows may be diverted in accordance with the sharing arrangement downstream of the location at which

the instream flow criteria applies to the extent that such diversions do not result in flow reductions that cause other downstream environmental flow criteria to be violated.

(2) Location and Purpose of Use.

(a) Austin shall only divert Return Flows for Indirect Reuse as set forth in this Section V.B downstream of one or more of its wastewater treatment plants.

(b) Austin shall only divert Return Flows for Indirect Reuse within Austin's Service Area to meet its own municipal water supply needs and up to 3500 acre-feet of steam electric needs at the Fayette Power Project and Sand Hill Energy Center.

(c) If Austin proposes a project to be located above the confluence of Onion Creek and the Colorado River (but below Walnut Creek Wastewater Treatment Plant), Austin will propose the new location to the Water Partnership. The Water Partnership will develop approaches to the proposed new location that consider the following factors:

(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.

(3) Implementation Date for Austin's Indirect Reuse.

The Parties agree that Austin's Indirect Reuse of Return Flows at the Sand Hill Energy Center and Fayette Power Project or for municipal purposes will not be implemented until:

(a) Austin has resumed payments under Article IV.H.4. of the 1999 Agreement; and

(b) any regulatory approvals, if necessary, have been obtained to allow such Indirect Reuse as set forth in Section V.A(1).

(4) Accounting Under Existing Water Supply Agreements and Supplemental Water Supply Agreement.

(a) Existing Water Sale Agreements

Notwithstanding any other interpretation of the Existing Water Sale Agreements, the Parties agree that:

(i) Each acre-foot of Return Flows that Austin Indirectly Reuses in any given year shall be counted towards the total number of acre-feet that LCRA is obligated to supply Austin under the Existing Water Sale Agreements.

(ii) Upon implementation of the sharing arrangement, 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 Indirect Reuse LCRA shall provide a credit equivalent to the LCRA's then current firm raw water rate, as follows:

(a) Austin's Indirect Reuse at FPP/SHEC shall be credited towards LCRA's obligation to supply up to 3500 acre-feet of water under the FPP/SHEC Agreement and, for any diversions of water in excess of 3500 acre-feet, unless such diverted water is determined to have been legally available to Austin under Certificate of Adjudication No. 14-5471B, Austin shall pay LCRA for water at the applicable water rate for diversions in excess of the Maximum Annual Quantity as stated in the FPP/SHEC Agreement.

(b) Upon resumption of payments under the 1999 Agreement, for every acre-foot of Indirect Reuse implemented by Austin for purposes other than for steam electric purposes under the FPP/SHEC Agreement, LCRA shall provide a credit against the amounts owed under the 1999 Agreement.

(b) Supplemental Water Supply Agreement.

To the extent Return Flows are available for possible Indirect Reuse by Austin, after accounting for applicable environmental flow needs and Carriage Losses, and any credits provided under the Existing Water Sale Agreements as set forth above in subsection (a), Austin may implement Indirect Reuse and receive an appropriate credit against amounts owed for water use under the Supplemental Water Supply Agreement. The method for determining whether Return Flows are available for possible Indirect Reuse, including appropriate environmental flow criteria, and the appropriate credit to be provided under the Supplemental Water Supply Agreement shall be developed by the Water Partnership prior to initiating Indirect Reuse under the Supplemental Water Supply Agreement and shall give due consideration to the source of supply to be made available for Austin's use, the factors identified in subsection V.B(2)(c) for Indirect Reuse located above the confluence of Onion Creek and the Colorado River (but below Walnut Creek Wastewater Treatment Plant), and any other 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 Indirect Reuse under the Supplemental Water Supply Agreement.

C. Use of Return Flows by LCRA.

The Parties agree that, whenever and to whatever extent Austin is not Indirectly Reusing Return Flows in accordance with this Settlement Agreement and to the extent Return Flows cannot be

allocated against any obligation LCRA may have to provide water for freshwater inflow or instream flow needs under its water rights, LCRA shall have the right to use Return Flows for any other Beneficial Use and to account for such Return Flows as state water available for diversion or use under its senior water rights. Such right shall not include the right to make such Return Flows available to Austin except as contemplated by Section IV.B(2)(d) and Section V.B(4) of this Agreement whereby LCRA may count such Return Flows in the total diversions made by Austin under the Existing Water Sale Agreements and the Supplemental Water Supply Agreement contemplated by Section IV.B, but has agreed to provide an appropriate credit for Austin's Indirect Reuse of such Return Flows.

D. Direct Reuse.

The Parties agree that nothing in this Agreement shall affect or reduce the Parties' rights to implement Direct Reuse.

VI. WATER NEEDS FOR AUSTIN'S STEAM ELECTRIC OR OTHER POWER PLANTS

Regarding Austin's water needs for steam electric or other power plant purposes, the Return Flows sharing arrangement contained in this Settlement Agreement is applicable only to Austin's existing water supply needs at the Sand Hill Energy Center and Fayette Power Plant. Should Austin need additional water for any of its other power plants, including new or expanded power plants in which Austin may acquire an ownership interest, the manner in which that supplemental water will be secured shall be referred to the Water Partnership for resolution. Until such time, Austin agrees that it will not use the Return Flow sharing arrangement or the Supplemental Water Supply Agreement contemplated by this Settlement Agreement to address the water supply needs of any other Austin power plants, including new or expanded power plants that Austin may add in the future unless:

(1) Austin decides to provide the needed supply from the water made available by LCRA under the 1999 Agreement at a designated Downstream Point of Diversion or other allowed diversion point under the 1999 Agreement, or

(2) Austin otherwise obtains the written consent of LCRA to provide such Return Flows to its new or expanded power plants under the Supplemental Water Supply Agreement contemplated by Section IV.B of this Settlement Agreement or some other written agreement between the Parties.

VII. CLARIFICATION OF OBLIGATIONS UNDER 1999 AGREEMENT.

A. Payment Trigger.

Article IV.H.(4) of the 1999 Agreement provides that, when the annual average amount of water diverted by Austin during any calendar period of two consecutive years exceeds 201,000 AFY for certain municipal, industrial and/or irrigation use, Austin will pay LCRA for all of such water use in excess of 150,000 AFY in all subsequent calendar years (the "Payment Trigger").

(1) The Parties acknowledge and agree that Austin is currently undertaking both aggressive Conservation programs and the construction of necessary infrastructure to implement Direct Reuse that may affect the date on which the Payment Trigger is reached. Further, LCRA acknowledges that future and certain existing Austin wholesale water supply agreements may require that, at Austin's option, Austin's customers must obtain their own raw water supply contract from LCRA in the future as a means of delaying the date on which payments by Austin will be required under the 1999 Agreement.

(2) Except for the strategies outlined in subsection (1) above, Austin agrees that it will not use alternative water supplies or implement Indirect Reuse to meet its municipal

water supply needs in a manner that would delay the date on which the Payment Trigger is reached.

(3) In the event that Austin chooses to use alternative water supplies or implement Indirect Reuse to meet its municipal water supply needs prior to the time at which Austin has resumed payments under the 1999 Agreement, Austin agrees that LCRA shall count any and all such water use as if it were water supplied by LCRA under the 1999 Agreement.

B. Accounting for Water Use under Various Water Rights

(1) The Parties agree that, notwithstanding Section IV.A of the 1999 Water Sale Agreement, all water to be used by Austin shall first be diverted and allocated against water rights held by Austin, with the remaining amounts to be allocated under any of LCRA's water supplies that LCRA may make available for use under the 1999 Water Sale Agreement, except as may otherwise be agreed upon by the Parties as part of the Water Partnership's efforts to collaboratively manage water supplies. The Parties agree and acknowledge that the exact quantity of water to be allocated from LCRA's firm supplies to satisfy LCRA's commitment under its Existing Water Sale Agreements may change over time as improvements and modifications are made to the manner in which water availability is assessed by LCRA, TCEQ, and the Texas Water Development Board.

(2) Consistent with the Parties' commitment to have a more collaborative relationship, and the obligations contained in the 1999 Agreement and state law, the Parties agree to improve communications and exchange of data and information regarding Austin's daily diversions for various beneficial purposes and to develop a

consistent method for reporting annual water use to the TCEQ to ensure that water use is being accurately accounted for under the Parties' respective water rights.

C. Points of Diversion and Diversion Rates.

The Parties agree that both LCRA and Austin have a need for flexibility in making diversions of water under various water rights and water sale agreements, including the 1999 Water Sale Agreement. To enhance this flexibility, the Parties agree as follows:

(1) Consistent with Article IV.A of the 1999 Agreement, as clarified by VII.B(1) of this Settlement Agreement, LCRA agrees that Austin may increase its allowed maximum daily peak day diversion rate from the Lake Travis Point of Diversion from 150 MGD up to 300 MGD.

(2) Under Article IV.B of the 1999 Agreement, LCRA acknowledges and agrees that Austin may divert raw water from the Colorado River or its tributaries from any reasonable location within Austin's Service Area, including Lake Travis, Lake Austin, Town Lake, and other Downstream Points of Diversion Austin may add on the Colorado River from Longhorn Dam to the Bastrop County line, without limitations on the daily and annual diversion rates and without further written approval from LCRA, except as set forth above in subsection (1) or as may be necessary to comply with any instream flow requirements set forth in the water rights under which such diversions are made. Further, the Parties agree that, if Austin proposes a project to divert above the confluence of Onion Creek and the Colorado River (but below Walnut Creek Wastewater Treatment Plant), Austin will propose the new location to the Water Partnership. The Water Partnership will develop approaches to the proposed new location that consider the following factors:

(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 acknowledge that the addition of some diversion points or changes in diversion rates under Austin's Existing Water Rights may require the approval of TCEQ and hereby agree to cooperate in seeking such approvals as are reasonably necessary to effectuate this agreement.

(3) Austin acknowledges and agrees that LCRA needs additional flexibility to use whichever of its water rights that it deems necessary and appropriate to allow it to make water available to Austin under the 1999 Agreement from sources other than Certificates of Adjudication No. 14-5478 (Lake Buchanan) & 14-5482 (Lake Travis), as amended, and to use whichever of its water rights that it deems necessary and appropriate to make water available to other LCRA customers. The Parties hereby agree to cooperate in seeking appropriate regulatory approvals to obtain such operational flexibility.

D. Town Lake Levels.

Considering the limitations placed on LCRA's obligation to provide water for industrial cooling purposes in Town Lake under Article IV.(E) of the 1999 Agreement, the Water Partnership shall be charged with developing a proposal to address maintenance of lake levels for Town Lake after the Holly Power Plant is closed. Such proposal shall include both the source of water supply and allocation of cost for such water supply.

E. Drought Contingency Plan.

Austin agrees that, consistent with Section IV.N of the 1999 Agreement, LCRA's Water Management Plan, and state law, it must develop a drought contingency plan for use of the water

supplied under the 1999 Agreement that reflects consideration of the supply made available by LCRA and the targets and goals set forth in the LCRA Drought Contingency Plan.

F. LCRA's Lometa Water System

Notwithstanding Special Condition 5.A(2) in Austin's Certificate of Adjudication No. 14-5471, Austin agrees that it will not assert a priority call on any water to be supplied by LCRA to the Lometa Water System for municipal and domestic purposes from any water right that LCRA may lease or acquire that has a priority date that is junior to November 15, 1900.

VIII. RESOLUTION OF CERTAIN REGULATORY MATTERS

The Parties agree to the following:

A. LCRA's Excess Flows Permit Application. TCEQ Application Number 5731 ("Excess Flows Application").

(1) Within thirty (30) days of the effective date of the Supplemental Water Supply Agreement, LCRA will file a letter with TCEQ in a form substantially similar to **Exhibit C** attached hereto clarifying that LCRA will not make priority calls upon Return Flows to enhance LCRA's right to divert any water granted in this permit during times when and to the extent that Austin is Indirectly Reusing Return Flows consistent with this Settlement Agreement unless the Parties determine such priority call is necessary to allow the diversion and Beneficial Use of such Return Flows by Austin after consultation with the TCEQ, as contemplated by Section V.A(1), nor will LCRA seek to restrict Austin's Direct Reuse. LCRA shall request from the TCEQ a permit condition confirming this agreement.

(2) If there is a contested case hearing on the Excess Flows Application, Austin will seek to become a party to that hearing pursuant to the TCEQ regulations found at 30 Tex. Admin. Code Chapter 55. Once the TCEQ determines that Austin is a party, however, Austin will participate in the hearing process only to the extent necessary to ensure that

subsequent permit processing does not injure Austin's Existing Water Rights or contravene this Settlement Agreement.

B. LCRA's Garwood Application. TCEQ Application Number 15-5434E ("Garwood Application").

(1) LCRA will ensure that the amendments sought by LCRA will not render Austin's Existing Water Rights less reliable than they would be if the Garwood Application was not granted.

(2) Within thirty (30) days of the effective date of the Supplemental Water Supply Agreement, LCRA will file a letter with TCEQ in a form substantially similar to **Exhibit D** attached hereto clarifying that it will not make priority calls upon Return Flows, to enhance LCRA's right to divert any water granted under this permit amendment during times when and to the extent that Austin is Indirectly Reusing Return Flows consistent with this Settlement Agreement unless the Parties determine such priority call is necessary to allow the diversion and Beneficial Use of such Return Flows by Austin after consultation with the TCEQ, as contemplated by Section V.A(1), nor will LCRA seek to restrict Austin's Direct Reuse. LCRA shall request from the TCEQ a permit condition confirming this agreement.

(3) If there is a contested case hearing on the Garwood Application, Austin will seek to become a party to that hearing pursuant to the TCEQ regulations found at 30 TAC Chapter 55. Once the TCEQ determines that Austin is a party, however, Austin will participate in the hearing process only to the extent necessary to ensure that subsequent permit processing does not injure Austin's Existing Water Rights or contravene this Settlement Agreement.

C. LCRA's Application to Amend its Water Management Plan. TCEQ Application Number 5838 ("WMP Application").

(1) The Parties hereby agree that LCRA does not need to amend its pending WMP Application to reflect this Settlement Agreement. Rather, LCRA agrees that it will clarify its obligations under this Settlement Agreement, including incorporation of the sharing arrangement for Return Flows in the manner set forth in Section V.A(2), as part of the next amendment of the Water Management Plan for which LCRA seeks approval from TCEQ, which is expected to be filed on or before December 31, 2010. If authorization to divert and use Return Flows consistent with this Settlement Agreement has not been secured by the time the LCRA files its next Water Management Plan, and if the Parties determine that such authority is not likely to be secured through revisions solely to the Water Management Plan, then LCRA shall seek to incorporate the Return Flows sharing arrangement into the Water Management Plan within six (6) months after such legal rights are otherwise secured. LCRA will provide Austin an opportunity to review and comment on these amendments before they are filed. For purposes of supporting the combined firm yield of Lakes Buchanan and Travis, LCRA may only rely upon Return Flows if and up to the extent that such reliance is necessary to prevent a reduction in the combined firm yield of 535, 812 acre-feet per year, as originally approved by the TCEQ's predecessor agency in its order dated September 7, 1989, considering the historical drought of record that was used to calculate such combined firm yield, and shall not impair Austin's right to implement Direct Reuse. Any reliance on an amount of Return Flows in excess of those amounts that may be necessary to support a greater combined firm yield for Lakes Buchanan and Travis, if necessary to implement this Settlement Agreement, shall be approved by the Water Partnership.

(2) If there is a contested case hearing on the WMP Application or any other amendment to the WMP, Austin will seek to become a party to that hearing pursuant to the TCEQ regulations found at 30 Tex. Admin. Code Chapter 55. Once the TCEQ determines that Austin is a party, however, Austin will participate in the hearing process only to the extent necessary to ensure that subsequent permit processing does not injure Austin's Existing Water Rights or contravene this Settlement Agreement.

D. Bed and Banks/Indirect Reuse Permit Applications. (TCEQ Permit Application Nos. 5779, 5915, 14-5478D, & 14-5482D)

Within thirty (30) days of receiving any necessary regulatory approvals to jointly use Return Flows as contemplated by Section V.A(1) of this Settlement Agreement, or a determination by TCEQ that no further authorization is required, LCRA and Austin shall file mutually agreed upon letters with the TCEQ withdrawing, with prejudice, any permit applications related to Indirect Reuse that are left pending at TCEQ at the time such regulatory approval is obtained or determined to be unnecessary.

IX. GENERAL PROVISIONS

A. CONSIDERATION.

Austin and LCRA acknowledge the adequacy of consideration as expressed by the recitations and mutual covenants in this Settlement Agreement.

B. WARRANTIES.

(1) Austin and LCRA each warrant that: (i) it has been fully informed and has full knowledge of the terms, conditions, and effects of this Settlement Agreement; (ii) it, either personally or through its independently retained attorneys, hydrologists and other consultants, has fully investigated to its satisfaction all facts surrounding the various claims, controversies and disputes, and is fully satisfied with the terms and effects of this Settlement Agreement; and (iii) no promise or inducement has been offered or made to it

except as expressly stated in this Settlement Agreement, and this Settlement Agreement is executed without reliance on any statement or representation by Austin or LCRA not expressly stated in this Settlement Agreement and without reliance on any statement or representation by any other party or any other party's agent.

(2) Austin and LCRA each warrant that the undersigned have been fully authorized to execute this Settlement Agreement on its behalf.

C. MUTUAL RELEASES.

(1) Austin does hereby release, acquit, and forever discharge the LCRA, and its officers, directors, partners, agents, attorneys, representatives, employees, affiliates, successors, assigns and insurers, from any and all claims, demands, debts, liability, damages, fees, expenses, or costs of Court, of any and every character and nature whatsoever related in any way to water supply, water rights, and the administration of water rights, whether known or unknown on the date of this Settlement Agreement, either in or arising out of the law of contracts, torts, property rights or the regulation of water, whether arising under statutory or common law, at law or in equity, directly or indirectly attributable in any way to the following: (1) the Existing Water Sale Agreements but only as those agreements relate in any way to water supply, water rights, or the administration of water rights, (2) LCRA's operation under its water rights, including the Water Management Plan, and (3) the filing of LCRA's water rights applications Nos. 14-5478D, 14-5482D, 5838, 5731, or 5434E, or (4) any other claim related in any way to water supply, water rights, and the administration of water rights that could have been brought prior to the Effective Date of this Settlement Agreement. Austin does not, however, release LCRA from any claims accruing after the Effective Date of this Settlement Agreement or the obligations created by this Settlement Agreement, nor does Austin

relinquish its right to become a party to a contested case hearing pursuant to 30 Tex. Admin. Code Chapter 55 for the regulatory matters discussed in Section VIII of this Settlement Agreement in the manner contemplated therein or for future LCRA water rights permit applications or amendments in which Austin may seek to become a party for purposes of protecting the rights and interests obtained under this Settlement Agreement, and to support any water rights applications that seek to optimize the water supplies available to the Parties, including any water rights or other permit applications to be filed by LCRA as part of the LCRA-SAWS Water Project.

(2) LCRA does hereby release, acquit, and forever discharge Austin, and its officers, directors, partners, agents, attorneys, representatives, employees, affiliates, successors, assigns and insurers, from any and all claims, demands, debts, liability, damages, fees, expenses, or costs of Court, of any and every character and nature whatsoever related in any way to water supply, water rights, and the administration of water rights, whether known or unknown on the date of this Settlement Agreement, either in or arising out of the law of contracts, torts, property rights or the regulation of water, whether arising under statutory or common law, at law or in equity, directly or indirectly attributable in any way to the following: (1) the Existing Water Sale Agreements, but only as those agreements relate in any way to water supply, water rights, and the administration of water rights, and (2) the filing of Austin's water rights applications Nos. 5779 & 5915. LCRA does not, however, release Austin from any claims accruing after the Effective Date of this Settlement Agreement or the obligations created by this Settlement Agreement, nor does LCRA relinquish its right to become a party to a contested case hearing pursuant to 30 Tex. Admin. Code Chapter 55 for future Austin water rights permit applications or amendments.

D. ATTORNEYS' FEES AND COSTS.

Each party agrees to bear its own costs and attorneys' fees.

E. BINDING EFFECT.

This Settlement Agreement shall be binding upon, and inure to the benefit of LCRA and Austin, including any affiliates, departments, or divisions thereof, and each of their respective representatives, successors, and assigns.

F. 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.

G. ENTIRE AGREEMENT

This Settlement Agreement, together with all Exhibits attached hereto, constitutes the entire agreement of the Parties relating to the subject matter of this Settlement Agreement. 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.

H. 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 Settlement Agreement with the view to effecting, to the extent possible, the original purpose and intent of this Settlement Agreement, and the validity and enforceability of the remaining provisions shall not be affected thereby. Notwithstanding the foregoing, however, the Parties agree and acknowledge that any termination of this Settlement Agreement resulting from the failure of the Parties to enter into a Supplemental Water Supply Agreement as contemplated by Section IV.B shall control over this section and the Parties shall have no obligations to each

other thereafter other than those existing prior to the Effective Date of this Settlement Agreement.

I. NO THIRD PARTY BENEFICIARIES.

Except as expressly provided in this Settlement Agreement, nothing will be construed to confer upon any person or entity other than the parties any rights, benefits or remedies under or because of this Settlement Agreement.

J. COUNTERPARTS.

This Settlement Agreement may be executed in one or more counterparts, all of which when taken together shall constitute one and the same document, and this Settlement Agreement may be executed by facsimile signatures.

K. EFFECTIVE DATE.

This Settlement Agreement shall be effective only when signed by both Austin and LCRA. The Effective Date of this Settlement Agreement shall be the latest date on which Austin or LCRA has signed the Settlement Agreement.

CITY OF AUSTIN

By: _____
Toby Hammett Futrell
City Manager

Date: 6-18-2007

Attest: _____

Secretary: KENNETH RAMIREZ

LOWER COLORADO RIVER AUTHORITY

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

Date: 15 June 2007

Attest: _____

Secretary: Thomas G. Mason

EXHIBITS

EXHIBIT A – COA and LCRA Water Resource Management Partnership

1. **Background**: Water is the lifeblood of Central Texas communities. Austin and LCRA have individually employed traditional water management strategies, focusing on solutions that have often unintentionally led to conflict. These conflicts, if left unresolved, may limit the ability of the Parties to meet their responsibilities as major water suppliers. As population growth and economic factors in the region increase the demand for water, the Parties recognize a different approach is needed. Collaborative water management strategies can offer new opportunities to optimize water supply solutions for the region.

2. **Vision:** Reliable and affordable water, managed in an environmentally responsible and collaborative manner, is critical to the vitality and economy of the region.

3. **Purpose**: LCRA and Austin, as the two largest water right holders in the lower Colorado River basin, have agreed to develop a cooperative management structure. Through this new approach, the Parties will jointly evaluate and implement strategies to optimize water supplies to meet water needs of their customers and the environment.

4. **Scope:** The scope of the partnership agreement will include joint water supply planning, as well as the ability to manage both entities' individual raw water supplies as an integrated system. All existing raw surface water supplies, including Return Flows, of each party will be included in this agreement. Future water supplies will be included as approved by the Executive Management Committee.

   Day-to-day management and coordination of the river system including flood management, water quality protection and other functions will remain LCRA's responsibility. Day-to-day water/wastewater utility planning and operations will remain the responsibility of each party.

5. **Cooperative Management Structure.** The Parties shall establish an Executive Management Committee and Technical Water Resources Planning Subcommittee, with the following structure and responsibilities:

   A. Executive Management Committee

   i. Composition: The Executive Management Committee (EMC) will be composed of two representatives each of Austin and LCRA, to be designated by the chief executive officer of each organization.

   ii. Duties and Responsibilities. The EMC will be responsible for carrying out the Purpose and Scope as follows:

   1. establishing and implementing strategic goals and policies,

2. approval of joint water supply strategies and implementation plans,
3. continued supervision and oversight of approved joint water supply strategies and implementation plans,
4. obtaining any necessary approvals from and ensuring compliance with requirements of each party's governing body,
5. coordination of communication with internal and external stakeholders,
6. ensuring adherence to the decision-making guidelines set forth below,
7. creation and general supervision of any subcommittees necessary to carry out the Purpose and Scope, and
8. developing standard operating procedures and bylaws for the EMC and any subcommittees.

B. Technical Water Resource Planning Subcommittee. A Technical Water Resource Planning Subcommittee (Technical Subcommittee) shall be established as follows:

i. Composition: The Technical Subcommittee will be an interdisciplinary committee comprised of members appointed by the EMC.

ii. Duties and Responsibilities. The Technical Subcommittee will be responsible for:

1. Projections of water demands and identification of a wide array of supply alternatives, including Return Flows, and preliminary recommendation of alternatives for consideration by the EMC for further study.

2. In consultation with the EMC, develop any necessary technical analyses and implementation plans for strategies identified for further study.

C. Decisionmaking Guidelines

i. Consensus decisions of the EMC shall be made using interest-based problem solving, mindful of the standards and mutual interests of the Parties as set forth below.
ii. The standards against which water supply strategies shall be evaluated include:
    1. Improve relationships between Austin and LCRA
    2. Cost effective and provides value to both Parties
    3. Obtain stakeholder input in an effort to fairly address multiple needs of the region
iii. The mutual interests of the Parties to be addressed by any water supply strategy selected by the EMC include:

1. maintaining ownership and protecting the value of each party's individual water rights,
2. preserving water quality and environmental health of the river and bay system,
3. improving the Parties' relationship and building trust through enhanced information sharing, cooperation, and partnering,
4. improving water supply certainty, including enhancing reliability and water availability, and
5. responsible water resource management, mindful of the Parties commitment to a strong water conservation ethic.

iv. The Parties may, by consensus, modify the standards and mutual interests to be used in making decisions under this agreement.

v. If the EMC cannot reach a consensus decisions on whether to pursue particular water supply strategies recommended by the Technical Subcommittee, then the EMC shall request a decision from the chief executive officers of each organization.

6. Operating Guidelines:

A. The Parties agree to designate their representatives to the Water Partnership Executive Management Committee (EMC) within 90 days of the final approval of the Supplemental Water Supply Agreement called for in Paragraph IV.B of the Settlement Agreement. The Parties also agree to convene an initial meeting of the EMC within 120 days of execution of the Supplemental Water Supply Agreement.

B. The initial tasks of the EMC include, but are not limited to:

i. Develop operating procedures and by-laws, to include but not be limited to:
   1. Set meeting schedule to initially include a minimum of one EMC meeting per quarter
   2. Set meeting logistics including chair, chair rotation schedule, meeting location, and record keeping, including meeting minutes, workplans, etc.
   3. Set schedule and process to develop scopes and workplans for tasks to be accomplished by the COA and LCRA Water Resource Management Partnership
   4. Set reporting schedule to include a minimum reporting schedule of at least one report to each the Austin City Council and the LCRA Board every two years
   5. Set regular quarterly meeting format to include, as appropriate, but not be limited to:
      a. Report by each party on all activities that might affect either party's water rights or water supply, which may include any significant developments in the following:
         i. status of
            - all water rights applications

- water supply development projects (current or proposed Water Management Plan status)
- any proposed water treatment, wastewater treatment or other related facilities
- any direct reuse projects
- water conservation efforts

ii. status of joint efforts and suggestions for additional joint effort opportunities
iii. updates on studies relevant to water supply availability
iv. updates on relevant environmental issues and implementation of environmental policies
v. relevant legislative updates including new statutes and pending legislation relating to water supply of the Parties
vi. Relevant administrative matters before the State Office of Administrative Hearings
vii. Updates on significant actions or decisions by the Texas Commission on Environmental Quality
viii. Update on water rates revisions
ix. Information on water sales, water usage, major diversions, new customers, and projected water demands (short and long-term)
x. Update on any LCRA Water Management Plan planned amendments
xi. State Region K regional water planning efforts
xii. Update on LCRA Board and Austin City Council actions relevant to
xiii. water supply availability

b. Subcommittee reports
c. Other items as determined

6. Set meeting process to initially include a minimum of two work sessions per year.
   a. Work session tasks may include, but not be limited to:
      i. develop joint basin management strategies in keeping with the mutual interests of the parties as outlined in Exhibit A. Section 5. C. iii., and updated, as needed, by the EMC.
      ii. develop plans for joint studies and projects,
      iii. develop any joint resolutions, proposed agreements,
      iv. Formulate subcommittees, as needed
      v. Evaluate on-going efforts of the COA and LCRA Water Resource Management Partnership including a re-evaluation of the

scope and purpose, including progress of efforts to meet long-term water supply needs

7. Appoint the Technical Water Resource Planning Subcommittee
8. Develop initial scope and workplan to address the following:
    a. Develop initial scope of tasks to be accomplished in the initial two years, including but not limited to:
        i. As per Settlement Agreement Section VII. D., develop proposal to address maintenance of Town Lake levels
        ii. Establish process to evaluate and implement joint water management strategies to optimize water supplies
    b. Establish coordination of reporting, operations, and diversions
    c. Develop a list of matters to be monitored by the EMC
    d. Develop process for determining future tasks and work plans, once initial tasks are complete, including development of demand projections ("Demand Schedule")

EXHIBIT B – Return Flows to be Dedicated for Environmental Flow Purposes

I. Environmental Flow Criteria

At the time of this Settlement Agreement, the Parties have agreed upon the following environmental flow criteria to be applied to the extent that Austin implements Indirect Reuse for purposes that involve allocations against the Existing Water Sale Agreements. Unless otherwise amended by the Water Partnership as contemplated by Section II of this Exhibit, Austin's Indirect Reuse may occur only after Return Flows are first dedicated to help meet certain freshwater inflow and instream flow needs as follows:

(1) Freshwater inflow needs. Before Austin implements any Indirect Reuse, Return Flows shall first be made available in such amounts as are necessary to provide the following monthly freshwater inflows to Matagorda Bay, as measured at the most downstream gage available on the Colorado River (currently the Bay City gage), after accounting for all flows measured in that month at such gage minus any monthly diversions made by water rights holders downstream of such gage:

(a) Critical monthly inflows: a minimum freshwater inflow of 36,000 acre-feet per month,

(b) Intermediate and Target monthly inflows: At such times as LCRA is required to help meet an intermediate or target freshwater inflow need from storable inflows into Lakes Buchanan and Travis under its Water Management Plan, Return Flows shall be provided to satisfy such intermediate or target freshwater inflow needs before any Indirect Reuse of these Return Flows, as follows:

Month	Intermediate Inflow Volume (AF per month)	Target Inflow Volume (AF per month)
January	54,000	205,600
February	54,000	194,500
March	54,000	63,200
April	54,000	60,400
May	54,000	255,400
June	54,000	210,500
July	54,000	108,400
August	54,000	62,000
September	54,000	61,900
October	54,000	71,300
November	54,000	66,500
December	54,000	68,000

(c) Any deficit in the monthly freshwater inflows to be provided from Return Flows in a given month may be made up with additional Return Flows in the first half of the immediately following month.

(2) Instream flow needs at the Bastrop, Columbus and Wharton gages. Before Austin implements any Indirect Reuse, Return Flows shall be made available in such amounts as are necessary to provide the following daily average flows at the Bastrop, Columbus and Wharton gages, after accounting for travel time from the point of Austin's discharge of Return Flows to the locations of these gages and other water projected to be present at such gages:

(a) Subsistence flows. Minimum of the following quantities of daily average flow expressed in cubic feet per second (cfs) at each of the designated locations:

Month	Average Daily Instream Flow Need (cfs)		
	Bastrop Gage	Columbus Gage	Wharton Gage
January	201	340	311
February	265	525	299
March	265	525	202
April	178	299	267
May	266	424	301
June	195	534	367
July	132	342	209
August	100	132	106
September	100	279	186
October	122	187	145
November	174	202	171
December	180	301	200

(b) Base-Dry Flows. At such times as LCRA is required to help meet base-dry instream flow needs from storable inflows into Lakes Buchanan and Travis under its Water Management Plan at the following locations, Return Flows shall be provided to satisfy such instream flow needs, as follows:

Month	Average Daily Instream Flow Need (cfs)		
	Bastrop Gage	Columbus Gage	Wharton Gage
January	303	487	487
February	306	590	590
March	265	525	525
April	277	554	554
May	559	966	974
June	404	967	972
July	335	570	570
August	187	310	310
September	228	405	405
October	237	356	356
November	273	480	480
December	300	464	464

(c) Base-Average Flows. At such times as LCRA is required to help meet

base-average instream flow needs from storable inflows into Lakes Buchanan and Travis under its Water Management Plan at the following locations, Return Flows shall be provided to satisfy such instream flow needs, as follows:

Month	Average Daily Instream Flow Need (cfs)		
	Bastrop Gage	Columbus Gage	Wharton Gage
January	418	828	828
February	480	895	895
March	480	1,020	1,024
April	613	977	999
May	796	1,316	1,380
June	708	1,440	1,495
July	590	895	895
August	368	516	516
September	409	610	610
October	418	741	741
November	410	755	755
December	435	737	737

II. Amendment to Environmental Flow Criteria

The environmental flow criteria set forth in Section I of this Exhibit B may be amended by the Water Partnership. Emphasis and weight shall be given to the environmental flow criteria contained in the then-approved LCRA Water Management Plan.

EXHIBIT C – LCRA Letter to TCEQ Re: Excess Flows Application

DATE

Via Hand Delivery

Ms. Iliana Delgado
Water Rights Permitting Team, MC-160
Water Supply Division
Texas Commission on Environmental Quality
12100 Park 35 Circle
Building F, 3rd Floor
Austin, Texas 78711-3087

Re: Lower Colorado River Authority's (LCRA's) Excess Flows Permit Application; TCEQ Application No. 5731

Dear Ms. Delgado:

I am pleased to inform you that the City of Austin and LCRA have reached a settlement concerning a variety of water rights matters pending before the Commission, including the above-referenced application. In accordance with the Settlement Agreement, LCRA wishes to clarify, as necessary, the intended scope of the above-referenced application specifically as it relates to return flows that may be discharged by the City of Austin. Unless the Parties otherwise agree, LCRA has no intention of enhancing its right to divert any water under this permit by making priority calls upon return flows discharged by Austin during times when and to the extent that such return flows may be authorized for indirect reuse as contemplated by the Settlement Agreement. Further, LCRA does not seek to restrict Austin's direct reuse. To the extent considered necessary by TCEQ, LCRA would request a condition to this effect be included in any permit that may be issued.

LCRA and the City of Austin would welcome the opportunity to discuss the details of our Settlement Agreement with you if you have further questions. Please feel free to call me anytime at 473-3378.

Regards,

Lyn Clancy
Associate General Counsel

cc: Ken Ramirez, Attorney for the City of Austin

EXHIBIT D – LCRA Letter to TCEQ Re: Garwood Application

DATE

Via Hand Delivery

Ms. Kathy Hopkins
Water Rights Permitting Team, MC-160
Water Supply Division
Texas Commission on Environmental Quality
12100 Park 35 Circle
Building F, 3rd Floor
Austin, Texas 78711-3087

Re: Lower Colorado River Authority's (LCRA's) Permit Application to Amend Certificate of Adjudication No. 14-5434; TCEQ Application No. 14-5434E

Dear Ms. Hopkins:

I am pleased to inform you that the City of Austin and LCRA have reached a settlement concerning a variety of water rights matters pending before the Commission, including the above-referenced application. In accordance with the Settlement Agreement, LCRA wishes to clarify, as necessary, the intended scope of the above-referenced application specifically as it relates to return flows that may be discharged by the City of Austin. Unless the Parties otherwise agree, LCRA has no intention of enhancing its right to divert any water under this permit by making priority calls upon return flows discharged by Austin during times when and to the extent that such return flows may be authorized for indirect reuse as contemplated by the Settlement Agreement. Further, LCRA does not seek to restrict Austin's direct reuse. To the extent considered necessary by TCEQ, LCRA would request a condition to this effect be included in any permit that may be issued.

LCRA and the City of Austin would welcome the opportunity to discuss the details of our Settlement Agreement with you if you have further questions. Please feel free to call me anytime at 473-3378.

Regards,

Lyn Clancy
Associate General Counsel

cc: Ken Ramirez, Attorney for the City of Austin

RELEASE AGREEMENT BETWEEN CITY OF AUSTIN AND LOWER COLORADO RIVER AUTHORITY CONCERNING PARTICIPATION IN FAYETTE POWER PROJECT UNITS 3 AND 4

Whereas, the City of Austin, Texas (Austin), a municipal corporation chartered under the constitution and laws of the State of Texas, and the Lower Colorado River Authority (LCRA), a river authority incorporated under the laws of the State of Texas, previously have entered into the Fayette Power Project Participation Agreement dated the 19th day of September, 1974 and as since amended (Participation Agreement) and,

Whereas, Austin and LCRA on January 31, 1984 entered into a Memorandum of Understanding concerning the Fayette Power Project (Fayette) and,

Whereas, Austin has heretofore paid the LCRA $2,775,622.44 in payments for Fayette Unit 3 and,

Whereas, Austin desires to relinquish any rights it may possess under the Participation Agreement concerning participation in Fayette Units 3 and 4 and,

Whereas, the LCRA desires to repay to Austin the sum of $2,775,622.44 previous paid to LCRA,

Now, therefore, Austin and LCRA mutually agree as follows:

1. Austin does hereby release, discharge and relinquish any and all rights it may have now or in the future under said Participation Agreement for participation in Fayette Units 3 and 4 and further release the Lower Colorado River Authority from any duty, obligation or notice requirement under said Participation Agreement concerning Fayette Units 3 and 4.

2. The LCRA does hereby release, discharge and relinquish any and all claims, disputes or actions it may have against Austin now or in the future for any payment or any other duty or obligation for any Particiation and ownership in Fayette Unit 3 and 4 arising out of, or in connection with said Participation Agreeent.

3. In consideration of the foregoing, Austin does hereby agree:

a. To Authorize LCRA to utilize Powell Bend lignite in Fayette Units 1 and 2 for the LCRA account provided that the utilization of Powell Bend lignite does not result in exceeding any regulatory requirements or materially affect performance of Fayette

Units 1 and 2 or require Austin to reduce its western coal commitments below Austin's minimum take levels.

b. To provide funding for Austin's pro-rata share of the conversion of Fayette Units 1 and 2 to dry fly ash.

c. To reserve to LCRA that certain portion of land at the Project Site designated for Unit 4 on Exhibit "A" attached hereto; provided, however, that Unit 4 is fueled by Cummings Creek lignite, that Unit 4 utilizes Generating Units Common Facilities with Unit 3, that Unit 4 utilizes the same basic design concepts as Unit 3 and that Unit 4 is the same nominal size as Unit 3.

4. In consideration of the foregoing, LCRA does hereby agree:

a. To sell Austin Powell Bend lignite for Fayette Units 1 and 2 at LCRA's cost, including reasonable compensation for LCRA's risk.

b. To pay Austin the sum of $2,775,622.44, in good and legal tender or to credit Austin's Fayette account for that amount, at Austin's option, said payment to reflect the total refund due Austin for progress payments made toward Fayette Unit No. 3.

In witness whereof the parties hereto have caused this release to be executed as of the 30th day of March, 1984.

City of Austin

By: Jorge Carrasco
Jorge Carrasco
Acting City Manager

Attest: James E. Aldridge
City Clerk

Lower Colorado River Authority

By: Elof Soderberg
Elof Soderberg
General Manager

Attest: Jed Hogan
asst. Secretary

THE FAYETTE POWER PROJECT

PARTICIPATION AGREEMENT

BETWEEN

THE CITY OF AUSTIN

&

LOWER COLORADO RIVER AUTHORITY

This document incorporates the 1980 & 1984 amendments. No substantive changes have been made and the "DRAFT" is intended for review of typographical errors only.

THE FAYETTE POWER PROJECT

PARTICIPATION AGREEMENT

1. PARTIES: The parties to this agreement are: CITY OF AUSTIN, hereinafter referred to as "Austin," and LOWER COLORADO RIVER AUTHORITY, hereinafter referred to as "LCRA."

2. RECITALS: The parties, having completed a feasibility study, desire to enter into this Participation Agreement providing for the construction, operation and maintenance of jointly owned and operated electric generation facilities to be known as the Fayette Power Project, hereinafter referred to as the Project.

3. AGREEMENT: In consideration of the mutual covenants herein, the parties agree as follows:

4. DEFINITIONS: The following terms, when used herein, shall have the meanings specified:

4.1 ADDITIONAL GENERATING UNIT: The second or any subsequent Generating Unit to be located on the Plant Site.

4.2 CAPACITY: Electrical rating expressed in megawatts (mw) or megavolt-amperes (mva) and based on manufacturer's nameplate electrical ratings where available.

4.3 CAPITAL ADDITIONS: Any Units of Property, land or interests in land which are added to the Project and which are not in substitution for any existing Units of Property, land or interests in land constituting a part of the Project, and which in accordance with accounting practice should be capitalized.

4.4 CAPITAL BETTERMENTS: Any improvements to the Project, including any

enlargement or improvement of any Units of Property constituting a part of the Project or the substitution therefor, where such substitution constitutes an enlargement or improvement as compared with that for which it is substituted, and which in accordance with accounting practice should be capitalized.

4.5 CAPITAL IMPROVEMENTS: All or any Capital Additions, Capital Betterments, or Capital Replacements.

4.6 CAPITAL REPLACEMENTS: The substitution of any Units of Property for other Units of Property constituting a part of the Project, where such substitution does not constitute an enlargement or improvement of that for which it is substituted, and which in accordance with accounting practice should be capitalized.

4.7 COMMON STATION FACILITIES: Those components of the Project ~~identified in Exhibit A as being for the common use of the initial Generating Unit and for the common use of any Additional Generating Units hereafter comprising the Project.~~ that are used in common by all Generating Units at the Plant Site. The question whether any real property or improvement thereto, or any personal property, machinery or equipment is a Common Project Site Facility shall be determined with reference to the operation, rather than the construction of the Generating Units. Without limiting the generality of the foregoing, the Plant Site, the cooling lake (or lakes), dam and spillway, and the river pumping plant and pipeline, together with any additions or enlargements to the above, shall always be considered to be Common Project Site Facilities. (1984 Amendment)

4.8 CONSTRUCTION WORK: All environmental impact studies, site evaluation, acquisition of the Plant Site, Engineering, design, construction, contract preparation, supervision, expediting, inspection, accounting, testing and start-up for Generating Units, Generating Units Common Facilities and Common ~~Station~~ Project Site Facilities up to the time of Firm Operation and

the decommissioning, dismantling, removal and final disposition of all components of the Project, including, but not by way of limitation, all related engineering, design, contract preparation, purchasing, supervision, expediting, inspection, accounting, testing, management and protection. (1984 Amendment)

4.9 CONSTRUCTION WORK LIABILITY: Liability of a Participation for damage suffered by anyone other than a Participant which arises out of Construction Work and is not discharged by Project Insurance, and is not the result of Willful Action.

4.10 ENERGY: Kilowatt-hours (kwh).

4.11 FIRM OPERATION: The state of completion at which a Generating Unit of the Project is determined by the Management Committee to be reliable and at which such unit can reasonably be expected to operate continuously at its rated Capacity.

4.12 FPC ACCOUNTS: The accounts prescribed by the Federal Power Commission's "Uniform System of Accounts Prescribed for Public Utilities and Licensees (Class A and Class B)" in effect as of July 1, 1974, as such system of accounts may be amended from time to time as maintained in accordance with generally accepted accounting principles.

4.13 GENERATION ENTITLEMENT SHARE: The percentage entitlement of each Participant in a particular Generating Unit of the Project. Each Participant's percentage entitlement shall be equal to such Participant's percentage ownership in the particular unit at the applicable time as contemplated by this Participation Agreement.

4.14 GENERATING UNIT: An electric generating unit, including the components thereof (steam supply system, turbine and generator including step-up transformers and other associated equipment), located on the Plant Site. A Generating Unit does not include ~~Common Station Project Site Facilities but does include that portion of the Plant Site allocated thereto in Exhibit B hereto,~~

~~and in the case of an Additional Generating Unit, that portion selected by the Participant proposing the Additional Generating Unit and approved by the Management Committee.~~ Common Project Site Facilities or Generating Units Common Facilities but does include that portion of the real estate encompassed within the boundaries of the Plant Site on which the Generating Unit sits. In addition, a Generating Unit includes all associated property and equipment used solely in conjunction with that electric generating unit. (1984 Amendment)

4.15 GENERATING UNITS COMMON FACILITIES: Those components of the Project that are for the common use of two or more, but less than all Generating Units consisting of, but not limited to, for example, railroad loops, coal dumpers, coal handling facilities, ash handling facilities, ash disposal facilities, ash ponds, coal piles, switchyards and storage buildings and the land associated therewith. Ownership of Generating Units Common Facilities shall be in the same proportion as ownership of the Generating Units to which the components are common. (1984 Amendment)

~~4.15~~ 4.16 MANAGEMENT COMMITTEE: The committee composed of representatives of each Participant established pursuant to Section 9.1 hereof.

~~4.16~~ 4.17 MINIMUM NET GENERATION: The lowest net Power output at which each Generating Unit can be reliably maintained in service on a continuous basis.

~~4.17~~ 4.18 NET EFFECTIVE GENERATING CAPABILITY: The maximum continuous ability of each Generating Unit to produce power which is available to the Participants at the high voltage terminals of the generator step-up transformers.

~~4.18~~ 4.19 NET ENERGY GENERATION: The Energy generated by a Generating Unit which is available to the Participants at the high voltage terminals of the generator step-up transformers less the portions of station service requirements attributable to such Unit.

~~4.19~~ 4.20 PARTICIPANT: A party hereto or other entity acquiring an interest in the Project in accordance with this Participation Agreement.

~~4.20 PLANT OWNERSHIP INTEREST: The percentage interest of the participants in the Project. Each Participant's percentage interest shall be equal to such Participant's ownership in the Common Station Facilities at the applicable time as contemplated by this Participation Agreement.~~ (1984 Amendment)

4.21 POWER: Kilowatts (kw) or megawatts (mw).

4.22 PROJECT AGREEMENTS: This Participation Agreement, any construction agreements, agreements for fuel and water supply and such other agreements relating to the Project, as the Participants find necessary or desirable to designate as Project Agreements, as each of such agreements is originally executed or as any of same may thereafter be supplemented or amended.

4.23 PROJECT INSURANCE: Policies of insurance to be procured and maintained in accordance with Section 25 hereof.

4.24 PROJECT MANAGER: The Participant responsible for the planning, construction and operation of the Project in accordance with this Participation Agreement and the Project Agreements.

4.25 PLANT SITE: A parcel of land in Fayette County Texas, consisting of approximately 6,400 acres and being generally depicted on Exhibit B hereto.

4.26 PROJECT: The Plant Site and, as initially contemplated, one coal or lignite fueled steam electric generating unit, having a Capacity of approximately 600 mw and all facilities and structures used therewith or related thereto and to be constructed on or adjacent to the Plant Site. The Project is generally described in Exhibit A hereto. Said definition shall also include any Additional Generating Unit located on the Plant Site pursuant to this Participation Agreement or any of the

Project Agreements and all facilities and structures used therewith or related thereto and constructed on or adjacent to the Plant Site.

4.27 STATION WORK: Operation, maintenance, use or repair of the Project subsequent to the time of Firm Operation, including, though not by limitation, all related engineering, contract preparation, purchasing, supervision, expediting, inspection, accounting, testing, management and protection.

4.28 STATION WORK LIABILITY: Liability of one or more Participants for damage suffered by anyone other than a Participant which arises out of Station Work, and is not discharged by Project Insurance, and is not the result of Willful Action.

4.29 UNIT 1: The initial Generating Unit contemplated for the Project.

4.30 UNITS OF PROPERTY: Units of property as described in the Federal Power Commission's "List of Units of Property for Use in Connection with Uniform System of Accounts prescribed for Public Utilities and Licensees" in effect from time to time.

4.31 WILLFUL ACTION:

4.31.1 Action taken or not taken by a Participant at the direction of its governing body or board, which action is knowingly or intentionally taken or not taken with intent to cause injury or damage to another.

4.31.2 Action taken or not taken by an employee of a Participant, which action is intentionally taken or not taken with intent to cause injury or damage to another and which action or non-action is subsequently ratified by the Participant employing such employee at the direction of its said governing body or board.

4.31.3 Willful Action does not include intentional acts or omissions of a Participant for which a Participant is legally responsible solely because of the master-servant relationship between such Participant and its employees.

4.32 SHORT-TERM FIRM POWER AND ENERGY: Power and Energy that is scheduled to be delivered on demand over a definite period of time less than or equal to twelve (12) months.

4.33 LONG-TERM FIRM POWER AND ENERGY: Power and Energy that is scheduled to be delivered on demand over a definite period of time, said time more than twelve (12) months.

4.34 SPINNING RESERVE: Generating capability reserved to ensure a Participant's system security and/or to meet requirements of the TIS.

4.35 ECONOMY POWER AND ENERGY: Power and Energy producible from previously unscheduled capacity available for sale to third parties on an interruptible basis, usually at a cost less than the third party could produce the same amount of power and energy for itself.

4.36 NON-FIRM POWER AND ENERGY: Power and Energy that is produced either on-peak or off-peak that is specifically agreed to be interruptible under any particular conditions agreed to by the parties involved.

4.37 COST OF FUEL: The cost of coal used to generate power and energy, based on the previous month's cost of coal delivered to the site for the particular generation unit using the last in, first out (LIFO) method of accounting. In the event that actual cost date are not available at a particular billing date, an estimate of the costs will be used as the basis for billing with an appropriate adjustment made to a later month's bill as soon as the actual cost date become available. (1980 Amendment)

5. OWNERSHIP OF PROJECT:

5.1 ~~Each Participant shall acquire and, subject to adjustments as provided herein, shall initially own an undivided fifty percent (50%) interest in the Plant Site, the Common Station Facilities and Unit 1 as a tenant in common with the other Participant.~~ Regardless of the Participants' respective expenditures for the construction and operation of the Plant Site and the Common Project Site Facilities, each Participant shall own an undivided fifty percent (50%) interest in the Plant Site and the Common Project Site Facilities as a tenant in common with the other

Participant. Except as otherwise provided in this Section 5, the Participants shall not reimburse each other with respect to construction expenditures for Common Project Site Facilities.

5.2 Either Participant may propose Capital Additions and Capital Betterments to the Common Project Site Facilities not associated with the construction of any particular Generating Unit. Upon approval of the proposed project and its construction budget by the Management Committee, the Project Manager shall undertake the construction of the proposed Capital Additions or Capital Betterments to the Common Project Site Facilities in accordance with the general procedures established for construction pursuant to this Agreement. In the absence of an agreement between themselves to the contrary, the Participants shall pay for the Capital Betterments and Capital Additions in the same proportion that each Participant's aggregate Generation Entitlement Share in each Generating Unit then in commercial operation bears to the sum of the nameplate ratings of each such Generating Unit.

5.3 Either Participant may propose Capital Additions and Capital Betterments to the Common Project Site Facilities which, though of use to the operation or construction of all Generating Units, are required by the construction or operation of one or more, but less than all generating units in existence or under construction. Upon approval of the proposed project and its construction budget by the Management Committee, the Project Manager shall undertake the construction of the proposed Capital Additions or Capital Betterments to the Common Project Site Facilities in accordance with the general procedures established for construction pursuant to the Agreement. In the absence of an agreement between themselves to the contrary, the Participants shall pay for the project in the same proportion that each Participant's aggregate Generation Entitlement Share in each Generating Unit whose operation or construction requires the construction of the Capital Additions or Capital Betterments bears to the sum of the nameplate ratings of all such

Generation Units.

5.4 Notwithstanding any other provision of this Agreement to the contrary, the Project cooling reservoirs (Cedar Creek Reservoir and the proposed Baylor Creek Reservoir) shall always be characterized as Common Project Site Facilities. If and when the Management Committee decides that the construction of an Additional Generating Unit will require the construction and use of Baylor Creek Reservoir for proper cooling of the existing or proposed Generating Units, the construction of Baylor Creek Reservoir and any associated water use facilities shall be paid for by the Participants in proportion to their respective ownership interests in the Additional Generating Unit which occasioned the construction of Baylor Creek Reservoir. Should any subsequent Additional Generating Units cooled from Baylor Creek Reservoir be built, the Participants shall, within 90 days after the date of commercial operation of any such Additional Generating unit, make such payments among themselves as may be required so that each Participant's investment (including reimbursements here required) in the Baylor Creek Reservoir and associated water us facilities bears the same proportion to the total of all construction costs for such reservoir and facilities as the sum of each Participant's Generation Entitlement share in each Generating Unit cooled from Baylor Creek Reservoir bears to the sum of the nameplate ratings of all Generating Units cooled from Baylor Creek Reservoir. (1984 Amendment)

6. ADDITION OF GENERATING UNITS:

6.1 A Participant may propose the construction of an Additional Generating Unit by written notice to the other Participant setting forth:

6.1.1 A general description of the proposed Additional Generating Unit and of proposed Capital Additions and Capital Betterments to the existing ~~Common Station Facilities, all in the same form and detail as Generating Unit 1 is shown in Exhibit A hereto, identifying all Common Station Facilities~~ Common Project Site Facilities and Generating Units Common Facilities, describing the design features of the Unit, the designed gross and

net capacity, and the proposed fuel and fuel source, identifying all Common Project Site Facilities, Generating Units Common Facilities and all associated facilities of existing Generating Units proposed for use in connection with the proposed Additional Generating Unit or with respect to which Capital Additions or Capital Betterments are proposed. (1984 Amendment)

6.1.2 A plat of the Plant Site depicting the location of the proposed Additional Generating Unit.

6.1.3 An estimate of the respective costs of the proposed Additional Generating Unit, Capital Additions and Capital Betterments, all in reasonable detail.

6.2 Within forty-five (45) days after service of the written notice given pursuant to Section 6.1 hereof, the Project Manager shall furnish to each Participant a statement, in reasonable detail, of all actual costs (without depreciation) of all Construction Work attributable to the ~~Common Station Facilities~~ Generating Units Common Facilities and to facilities associated with existing Generating Units identified in Section 6.1.1 hereof, as shown on the books of such Project Manager. (1984 Amendment)

6.3 The non-proposing Participant may elect to participate in the proposed Additional Generating Unit, Capital Additions and Capital Betterments ~~to the extent of its Plant Ownership Interest by~~ up to a maximum 50% ownership share by means of a written election served upon the proposing Participant within three (3) months after service of the written notice given pursuant to Section 6.1 hereof. Failure of a Participant to exercise said election as provided in this Section 6.3 within the time period specified shall be conclusively deemed to be an election not to participate. (1984 Amendment)

6.4 Should the non-proposing Participant elect to participate in the proposed Additional Generating Unit, the proposed Additional Generating Unit, Capital Additions and Capital Betterments shall be constructed, operated and maintained in accordance with the provisions of this Participation Agreement and the Project Agreements, and shall be owned (subject to adjustments as

net capacity, and the proposed fuel and fuel source, identifying all Common Project Site Facilities, Generating Units Common Facilities and all associated facilities of existing Generating Units proposed for use in connection with the proposed Additional Generating Unit or with respect to which Capital Additions or Capital Betterments are proposed. (1984 Amendment)

6.1.2 A plat of the Plant Site depicting the location of the proposed Additional Generating Unit.

6.1.3 An estimate of the respective costs of the proposed Additional Generating Unit, Capital Additions and Capital Betterments, all in reasonable detail.

6.2 Within forty-five (45) days after service of the written notice given pursuant to Section 6.1 hereof, the Project Manager shall furnish to each Participant a statement, in reasonable detail, of all actual costs (without depreciation) of all Construction Work attributable to the ~~Common Station Facilities~~ Generating Units Common Facilities and to facilities associated with existing Generating Units identified in Section 6.1.1 hereof, as shown on the books of such Project Manager. (1984 Amendment)

6.3 The non-proposing Participant may elect to participate in the proposed Additional Generating Unit, Capital Additions and Capital Betterments ~~to the extent of its Plant Ownership Interest by~~ up to a maximum 50% ownership share by means of a written election served upon the proposing Participant within three (3) months after service of the written notice given pursuant to Section 6.1 hereof. Failure of a Participant to exercise said election as provided in this Section 6.3 within the time period specified shall be conclusively deemed to be an election not to participate. (1984 Amendment)

6.4 Should the non-proposing Participant elect to participate in the proposed Additional Generating Unit, the proposed Additional Generating Unit, Capital Additions and Capital Betterments shall be constructed, operated and maintained in accordance with the provisions of this Participation Agreement and the Project Agreements, and shall be owned (subject to adjustments as

~~needed the construction costs of the Additional Generating Unit and of said Capital Additions and Capital Betterments and the operation and maintenance costs of the Additional Generating Unit. The operation and maintenance costs of the Common Station Facilities to which said Capital Additions and Capital Betterments relate shall be shared and paid by the Participants in proportion to their adjusted Plant Ownership Interest resulting from the Additional Generating Unit.~~ (1984 Amendment)

6.6 Within two months after the proposing Participant has determined the actual costs of the Capital Additions and Capital Betterments to the previously existing Common Project Site Facilities, Generating Units Common Facilities, and facilities associated with previously existing Generating Units undertaken in conjunction with the Additional Generating Unit, the Project Manager shall furnish to each Participant a statement showing the following:

6.6.1 each item of all actual costs of all Generating Units Common Facilities incurred to date. This list shall include each item of all actual costs of Common Project Site Facilities and facilities previously associated solely with an individual Generating Unit which, with the operation of the Additional Generating Unit, have become items of Generating Units Common Facilities.

6.6.2 the total of all expenditures for Generating Units Common Facilities identified above incurred by each Participant to date;

6.6.3 a proration among the Participants of the costs of each item of Generating Units Common Facilities identified above according to their respective ownership interests in the Generating Units to which the items of Generating Units Common Facilities are common;

6.6.4 a comparison of each Participant's expenditures for Generating Units Common Facilities identified in 6.6.2 above with the sum of each Participant's prorated costs identified in 6.6.3 above.

If the Participants' actual expenditures and prorated costs of Generating Units Common Facilities are not equal, the Participant whose expenditures are less than its prorated cost shall, within 30 days of receipt of the information called for in this paragraph, pay to the other Participant the difference between its expenditures and its prorated costs. For the purpose of any future calculations to be made with reference to the Participants' expenditures for Generating Units Common Facilities, the Participants' actual expenditures shall be debited or credited for the amount of any payment made

pursuant to this paragraph. (1984 Amendment)

7. GENERATING CAPACITY AND ENERGY ENTITLEMENTS:

7.1 The Capacity entitlement of each Participant in each Generating Unit of the Project shall be the product of its Generation Entitlement Share in such Generating Unit and the Net Effective Generating Capability of such Generating Unit.

7.2 Each Participant shall be entitled to schedule for its account Power and Energy from any Generating Unit up to the amount of its available Capacity entitlement in such Generating Unit.

7.3 When a Participant requests operation of a Generating Unit, each Participant shall, unless otherwise mutually agreed, schedule for its account its share of Minimum Net Generation which shall be the product of its Generation Entitlement Share in said Generating Unit and the Minimum Net Generation established for such Generating Unit. At any time a Participant has scheduled from any Generating Unit an amount of Power in excess of its share of Minimum Net Generation, then the other Participant shall only be obligated to schedule for its account an amount of Power equal to the product of its Generation Entitlement Share and the remaining amount of Minimum Net Generation established for such Generating Unit provided that such reductions do not result in economic detriment to any Participant.

7.4 Operation of any Generating Unit by the Project Manager shall be subject to scheduled outages or curtailments, operating emergencies and unscheduled outages or curtailments of such Generating Unit.

7.5 In scheduling generating capacity for its account, each Participant shall be entitled to include each of the following to determine its take of generation capacity, it being expressly understood that each Participant shall treat its Entitlement as part of the generation belonging to its own electric power system.

(i) Sufficient capacity to produce the quantity each Participant expects to receive into its own system.

(ii) An allowance for anticipated line loss as provided in the 1977 Fayette Power Project Transmission Agreement.

(iii) Any Spinning Reserve which such Participant desires to carry from its share of the Project Generating Capacity.

(iv) Any short-term or long-term Power and Energy sold to a third party.

(v) Any economy, brokerage, or non-firm Power and Energy sold to a third party.

7.6 In the event that a Participant desires to sell Long-Term or Short-Term Firm Power and Energy from its own Entitlement to a third party, such Participant shall obtain a written offer from the prospective purchaser, setting forth the price and terms under which the proposed sale will be made. For Short-Term Firm Power and Energy sales, the selling Participant shall transmit such offer to the other Participant, who shall have two (2) days to elect to purchase such Power and Energy for its own use at the same price and under the same terms as contained in such offer. For Long-Term Firm Power and Energy sales, the selling Participant shall give the other Participant written notice of its intent to sell, including the terms and conditions, and the other Participant shall have thirty (30) days to elect to purchase such Power and Energy for its own use at the same price and under the same terms and conditions. Once this option is exercised, the scheduling shall be made according to Sec. 7.5 (iv) herein. In either case, it the other Participant does not elect to purchase such Power and Energy within the specified time, the selling Participant may proceed with the sale to the third party. This right of first refusal shall apply to each prospective firm sale contract but not to hour-to-hour sales under economy power and energy or to brokerage sales.

7.7 Economy Power and Energy sales by either Participant to third parties shall be made

by each Participant individually. The proceeds of any such sale shall be billed and collected independently by each Participant. For the purpose of allocating fuel cost, any Participant's sale of such capacity shall be considered as scheduled capacity for that Participant pursuant to 7.5 above.

7.8 For any period mutually agreed upon that a Participant does not schedule according to Sec. 7.5 its full available Capacity Entitlement, the other Participant may schedule for its account Firm Power and Energy[1] from such unscheduled capacity, provided that:

(i) The Participant that did not schedule its full available capacity expressly in writing or by such other means as may be agreed upon, authorizes such scheduling for the entire agreed period.

(ii) At the sole option of the Participant giving up a portion of its Capacity Entitlement, that Participant may choose whose fuel will be used in generating that portion of its capacity being used by the other Participant. If the Participant taking the unscheduled capacity uses the other Participant's fuel, then the Participant giving up a portion of its capacity will be reimbursed for the cost of the fuel used by the Participant taking that capacity.

(iii) The Participant taking the unscheduled capacity credits the account of the non-taking Participant on a monthly basis or as otherwise agreed upon, for the amount of operation and maintenance expenses, excluding fuel, corresponding to the MWH amount of the unscheduled capacity taken. Said credit for operation and maintenance expenses shall be determined by multiplying the annual average cost per megawatt hour generated by the plant by the number of megawatt hours of the

[1]except during periods of generation loss or other capacity limitations in which Firm Power and Energy schedules are subject to reduction according to 7.8 (iv) herein.

unscheduled capacity taken from the plant for the billing period. The Participant taking unscheduled capacity shall also pay for the same billing periods capitalization costs applicable to the MW amount taken from the other's Entitlement. The capitalization costs for each billing period shall be computed by: the product of the non-taking Participant's embedded cost (revised quarterly) per megawatt of its FPP Entitlement, the capitalization factor (revised quarterly), reflected on the non-taking Participant's books for its FPP Entitlement, and the peak number of megawatts of the unscheduled capacity used during billing period.

(iv) In the event that one or both units or any essential component of the transmission system develop capacity limitations, then a "floating entitlement" shall come into effect in which the reduced capacity is shared equally by each Participant. In such circumstances, each Participant is entitled to receive 50 percent of the reduced plant capacity, and the Participant that had not scheduled its full Capacity Entitlement, shall have the right to reclaim as much of its reduced Entitlement as is required to meet, or partially meet, its schedule according to Sec. 7.5 herein. Any remaining unscheduled capacity may still be used by the other Participant according to the rules herein.

7.9 For any period mutually agreed upon that a Participant does not schedule according to Sec. 7.5 its full available Capacity Entitlement, the other Participant may schedule for its own use such unscheduled capacity on a non-firm, interruptible basis under the same conditions of 7.8 (i) and 7.8 (ii). The provisions of 7.8 (iii) shall not apply. The Participant giving up a portion of its Entitlement may recall part or all of that Entitlement at any time. (1980 Amendment)

8. DELIVERY AND TRANSMISSION:

8.1 Power and Energy shall be metered and delivered to the transmission systems of the Participants at the Project switchyard and shall be accounted for in accordance with the scheduling of the respective Participants.

8.2 Each Participant shall design, construct, own, operate and maintain the transmission facilities necessary to connect its system to the high voltage bus in the Project switchyard, with the objective of permitting each Participant to transmit under normal operating conditions its Generation Entitlement Share from units of the Project to its system in a manner which will not unreasonably affect the operation of the electric system of the other Participant or the interconnected systems of others.

8.3 Each Participant shall be entitled to the exclusive use of so much of the Plant Site as may be necessary to construct and connect its transmission facilities to the high voltage bus in the Project switchyard as generally shown in Exhibit A hereto, provided the actual location and construction schedule of such transmission facilities shall be subject to approval of the Management Committee.

9. ADMINISTRATION:

9.1 As a means of securing effective cooperation and interchange of information and of providing consultation on a prompt and orderly basis among the Participants in connection with various administrative and technical problems which may arise from time to time in connection with the terms and conditions of this Participation Agreement or the Project Agreements, the Participants hereby establish the Management Committee.

The Management Committee shall be composed of two representatives of each Participant and one alternate for each such representative who shall be designated by the Participant represented by written notice to the other Participant.

9.3 The Management Committee shall:

9.3.1 Provide liaison among the Participants at the management level and between them and the Project Manager;

9.3.2 Exercise general supervision over the Committees established pursuant to Section 9.8 hereof;

9.3.3 Consider and act upon matters referred to it by the committees established pursuant to Section 9.8 hereof;

9.3.4 Perform such other functions and duties as may be assigned to it in the Participation Agreement or in the Project Agreements;

9.3.5 Review, discuss and act upon disputes among the Participants arising under the Participation Agreement or the Project Agreements;

9.3.6 Review and act upon the Project Manager's recommendations concerning:

9.3.6.1 Bids and proposals for water supply, water rights and fuel other than coal and the furnishing of engineering services and studies, bids and proposals from vendors for the purchase and procurement of the equipment, apparatus, machinery, materials and supplies and bids and proposals from contractors for the performance and completion of Construction and Station Work if the obligation to be incurred exceeds the sum of $15,000;

9.3.6.2 The Project Insurance to be procured and maintained, including insurance values, limits, deductibles, retentions and other special terms;

9.3.6.3 The annual capital expenditures budget, annual manpower table and budget, and annual operation and maintenance budget, including guidelines for the utilization of Project Manager's employees;

9.3.6.4 The planned outages, schedules for maintenance and the manner of selection of any maintenance contractor for contract maintenance included in the annual operation and maintenance budget;

9.3.6.5 The policies for establishing the inventories for spare parts, materials and supplies;

9.3.6.6 The written statistical and administrative reports, written budgets, and information and other similar records, and the form thereof, to be kept by the Project Manager (excluding accounting records used internally by the Project Manager for the purpose of accumulating financial and statistical data, such as books of original entry, ledgers, work papers, and source documents);

9.3.6.7 The procedures for determining Net Effective Generating Capability, Minimum Net Generation and other Capacities of each Generating Unit and several Generating Units;

9.3.6.8 The procedures for determining capital expenditures;

9.3.6.9 The procedures for performance and efficiency testing;

9.3.6.10 The procedures for maintaining complete and accurate fuel, Power and Energy accounting;

9.3.6.11 The written statement of operating practices and procedures;

9.3.6.12 The list of transportation and motorized equipment to be owned or leased by the Project Manager for Station Work;

9.3.6.13 The establishment of practices and procedures for keeping each Participant advised of the Net Effective Generating Capability and for the delivery of power and Energy from the Project in accordance with the Participant's schedule (such practices and procedures to provide for modifying said schedules to meet the needs of day-to-day or hour-by-hour operation, including emergencies on a Participant's system);

9.3.6.14 The establishment of procedures for the operation of the Project during periods of curtailed operations which reduce or may reduce the Net Effective Generating Capability;

9.3.6.15 The establishment of criteria for determination of date of Firm Operation;

9.3.7 Either Participant through its representatives on the Management Committee may request a recommendation or report from the Project Manager on any matter relating to the Project. Such recommendation or report shall be furnished within a reasonable time;

9.3.8 Arrange for annual audits of the records maintained by the Project Manager in its performance of Construction Work and Station Work and other company records maintained by the Project Manager in support of its billings to the Participants; and

9.3.9 Arrange for certification by a nationally recognized firm of Independent Certified Public Accountants to the Participants that the Project Manager's accounting methods and records, including any allocations for Construction Work and Station Work, as the case may be, are in accordance with the Participation Agreement, the Project Agreements and sound accounting practice.

9.4 All matters coming under the authority of the Management Committee shall be decided by majority vote of the members of the Committee with each member having equal voting rights; provided, however, that representatives of a Participant with no ownership interest in a particular Generating Unit shall note vote on matters relating solely to the construction or operation of that Generating Unit, and not materially affecting other Generating Units. All decisions reached by the Management Committee on matters concerning the Project and properly before the Management Committee for decision pursuant to the terms of this Participation Agreement or the Project Agreements shall be binding upon all Participants. (1984 Amendment)

9.5 The Management Committee shall designate one of its members as Chairman and another as Vice Chairman, and shall appoint a Secretary and an Assistant Secretary, neither of whom need be a member of the Management Committee, and the Committee shall keep such minutes of its meetings as the Committee shall determine, provided a written record shall be made by the Committee of all its actions and decisions.

9.6 Neither the Management Committee nor any of its appointed committees shall have any authority to modify any of the terms, covenants or conditions of this Participation Agreement or of the Project Agreements.

9.7 Each Participant shall give prompt written notice to the other Participant of any change in the designation of its representatives on the Management Committee. Any representative appearing at a committee meeting shall be deemed to have authority to act on behalf of the Participant he represents unless the Participant represented has designated another representative as provided in Section 9.2 hereof.

9.8 The Management Committee shall have the right to establish temporary or permanent committees. The authority and duties of any such committee shall be set forth in writing and shall be

subject to the provisions of this Participation Agreement and the Project Agreements.

10. PROJECT MANAGER:

10.1 The Project Manager for the Project shall be LCRA.

10.2 Austin hereby appoints the Project Manager as its agent with respect to those Generating Units and Generating Units Common Facilities in which Austin has an ownership interest and for Common Project Site Facilities. ~~and the~~ The Project Manager shall undertake as Austin's agent for the Generating Units and Generating Units Common Facilities in which Austin has an ownership interest and for Common Project Site Facilities and as principal on its own behalf, the responsibility for the performance and completion of Construction Work and Station Work required by this Participation Agreement. (1984 Amendment)

10.3 Subject to this Participation Agreement, the Project Manager shall:

10.3.1 Provide for and obtain all studies (including environmental impact studies and preliminary safety analyses), permits and licenses necessary for the construction and operation of the Project.

10.3.2 Acquire the Plant Site in accordance with the parameters set forth in Section 31 hereof, such acquisition to be for the initial benefit, and at the cost, of the Participants in the proportions set forth in Section 5.1.

10.3.3 Supply the Participants with copies of all studies made, license and permit applications filed and licenses and permits obtained.

10.3.4 Obtain bids and negotiate proposals for the furnishing of engineering services and studies necessary for the performance and completion of Construction Work.

10.3.5 Obtain bids and negotiate proposals from vendors for the purchase and procurement of the equipment, apparatus, machinery, materials, tools and supplies necessary for the performance and completion or Construction Work.

10.3.6 Obtain bids and negotiate proposals from contractors for the performance and completion of each component of Construction Work.

10.3.7 Review with the Management Committee all bids and proposals obtained under 10.3.4, 10.3.5, and 10.3.6 above and execute such contracts and accept bids and

proposals as authorized by the Management Committee in the name of the Project Manager, acting as principal on its own behalf and as agent for Austin, except that Project Manager is authorized to execute contracts and accept bids involving expenditures of less than $15,000 without authorization of the Management Committee, subject to all legal requirements in respect to competitive bidding.

10.3.8 Transmit as received from consultants, contractors or vendors all correspondence, studies, specifications and drawings related to the Project to the Management Committee for review and comment.

10.3.9 Furnish Participants with duplicate original copies of all contracts with the contractors, subcontractors and vendors.

10.3.10 Arrange for the placement of Project Insurance pursuant to Section 25 hereof.

10.3.11 Determine what contractors, in any, shall be required to furnish any portion of Construction Insurance, other insurance and faithful performance and payment bonds.

10.3.12 Investigate, adjust, and settle claims arising out of or attributable to Construction Work or Station Work, the past or future performance or nonperformance of the obligations and duties of either Participant (including the Project Manager) under or pursuant to this Participation Agreement, or the past or future performance or nonperformance of Construction Work and Station Work, including but not limited to any claim resulting from death or injury to persons or damage to property for which payment shall not be made on account of valid and collectible Project Insurance or other valid and collectible insurance carried by either Participant, and present and prosecute claims against any insurer or other party for losses and damages in connection with Construction Work or Station Work. The terms of this Section 10.3.12 shall not include claims involving Willful Action by the Project Manager. The authorization from the Management Committee shall be obtained by the Project Manager before any claim or incident is settled for more than One Hundred Thousand Dollars ($100,000.00), or the amount of any Project Insurance deductible, whichever may be greater.

10.3.13 Assist any insurer in the investigation, adjustment and settlement of any loss or claim.

10.3.14 Administer and enforce contracts in the name of the Project Manager, acting as principal on its own behalf and as agent for Austin.

10.3.15 Comply with (i) any and all laws and regulations applicable to the performance of Construction Work or Station Work, and (ii) the terms and conditions of any contract relating to Construction Work or Station Work.

10.3.16 Expend the funds advanced to the Project Manager in accordance with the terms and conditions of this Participation Agreement.

10.3.17 Keep and maintain records of monies received and expended, obligations incurred, credits accrued, estimates of Construction Costs (excluding ad valorem taxes and interest during construction) and contracts entered into in the performance of Construction Work, and make such records available for inspection by the other Participant at reasonable times and places.

10.3.18 Not suffer any liens in connection with Construction Work or Station Work to remain in effect unsatisfied against the Project (other than liens permitted under the Project Agreements, liens for taxes and assessments not yet delinquent, liens for workmen's compensation awards, and liens for labor and material not yet perfected); provided, however, that the Project Manager shall not be required to pay or discharge any such lien as long as the Project Manager in good faith shall be contesting the same which shall operate during the pendency thereof to prevent the collection or enforcement of such lien so contested.

10.3.19 As soon as practicable after the Date of Firm Operation of Unit 1, provide each Participant with a summary of the estimated construction costs applicable to such unit and the common facilities in a form which will allow each such Participant to classify such Construction Costs to appropriate accounts and by Units of Property.

10.3.20 Provide each Participant with all necessary and required records and information pertaining to the performance of Construction Work, including a monthly progress report.

10.3.21 Keep each Participant fully and promptly informed of any known default under the provisions of this Participation Agreement.

10.3.22 As soon as practicable after the commencement of Construction Work, furnish each Participant with a detailed forecast of total Construction Costs. Said forecast shall be revised and furnished to each Participant every three (3) months thereafter until completion of Construction Work, provided that any significant changes in said forecast shall be submitted to each Participant as soon as practicable after such changes become evident. In addition, and as soon as practicable after commencement of Construction Work, furnish each Participant a detailed monthly forecast of each Participant's estimated expenditures for the succeeding month for Construction Work, which said forecast shall be furnished each Participant monthly thereafter until completion of Construction Work.

10.3.23 Furnish each Participant any information reasonably available pertaining to Construction Work that will assist said Participant in responding to a request for such information by any federal, state or local authority.

10.3.24 Use its best efforts in the performance of its responsibilities hereunder to effect the completion of Construction Work in accordance with the scheduled Date of Firm Operation.

10.3.25 Keep each Participant fully and promptly advised of the major developments in connection with the performance and completion of Construction Work.

10.3.26 Prepare and distribute the Final Completion Report to each Participant within eighteen months after the date of Firm Operation of Unit 1.

10.3.27 Conduct tests to verify that specified characteristics of equipment items have been achieved and, it necessary, make or arrange for final equipment modifications to meet the specified requirements thereof.

10.3.28 Obtain and enforce any and all customary warranties on equipment, facilities, and materials furnished for the Project.

10.3.29 Perform the Station Work in accordance with generally accepted practices in the electric utility industry as such practices may be affected by the design and operational characteristics of the Generating Unit and the Common Facilities, the quality and quantity of fuel available, the rights and obligations of the Participants under the Project Agreements, and any other special circumstances affecting the Station Work.

10.3.30 Execute, enforce, and comply with all contracts entered into in the name of the Project Manager, acting as principal on its own behalf and as agent for the other Participant, in connection with the performance of Station Work which has been authorized by the Management Committee.

10.3.31 Furnish and train the necessary personnel for performance of Station Work.

10.3.32 Comply with any and all laws and regulations applicable to the performance of Station Work.

10.3.33 Purchase and procure, with the approval of the Management Committee, the equipment, apparatus, machinery, tools, materials and supplies and spare parts necessary for the performance of Station Work, however, the Project Manager shall not need such approval for any purchase costing less than $15,000.

10.3.34 Keep and maintain records of monies received and expended, obligations incurred, credits accrued, and contracts entered into in connection with the performance of Station Work and make such records available for inspection by the other Participant at reasonable times and places.

10.3.35 Keep each Participant fully and promptly advised of major changes in conditions or other major developments which affect the performance of Station Work, and furnish each Participant with copies of any notices given or received pursuant to the Project Agreements.

10.3.36 Determine Net Effective Generating Capabilities, Minimum Net Generation and other capacities for each Generating Unit and several Generating Units.

10.3.37 Upon the request of either Participant, provide such Participant a copy of any report, record, list, budget, manual, accounting or billing summary, classification of accounts or other documents or revisions of any of the aforesaid items, all as prepared in accordance with this Participation Agreement.

10.3.38 Administer and supervise deliveries of fuel for the Project in accordance with the applicable agreements.

10.3.39 Accept and supervise deliveries of fuel for the Project in accordance with the applicable agreements.

10.3.40 Keep each Participant fully and promptly informed of any known default of the Project Agreements.

10.3.41 Periodically test or arrange for testing of all meters used to measure Power and Energy. Either Participant may ask for a test of such meters, and it will be the duty of the Project Manager to inform the other Participant in advance so it may have representatives present at such test. Any such test shall be held at a reasonable time and each Participant shall bear its own Costs therefor.

10.3.42 Maintain plant charts and operating records as may be required for reporting to regulatory agencies having jurisdiction.

10.3.43 Establish, periodically review and from time to time, revise and submit to the Management Committee for review and approval the following information:

10.3.43.1 Manning requirements and manning table including administrative, engineering, operating and maintenance personnel.

10.3.43.2 Safety procedures for the protection of personal, for removing equipment and systems, including clearance procedures for removing equipment from service for inspection, test and maintenance.

10.3.43.3 A book of "Plant Operation Orders" listing all permanent or semipermanent instructions to operating personnel.

10.3.43.4 A book of "Equipment Operating Instructions" outlining standard procedures for equipment and systems startup, operation and shutdown.

10.3.43.5 A book of "Preventative Maintenance Instructions and Schedules" outlining standard procedures, schedules and testing for performing

mechanical, electrical, and instrument maintenance.

10.3.43.6 Procedures for training operating and maintenance personnel.

10.3.44 Prepare and submit to the Management Committee recommendations for the acquisition of necessary water supply and water rights.

10.4 The books of account and the financial records of the Project manager and the affairs of the Project as a whole shall be kept and conducted on a fiscal year ending June 30 of each year. (1984 Amendment)

11. CONSTRUCTION SCHEDULES:

11.1 Construction of the Project has been planned with the objective of having Unit 1 available for Firm Operation by April 1978.

12. CONSTRUCTION COSTS:

12.1 Construction Costs shall consist of payments made and obligations incurred (other than obligations for interest during construction) for the account of Construction Work and shall consist of, but not be limited to, the following:

12.1.1 All costs of labor, services and studies performed in connection with Construction Work, if authorized and approved as provided herein.

12.1.2 Payroll and other expenses of the Project Manager's employees while performing Construction Work, including properly allocated labor loading charges, such as department overhead, time-off allowances, payroll taxes, workmen's compensation insurance, retirement and death benefits and employee benefits.

12.1.3 All components of Construction Costs, including overhead costs associated with construction (including the allowance for the Project Manager's administrative and general expenses described in Section 12.4 hereof), costs of temporary facilities, land and land rights, structures and improvements, and equipment for Unit 1, in accordance with FPC Accounts.

12.1.4 All costs and expenses, including those of outside consultants and attorneys, incurred by the Project Manager for construction and operating certificates, licenses and permits, and with respect to environmental laws, rules and regulations, to land and water rights, to fuel requirements and supply and the acquisition thereof, and to the preparation of

agreements relating to Construction Work with entities other than the Participants.

12.1.5 Applicable costs of materials, supplies, tools, machinery, equipment, apparatus, initial Spare Parts, construction power and construction water in connection with Construction Work, including rental charges.

12.1.6 All costs of Construction Insurance, all costs of any loss, damage or liability arising out of or caused by Construction Work which are not satisfied under the coverage of Construction Insurance, and the expenses incurred in settlement of injury and damage claims, including the costs of labor and related supplies and expenses incurred in injury and damage activities (all as referred to in FPC Account 925), because of any claim arising out of or attributable to the ~~construction of Unit 1 and the Common Station Facilities, or the past or future performance or nonperformance of Construction Work, including but not limited to any claim resulting from death or injury to persons or damage to property.~~ past of future performance or nonperformance of Construction Work, including but not limited to any claim resulting from death or injury to persons or damage to property. (1984 Amendment)

12.1.7 All federal, state or local taxes of any character imposed upon Construction Work, except any tax assessed directly against an individual Participant unless such tax was assessed to such individual Participant on behalf of both Participants.

12.1.8 All costs and expenses of enforcing or attempting to enforce the provisions of Construction Insurance policies, payment and performance bonds, contracts executed as Project Manager and warranties extending to Project Facilities.

12.2 In cases where the allocation of a cost item is made between Construction Work and any other work, such allocation shall be made on a fair and equitable basis in accordance with established accounting procedures.

12.3 The Project Manager shall use the FPC Accounts to account for Construction Costs in the Final Completion Report and any supplement thereto.

12.4 The allowance for the Project Manager's administrative and general expenses to cover the costs of services rendered by it in the performance of Construction Work and Capital Improvement shall be allocated monthly at the rate of one percent (1%) of Construction Costs and Capital Improvement Costs incurred during the preceding month, excluding from such costs:

12.4.1 Any allowance for administrative and general expenses provided for in the Section 12.4.

12.4.2 Expenses described in Sections 12.1.6 and 12.1.7 hereof until the end of the Project Manager's fiscal year. After the end of such fiscal year, such allowance shall be subject to review and adjustment as recommended by the Independent Certified Public Accountants selected by the Management Committee under Section 9.3.8 hereof. The rate of such allowance shall be adjusted to actual at the end of each fiscal year and the adjusted rate shall be used in preparation of revised billings to the Participants and as the basis for allocating such administrative and general expense during the next succeeding fiscal year.

13. ADVANCES DURING CONSTRUCTION:

13.1 The Participants shall, during the course of and until the final completion of Construction Work, advance to the Project Manager such funds as shall enable it to pay estimated Construction Costs (including estimated administrative and general expenses) in order that the Project Manager in its capacity as such will not have to advance funds on behalf of the other Participant.

13.2 During the course of Construction Work, each Participant shall advance funds to the Construction Account to cover estimated Construction Costs in proportion to its percentage of ownership in the Construction Work being performed.

13.3 Funds shall be advanced by the Participants to the Project Manager in response to a Request for Funds within five (5) working days after receipt by such Participant of the Request for Funds. Net earnings or losses will be allocated to the Participants on the basis of funds advanced. Funds shall be requested as near to the date such funds are required by the Project Manager as is practical under the circumstances.

13.4 The sum of the advances by the Participants hereunder shall not exceed 100 percent of the total Construction Costs estimated to be expended during the period specified in the Request for Funds.

13.5 Funds not advanced to the Project Manager on or before the due date specified in

Section 13.3 hereof shall be payable with interest, in any, accrued as provided in Section 27.3 hereof.

13.6 If a Participant shall dispute any portion of any amount specified in a Request for Funds, the disputant shall make the total payment specified in the Request for Funds under protest as provided in Section 27.4 hereof.

13.7 When the total and final Construction Costs have been incurred and calculated, each Participant shall pay and deficit between total advances made by it and its share of said total and final Construction Costs or shall be reimbursed for any credit between said total advances made by it and its share of said total and final Construction Costs by the other Participant.

14. OPERATION AND MAINTENANCE EXPENSES:

14.1 In determining the expenses of Station Work the Project Manager shall include the following expenses, to the extent that they are chargeable to the project, in accordance with FPC Accounts:

14.1.1 The operation expenses chargeable to FPC Accounts 500, 502, 503, 504, 505, 506, 507, 556, 557 and 563 and related expenses which shall include overhead expenses, labor loading charges (which shall include, but not be limited to, time off allowance, employee payroll taxes chargeable to FPC Account 408, employee pensions and benefits chargeable to FPC Account 926 and workmen's compensation insurance chargeable to FPC Account 925), and administrative and general expenses. The related expenses as provided for herein shall be charged to the FPC accounts referred to in the manner set out in 14.1.3 hereinbelow.

14.1.2 The maintenance expenses chargeable to FPC Accounts 510 through 514 and 571 and related expenses which shall include overhead expenses, labor loading charges (which shall include, but not be limited to, time off allowance, employee payroll taxes chargeable to FPC Account 408, and employee pensions and benefits chargeable to FPC Account 926 and workmen's compensation insurance chargeable to FPC Account 925). The related expenses as provided for herein shall be charged to the FPC accounts referred to in the manner set out in 14.1.3 hereinbelow.

14.1.3 Overhead expenses, labor loading charges and administrative and general expenses referred to in 14.1.1 and 14.1.2 above shall be charged in the following manner:

14.1.3.1 Unemployment and FICA taxes, costs of pension benefits and

workmen's compensation and public liability insurance costs which are directly related to labor costs incurred which are chargeable to the FPC accounts referred to in this Section 14 shall be charged as a part of direct labor costs.

14.1.3.2 Costs of time off pay for holidays, annual and sick leave, military leave, and jury service applicable to individuals whose labor costs are chargeable to the FPC accounts referred to in this Section 14 shall be charged to the above accounts as a percentage of the direct labor costs of such individuals which are chargeable thereto. Not less frequently than once a year a study shall be made of such time off pay costs and a revised percentage basis for such charges shall then be established.

14.1.3.3 Administrative and general expenses shall be calculated and charged monthly as a percentage of costs of Station work performed by the Project Manager. Such percentage shall be determined annually as of March 31 by an overhead and indirect cost study of the Project Manager's costs for administrative and general expenses for the year then ended, which study shall be subject to review and approval by the firm of Independent Certified Public Accountants as provided in Section 9.3.8 hereof. Appropriate adjustments based on such study and review will be made in the amounts charged each of the Participants for administrative and general expenses prior to the end of the Project Manager's fiscal year in which the amount of the adjustment is determined.

14.2 ~~In the event additional Generating Units are constructed, expenses described in Section 14.1.1 hereof shall be apportioned to each of the units, including Common Station Facilities, in the ratio that the Net Effective Generating Capability of each Unit bears to the Aggregate Net Effective Generating Capability of the Project.~~ The expenses described in paragraph 14.1.1 above relating to Common Project Site Facilities shall be borne by the Participants in the same proportion as the sum of each Participant's Generation Entitlement Share in each Generating Unit bears to the sum of the nameplate rated capacity of all Generating Units. Those expenses associated with the operation of the Generating Units and the Generating Units Common Facilities shall be apportioned to each of the Generating Units and allocated among the Participants according to their respective ownership interests in the Generating Unit to which the cost is attributed, to allow Austin and LCRA, as near as practical and in keeping with sound utility practices, to pay for their proper portion

of such costs and expenses. (1984 Amendment)

14.3 Expenses described in Section 14.1.2 hereof shall be charged directly to ~~Unit 1 and to~~ each ~~Additional~~ Generating Unit, Generating Units Common Facilities or the Common ~~Station~~ Project Site Facilities, as the case may be. The expenses so charged directly to the Common ~~Station~~ Project Site Facilities shall be ~~apportioned between Unit 1 and each Additional Generating Unit, if any there be, in the ratio that the Net Effective Generating Capability of Unit 1 and of each Additional Generating Unit bears to the aggregate Net Effective Generating Capability of the Project.~~ Allocated to each Generating Unit in the proportion that each Unit's nameplate rated capacity bears to the sum of all Generating Units nameplate rated capacities, so that, in keeping with sound utility practices, the Participants may pay for their proper proportion of such costs and expenses. (1984 Amendment)

14.4 Either Participant may request that the method used to determine the Project Manager's payroll tax expenses, employee workmen's compensation insurance expenses, employee pensions and benefits expenses, and administrative and general expense e submitted to the Management Committee for review if such Participant believes that such method results in an unreasonable burden of it; provided, that such review may be requested only after one year from the Date of Firm Operation, and thereafter at intervals of not less than two (2) years each. After any such request the Management Committee shall review said method and shall attempt to determine whether or not said unreasonable burden does exist. If after such review the Management Committee determines that the application of said method does result in an unreasonable burden on either of the Participants, the Management Committee shall determine and recommend a modified method to the Project Manager so that such unreasonable burden would be eliminated if such modified method is adopted by the Project Manager. If after such review the Management

Committee is unable to agree on whether or not such unreasonable burden does exist or is unable to agree on said modified method for eliminating said unreasonable burden, the Management Committee shall submit the entire matter to a nationally recognized firm of Independent Certified Public Accountants for decision and recommendation of a modified method if one is found to be justified.

14.5 Any modified method adopted by the Management Committee or determined through arbitration shall not be retroactive and shall become effective on the first day of the Project Manager's fiscal year next following such adoption or determination. Said modified method shall stay in effect no less than two years.

15. INITIAL TRAINING EXPENSES:

15.1 The initial training expenses shall consist of labor, material, transportation, services and any other costs applicable to hiring and training, including any relocation of personnel, for Station Work.

15.2 Initial training expenses shall also include departmental overheads, time-off allowances, payroll taxes, employee pensions and benefits, Workmen's Compensation, and administrative and general expenses determined in accordance with Section 14 hereof.

15.3 The Project Manager shall accumulate the initial training expenses up to but no beyond the Date of Firm Operation in a manner to provide identification, but such expenses shall be included in Construction work billing.

16. ADVANCEMENT OF OPERATING FUNDS:

16.1 Not less than thirty (30) days prior to incurring any operating cost on behalf of the Participants pursuant to this Participation Agreement, the Project Manger shall establish the Operating Account. The Project Manager shall notify the Participants in writing of the establishment

of the Operating Account no later than five (5) days following its establishment.

16.2 All Operating Funds required to be advanced by the Participants in accordance with this Participation Agreement shall be paid into the Operating Account, or may be credited to the Operating Account by interbank transfers. All Operating Funds shall be deposited in the Operating Account, and the Project Manager shall, unless otherwise agreed to by both Participants, make disbursements from the Operating Account only for expenditures or obligations incurred by it in the performance of Operating Work.

16.3 ~~Not less than sixty (60) days prior to the establishment of the Operating Account,~~ The Management Committee shall establish a minimum amount for the Operating Account so that the Project Manager will have Operating Funds to pay for expenditures or obligations incurred by the Project Manager pursuant to this Participation Agreement. Such minimum amount may be revised by the Management Committee at any time. The original minimum amount and any increase therein shall be allocated among the Participants ~~in accordance with their Common Station Facilities Ownership Shares~~ as described in Section 14.2 and shall be due and payable within fifteen (15) business days following notification of the establishment of the Operating Account or the date on which any increase in such minimum amount shall become effective. In the event that Management Committee authorized a decrease in such minimum amount, then each Participant shall receive a credit which shall be equal to its ~~Common Station Facilities Ownership Share.~~ proportionate share of the minimum amount. (1984 Amendment)

16.4 Each Participant shall advance Operating Funds to the Operating Account on the basis of bills it receives from the Project Manager which reflect such Participant's share of costs and expenses determined in accordance with this Participation Agreement as follows:

16.4.1 ~~Expenses described in Sections 14,15, and 19 hereof for the current month~~

~~shall be billed on an estimated basis on or before the first business day of each such month and payment shall be due and payable by the 15th day of such month; provided, that adjustments for actual expenses incurred for such month shall be reflected in the bill for the month which follows the date of determination of such actual expenses.~~ Costs incurred in the acquisition of fuel (excluding separately billed transportation charges) and Project Insurance shall be billed in a Request for Funds. Such a Request shall be based on invoices or statements from vendors and shall be due prior to the date of payment on invoices.

16.4.2 ~~Expenses described in Sections 20 and 25 (excluding workmen's compensation insurance), hereof shall be billed not less than eight (8) business days prior to their due date and shall be due and payable within three (3) business days following receipt of the invoice. If such expenditures or obligations do not have a specified due date, they shall be billed within a reasonable time following the incurrence of such expenditures or obligations and shall be due and payable within five (5) business days following receipt of the bill.~~ The Management Committee shall set an amount to be advanced weekly to cover invoices for fuel transportation charges. The advance for the first week of the month shall include an adjustment for the difference between amounts advanced and actual transportation costs incurred in the prior month.

16.4.3 ~~The expenditures or obligations described in Section 19 hereof, for coal consumed, shall, if necessary, be billed on an estimated basis, to be adjusted in the next monthly billing. Advances to cover billings for coal shall be made as close to the due date of the coal suppliers' billing as practicable.~~ All other costs and expenses incurred in the operation and maintenance of the Common Project Site Facilities, Generating Units Common Facilities and Generating Units, including costs recorded in FERC accounts 107 and 108, shall be billed to the Participants after the close of the books for the month.

16.4.4 To the extent that the minimum amount described in Section 16.3 will not cover monthly costs and expenses billed pursuant to Section 16.4.3, the Project Manager may request payment of additional funds based on actual invoices or estimated amounts. Such an advance shall be due within five business days from the date of submittal of the request and shall be credited to the Participants when calculating costs and expenses billed pursuant to Section 16.4.3. (1984 Amendment)

16.5 Operating Funds not advanced to the Project Manager on or before the due date specified shall be payable with interest, if any, accrued as provided in Section 27 hereof.

16.6 If a Participant shall dispute any portion of any amount specified in a request for Operating Funds, the disputant shall make the total payment specified in the request for Operating Funds under protest as provided in Section 27 hereof.

16.7 Within forty-five (45) days following the end of each calendar year the Project

Manager shall submit to each of the Participants a final accounting for such calendar year showing all amounts deposited into and expended from the Operating Account and the apportionment of such expenditures among the Participants. Adjustments shall be made among the Participants, if required, so that all costs incurred in the performance of Station Work shall have been shared by each Participant in accordance with this Participation Agreement.

17. ANNUAL BUDGETS:

17.1 At least one hundred twenty (120) days before the commencement of the initial training period for the personnel that will perform Station Work, the Project Manager shall prepare and submit to the Management Committee for its review and approval a budget (manning and dollars) for training such personnel. The Management Committee shall approve a training budget not less than sixty (60) days prior to the commencement of said initial training period.

17.2 Not less than one hundred sixty (160) days prior to the Date of Firm Operation of Unit 1, and by July 1st of the year preceding each calendar year thereafter, the Project Manager shall prepare and submit to the Management Committee for its review and approval the proposed annual capital expenditures budget, annual manpower budget, and annual operating and maintenance budget for Station Work for the initial year of operation and for such succeeding calendar year, respectively.

17.3 Not less than sixty (60) days prior to the Date of Firm Operation of Unit 1 and by August 1st of the year preceding each calendar year thereafter, the Management Committee shall approve an annual capital expenditures budget, annual manpower budget, and annual operating and maintenance budget. If these budgets or any one of them are not approved by the Management Committee in final from prior to the beginning of the next calendar year, the Project Manager shall nevertheless continue to perform Station Work in accordance with Section 29 hereof until such time as a budget has been approved or otherwise determined in accordance with the Project Agreements.

17.4 Any information required from the Participants by the Project Manager in preparing the aforesaid proposed budgets shall be supplied by the Participants, if possible, within thirty (30) days following a request by the Project Manager.

17.5 The Management Committee may at any time during the year approve revisions to the annual capital expenditures budget, annual manpower budget, and the annual operating and maintenance budget for Station Work.

18. FUEL SUPPLY AND WATER SUPPLY:

18.1 The Project Manager shall solicit and obtain bids and contract proposals ~~from coal suppliers to supply coal to the Project~~ for a proposed supply of fuel for Generating Units in which both LCRA and Austin shall have an interest and shall submit such bids and proposals to the Management Committee for review and approval. With respect to additional Generating Units, such proposed fuel supply arrangements shall be consistent with the fuel and fuel source identified in the notice required by Section 6.1.1. Any fuel supply contracts approved by the Management Committee shall be then submitted to the Participants. Both Participants shall execute ~~any~~ fuel contracts pertaining to Generating Units in which LCRA and Austin have a joint participation. (1984 Amendment)

18.2 Each Participant, in the absence of other agreement shall have the option to furnish its share of all necessary water supply from independent sources including existing water rights or rights which may be obtained.

19. FUEL COST ALLOCATION:

19.1 The cost of purchasing a ~~stockpile of coal~~ reserve supply of fuel shall be apportioned to the Participants ~~in proportion to their cost responsibility for Common Station Facilities.~~ to allow Austin and LCRA, as near as practical and in keeping with sound utility practices, to pay for their

proper proportion of such costs and expenses. (1984 Amendment)

19.2 In the event of more than one coal-fired (1984 Amendment) Generating Unit, it shall be the responsibility of the Project Manager to assure that the coal moving to the bunkers of each Unit shall be weighed and sampled separately. ~~The cost of coal burned in each respective unit in each calendar month is reflected by invoices submitted by the coal suppliers and related costs chargeable to FPC Account 501 shall be in accord with the quantity of coal weighted and sampled during the movement into the bunkers of the respective Units.~~ (1980 Amendment) ~~In the case of coal provided under joint contracts with all Participants, the Project Manager shall bill each Participant upon delivery based on the proportion of each Participant's respective interest in the coal contract under which the coal is delivered. In the case of coal purchased by an Participant individually, the Project Manager shall bill that Participant for the full cost at delivery.~~ (Initial addition from 1980 Amendment, subsequently deleted per the 1984 Amendment) The cost of coal burned in each respective coal-fired unit in each calendar month as reflected by invoices submitted by the fuel suppliers and related costs chargeable to FPC Account 501 shall be in accord with the quantity of coal weighed and sampled during the movement into the bunkers of the respective Units. (1984 Amendment)

19.3 ~~The cost of coal allocated to each respective Unit pursuant to Section 19.2 and the cost of other fuel shall be apportioned to each Participant in the ratio that each Participant's monthly Net Energy Generation scheduled from such Unit bears to the total monthly Net Energy Generation scheduled from such Unit.~~ The Project Manager shall keep separate records of the coal inventories for each coal contract for each Participant. This record shall include the deliveries and the amount of coal burned by each Participant in meeting each Participant's schedule. The Project Manager shall ensure that each participant uses only coal from the Participant's own inventory, except for

generation pursuant to Sections 7.8 (ii) and the similar provision in Sec. 7.9 where the Participants may otherwise agree to use the other Participant's fuel. (1980 Amendment)

19.4 The costs of ash disposal chargeable to FPC Account 501 shall be apportioned to the ~~Participants in the same proportions as the apportionment of monthly coal costs.~~ Participant in the ratio that each Participant's monthly Net Energy Generation scheduled from such Unit bears to the total monthly Net Energy Generation scheduled from such Unit. (1980 Amendment)

20. TAXES:

20.1 To the extent the same may be taxable, each Participant shall render for ad valorem taxation its undivided interest in the jointly owned property comprising the Project and shall otherwise use its best efforts to have any taxing authority imposing any such taxes or assessments on the Project, or any interest or rights therein, assess and levy such taxes or assessments directly against the ownership or beneficial interest of each Participant.

20.2 To the extent of any taxes or assessments collect title against or with respect to each Participant's interest in, or pro rata share of, the purchase, use, ownership or beneficial interest in the Project, the same shall be the sole responsibility of, and shall be paid by, the Participant upon whose purchase, use, ownership or beneficial interest said taxes or assessments are levied.

20.3 If any property taxes or other taxes or assessments are legally and properly levied or assessed other than against each Participant as contemplated in Sections 20.1 and 20.2 hereof (that is, are levied or assessed in such a way as to be disproportionately collected from one or both Participants), such taxes or assessments shall be apportioned between the Participants in accordance with their respective ownership interest or Power or Energy entitlement or take, whichever is appropriate to the incidence of the tax.

20.4 The Participant claiming exemption from any taxes or assessments shall be

responsible for and shall pay all expenses in connection with the sustaining or determination of such claims and the other Participant, the Management Committee and the Project Manager shall lend all reasonable cooperation in connection with the filing of tax renditions and reports and in connection with the making of protest and payment under protest as may be requested by each Participant claiming an exemption.

21. WAIVER OF RIGHT TO PARTITION:

21.1 Each Participant hereto agrees to waive any rights which it may have to partition any component of the Project, whether by partition in kind or by sale and division of the proceeds, and further agrees that it will not resort to any action in law or in equity to partition such component, and it waives the benefits of all laws that may now or hereafter authorize such partition for a term (i) which shall be coterminous with the co-tenancy agreement for such component, or (ii) which shall be for such lesser period as my be required under applicable law.

22. MORTGAGE AND TRANSFER OF INTERESTS:

22.1 Each Participant shall have the right at any time and from time to time to mortgage, pledge, create or provide for a security interest in or convey in trust all or part of its ownership share in the Project, together with an equal interest in this Participation Agreement and the Project Agreements, to a trustee or trustees under deeds of trust, mortgages or indentures, or to secured parties under a security agreement, as security for its present or future bonds or other obligations or securities, and to any successors or assigns thereof, without need for the prior written consent of the other Participant, and without such mortgagee, trustee or secured party assuming or becoming in any respect obligated to perform any of the obligations of the Participant arising prior to such time as such mortgagee, trustee or secured party obtains possession of or assumes the right to exercise such Participant's rights in respect of such ownership share, or after such possession or assumption

ceases.

22.2 Any mortgagee, trustee or secured party under present or future deeds of trust, mortgages, indentures or security agreements of either of the Participants and any successor or assign thereof, and any receiver, referee or trustee in bankruptcy or reorganization of either of the Participants, and any successor by action of law or otherwise, and any purchaser, transferee or assignee of any thereof may, without need for the prior written consent of the other Participant, succeed to and acquire all of the rights, titles and interests of such Participant in the Project and in this Participation Agreement and the Project Agreements, and may take over possession of or foreclose upon said property rights, titles and interests of such Participant.

22.3 Each Participant shall have the right to transfer or assign all its ownership share in the Project, together with a proportionate part of its rights under this Participation Agreement and the Project Agreements, to any of the following without the need for prior written consent of the other Participant:

22.3.1 To any entity acquiring all or substantially all of the electric utility properties and business of such Participant; or

22.3.2 To any entity merged or consolidated with such Participant; or

22.3.3 To any entity which is wholly-owned by such Participant.

22.4 Except as otherwise provided in Sections 22.1 and 22.2 hereof, any successor to the rights, titles and interests of a Participant in the Project shall assume and agree in writing to fully perform and discharge all of the obligations hereunder of such Participant, and such successor shall notify the other Participant in writing of such transfer, assignment or merger, and shall furnish to the other Participant evidence of such transfer, assignment or merger.

22.5 No Participant assigning or transferring an interest under this Section 22 or Section

23 shall be relieved of any of its obligations under this Participation Agreement or the Project Agreements but shall remain liable and obligated for the performance of all of the terms and conditions of this Participation Agreement and the Project Agreements, unless otherwise agreed by the remaining Participant.

23. RIGHT OF FIRST REFUSAL:

23.1 Except as provided in Section 22 hereof, should either Participant, prior to the expiration of the period described in Section 22.1 hereof, desire to transfer its ownership in the Project to any person or entity, ready, able and willing to acquire same, the Participant desiring to make such transfer shall obtain a written offer from the prospective transferee, setting forth the consideration and other terms of the offer, and the other Participant shall have the right of first refusal to acquire such interest on the basis of the following consideration:

23.1.1 If the offer is in cash, whether payable in one payment or in installments, the amount of the bona fide written offer from the prospective transferee, payable as specified in the offer; or

23.1.2 If the offer is not in cash but is in securities having a readily ascertainable market value, the fair market value of the securities offered by the prospective transferee; or

23.1.3 If the offer is neither in cash nor in securities having a readily ascertainable market value, the fair market value of the ownership interest to be transferred.

23.2 At least seven (7) months prior to the date on which the intended transfer is to be consummated, the Participant desiring to transfer shall serve written notice of its intention to do so upon the other Participant. Such notice shall contain the proposed date of transfer and the terms and conditions of the transfer.

23.3 The other Participant shall have the option to acquire the interest to be transferred and shall exercise said option by serving written notice of its intention upon the Participant desiring to transfer within three (3) months after service of the written notice of intention to transfer given

pursuant to Section 23.2 hereof. Failure of a Participant to exercise said option as provided herein within the time period specified shall be conclusively deemed to be an election not to exercise said option.

23.4 When the option to acquire said ownership has been exercised, the Participants shall thereby incur the following obligations:

23.4.1 The Participant desiring to transfer the ownership interest and the Participant having exercised the option to acquire such ownership interest shall be obligated to proceed in good faith and with due diligence to obtain all required authorizations and approvals of such acquisition.

23.4.2 The Participant desiring to transfer such ownership interest shall be obligated to obtain the release of any lien encumbering the ownership interest which is the subject of the transfer at the earliest practicable date.

23.4.3 The Participant having exercised the option to acquire such ownership interest shall be obligated to perform all of the terms and conditions required of it to complete the acquisition of said ownership interest.

23.5 The acquisition of the ownership interest by the Participant having elected to acquire the same shall be fully consummated within seven (7) months following the date upon which all notices required to be given under this Section 23 have been duly served.

23.6 If the Participant receiving notice of the proposed transfer fails to exercise its option to acquire the ownership interest to be transferred, the Participant desiring to transfer such interest shall be free to transfer such interest, to the party that made the offer referred to in said bona fide written offer. If such transfer is not consummated by the proposed date of transfer referred to in Section 23.2 hereof, the Participant desiring to transfer said ownership interest must give another complete new right of first refusal to the other Participant pursuant to the provisions of the Section 23 before such Participant shall be free to transfer said ownership interest to another party.

23.7 The Participant who acquires an ownership interest pursuant to this Section 23 shall

receive title to and shall own the interest as a tenant in common, subject to the same rights, duties and obligations as are applied by this Participation Agreement and by the Project Agreements to the interest being transferred in the hands of the transferring Participant.

23.8 Any party who may succeed to an ownership interest pursuant to this Section 23 shall specifically agree in writing with the remaining Participant at the time of such transfer that it will not transfer or assign all or any portion of such ownership interest without complying with the terms and conditions of this Section 23.

24. DESTRUCTION OR ABANDONMENT:

24.1 If a Generating Unit or Generating Units Common Facilities should be damaged or destroyed to the extent that the estimated cost of repairs, replacement or reconstruction is not more than one hundred percent (100%) of the aggregate amount of the proceeds from property damage insurance carried and covering the cost of the repairs, replacement or reconstruction of such Generating Unit or Generating Units Common Facilities, the Participants, unless otherwise unanimously agree, shall repair, replace or reconstruct such Generating Unit or Generating Units Common Facilities to substantially the same general character or use as the original. The Participants shall share the costs of such repairs, replacement or reconstruction in proportion to their ~~Generation Entitlement Shares~~ respective ownership interest in the Generating Unit or Generating Units Common Facilities so destroyed. (1984 Amendment)

24.2 If a Generating Unit or Generating Units Common Facilities should be damaged or destroyed to the extent that the estimated cost of repairs, replacement or reconstruction is more than one hundred percent (100%) of the aggregate amount of the proceeds from property damage insurance carried and covering the cost of the repairs, replacement or reconstruction of such Generating Unit or Generating Units Common Facilities, the Participants shall, upon agreement,

repair, replace or reconstruct such Generating Unit or Generating Units Common Facilities to substantially the same general character or use as the original; provided, however, that should the Participants not agree to repair, replace or reconstruct such Generating Unit or Generating Units Common Facilities, then any Participant who does not agree to repair, replace or reconstruct shall sell its interest in such Generating Unit or Generating Units Common Facilities ~~together with the corresponding interest in the Common Station Facilities~~ to the Participant desiring to repair, replace or reconstruct such Generating Unit or Generating Units Common Facilities for a price equal t the selling Participant's proportionate interest in the salvage value of such Generating Unit plus such Participant's proportionate cost, less depreciation at the maximum straight line rates then applicable to like properties under the Federal income tax law, in the interest in the ~~Common Station Facilities~~ Generating Units Common Facilities so sold. (1984 Amendment)

24.3 If any of the Common ~~Station~~ Project Site Facilities should be destroyed, the Participants shall, unless otherwise agreed, repair or reconstruct same to substantially the same character or use as the original. The Participants shall share the costs of such repair or reconstruction in proportion to ~~their Plant Ownership Interests.~~ the ownership of the Project as set forth in Section 5 above. (1984 Amendment)

25. PROJECT INSURANCE:

25.1 The Project Manager shall recommend to the Management Committee, and the Management Committee shall determine, the insurance coverages, including the insurable values, limits, deductibles, retentions and other special terms, and the insurance carriers from which such insurance is to be obtained during the periods covered by and with respect to Construction Work and Station Work or any phases thereof.

25.2 All policies of Project Insurance shall:

25.2.1 Provide insurable values, limits, deductibles, retentions and other special terms as determined by the Management Committee;

25.2.2 List as loss payees or additional insureds (as their interests may appear) such mortgagees, trustees or secured parties as a Participant, by written notice to the Project Manager, may designate;

25.2.3 Contain endorsements providing for positive notice of cancellation to all parties listed as named or additional insureds;

25.2.4 Contain endorsements providing that the insurance is primary insurance for all purposes; and

25.2.5 Contain cross-liability endorsements for comprehensive bodily injury liability and property damage liability coverages.

25.3 The following procedures shall be observed in connection with the procurement of Project Insurance and Changes in Project Insurance:

25.3.1 The Project Manager shall give prompt written notice to the Management Committee of the procurement of all insurance binders.

25.3.2 The Project Manager shall furnish each Participant with either a certified copy of each of the policies of the insurance procured or a certified copy of each of the policy forms therefor, together with a line sheet therefor (and any subsequent amendments) naming the insurers and underwriters and the extent of their participation.

25.3.3 No policy of Project Insurance obtained pursuant to decision of the Management Committee shall be materially changed without the prior written consent of the Management Committee.

25.3.4 Any changes in policies of Project Insurance shall be promptly reported to the Management Committee by the Project Manager.

25.4 Each Participant, at its expense, shall have the right to secure such additional or different insurance coverage as may be required under any mortgage or contract provision, and, to the extent practicable, such additional or different insurance coverage may be effected through endorsements on policies of Project Insurance.

26. LIABILITY OF PARTICIPANTS TO EACH OTHER:

26.1 Each Participant shall protect, indemnify, and hold the other Participant, and its directors, officers and employees, free and harmless from Construction Work Liability arising out of construction of an Additional Generating Unit in which the other Participant has no ownership interest. Except as provided in the previous sentence, participants shall have no remedies against the other Participant for tortious conduct arising out of the ownership of the Project, or any portion thereof, or out of Construction Work or Station Work except when the claim results from Willful Action. (1984 Amendment)

26.2 Remedies of a Participant with respect to a claim against the other Participant shall be unimpaired by this Participation Agreement when the claim does not arise out of ownership of the Project or any portion thereof, or out of Construction Work or Station Work.

26.3 Each Participant shall protect, indemnify, and hold the other Participant, and its directors, officers and employees, free and harmless from and against any and all claims, demands, causes of action, suits or other proceedings (including all costs in connection therewith and in connection with the defense thereof, including attorney's fees) of every kind and character arising in favor of any of that Participant's electric customers (or anyone claiming through that Participant's electric customers) on account of bodily injuries, death, damage to property or economic loss in any way occurring, incident to, arising out of or in connection with the furnishing of, or failure to furnish, electric service to such customers, it being the intention of this Section 26.3 to impose on each Participant the sole responsibility for the defense and discharge of such claims, demands, causes of action, suits or other proceedings brought against one or both Participants by a Participant's customers even when caused by the sole fault of the other Participant. Nothing in this Section 26.3 shall impair the remedies of a Participant against the other Participant preserved by Sections 26.1 and 26.2 hereof.

26.4 The terms "Participant" and "Participants," as used in this Section 26, shall include the Project Manager in its capacity as such.

27 DEFAULTS AND COVENANTS REGARDING OTHER AGREEMENTS:

27.1 Each Participant hereby agrees that it shall pay all monies and carry out all other duties and obligations agreed to be paid or performed by it pursuant to all of the terms and conditions set forth and contained in the Project Agreements, and a default by either Participant in the covenants and obligations set forth and contained in any of the Project Agreements shall be an act of default under this Participation Agreement.

27.2 In the event of an alleged default by either Participant in any of the terms and conditions of the Project Agreements concerning the advancement of funds, then, within ten (10) days after written notice has been given by the nondefaulting Participant to the defaulting Participant of the existence and nature of the default, the nondefaulting Participant shall remedy such default by advancing the necessary funds or commencing to render the necessary performance.

27.3 In the event of an alleged default by either Participant in any of the terms and conditions of the Project Agreements and the giving of notice as provided in Section 27.2 hereof, the defaulting Participant shall take all steps necessary to cure such default as promptly and completely as possible and shall pay promptly upon demand to the nondefaulting Participant the total amount of money or the reasonable equivalent in money of nonmonetary performance, if any, paid or made by such nondefaulting Participant in order to cure any default by the defaulting Participant, together with interest on such money or the costs of nonmonetary performance at the commercial prime rate then in effect at the First National Bank in New York, or at the maximum rate of interest legally chargeable, whichever is the lesser, from the date of the expenditure of such money or the date of completion of such nonmonetary performance by such nondefaulting Participant to the date of such

reimbursement by the defaulting Participant, or such greater amount as my be otherwise provided in the Project Agreements.

27.4 In the event that either Participant shall dispute an asserted default by it, then such Participant shall pay the disputed payment or perform the disputed obligation, but may do so under protest. The protest shall be in writing, shall accompany the disputed payment or precede the performance of the disputed obligation, and shall specify the reasons upon which the protest is based. A copy of such protest shall be mailed by such Participant to the other Participant. Payments not made under protest shall be deemed to be correct, except to the extent that periodic or annual audits may reveal over or under payments by Participants, necessitating adjustments. In the event it is determined by arbitration, pursuant to the provisions of this Participation Agreement of otherwise, that a protesting Participant is entitled to a refund of all or any portion of a disputed payment or payments or is entitled to the reasonable equivalent in money of nonmonetary performance of a disputed obligation theretofore made, then, upon such determination, the nonprotesting Participant shall pay such amount to the protesting Participant, together with interest thereon at the commercial prime rate of interest then in effect at the First National City Bank in New York or at the maximum legal rate, whichever is the lesser, from the date of payment or of the performance of a disputed obligation to the date of reimbursement.

27.5 Unless otherwise determined by a board of arbitrators, in the event a default by either Participant in the payment or performance of an obligation under the Project Agreements shall continue for a period of six (6) months or more without having been cured by the defaulting Participant or without such Participant having commenced or continued action in good faith to cure such default, or in the event the question of whether an act of default continues for a period of six (6) months following a final determination by a board of arbitrators or otherwise that an act of default

exists and the defaulting Participant has failed to cure such default or to commence such action during said six (6) month period, then, at any time thereafter and while said default is continuing, the nondefaulting Participant may, by written notice to the defaulting Participant, suspend the right of such defaulting Participant to receive all or any part of its proportionate share of the Net Effective Generating Capability, in which event:

27.5.1 During the period that such suspension is in effect, the nondefaulting Participant shall bear all of the operation and maintenance costs, insurance costs and other expenses otherwise payable by the defaulting Participant under the Project Agreements.

27.5.2 The defaulting Participant shall be liable to the nondefaulting Participant for all costs incurred by such nondefaulting Participant together with interest as provided in Section 27.3 hereof.

27.6 In addition to the remedies provided for in Section 27.5 of this Participation Agreement, the nondefaulting Participant may, in submitting a dispute to arbitration in accordance with the provisions of Section 28 hereof, request that the board of arbitrators determine what additional remedies may be reasonably necessary or required under the circumstances which give rise to the dispute. The board of arbitrators may determine what remedies are necessary or required in the premise, including but not limited to the conditions under which the Project may be operated economically and efficiently during periods when the defaulting Participant's right to receive its proportionate share of the Net Effective Generating Capability is suspended.

27.7 The rights and remedies of the Participants set forth in this Participation Agreement shall be in addition to the rights and remedies of the Participants set forth in any other of the Project Agreements.

28. ARBITRATION:

28.1 If a dispute between the Participants should arise under this Participation Agreement or the Project Agreements, which is not resolved by the Management Committee, either Participant

may call for submission of the dispute to arbitration, which call shall be binding upon the other Participant. Except as specifically provided in this Participation Agreement of in the Project Agreements, the arbitration shall be governed by the Texas General Arbitration Act of 1965, as same may be amended at the time of the call for arbitration. The costs and expenses of the arbitrators shall be shared equally by the Participants, unless otherwise decided by the arbitrators.

28.2 A Participant calling for arbitration shall make such call by written notice to the other Participant, naming in such notice one arbitrator. Upon receipt of a written demand for arbitration, the other Participant shall appoint one arbitrator. The arbitrators so appointed shall elect one additional arbitrator. The initial meeting of the arbitrators shall be at a place in Texas named by the Participant making the demand for arbitration. Thereafter, the arbitrators shall meet at such place or places in Texas as they deem appropriate. The decision of a majority of the arbitrators so appointed shall be binding on all Participants, and the Participants hereby consent to the entry of a judgment in any court of competent jurisdiction confirming and implementing the decision of the arbitrators.

29. ACTIONS PENDING RESOLUTION OF DISPUTES:

29.1 Pending the resolution of any dispute by arbitration or judicial proceedings, the Project Manager shall proceed with the Construction Work or Station Work in a manner consistent with this Participation Agreement and the Project Agreements and with the best judgment of the Project Manager, and the Participants shall advance the funds required to perform such Construction work or Station Work in accordance with the applicable provisions of this Participation Agreement of the Project Agreements.

30. RELATIONSHIP OF PARTICIPANTS:

30.1 The covenants, obligations and liabilities of the Participants shall be several and not joint or collective. Each Participant shall be individually responsible for its own covenants,

obligations and liabilities as herein provided and as provided in the Project Agreements. It is not the intention of the parties to create, nor shall this Participation Agreement nor any of the Project Agreements be construed as creating, a partnership, association, joint venture or trust, as imposing a trust or partnership covenant, obligation or liability on or with regard to either of the Participants, or as rendering the Participants liable as partners or trustees. No Participant shall be under the control of or shall be deemed to control the other Participant. A Participant as such shall not be the agent of or have a right or power to bind the other Participant.

31. ACQUISITION OF REAL PROPERTY INTERESTS:

31.1 The Project Manager shall acquire, or cause to be acquired, in its own name, or in the name of the other Participant, or both, the Plant Site by purchase or eminent domain proceedings, for a cash consideration. The tracts of land constituting the Plant Site shall be acquired in fee simple absolute unless a lesser title is approved by the Management Committee. Acquisition of the Plant Site shall be based upon: (i) title opinions by counsel, title insurance, or other title showings or combinations of showings; and (ii) such survey work and title curative work as the Project Manager in its judgment, reasonably exercised, shall deem necessary; provided that title opinions by counsel approved by the Management Committee shall be procured on all of the Plant Site (except any portions as to which title opinions may be waived by the Management Committee) prior to commencement of the Construction Work. The purchase price for all lands acquired for the Plant Site and all costs and expenses incurred in connection with the acquisition of said lands, including, but not by limitation, title insurance premiums, abstracters, attorneys, surveyors, nominees and land agents fees, title curative work, court costs and recording fees, shall be Construction Costs and borne by the Participants as such. The purchase price for all land acquired through voluntary conveyance shall be approved by the Management Committee.

32. FORCE MAJEURE:

32.1 In the event of any Participant being rendered unable, wholly or in part, by force majeure to perform any of its obligations under this Participation Agreement or the Project Agreements (other then obligations to pay costs and expenses due), upon such Participant giving notice and full particulars of such force majeure in writing or by telephone to the other Participant as soon as reasonably possible after the occurrence of the cause relied upon, the obligations of the Participant giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of any inability or performance so caused, but for longer period. Telephone notices given under the provisions of this Section 32.1 shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the force majeure, the time and date when the force majeure occurred and when the force majeure ceased. This Participation Agreement shall not be terminated by reason of any such cause but shall remain in full force and effect. The term "force majeure" shall mean any cause beyond the control of the Participant affected, including, but not restricted to, failure or threat of failure of facilities or fuel supply, flood, earthquake, storm, fire, lightening, epidemic, war, acts of the public enemy, riot, civil disturbance or disobedience, strike, lockout, work stoppages, other industrial disturbance or dispute, labor or material shortage, sabotage, restraint by court order or other public authority and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by the exercise of due diligence such Participant could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed so as to require a Participant to settle any strike, lockout, work stoppage or other industrial disturbance or dispute in which it may be involved. A Participant rendered unable to fulfill any of its obligations under this Participation Agreement or any of the Project Agreements by

reason of force majeure shall exercise due diligence to remove such inability with all reasonable dispatch. The term "Participant" as used in this Section 32.1 shall include the Project Manager in its capacity as such.

33. GOVERNING LAW:

33.1 This agreement shall be governed by the laws of the State of Texas, except as to matters exclusively controlled by the Constitution and statutes of the United States of America.

34. BINDING OBLIGATIONS:

34.1 All of the respective covenants, undertakings and obligations of each of the Participants set fort in this Participation Agreement and in each of the Project Agreements shall bind and shall be and become the respective covenants and obligations of each such Participant and, to the extent permitted by law and the existing contracts of the applicable Participant, shall apply to and bind:

34.1.1 All mortgagees, trustees and secured parties under all present and future mortgages, indentures and deeds of trust, security agreements and other financing arrangements which are or may become a lien upon any of the properties of such Participant;

34.1.2 All receivers, assignees for the benefit of creditors, bankruptcy trustees and referees of, or having control of jurisdiction over, such Participant;

34.1.3 All other persons, firms, partnerships, corporations or entities claiming by, through or under any of the foregoing; and

34.1.4 Any successors or assigns of any of those mentioned above in this Section 34.1;

and shall be covenants and obligations running with each Participant's respective rights, titles and interests in the Project and with all of the rights and interests of each Participant under this Participation Agreement and the Project Agreements, and shall be for the benefit of the respective rights, titles and interests of the Participants and their respective successors and assigns, in and to the

Project. It is the specific intention of this provision that all such covenants and obligations shall be binding upon any party which acquires any of the rights, titles and interests of a Participant in the Project or in, to and under this Participation Agreement or any of the Project Agreements and that all of the above-described persons and groups shall be obligated to use such Participant's rights, titles and interests in the Project or in, to or under this Participation Agreement or any of the Project Agreements for the purpose of discharging the covenants and obligations under this Participation Agreement and the Project Agreements.

35. PROJECT AGREEMENTS:

35.1 The Participants hereto agree to negotiate in good faith and to proceed with diligence to obtain and agree upon all of the Project Agreements among the Participants and between the Participants and other entities.

35.2 It is acknowledged by the Participants that one or more of the Project Agreements may contain provisions which are in conflict with or contrary to the terms of this Participation Agreement, and any such provision in a Project Agreement executed subsequent to the execution of this Participation Agreement shall be deemed to supersede, amend or modify any conflicting or contrary provision contained herein. The mutual agreement of the Participants to supersede, amend or modify the terms hereof shall constitute the legal consideration to support such change in the legal rights and obligations of the Participants.

36. REMOVAL OF PROJECT MANAGER:

36.1 The Project Manager shall serve during the term of and pursuant to this Participation Agreement or until it resigns by giving written notice to the other Participant at least one (1) year in advance of the date of resignation or until receipt of notice of its removal following a determination that it is in default of the Participation Agreement as provided in Section 36.2 hereof.

36.2 The following provisions shall apply solely in regard to violations or allegations of violations of this Participation Agreement by the Project Manager on the basis of which removal is sought:

36.2.1 In the event the other Participant shall be of the opinion that an action taken or failed to be taken by the Project Manager constitutes a violation of this Participation Agreement, it may give written notice thereof together with a statement of the reasons for its opinion to the other Participant. Thereupon, the Project Manager may prepare a rebutting statement of the reasons justifying its action or failure to take action. In the event that agreement is not reached between it and the Participant which gave such notice, the matter shall be submitted to arbitration in the manner provided in Section 28 hereof. During the continuance of the arbitration proceedings, the Project Manager may continue such action taken or failed to be taken in the manner it deems most advisable and consistent with this Participation Agreement.

36.2.2 If it is determined that the Project Manager is violating this Participation Agreement, it shall act with due diligence to end such violation, and in any event within six (6) months or within such lessor time following the decision as my be prescribed in the decision, shall take action in good faith to terminate such violation. In the event that the Project Manager has either failed to correct or commence action to correct the violation within such allowed period (which itself may be a subject of dispute for determination as above provided) it shall be deemed in default under this Participation Agreement and shall be subject to removal upon receipt of the notice referred to in Section 36.1 hereof signed by the other Participant.

36.2.3 The provisions of Section 27 hereof shall not apply to disputes as to whether or not an action or nonaction of the Project Manager, in its capacity as such, is a violation of or a default under this Participation Agreements.

36.3 Upon the effective date of resignation or removal, as provided in this Section 36, the Project Manager shall vacate said position and prior thereto the other Participant shall become the new Project Manager. Assumption of duties by the new Project Manager shall constitute its agreement to perform the obligations of said position pursuant to this Participation Agreement.

37. ENVIRONMENTAL PROTECTION:

37.1 In recognition of the need to provide for the greatest feasible degree of environmental protection, the Participants hereby covenant with one another that in the construction and operation

of the Project they shall install and operate air quality control equipment and water quality control equipment.

37.2 The Participants, in recognition of all applicable Federal, State and local laws, orders and regulations relating to environmental protection with which they intend to and shall fully comply, and the continuing need for the greatest feasible degree of environmental protection, hereby affirm their understanding and further agree as set forth in Sections 37.3 through 37.5 hereof.

37.3 The Participants shall install and diligently operate in Unit 1 and any additional Units facilities or equipment to comply with applicable Federal, State, or local laws, regulations or standards for the removal of particulate, removal of oxides of sulphur, control of oxides of sulphur and nitrogen and the design of such Units will, to the extent practicable, provide for the future installation of any equipment or facilities required to comply with said Federal, State, or local laws, regulations, or standards.

37.4 The Participants shall install and diligently operate as part of the Project such waste water and waste material control, and sewage control and diposal facilities as are necessary to comply with all applicable Federal, State, and local laws, orders and regulations.

37.5 The Participants shall take appropriate measures to minimize the effect of the plant on the environment and shall recognize and consider the ecology of the area in the design of the Project. In developing plans for Unit 1 and any Additional Generating Units, appurtenant buildings, substations, and coal and water handling facilities, due consideration will be given to minimizing adverse effects to the terrain on which they are located.

38. TERM:

38.1 This Participation Agreement shall become effective when it has been duly executed and delivered on behalf of the parties hereto and shall remain in force and effect, subject to prior

termination by unanimous agreement by the Participants, until the abandonment of the Project or such later date as may become the termination date of the last one of the Project Agreements to terminate.

39. INTERESTS ACQUIRED IN THE NAME OF AN INDIVIDUAL PARTICIPANT:

39.1 Any Participant which acquires in its name an interest in any real or personal property or a contractual right which is part of the Project shall acquire and hold same subject to this Participation Agreement and any applicable Project Agreement, and shall transfer and assign an undivided interest therein to the other Participant so that the ownership and rights of the Participants in such property or contract shall be as provided in this Participation Agreement or in the applicable Project Agreements.

40. NOTICES:

40.1 Any notice, demand or request provided for in this Participation Agreement or in the Project Agreements shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid, to the Participants at the addresses specified below:

City of Austin
P.O. Box 1088
Austin, Texas 78767
Attention: City Manager

Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767
Attention: Office of the General Manager

40.2 A Participant may, at any time, by written notice to the other Participant, designate different or additional persons or different addresses for the giving of notices hereunder.

40.3 The Project Manager shall provide to each Participant a copy of any notice, demand or request given or received by it in connection with this Participation Agreement or any of the

Project Agreements.

41. MISCELLANEOUS PROVISIONS:

41.1 Each Participant agrees, upon request by the other Participant, to make, execute and deliver any and all documents and writings of every kind reasonably requested or required to implement this Participation Agreement and the Project Agreements.

41.2 The captions and headings appearing in the Participation Agreement and in the Project Agreements are inserted merely to facilitate reference and shall have no bearing upon the interpretation thereof.

41.3 Each term, covenant and condition of this Participation Agreement and of the Project Agreements is deemed to be an independent term, covenant and condition, and the obligation of any Participant to perform all of the terms, covenants and conditions to be kept and performed by it is not dependent upon the performance by the other Participant or any or all of the terms, covenants and conditions to be kept and performed by it.

41.4 In the event that any of the terms, covenants or conditions of this Participation Agreement or of any of the Project Agreements, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction in the premises, the remainder of such agreement, and the application of its terms, covenants or conditions to such persons or circumstances shall not be affected thereby.

41.5 The Participants do not intend to create rights in or to grant remedies to any third party as a beneficiary of this Participation Agreement or a Project Agreement or of any duty, covenant, obligation or undertaking established therein.

41.6 Any waiver at any time by a Participant of its rights with respect to a default or any other matter arising in connection with this Participation Agreement or any Project Agreement shall

not be deemed a waiver with respect to any subsequent default or matter.

IN WITNESS WHEREOF, the parties hereto have caused this day Participation Agreement to be executed as of the _____ day of _____ 1974.

CITY OF AUSTIN

By

City Manager

ATTEST:

City Clerk ~~Secretary~~

LOWER COLORADO RIVER AUTHORITY

By

ATTEST

Secretary

Signatures of Counsel for Purposes of
The Texas General Arbitration Act:

City Attorney, Austin, Texas

General Counsel, Lower Colorado
River Authority

~~EXHIBIT A~~

~~COMMON STATION FACILITIES~~

~~The Fayette Power Project will consist of, but not limited to, the following items that will be common to all generating units to be installed at the chosen site:~~

~~A.~~ ~~Land for Plant Site and Cooling Lake~~

~~The land requirement for the dam, cooling lake, pumping plant, and coal and ash storage is estimated to be 6400 acres. This site will accommodate an ultimate plant capacity of 3000 Mw and will be common for all units.~~

~~B.~~ ~~Cooling Lake, Dam and Spillway~~

~~The cooling lake is planned to be a staged development in that the initial reservoir will be designed to provide a 2500 acre lake that will accommodate approximately 2200 Ms. The second stage of the development will create approximately 1000 to 1200 acres that will increase the allowable plant capacity to an excess of 3000 Mw.~~

~~C.~~ ~~River Pumping Plant and Pipeline~~

~~The pumping plant will be constructed on the banks of the Colorado River and a pipeline constructed for a distance of approximately four miles to the plant site and cooling reservoir and necessary plant use.~~

~~D.~~ ~~Railroad Spur~~

~~The railroad spur will be constructed from the existing railroad into and out of the plant site for delivery of coal and plant construction material.~~

~~E.~~ ~~Coal Handling Facilities~~

~~A coal handling system will be provided which will consist of a car dumping facility, underground storage hoppers, stack out tower, a crusher house, and belt conveyor systems. There will also be an area designated for coal storage for the ultimate capacity of the plant.~~

~~F.~~ ~~Ash Handling Facilities~~

~~Facilities will be constructed consisting of the pump and piping to transport the ash to a disposal area designed to accommodate the total capacity of the plant.~~

~~G.~~ ~~Fuel Oil System~~

~~A fuel oil system will be included consisting of a 20,000 barrel storage tank, burner ignitors and start up guns using a light "No. 2" fuel oil for start up of the boiler.~~

~~H.~~ ~~Miscellaneous Plant Equipment~~

~~Other common facilities will consist of an administrative building, a machine shop, a warehouse, a maintenance shop, sanitary sewage and waste water treatment, and roadways.~~ (1984 Amendment)

EXHIBIT A

FAYETTE POWER PROJECT UNIT 1

GENERAL DESCRIPTION

Fayette Power Project Unit No. 1 will consist of a 683,700 kva electric generator driven by a 3600 rpm, tandem compound, four-flow reheat, condensing steam turbine having a nameplate rating of 551,922 Kw when supplied with steam at 2400 psig, 1000 F., and 3.5" Hg. Abs. exhaust pressure. Steam for the turbine will be supplied from an outdoor western coal/lignite controlled circulation steam-generator having a rating of 4, 200,000 pounds per hour. A stacked electrostatic precipitator will allow the unit to meet or exceed all federal and state air pollution regulations while firing sub-bituminous western coal. The plant will be arranged to accommodate future SQ_2 removal equipment in the event lignite firing becomes a reality. All associated equipment necessary for an operable coal fired plant will be included as a part of the unit. The turbine generator building and office building will be of rigid frame steel design.