

STATE OF TEXAS §  
COUNTY OF Williamson §  
§

**SURFACE WATER AFFIDAVIT**

Before me, the undersigned notary, on this day personally appeared a person \_  
\_\_\_\_ whose identity is known to me. After I administered an oath to him/her, upon his/her oath  
he/she said:

1. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
2. I am an authorized representative of the City of Round Rock, an entity that has filed an application for financial assistance with the Texas Water Development Board for a project that proposes the development of a new surface water supply source.
3. Does the applicant possess a Certificate of Adjudication and/or Water Rights Permit(s) issued by the Texas Commission on Environmental Quality or a predecessor agency authorizing the appropriation and use of the surface water needed for the Project?

Yes  No

Please attach a copy of the Certificate(s) of Adjudication and Water Rights Permit(s).

**Item attached:** Yes  No

4. Does the applicant have the contractual right to use the surface water from an entity that enjoys the right to appropriate and use the surface water needed for the project?

Yes  No

Please attach a copy of any draft or executed water supply contract, lease or other legal instrument providing contractual authorization to use the surface water needed for the Project.

**Item attached:** Yes  No

Please identify the Certificate of Adjudication(s) and Water Rights Permit(s) possessed by the wholesale water provider pursuant to which the contract, lease or other legal instrument has been or will be executed.

Certificate of Adjudications: \_\_\_\_\_

**Item attached:**            Yes                             No

Water Rights Permit(s):            See attached.

**Item attached:**            Yes                             No

Signed the day of \_\_\_\_\_, 20\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Sworn to and subscribed before me by \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_

Notary Public in and for the State of Texas

[SEAL]

My Commission expires: \_\_\_\_\_

SYSTEM WATER AVAILABILITY AGREEMENT  
FOR COLORADO RIVER BASIN WATER  
BETWEEN  
BRAZOS RIVER AUTHORITY  
AND  
CITY OF ROUND ROCK

AGREEMENT made and entered into this the 4<sup>th</sup> day of October 2001, by and between BRAZOS RIVER AUTHORITY ("Authority"), a river authority of the State of Texas, and CITY OF ROUND ROCK ("Purchaser") of Williamson County, Texas.

1. RECITALS. Authority owns and operates various lakes in the Brazos River Basin. Authority also has entered into contracts with the United States of America by virtue of which it has obtained the right to utilize for water supply purposes a portion of the usable storage space in various lakes owned and operated by the United States Army Corps of Engineers. Authority is authorized by the State of Texas to store State waters in the lakes owned by Authority and various lakes owned and operated by the United States Army Corps of Engineers in the Brazos River Basin, hereinafter collectively called the "System", and to make such stored waters available for beneficial use.

Authority is authorized to operate the System as a hydrologic unit pursuant to an order of the Texas Water Commission (now Texas Natural Resource Conservation Commission "TNRCC") issued on July 23, 1964 ("System Operation Order"). The Final Determination of All Claims of Water Rights in the Brazos River Basin and the San Jacinto-Brazos Coastal Basin Maintained by the Brazos River Authority, Fort Bend County W.C.I.D. No. 1 and Galveston County Water Authority ("Final Determination") issued on June 26, 1985, by TNRCC clarified and amplified the System Operation Order. Under the System Operation Order as adjudicated by the Final Determination, Authority is authorized to operate the System as a hydrologic unit to more efficiently utilize the reservoirs that make up the System to make water available to meet the needs of Authority's customers.

Authority and Purchaser have entered into certain raw water contracts (System Water Availability Agreement Between Brazos River Authority And City of Round Rock - Lake Georgetown and System Water Availability Agreement Between Brazos River Authority And City of Round Rock - Lake Stillhouse Hollow) dated contemporaneously herewith pursuant to which Authority has agreed to make available a total of 24,854 acre-feet of water per Fiscal Year from the System.

Authority has also acquired the right to divert and use 25,000 acre-feet of water per year from the Colorado River Basin made available from the Lower

R-01-09-13-15F12

Colorado River Authority (LCRA) under the "Water Sale Contract by and between Lower Colorado River Authority and Brazos River Authority Purchaser", dated October 2000 (LCRA Contract) pursuant to the terms of House Bill 1437 of the 76<sup>th</sup> Texas Legislative Session and codified under Section 27 of the LCRA Enabling Act. It is from the 25,000 acre-foot of water per year from the Colorado River Basin ( the "LCRA" Water") that Purchaser now wishes to contract for Authority to make available 6,944 acre-feet of water per Calendar Year under the terms and conditions herein provided.

2. DEFINITIONS.

- a) The term "Agreement" means this agreement.
- b) The term "Agreement Rates" means the "Agreement Water Rate", the "Agreement Reserved Water Charge", and the "Agreement Inverted Block Rate" for water purchased pursuant to this Agreement as more fully described in Section 5, PRICING STRUCTURE, and in Section 7, UNCONDITIONAL NATURE OF PAYMENT OBLIGATION; PRICE, below.
- c) The term "Area of Use" means that certain area in Williamson County that lies outside of the watershed of the Colorado River, but excludes those municipalities which were customers of the Lower Colorado River Authority as of May 20, 1997, and who are located in watersheds of both the Colorado and Brazos Rivers.
- d) The term "Authority" shall mean Brazos River Authority.
- e) The term "Board" shall mean the Board of Directors of Brazos River Authority.
- f) The term "Credit for System Rate Recovery" or "CSRR" means the credit described in Section 7. (c) of this Agreement.
- g) The term "Cost Recovery Fee" or "CRF" means the fee described in Section 7. (b) (3) of this Agreement.
- h) The term "Federal Contracts" shall mean those contracts with the United States of America whereby Authority has acquired, is acquiring, or may acquire conservation storage capacity in Federal Reservoirs.
- i) The term "Federal Reservoirs" shall include the following:
  - Aquilla Dam and Reservoir
  - Belton Dam and Reservoir
  - Georgetown Dam and Reservoir
  - Granger Dam and Reservoir
  - Proctor Dam and Reservoir
  - Somerville Dam and Reservoir
  - Stillhouse Hollow Dam and Reservoir
  - Whitney Dam and Reservoir
- j) The term "Fiscal Year" shall mean Authority's fiscal year from September 1 through August 31, or such other annual fiscal year period as Authority may later determine.
- k) The term "Highest Lawful Rate" shall mean the maximum rate which Authority may charge on obligations payable under this Agreement without

violation of any applicable law or any applicable lawful regulation of any agency of the State of Texas or of the United States having jurisdiction of the matter.

l) The term "Industrial Use" shall mean the use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including commercial feedlot operations, commercial fish production, and the development of power by means other than hydroelectric.

m) The term "Irrigation Use" shall mean the use of water for the irrigation of crops, trees, and pastureland, including, but not limited to, golf courses and parks which do not receive water through a municipal distribution system.

n) The term "LCRA" means Lower Colorado River Authority.

o) The term "LCRA Contract" means the "Water Sale Contract by and between Lower Colorado River Authority and Brazos River Authority, Purchaser" dated October 2000.

p) The term "LCRA Rates" means the LCRA rates and charges for sale of water for municipal purposes as delineated in Section II. B. of the LCRA Contract.

q) The term "LCRA Water" means the 25,000 acre-feet of water per year purchased by Brazos River Authority from LCRA pursuant to House Bill 1437 of the 76<sup>th</sup> Texas Legislative Session.

r) The term "Mining Use" shall mean the use of water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.

s) The term "Municipal Use" shall mean the use of potable water within a community or municipality and its environs for domestic, recreational, commercial, or industrial purposes or for the watering of golf courses, parks and parkways.

t) The term "Purchaser" shall mean City of Round Rock.

u) The term "System" shall mean Authority's Water Supply System and shall include certain of Authority's facilities and properties insofar as they are related to making water available from the System, to wit, as follows: Morris Sheppard Dam and Possum Kingdom Reservoir, DeCordova Bend Dam and Lake Granbury, Sterling C. Robertson Dam and Lake Limestone, Authority's conservation storage in the Federal Reservoirs, and the LCRA Water obtained pursuant to the LCRA Contract, together with all future extensions, improvements, enlargements, and additions to and replacements of the System, and all replacements thereof whether from surface water supplies, groundwater, or a combination thereof, specifically added to the System by resolution of the Board; provided that, notwithstanding the foregoing, the term System shall not include (i) any of Authority's facilities and properties not specifically included in the System by the terms of this Agreement or not added by a subsequent resolution of the Board, and (ii) any water supply, wastewater or other facilities which have been or are declared not to be a part of the System and which may be acquired or constructed by Authority with the proceeds from the issuance of "Special Facilities Bonds," which are hereby defined as being special revenue

obligations of Authority which are not secured by or payable from the revenues of the System but which are secured by and payable solely from special contract revenues or payments received from any persons or other legal entity or entities in connection with such special facilities.

v) The term "System Agreements" means those certain raw water contracts titled "System Water Availability Agreement Between Brazos River Authority and City of Round Rock – Lake Georgetown" and "System Water Availability Agreement Between Brazos River Authority and City of Round Rock – Lake Stillhouse Hollow", dated contemporaneously with this Agreement herewith.

w) The term "System Operation Order" shall mean that certain order of the TNRCC or its predecessor dated July 23, 1964, as adjudicated by order of the TNRCC or its predecessor on June 26, 1985, in the Final Determination of all Claims of Water Rights in the Brazos River Basin and the San Jacinto-Brazos Coastal Basin Maintained by the Brazos River Authority, Fort Bend County W.C.I.D. No. 1 and Galveston County Water Authority.

x) The term "System Rate" or "SR" shall mean the rate per acre-foot of water established by Authority from time to time under its system-wide pricing methodology.

y) The term "Total Annual Budgeted System Costs" shall mean the amounts approved by Authority as estimated costs of the System in the annual budgets adopted by Authority for a given Fiscal Year including, without limitation, amounts budgeted to meet Annual System Operation and Maintenance Expenses and Annual Capital Related Costs.

z) The term "Total System Billing Units" shall mean the total amount of water (expressed in acre-feet) determined by Authority under accepted engineering practice as necessary to be reserved from firm yield produced by storage in the System to fulfill its commitments for which Authority receives payment under long term (in excess of five years) water sales contracts with Purchaser and Authority's other customers; provided, however, such term shall not include amounts of water required by appropriate governmental authority to be reserved in the System for use for bay and estuary purposes, in-stream uses, or for other similar environmental, public, or other beneficial uses to the extent Authority is not adequately compensated for any such requirement.

3. **EFFECTIVE DATE.** The effective date of this Agreement is September 1, 2001.

4. **AVAILABILITY OF WATER.** While this Agreement remains in force, Authority agrees to make available to Purchaser an amount of water not to exceed 6,944 acre-feet of water per Calendar Year under the following conditions:

a) Notwithstanding anything herein to the contrary, Authority's obligation to make water available to Purchaser under this Agreement is subject to, and limited by, the rights of Authority to obtain the LCRA Water pursuant to the LCRA Contract. Purchaser acknowledges that Purchaser has received a

copy of the LCRA Contract and is familiar with the rights of Authority thereunder, and the limitations on Authority's rights thereunder to obtain the LCRA Water.

b) Authority may interrupt or curtail the water supplied to Purchaser under this Agreement to the extent Authority experiences interruption or curtailment of water supplied to it under the LCRA Contract for any reason.

c) Water supplied under this Agreement shall only be used within the Area of Use.

d) Purchaser acquires no property rights in the water made available to it under this Agreement beyond the right to have the water made available to it for diversion and use under the terms of this Agreement. This right of use extends to direct reuse (flange to flange) of the water made available under this Agreement. Purchaser represents, and Authority relies on such representation, that all water to be made available by Authority under this Agreement to Purchaser shall be used solely for municipal purposes.

## 5. PRICING STRUCTURE

a) The pricing structure for water rates under this Agreement is dependent upon the pricing structure of water made available to the Authority under the LCRA Contract unless or until the Authority's System Rate exceeds the price derived from the formula provided for price calculation in Section 7, below. At such time, the price under this Agreement shall be the Authority's System Rate.

b) The LCRA Water is provided to Authority under the LCRA Contract pursuant to the following pricing structure:

(1) The "Water Rate" for LCRA Water is charged for water diverted and used during a calendar year. The current Water Rate is \$105.00 per acre-foot of water per year.

(2) The "Reserved Water Charge" for LCRA Water is charged for water under contract but not diverted and used during a calendar year. The Reserved Water Charge is 50% of the Water Rate, or currently \$52.50 per acre-foot of water per year.

(3) The "Inverted Block Rate" for LCRA Water is charged for all water used in excess of the total contractual amount and is currently \$200.00 per acre-foot of water per year.

(4) The "Conservation Charge" for LCRA Water is currently 25% of the Water Rate, the Reserved Water Charge, or the Inverted Block Rate, as applicable.

(5) The current "Total LCRA Rates" for LCRA Water are as follows:

(a) The "Total LCRA Water Rate" is the Water Rate + the Conservation Charge, currently \$131.25 an acre-foot.

(b) The "Total LCRA Reserved Water Charge" is the Reserved Water Charge + the Conservation Charge, currently \$65.63 an acre-foot.

(c) The "Total LCRA Inverted Block Rate" is the Inverted Block Rate + the Conservation Charge, currently \$250.00 an acre-foot.

d) The Authority makes water available to Purchaser under this Agreement pursuant to the following pricing structure:

(1) The "Agreement Reserved Water Charge" for all water agreed to be made available under this Agreement whether or not it is diverted and used during a calendar year. The current Agreement Reserved Water Charge is \$49.22 per acre-foot of water per year, the calculation for which is set out in Section 7.c., below.

(2) The "Agreement Water Rate" for only water that is diverted and used during a calendar year. The Agreement Water Rate equals the Agreement Reserved Water Charge and is in addition to the Agreement Reserved Water Charge.

3) The "Agreement Inverted Block Rate" for water used in excess of the amount agreed to be made available under this Agreement. The Agreement Inverted Block Rate equals the Total LCRA Inverted Block Rate.

#### 6. DATE AND PLACE OF PAYMENTS.

a) Payments to be made hereunder shall be made at Authority's office in Waco, McLennan County, Texas. Authority contemplates that by September 1 of each Fiscal Year it will have adopted budgets for Authority for said Fiscal Year and established the System Rate and the Agreement Rates for said Fiscal Year. Payments for each Fiscal Year may be made under one of three payment options from which Purchaser will select at the beginning of each Fiscal Year. The payment due at the beginning of each Fiscal Year will be for the water agreed to be provided during the next calendar year, and shall be based on the Agreement Reserved Water Charge. Annual payments for water provided at the Agreement Reserved Water Charge shall be made on or before September 15 each Fiscal Year. Quarterly payments shall be made on or before September 15, December 15, March 15, and June 15 each Fiscal Year. Monthly payments shall be made on or before the fifteenth of each month each Fiscal Year. Quarterly payments or monthly payments shall include a multiplier to be applied to the annual payment to allow Authority to recover interest lost on any unpaid balance plus a service charge for administrative costs, including but not limited to costs involving the billing, accounting, and collecting for the quarterly or monthly payments. The multiplier to recover lost interest revenue and the service charge for administrative costs shall be determined on an annual basis and shall be just and reasonable. If the effective date of this Agreement is other than January 1, the amount of water available to Purchaser and the payment owed by Purchaser will be prorated for the remaining months of the Calendar Year, 2001.

b) The charge for any water actually diverted and used during the next calendar year will be billed to Purchaser on a monthly basis based on actual diversion and usage for the previous month at the Agreement Water Rate.

c) Purchaser may elect to defer payment of its obligations for water purchased pursuant to Agreement Reserved Water Charges by providing Authority notice of such election in writing within 60 days from the date of

execution of this Agreement. In no instance shall the deferral terms extend beyond the initial ten years of this Agreement.

If Purchaser selects deferred payment, the following structure will be used:

(1) Years 1-2; Purchaser will receive a credit of 50% of the Agreement Reserved Water Charge.

(2) Years 3-4; Purchaser will receive a credit of 25% of the Agreement Reserved Water Charge.

(3) Years 5-6; Purchaser will receive no deferral of the Agreement Reserved Water Charge.

(4) Year 7; Purchaser will pay 125% of the Agreement Reserved Water Charge.

(5) Years 8-9; Purchaser will pay 150% of the Agreement Reserved Water Charge.

(6) Year 10; Purchaser will pay the remaining outstanding deferred balance plus 100% of the current year's Agreement Reserved Water Charge.

Notwithstanding anything herein to the contrary, in the event the differed payments calculation yields a rate that is less than the then current Authority System Rate, the full System Rate will be the rate charged for that Fiscal Year's payment.

Unpaid balances will accumulate interest based on actual Authority interest rates earned on the Authority's investments. The Authority's interest rate will be the Authority's average annual portfolio yield plus 0.5 percent per annum for administrative costs. Interest charges will be assessed on an annual basis using simple interest, compounded annually.

#### 7. UNCONDITIONAL NATURE OF PAYMENT OBLIGATION; PRICE.

a) Purchaser unconditionally agrees to pay Authority in accordance with the terms of this Agreement for the water agreed to be made available to Purchaser from the LCRA Water pursuant to this Agreement.

b) The Agreement Rates are derived using the following components:

(1) The Authority's System Rate (currently \$26.00 per acre-foot of water per year).

(2) The Total LCRA Water Rate, Total LCRA Reserved Water Charge, or Total LCRA Inverted Block Rate (as defined in Section 5.b.(5), above).

(3) The "Cost Recovery Fee" (the applicable Total LCRA Rate minus the Authority's System Rate minus the Credit for System Rate Recovery).

c) The "Credit for System Rate Recovery" (a 25% discount from the Total LCRA Water Rate or the Total LCRA Reserved Water Rate, but not from the Total LCRA Inverted Block Rate). The Agreement Reserved Water

Charge (ARWC) is the System Rate plus the Cost Recovery Fee. Using current components, the Agreement Reserved Water Charge is derived as follows:

$$\text{ARWC} = \text{SR} + \text{CRF}$$

$$\text{ARWC} = \$26.00 + (\text{Total LCRA Reserved Water Charge} - \text{SR} - \text{CSRR})$$

$$\text{ARWC} = \$26.00 + (\$65.63 - \$26.00 - \$16.41)$$

$$\text{ARWC} = \$26.00 + \$23.22$$

$$\text{ARWC} = \$49.22$$

d) The Agreement Water Rate is equal to the Agreement Reserved Water Charge, currently \$49.22, and is in addition to the Agreement Reserved Water Charge.

e) The Agreement Inverted Block Rate is equal to the Total LCRA Inverted Block Rate, currently \$250.00.

f) Authority may, and it specifically reserves the right to, revise the Agreement Rates from time to time (usually prior to the start of each Fiscal Year) to reflect changes in the System Rate and the LCRA Rates. Authority shall not increase the Agreement Rates other than on a Fiscal Year basis except for unforeseeable reasons of a serious and substantial nature. Such reasons include Force Majeure, government legislation or regulation, permit requirements, or changes in the LCRA Rates.

g) Notwithstanding anything herein to the contrary, in the event the Agreement Rates calculation yields a rate that is less than the then current Authority System Rate, the System Rate will be the Agreement Rates.

8. **SOURCE OF PAYMENTS.** The payments to be made hereunder by Purchaser shall constitute operating expenses of Purchaser's water works system or Purchaser's combined water works and sewer system. Purchaser shall charge rates for services of its water works system or its combined water works and sewer systems that will be sufficient to pay the operating and maintenance expenses thereof, including the payments provided for hereunder, and the interest on and principal of, as the same come due and mature, obligations issued by Purchaser now or hereafter payable from the revenues of said system or systems.

9. **INTEREST ON PAST DUE PAYMENT; COLLECTION.** In the event of failure of Purchaser to make any payment to Authority provided to be made in this Agreement at the time when same shall be due, the past due payment shall bear interest at the lesser of the highest rate allowed by applicable law or 18 percent per year. Regardless of any other provision contained in this Agreement, Authority shall never be entitled to receive, collect, or apply as interest under this Agreement any amount of money determined at a rate which exceeds the Highest Lawful Rate. If Authority ever charges, receives, collects, or applies as interest an amount in excess of that permitted by application of the Highest Lawful Rate, then any such amount which would be excessive interest shall be deemed a partial prepayment of amounts payable under this Agreement which do not constitute interest and shall be treated hereunder as such; and if all

other obligations payable under this Agreement shall have been paid in full, then Authority shall refund the amount of such excessive interest.

10. **REMEDIES FOR NONPAYMENT OR DEFAULT.** Should Purchaser fail to make any payment to Authority when due hereunder or otherwise be in default under this Agreement, Authority at its sole option and in addition to and without impairing any other remedy available to it on account of the default, may elect to either (i) suspend its duty to make available water to Purchaser under this Agreement or (ii) terminate this Agreement, by providing written notice of such suspension or termination delivered to Purchaser on or before 30 days before the date specified in said notice of suspension or termination, provided that the nonpayment or other default with respect to which notice of suspension or termination of this Agreement has been given, shall not be cured by the date specified in such notice. Nothing in this Agreement shall be construed in any manner so as to abridge, limit, or deprive either party hereunto of any means which it would otherwise have of enforcing any right or remedy either in law or in equity for breach of any of the provisions hereof.

11. **REMEDIES FOR OVERUSE.** Purchaser recognizes that any diversion of water in excess of its contractual amount may impact Authority's ability to make available water to Authority's other raw water customers. Purchaser agrees that if for any reason it needs to exceed the contractual annual amount of water to be made available to it under this Agreement, Purchaser will give written notice to Authority 30 days in advance of the need for such additional water and in such notice will state the reason for the additional need, the amount of water needed to be made available, and the duration of the need. Authority, in its sole discretion, may make all or a portion of the requested water available.

Should Authority determine that it can make all or a portion of the requested water available without adversely impacting its ability to make water available to its other customers, Purchaser agrees to pay for such water to be made available in advance at a rate that is equal to the then current Agreement Inverted Block Rate.

Should Purchaser fail to notify Authority of its need for additional water to be made available, and exceed the contractual annual amount of water to be made available to it, or should Purchaser, after notification of Authority and Authority's determination that additional water is not available for Purchaser's use, nonetheless exceed the contractual amount of water to be made available to it, Authority may cancel this Agreement by providing written notice of such cancellation delivered to Purchaser on or before thirty (30) days before the date specified in said notice of cancellation.

Nothing in this Agreement shall be construed in any manner so as to abridge, limit, or deprive either party hereunto of any means which it would

otherwise have of enforcing any right or remedy either in law or in equity for breach of any of the provisions hereof.

**12. FACILITIES.** All new facilities that are located in the Area of Use that are used to transport raw water that is purchased pursuant to this Agreement exclusively may be owned and operated by LCRA, at its sole option. All new facilities or all substantial expansions to facilities that are located in the Area of Use that treat water or transport treated water that is purchased pursuant to this Agreement and that are constructed by BRA or LCRA shall be Brazos-Colorado Alliance projects. The LCRA may own, at its sole option, a portion of any such facilities that is commensurate with the percentage that LCRA water (i.e., water supplied under the LCRA Contract) bears to the total amount of water supplied by BRA and LCRA for treatment or transportation by such facilities. For example, if twenty-five percent (25%) of the water used at an Alliance facility is supplied by LCRA under the LCRA Contract, the LCRA may own twenty-five (25%) percent of that facility. All such facilities in the Area of Use, however, shall be operated by BRA.

All new facilities and all substantial expansions to facilities that are located in the Area of Use that treat or transport treated water purchased pursuant to this Agreement that are constructed by Purchaser may be owned and/or operated by Purchaser if such ownership and/or operation is desired by Purchaser.

Purchaser acknowledges that the economics of scale and efficiencies of use made possible by regionalization of water treatment facilities are highly desirable. Purchaser, therefore, agrees to negotiate in good faith with BRA and LCRA to maximize the potential for regionalization of water treatment and transportation facilities, either new facilities or substantial expansion of facilities, located in the Area of Use used to treat or transport water that is purchased pursuant to this Agreement.

**13. METERING.** Purchaser agrees that, at its sole cost and expense, it shall install, operate and maintain meters for the accurate measuring of all water diverted by Purchaser under this Agreement in order to aid Authority in accurately reporting actual water usage to the TNRCC as required by applicable law or regulation. Such meter or meters shall be tested and calibrated for accuracy by and at the expense of Purchaser once each fiscal year at intervals of approximately 12 months, and a report of such test and calibration shall be furnished to Authority. Authority shall be given at least two prior days notice of the time of any test and calibration of Purchaser's meters, or any of them, and Authority shall have the right to have a representative present at each test to observe the test and any adjustments found thereby to be necessary. Authority shall have the right to inspect and check the accuracy of Purchaser's meter or meters at any time during usual business hours after not less than one nor more than five (5) days notice. In the event any question arises at any time as to the

accuracy of any such meter, such meter shall be tested promptly upon demand of Authority, the expense of such test to be borne by Authority if the meter is found to be correct and by Purchaser if it is found to be incorrect. Readings within 2% of accuracy, plus or minus, shall be considered correct. If, as a result of any test, any meter is found to be registering inaccurately (i.e., in excess of 2% of accuracy, plus or minus), the readings of such meter shall be corrected at the rate of its inaccuracy for any period which is definitely known and agreed upon, but in case the period is not definitely known and agreed upon, then the shorter of the following periods shall be used as the basis for correction:

- a) a period extending back either 60 days from the date of demand for the test or, if no demand for the test was made, 60 days from the date of the test; or
- b) a period extending back half of the time elapsed since the last previous test;

and the records of readings shall be adjusted accordingly. Following each test of a meter, Purchaser shall cause the same to be calibrated to register accurately.

**14. REPORTING.** Purchaser agrees that it will keep accurate records of the daily readings from the meter or meters installed pursuant to Section 13., Metering, above. These records shall be subject to inspection by Authority at reasonable times and places. Purchaser shall submit reports to Authority by the 10th day of each month showing the amount of water diverted under this Agreement each day during the preceding month.

**15. SYSTEM AGREEMENT.** This Agreement does not affect the rights and obligations of Authority and Purchaser under the System Agreements.

**16. CONSERVATION OF WATER.** It is the intent of the parties to this Agreement to provide to the maximum extent practicable for the conservation of water, and Purchaser agrees that it is a condition of this Agreement that it shall maintain and operate its facilities in a manner that will prevent unnecessary waste of water. Authority, in accordance with applicable law or regulation, may from time to time adopt reasonable rules and regulations relating to water conservation. Purchaser agrees to abide by the "Brazos River Authority Drought Contingency Policy" adopted by the Board on January 16, 1989, or any subsequent Drought Contingency Policy duly adopted by the Board and any Drought Contingency Plans developed under the Drought Contingency Policy. If required by applicable law or regulation or by Authority, Purchaser agrees to implement a water conservation and drought management program in accordance with a water conservation plan and that the water made available and diverted by Purchaser pursuant to this Agreement will be used in accordance with such conservation plan, and with the regulations of the Texas Natural Resource Conservation Commission (or other appropriate regulating authority) applicable to retail public utilities. Purchaser further agrees to make available its water conservation and drought contingency programs to Authority and LCRA for

review. If required by applicable law or regulation Purchaser agrees that, in the event Purchaser furnishes water or water services to a third party that in turn will furnish the water or services to the ultimate consumer, the requirements relative to water conservation shall be met through contractual agreements between Purchaser and the third party providing for the establishment and implementation of a water conservation program in compliance with such applicable law or regulation.

If Purchaser fails to comply with its water conservation plan, Authority may, at its sole option terminate this Agreement without recourse unless such default is cured within thirty (30) or, if the nature of such default is not susceptible to being cured within such thirty (30) day period, such longer period of time during which Purchaser diligently prosecutes the cure of such default, not to exceed ninety (90) days of Purchaser's receipt of written notice of such default.

**17. WATER QUALITY.** As a further condition of this Agreement, Purchaser also agrees that it will comply with applicable water quality standards of the State in the diversion, use, reuse, or discharge of water made available hereunder. Should Purchaser be determined by any competent legal authority to have degraded the quality of water of the State or to have violated any water quality standard established by law or lawfully adopted regulation, and subsequently fail to take action with reasonable diligence to correct such deficiency as directed by competent legal authority, such failure shall constitute an event of default under this Agreement.

Authority, in accordance with applicable law or regulation, may from time to time adopt reasonable rules and regulations relating to water quality protection. If required by applicable law or regulation or by Authority, Purchaser agrees to implement appropriate water quality protection measures including, without limitation, a non-point source water pollution abatement program in accordance with a non-point source water pollution abatement plan.

**18. WATER SURPLUS TO PURCHASER'S NEEDS.** Purchaser may not unilaterally cancel this Agreement or reduce the amounts of water agreed to be made available to it and for which availability it is obligated to pay under the terms of Sections 4. and 7., above, except as provided in Section 26, below. Purchaser may not sell or make available to others the water agreed to be made available to it under this Agreement, except in the case of municipal uses, as potable treated water. However, should Purchaser determine that it has water surplus to its anticipated needs from the water to be made available by Authority under this Agreement, Purchaser may notify Authority as to the amount of water no longer needed to be made available to it. Authority will use reasonable efforts to find a third party who is able and willing to pay for such availability for a period to the end of this Agreement. If Authority is successful in finding such a third party suitable to it to acquire Purchaser's interest in its available surplus for a period of time to the end of this Agreement, this Agreement will be amended to

reduce the amount of water to be made available to Purchaser by the amount of availability paid for by such third party, and Purchaser will be relieved of the obligation to make payments for such availability of water.

19. **SHORTAGES.** Authority makes no guarantee that any lakes or other sources of supply in the Colorado River Basin will be maintained at any specific level at any particular time. Purchaser bears all transportation losses prior to final diversion. It is fully understood by the parties hereto that the level of lakes or other sources of supply in the Colorado River Basin will vary as a result of weather conditions beyond the control of Authority, and that this instrument is merely an agreement to require Authority to make available water when and if water is available to Authority under the Authority's LCRA Contract, and to allow Purchaser to make withdrawals of the water subject to the general law on distribution and allocation of water during shortages of supply.

Authority covenants that it will use its best reasonable efforts to maintain and preserve its rights under the LCRA Contract. If for any reason the availability of water to Authority under the LCRA Contract is restricted, impaired, or otherwise limited, Authority agrees, and Purchaser covenants, that Authority may fairly and equitably apportion and ration the available water supply from the LCRA Contract among all its several customers receiving water from Authority as a result of the LCRA Contract, including Purchaser.

20. **FORCE MAJEURE.** Notwithstanding anything herein to the contrary, neither party hereto shall be under any liability or be deemed in default with respect to its obligations under this Agreement for any failure to perform or for delay in performing such party's obligations hereunder (except for the obligation to pay money) where such failure or delay is due to force majeure, while and to the extent that such performance is prevented by such cause. The term force majeure means acts of God, fire, storm, flood, war, riots, sabotage, drought, lack of availability of water due to sedimentation, low inflows of water to, or lack of water supply in the System or from the Colorado River basin to be made available under the LCRA Contract, strikes or other differences with labor (whether or not within the power of the parties to settle same), decrees or orders of the courts or other governmental authority, or other similar or dissimilar causes not within the reasonable control of such party and not due to negligence of such party. Each party shall use due diligence to resume performance of any obligation suspended by force majeure at the earliest practicable time.

21. **WAIVER.** Any waiver at any time by any party of its rights with respect to default under this Agreement shall not be deemed a waiver of such rights with respect to any subsequent default or matter.

22. **NOTICES AND CERTIFICATIONS.** Notices and certifications provided for in this Agreement shall be in writing. The same shall be delivered by

mailing certified mail, postage paid, return receipt requested, to the respective parties at the following addresses:

**Authority:** Brazos River Authority  
P.O. Box 7555  
Waco, Texas 76714-7555  
Telephone: (254) 776-1441  
Fax: (254) 772-5780

**Purchaser:** City of Round Rock  
221 East Main Street  
Round Rock, Texas 78664  
Telephone: (512) 218-5400  
Fax: (512) 218-7097

Either party may change its address as shown above by written notice to the other party. Notices shall be deemed to have been delivered on the business day following their deposit in the United States mail, postage paid, and properly addressed and certified.

**23. OTHER REQUIREMENTS.** This Agreement is subject to all conditions, provisions, and limitations included in Authority's water rights from the TNRCC and the System Order and the LCRA Contract. Further, this Agreement is subject to all applicable Federal, State and local laws, and any applicable ordinances, rules, orders and regulations of any local, State or Federal governmental authority having jurisdiction. However, nothing contained in this Agreement shall be construed as a waiver of any right to question or contest any law, ordinance, order, rule, or regulation of any governmental authority.

**24. SEVERABILITY.** The provisions of this Agreement are severable, and if for any reason any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement and this Agreement shall remain in effect and be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Agreement.

**25. ASSIGNMENT.** This Agreement may be assigned by Purchaser only with the written consent of Authority, which consent shall not be unreasonably withheld or delayed. Only assignment of this entire Agreement will be approved. Releases of lesser obligations must be authorized under Section 18., Water Surplus to Purchaser's Needs, above.

**26. TERM OF AGREEMENT.** The term of this Agreement shall begin on the Effective Date, Section 3., and shall end on the fifty (50) year anniversary of the Effective Date. If Authority is able to extend or renew its LCRA Contract,

Authority and Purchaser agree to negotiate in good faith regarding terms for extension or renewal of this Agreement.

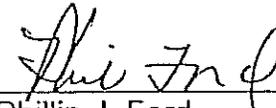
If purchaser is current on all payments due Authority under this Agreement, Purchaser may terminate this contract, in whole or in part, on February 15 of any year following the expiration of ten (10) years measured from the Effective Date by providing six (6) months prior written notice to Authority, that is by August 15 of the year preceding the February 15 termination date.

This Agreement shall be null and void in the event that the interbasin transfer permit referenced in Section 3, above, is not issued by the TNRCC within the two (2) years of the date of filing of the application for said interbasin transfer permit.

CITY OF ROUND ROCK

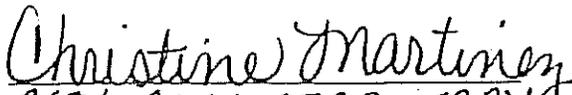
BRAZOS RIVER AUTHORITY

By:   
Name: ROBERT A. SILUKA, JR.  
Title: MAYOR

By:   
Phillip J. Ford  
General Manager

ATTEST:

ATTEST:

  
ASST. CITY SECRETARY

  
Assistant Secretary



SYSTEM WATER AVAILABILITY AGREEMENT  
FOR COLORADO RIVER BASIN WATER  
BETWEEN  
BRAZOS RIVER AUTHORITY  
AND  
CITY OF ROUND ROCK

AGREEMENT made and entered into this the *26<sup>th</sup>* day of *September* 2002, by and between BRAZOS RIVER AUTHORITY ("Authority"), a river authority of the State of Texas, and CITY OF ROUND ROCK ("Purchaser") of Williamson County, Texas.

1. **RECITALS.** Authority owns and operates various lakes in the Brazos River Basin. Authority also has entered into contracts with the United States of America by virtue of which it has obtained the right to utilize for water supply purposes a portion of the usable storage space in various lakes owned and operated by the United States Army Corps of Engineers. Authority is authorized by the State of Texas to store State waters in the lakes owned by Authority and various lakes owned and operated by the United States Army Corps of Engineers in the Brazos River Basin, hereinafter collectively called the "System", and to make such stored waters available for beneficial use.

Authority is authorized to operate the System as a hydrologic unit pursuant to an order of the Texas Water Commission (now Texas Natural Resource Conservation Commission "TNRCC") issued on July 23, 1964 ("System Operation Order"). The Final Determination of All Claims of Water Rights in the Brazos River Basin and the San Jacinto-Brazos Coastal Basin Maintained by the Brazos River Authority, Fort Bend County W.C.I.D. No. 1 and Galveston County Water Authority ("Final Determination") issued on June 26, 1985, by TNRCC clarified and amplified the System Operation Order. Under the System Operation Order as adjudicated by the Final Determination, Authority is authorized to operate the System as a hydrologic unit to more efficiently utilize the reservoirs that make up the System to make water available to meet the needs of Authority's customers.

Authority and Purchaser have entered into certain raw water contracts (System Water Availability Agreement Between Brazos River Authority And City of Round Rock - Lake Georgetown And System Water Availability Agreement Between Brazos River Authority And City of Round Rock - Lake Stillhouse Hollow).

Authority has also acquired the right to divert and use 25,000 acre-feet of water per year from the Colorado River Basin made available from the Lower Colorado River Authority (LCRA) under the "Water Sale Contract by and between Lower Colorado River Authority and Brazos River Authority Purchaser", dated October 2000 (LCRA Contract) pursuant to the terms of House Bill 1437 of the 76<sup>th</sup> Texas Legislative Session and codified under Section 27 of the LCRA Enabling Act. It is from the 25,000 acre-foot of

R-02-09-26-11D9

water per year from the Colorado River Basin (the "LCRA Water") that Purchaser now wishes to contract for Authority to make available 4,500 acre-feet of water per Calendar Year under the terms and conditions herein provided.

## 2. DEFINITIONS.

- a) The Term "Agreement" means this agreement.
- b) The Term "Agreement Rates" means the "Agreement Water Rate", the "Agreement Reserved Water Charge", and the "Agreement Inverted Block Rate" for water purchased pursuant to this Agreement as more fully described in Section 5, PRICING STRUCTURE, and in Section 7, UNCONDITIONAL NATURE OF PAYMENT OBLIGATION; PRICE, below.
  - c) The term "Area of Use" means that certain area in Williamson County that lies outside of the watershed of the Colorado River, but excludes those municipalities which were customers of the Lower Colorado River Authority as of May 20, 1997, and who are located in watersheds of both the Colorado and Brazos Rivers.
  - d) The term "Authority" shall mean Brazos River Authority.
  - e) The term "Board" shall mean the Board of Directors of Brazos River Authority.
  - f) The term "Credit for System Rate Recovery" of "CSRR" means the credit described in Section 7. (c) of this Agreement.
  - g) The term "Cost Recovery Fee" or "CRF" means the fee described in Section 7. (b) (3) of this Agreement.
  - h) The Term "Federal Contracts" shall mean those contracts with the United States of America whereby Authority has acquired, is acquiring, or may acquire conservation storage capacity in Federal Reservoirs.
    - i) The term "Federal Reservoirs" shall include the following:
      - Aquilla Dam and Reservoir
      - Belton Dam and Reservoir
      - Georgetown Dam and Reservoir
      - Granger Dam and Reservoir
      - Proctor Dam and Reservoir
      - Somerville Dam and Reservoir
      - Stillhouse Hollow Dam and Reservoir
      - Whitney Dam and Reservoir
    - j) The term "Fiscal Year" shall mean Authority's fiscal year from September 1 through August 31, or such other annual fiscal year period as Authority may later determine.
  - k) The term "Highest Lawful Rate" shall mean the maximum rate which Authority may charge on obligations payable under this Agreement without violation of any applicable law or any applicable lawful regulation of any agency of the State of Texas or of the United States having jurisdiction of the matter.
    - l) The term "Industrial Use" shall mean the use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including commercial feedlot operations, commercial fish production, and the development of power by means other than hydroelectric.
    - m) The term "Irrigation Use" shall mean the use of water for the irrigation of crops, trees, and pastureland, including, but not limited to, golf courses and parks which do not receive water through a municipal distribution system.

- n) The term "LCRA" means Lower Colorado River Authority.
- o) The term "LCRA Contract" means the "Water Sale Contract by and between Lower Colorado River Authority and Brazos River Authority, Purchaser" dated October 2000.
- p) The term "LCRA Rates" means the LCRA rates and charges for sale of water for municipal purposes as delineated in Section II. B. of the LCRA Contract.
- q) The term "LCRA Water" means the 25,000 acre-feet of water per year purchased by Brazos River Authority from LCRA pursuant to House Bill 1437 of the 76<sup>th</sup> Texas Legislative Session.
- r) The term "Mining Use" shall mean the use of water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.
- s) The term "Municipal Use" shall mean the use of potable water within a community or municipality and its environs for domestic, recreational, commercial, or Industrial purposes or for the watering of golf courses, parks and parkways.
- t) The term "Purchaser" shall mean City of Round Rock.
- u) The term "System" shall mean Authority's Water Supply System and shall include certain of Authority's facilities and properties insofar as they are related to making water available from the System, to wit, as follows: Morris Sheppard Dam and Possum Kingdom Reservoir, DeCordova Bend Dam and Lake Granbury, Sterling C Robertson Dam and Lake Limestone, Authority's conservation storage in the Federal Reservoirs, and LCRA Water obtained pursuant to the LCRA Contract, together with all future extensions, improvements, enlargements, and additions to and replacements of the System; and all replacements thereof whether from surface water supplies, groundwater, or a combination thereof, specifically added to the System by resolution of the Board; provided that, notwithstanding the foregoing, the term System shall not include (i) any of Authority's facilities and properties not specifically Included in the System by the terms of this Agreement or not added by the subsequent resolution of the board, and (ii) any water supply, wastewater or other facilities which have been or are declared not to be a part of the system and which may be acquired or constructed by Authority with the proceeds from the issuance of "Special Facilities Bonds," which are hereby defined as being special revenue obligations of Authority which are not secured by or payable from the revenues of the System but which are secured by and payable solely from special contract revenues or payments received from any persons or other legal entity or entities in connection with such special facilities.
- v) The term "System Agreements" means those certain raw water contracts titled "System Water Availability Agreement Between Brazos River Authority and City of Round Rock - Lake Georgetown" and "System Water Availability Agreement Between Brazos River Authority and City of Round Rock - Lake Stillhouse Hollow", dated contemporaneously with this Agreement herewith.
- w) The term "System Operation Order" shall mean that certain order of TNRCC or its predecessor dated July 23, 1964, as adjudicated by order of the TNRCC or its predecessor on June 26, 1985, in the Final Determination of all Claims of Water Rights in the Brazos River Basin and the San Jacinto-Brazos Coastal Basin Maintained by the Brazos River Authority, Fort Bend County W.C.I.D. No. 1 and Galveston County Water Authority.

x) The term "System Rate" or "SR" shall mean the rate per acre-foot of water established by Authority from time to time under its system-wide pricing methodology.

y) The term "Total Annual Budgeted System Costs" shall mean the amounts approved by Authority as estimated costs of the System in the annual budgets adopted by Authority for a given Fiscal Year including, without limitation, amounts budgeted to meet Annual System Operation and Maintenance Expenses and Annual Capital Related Costs.

z) The term "Total System Billing Units" shall mean the total amount of water (expressed in acre-feet) determined by Authority under accepted engineering practice as necessary to be reserved from firm yield produced by storage in the System to fulfill its commitments for which Authority receives payment under long term (in excess of five years) water sales contracts with Purchaser and Authority's other customers; provided, however, such term shall not include amounts of water required by appropriate governmental authority to be reserved in the System for use for bay and estuary purposes, in-stream uses, or for other similar environmental, public, or other beneficial uses to the extent Authority is not adequately compensated for any such requirement.

3. **EFFECTIVE DATE.** The effective date of this Agreement is September 1, 2002.

4. **AVAILABILITY OF WATER.** While this Agreement remains in force, Authority agrees to make available to Purchaser an amount of water not to exceed 4,500 acre-feet of water per Calendar Year under the following conditions:

a) Notwithstanding anything herein to the contrary, Authority's obligation to make water available to Purchaser under this Agreement is subject to, and limited by, the rights of Authority to obtain the LCRA Water pursuant to the LCRA Contract. Purchaser acknowledges that Purchaser has received a copy of the LCRA Contract and is familiar with the rights of Authority thereunder, and the limitations on Authority's rights thereunder to obtain the LCRA Water.

b) Authority may interrupt or curtail the water supplied to Purchaser under this Agreement to the extent Authority experiences interruption or curtailment of water supplied to it under the LCRA Contract for any reason.

c) Water supplied under this Agreement shall only be used within the Area of Use.

d) Purchaser acquires no property rights in the water made available to it under this Agreement beyond the right to have the water made available to it for diversion and use under the terms of this Agreement. This right of use extends to direct reuse (flange to flange) of the water made available under this Agreement. Purchaser represents, and Authority relies on such representation, that all water to be made available by Authority under this Agreement to Purchaser shall be used solely for municipal purposes.

## 5. PRICING STRUCTURE

a) The pricing structure for water rates under this Agreement is dependent upon the pricing structure of water made available to the Authority under the LCRA Contract unless or until the Authority's System Rate exceeds the price derived from the formula provided for price calculation in Section 7, below. At such time, the price under this Agreement shall be the Authority's System Rate.

b) The LCRA Water is provided to Authority under the LCRA Contract pursuant to the following pricing structure:

(1) The "Water Rate" for LCRA Water is charged for water diverted and used during a calendar year. The current Water Rate is \$105.00 per acre-foot of water per year.

(2) The "Reserved Water Charge" for LCRA Water is charged for water under contract but not diverted and used during a calendar year. The Reserved Water Charge is 50% of the Water Rate, or currently \$52.50 per acre-foot of water per year.

(3) The "Inverted Block Rate" for LCRA Water is charged for all water used in excess of the total contractual amount and is currently \$200.00 per acre-foot of water per year.

(4) The "Conservation Charge" for LCRA Water is currently 25% of the Water Rate, the Reserved Water Charge, or the Inverted Block Rate, as applicable.

(5) The current "Total LCRA Rates" for LCRA Water are as follows:

(a) The "Total LCRA Water Rate" is the Water Rate + the Conservation Charge, currently \$131.25 an acre-foot.

(b) The "Total LCRA Reserved Water Charge" is the Reserved Water Charge + the Conservation Charge, currently \$65.63 an acre-foot.

(c) The "Total LCRA Inverted Block Rate" is the Inverted Block Rate + the Conservation Charge, currently \$250.00 an acre-foot.

(d) The Authority makes water available to Purchaser under this Agreement pursuant to the following pricing structure:

(1) The "Agreement Reserved Water Charge" for all water agreed to be made available under this Agreement whether or not it is diverted and used during a calendar year. The current Agreement Reserved Water Charge is \$49.22 per acre-foot of water per year, the calculation for which is set out in Section 7.c., below.

(2) The "Agreement Water Rate" for only water that is diverted and used during a calendar year. The Agreement Water Rate equals the Agreement Reserved Water Charge and is in addition to the Agreement Reserved Water Charge.

(3) The "Agreement Inverted Block Rate" for water used in excess of the amount agreed to be made available under this Agreement. The Agreement Inverted Block Rate Equals the Total LCRA Inverted Block Rate.

## 6. DATE AND PLACE OF PAYMENTS

a) Payments to be made hereunder shall be made at Authority's office in Waco, McLennan County, Texas. Authority contemplates that by September 1 of each Fiscal Year it will have adopted budgets for Authority for said Fiscal Year and established the System Rate and the Agreement Rates for said Fiscal Year. Payments for each Fiscal Year may be made under one of three payment options from which

Purchaser will select at the beginning of each Fiscal Year. The payment due at the beginning of each Fiscal Year will be for the water agreed to be provided during the next calendar year, and shall be based on the Agreement Reserved Water Charge. Annual payments for water provided at the Agreement Reserved Water Charge shall be made on or before September 15 each Fiscal Year. Quarterly payments shall be made on or before September 15, December 15, March 15, and June 15 each Fiscal Year. Monthly payments shall be made on or before the fifteenth of each month each Fiscal Year. Quarterly payments or monthly payments shall include a multiplier to be applied to the annual payment to allow Authority to recover interest lost on any unpaid balance plus a service charge for administrative costs, including but not limited to costs involving the billing, accounting, and collecting for the quarterly or monthly payments. The multiplier to recover lost interest revenue and the service charge for administrative costs shall be determined on an annual basis and shall be just and reasonable. If the effective date of this Agreement is other than January 1, the amount of water available to Purchaser and the payment owed by Purchaser will be prorated for the remaining monthly of the Calendar Year, 2002.

b) The charge for any water actually diverted and used during the next calendar year will be billed to Purchaser on a monthly basis based on the actual diversion and usage for the previous month at the Agreement Water Rate.

c) Purchaser may elect to defer payment of its obligations for water purchased pursuant to Agreement Reserved Water Charges by providing Authority notice of such election in writing within 60 days from the date of execution of this Agreement. In no instance shall the deferral terms extend beyond the initial ten years of this Agreement.

If Purchaser selects deferred payment, the following structure will be used:

(1) Years 1-2: Purchaser will receive a credit of 50% of the Agreement Reserved Water Charge.

(2) Years 3-4: Purchaser will receive a credit of 25% of the Agreement Reserved Water Charge.

(3) Years 5-6: Purchaser will receive no deferral of the Agreement Reserved Water Charge.

(4) Year 7: Purchaser will pay 125% of the Agreement Reserved Water Charge.

(5) Year 8-9: Purchaser will pay 150% of the Agreement Reserved Water Charge.

(6) Year 10: Purchaser will pay the remaining outstanding deferred balance plus 100% of the current year's Agreement Reserved Water Charge.

Notwithstanding anything herein to the contrary, in the event the differed payments calculation yields a rate that is less than the then current Authority System Rate, the full System Rate will be the rate charged for the Fiscal Year's payment.

Unpaid balances will accumulate interest based on actual Authority interest rates earned on the Authority's investments. The Authority's interest rate will be the Authority's average annual portfolio yield plus 0.5 percent per annum for administrative costs. Interest charges will be assessed on an annual basis using simple interest, compounded annually.

7. UNCONDITIONAL NATURE OF PAYMENT OBLIGATION; PRICE.

a) Purchaser unconditionally agree to pay Authority in accordance with the terms of this Agreement for the water agreed to be made available to Purchaser from the LCRA Water pursuant to this Agreement.

b) The Agreement Rates are derived using the following components:

(1) The Authority's System Rate (currently \$29.90 per acre-foot of water per year).

(2) The Total LCRA Water Rate, Total LCRA Reserved Water Charge, or Total LCRA Inverted Block Rate (as defined in Section 5.b.(5), above).

(3) The "Cost Recovery Fee" (the applicable Total LCRA Rate minus the Authority's System Rate minus the Credit for System Rate Recovery).

c) The "Credit for System Rate Recovery" (a 25% discount from the Total LCRA Water Rate or the Total LCRA Reserved Water Rate, but not from the Total LCRA Inverted Block Rate). The Agreement Reserved Water Charge (ARWC) is the System Rate plus the Cost Recovery Fee. Using current components, the Agreement Reserved Water Charge is derived as follows:

$$\text{ARWC} = \text{SR} + \text{CRF}$$

$$\text{ARWC} = \$26.00 + (\text{Total LCRA Reserved Water Charge} - \text{SR} - \text{CSRR})$$

$$\text{ARWC} = \$26.00 + (\$65.63 - \$26.00 - \$16.41)$$

$$\text{ARWC} = \$26.00 + \$23.22$$

$$\text{ARWC} = \$49.22$$

d) The Agreement Water Rate is equal to the Agreement Reserved Water Charge, currently \$49.22, and is in addition to the Agreement Reserved Water Charge.

e) The Agreement Inverted Block Rate is equal to the Total LCRA Inverted Block Rate, currently \$250.00.

f) Authority may, and it specifically reserves the right to, revise the Agreement Rates from time to time (usually prior to the start of each Fiscal Year) to reflect changes in the System Rate and the LCRA Rates. Authority shall not increase the Agreement Rates other than on a Fiscal Year basis except for unforeseeable reasons of a serious and substantial nature. Such reasons include Force Majeure, government legislation or regulation, permit requirements, or changes in the LCRA Rates.

g) Notwithstanding anything herein to the contrary, in the event the Agreement Rates calculation yields a rate that is less than the then current Authority System Rate, the System Rate will be the Agreement Rates.

8. SOURCE OF PAYMENTS. The payments to be made hereunder by Purchaser shall constitute operating expenses of Purchaser's water works system or Purchaser's combined water works and sewer system. Purchaser shall charge rates for services of its water works system or its combined water works and sewer systems that will be sufficient to pay the operating and maintenance expenses thereof, including the payments provided for hereunder, and the interest on and principal of, as the same come due and mature, obligations issued by Purchaser now or hereafter payable from the revenues of said system or systems.

9. **INTEREST ON PAST DUE PAYMENT: COLLECTION.** In the event of failure of Purchaser to make any payment to authority provided to be made in this Agreement at the time when same shall be due, the past due payment shall bear interest at the lesser of the highest rate allowed by applicable law or 18 percent per year. Regardless of any other provision contained in this Agreement, Authority shall never be entitled to receive, collect, or apply as interest under this Agreement any amount of money determined at a rate which exceeds the Highest Lawful Rate. If Authority ever charges, receives, collects, or applies as interest an amount in excess of that permitted by application of the Highest Lawful Rate, then any such amount which would be excessive interest shall be deemed a partial prepayment of amounts payable under this Agreement which do not constitute interest and shall be treated hereunder as such; and if all other obligations payable under this Agreement shall have been paid in full, then Authority shall refund the amount of such excessive interest.

10. **REMEDIES FOR NONPAYMENT OR DEFAULT.** Should Purchaser fail to make any payment to Authority when due hereunder or otherwise be in default under this Agreement, Authority at its sole option and in addition to and without impairing any other remedy available to it on account of the default, may elect to either (i) suspend its duty to make available water to Purchaser under this Agreement or (ii) terminate this Agreement, by providing written notice of such suspension or termination delivered to Purchaser on or before 30 days before the date specified in said notice of suspension or termination, provided that the nonpayment or other default with respect to which notice of suspension or termination of this Agreement has been given, shall not be cured by the date specified in such notice. Nothing in this Agreement shall be construed in any manner so as to abridge, limit, or deprive either party hereunto or any means which it would otherwise have of enforcing any right or remedy either in law or in equity for breach of any of the provisions hereof.

11. **REMEDIES OF OVERUSE.** Purchaser recognizes that any diversion of water in excess of its contractual amount may impact Authority's ability to make available water to Authority's other raw water customers. Purchaser agrees that if for any reason it needs to exceed the contractual annual amount of water to be made available to it under this Agreement, Purchaser will give written notice to Authority 30 days in advance of the need for such additional water and in such notice will state the reason for the additional need, the amount of water needed to be made available, and the duration of the need. Authority, in its sole discretion, may make all or a portion of the requested water available.

Should Authority determine that it can make all or a portion of the requested water available without adversely impacting its ability to make water available to its other customers, Purchaser agrees to pay for such water to be made available in advance at a rate that is equal to the then current Agreement Inverted Block Rate.

Should Purchaser fail to notify Authority of its need for additional water to be made available, and exceed the contractual annual amount of water to be made available to it, or should Purchaser, after notification of Authority and Authority's

determination that additional water is not available for Purchaser's use, nonetheless exceed the contractual amount of water to be made available to it, Authority may cancel this Agreement by providing written notice of such cancellation delivered to Purchaser on or before thirty (30) days before the date specified in said notice of cancellation.

Nothing in this Agreement shall be construed in any manner so as to abridge, limit, or deprive either party hereunto of any means which it would otherwise have of enforcing any right or remedy either in law or in equity for breach of any of the provisions hereof.

**12. FACILITIES.** All new facilities that are located in the Area of Use that are used to transport raw water that is purchased pursuant to this Agreement exclusively may be owned and operated by LCRA, at its sole option. All new facilities or all substantial expansions to facilities that are located in the Area of Use that treat water or transport treated water that is purchased pursuant to this Agreement and that are constructed by BRA or LCRA shall be Brazos-Colorado Alliance projects. The LCRA may own, at its sole option, a portion of any such facilities that is commensurate with the percentage that LCRA water (i.e., water supplied under the LCRA Contract) bears to the total amount of water supplied by BRA and LCRA for treatment or transportation by such facilities. For example, if twenty-five percent (25%) of the water used at an Alliance facility is supplied by LCRA under the LCRA Contract, the LCRA may own twenty-five percent (25%) of that facility. All such facilities in the Area of Use, however, shall be operated by BRA.

All new facilities and all substantial expansions to facilities that are located in the Area of Use that treat or transport treated water purchased pursuant to this Agreement that are constructed by Purchaser may be owned and/or operated by Purchaser if such ownership and/or operation is desired by Purchaser.

Purchaser acknowledges that the economics of scale and efficiencies of use made possible by regionalization of water treatment facilities are highly desirable. Purchaser, therefore, agrees to negotiate in good faith with BRA and LCRA to maximize the potential for regionalization of water treatment and transportation facilities, either new facilities or substantial expansion of facilities, located in the Area of Use used to treat or transport water that is purchased pursuant to this Agreement.

**13. METERING.** Purchaser agrees that, at its sole cost and expense, it shall install, operate and maintain meters for the accurate measuring of all water diverted by Purchaser under this Agreement in order to aid Authority in accurately reporting actual water usage to the TNRCC as required by applicable law or regulation. Such meter or meters shall be tested and calibrated for accuracy by and at the expense of Purchaser once each fiscal year at intervals of approximately 12 months, and a report of such test and calibration shall be furnished to Authority. Authority shall be given at least two prior days notice of the time of any test and calibration of Purchaser's meters, or any of them, and Authority shall have the right to have a representative present at each test to observe the test and any adjustments found thereby to be necessary. Authority shall have the right to inspect and check the accuracy of Purchaser's meter or meters at any

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time during usual business hours after not less than one nor more than five (5) days notice. In the event any question arises at any time as to the accuracy of any such meter, such meter shall be tested promptly upon demand of Authority, the expense of such test to be borne by Authority if the meter is found to be correct and by Purchaser if it is found to be incorrect. Readings within 2% of accuracy, plus or minus, shall be considered correct. If, as a result of any test, any meter is found to be registering inaccurately (i.e., in excess of 2% of accuracy, plus or minus), the readings of such meter shall be corrected at the rate of its inaccuracy for any period which is definitely known and agreed upon, but in case the period is not definitely known and agreed upon, then the shorter of the following periods shall be used as the basis for correction:

- a) a period extending back either 60 days from the date of demand for the test or, if no demand for the test was made, 60 days from the date of the test; or
- b) a period extending back half of the time elapsed since the last previous test;

and the records of readings shall be adjusted accordingly. Following each test of a meter, Purchaser shall cause the same to be calibrated to register accurately.

14. **REPORTING.** Purchaser agrees that it will keep accurate records of the daily readings from the meter or meters installed pursuant to Section 13., Metering, above. These records shall be subject to inspection by Authority at reasonable times and places. Purchaser shall submit reports to Authority by the 10<sup>th</sup> day of each month showing the amount of water diverted under this Agreement each day during the preceding month.

15. **SYSTEM AGREEMENT.** This Agreement does not affect the rights and obligations of Authority and Purchaser under the System Agreements.

16. **CONSERVATION OF WATER.** It is the intent of the parties to this Agreement to provide to the maximum extent practicable for the conservation of water, and Purchaser agrees that it is a condition of this Agreement that it shall maintain and operate its facilities in a manner that will prevent unnecessary waste of water. Authority, in accordance with applicable law or regulation, may from time to time adopt reasonable rules and regulations relating to water conservation. Purchaser agrees to abide by the "Brazos River Authority Drought Contingency Policy" adopted by the Board on January 16, 1989, or any subsequent Drought Contingency Policy duly adopted by the Board and any Drought Contingency Plans developed under the Drought Contingency Policy. If required by applicable law or regulation or by Authority, Purchaser agrees to implement a water conservation and drought management program in accordance with a water conservation plan and that the water made available and diverted by Purchaser pursuant to this Agreement will be used in accordance with such conservation plan, and with the regulations of the Texas Natural Resource Conservation Commission (or other appropriate regulating authority) applicable to retail public utilities. Purchaser further agrees to make available its water conservation and drought contingency programs to Authority and LCRA for review. If required by applicable law or

regulation Purchaser agrees that, in the event Purchaser furnished water or water services to a third party that in turn will furnish the water or services to the ultimate consumer, the requirements relative to water conservation shall be met through contractual agreements between Purchaser and the third party providing for the established and implementation of a water conservation program in compliance with such applicable law or regulation.

If Purchaser fails to comply with its water conservation plan, Authority may, at its sole option terminate this Agreement without recourse unless such default is cured within thirty (30) or, if the nature of such default is not susceptible to being cured within such thirty (30) day period, such longer period of time during which Purchaser diligently prosecutes the cure of such default, not to exceed ninety (90) days of Purchaser's receipt of written notice of such default.

**17. WATER QUALITY.** As a further condition of this Agreement, Purchaser also agrees that it will comply with applicable water quality standards of the State in the diversion, use, reuse, or discharge of water made available hereunder. Should Purchaser be determined by any competent legal authority to have degraded the quality of water of the State or to have violated any water quality standard established by law or lawfully adopted regulation, and subsequently fail to take action with reasonable diligence to correct such deficiency as directed by competent legal authority, such failure shall constitute an event of default under this Agreement.

Authority, in accordance with applicable law or regulation may from time to time adopt reasonable rules and regulations relating to water quality protection. If required by applicable law or regulation or by Authority, Purchaser agrees to implement appropriate water quality protection measures including, without limitation, a non-point source water pollution abatement program in accordance with a non-point source water pollution abatement plan.

**18. WATER SURPLUS TO PURCHASER'S NEEDS.** Purchaser may not unilaterally cancel this Agreement or reduce the amounts of water agreed to be made available to it and for which availability it is obligated to pay under the terms of Sections 4. And 7., above, except as provided in Section 26, below. Purchaser may not sell or make available to others the water agreed to be made available to it under this Agreement, except in the case of municipal uses, as potable treated water. However, should Purchaser determine that it has water surplus to its anticipated needs from the water to be made available by Authority under this Agreement, Purchaser may notify Authority as to the amount of water no longer needed to be made available to it. Authority will use reasonable efforts to find a third party who is able and willing to pay for such availability for a period to the end of this Agreement. If Authority is successful in finding such a third party suitable to it to acquire Purchaser's interest in its available surplus for a period of time to the end of this Agreement, this Agreement will be amended to reduce the amount of water to be made available to Purchaser by the amount of availability paid for by such third party, and Purchaser will be relieved of the obligation to make payments for such availability of water.

19. **SHORTAGES.** Authority makes no guarantee that any lakes or other sources of supply in the Colorado River Basin will be maintained at any specific level at any particular time. Purchaser bears all transportation losses prior to final diversion. It is fully understood by the parties hereto that the level of lakes or other sources of supply in the Colorado River Basin will vary as a result of weather conditions beyond the control of Authority, and that this instrument is merely an agreement to require Authority to make available water when and if water is available to Authority under this Authority's LCRA Contract, and to allow Purchaser to make withdrawals of the water subject to the general law on distribution and allocation of water during shortages of supply.

Authority covenants that it will use its best reasonable efforts to maintain and preserve its rights under the LCRA Contract. If for any reason the availability of water to Authority under the LCRA Contract is restricted, impaired, or otherwise limited, Authority agrees, and Purchaser covenants, that Authority may fairly and equitably apportion and ration the available water supply from the LCRA Contract among all its several customers receiving water from Authority as a result of the LCRA Contract, including Purchaser.

20. **FORCE MAJEURE.** Notwithstanding anything herein to the contrary, neither party hereto shall be under any liability or be deemed in default with respect to its obligations under this Agreement for any failure to perform or for delay in performing such party's obligations hereunder (except for the obligation to pay money) where such failure or delay is due to force majeure, while and to the extent that such performance is prevented by such cause. The term force majeure means acts of God, fire, storm, flood, war, riots, sabotage, drought, lack of availability of water due to sedimentation, low inflows of water to, or lack of water supply in the System or from the Colorado River basin to be made available under the LCRA Contract, strikes or other differences with labor (whether or not within the power of the parties to settle same), decrees or orders of the courts or other governmental authority, or other similar or dissimilar causes not within the reasonable control of such party and not due to negligence of such party. Each party shall use due diligence to resume performance of any obligation suspended by force majeure at the earliest practicable time.

21. **WAIVER.** Any waiver at any time by any party of its rights with respect to default under this Agreement shall not be deemed a waiver of such rights with respect to any subsequent default or matter.

22. **NOTICES AND CERTIFICATIONS.** Notices and certifications provided for in this Agreement shall be in writing. The same shall be delivered by mailing certified mail, postage paid, return receipt requested, to the respective parties at the following addresses:

**Authority:** Brazos River Authority  
4600 Cobbs Drive  
P.O. Box 7555  
Waco, Texas 76714-7555  
Telephone: (254) 761-3100  
Fax: (254) 761-3207

**Purchaser:** City of Round Rock  
221 East Main Street  
Round Rock, Texas 78664  
Telephone: (512) 218-5400  
Fax: (512) 218-7097

Either party may change its address as shown above by written notice to the other party. Notices shall be deemed to have been delivered on the business day following their deposit in the United States mail, postage paid, and properly addressed and certified.

**23. OTHER REQUIREMENT.** This Agreement is subject to all conditions, provisions, and limitations included in Authority's water rights from the TNRCC and the System Order and the LCRA Contract. Further, this Agreement is subject to all applicable Federal, State and local laws, and any applicable ordinances, rules, orders and regulations of any local, State or Federal governmental authority having jurisdiction. However, nothing contained in this Agreement shall be construed as a waiver of any right to question or contest any law, ordinance, order, rule, or regulation of any governmental authority.

**24. SEVERABILITY.** The provisions of this Agreement are severable, and if for any reason any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement and this Agreement shall remain in effect and be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Agreement.

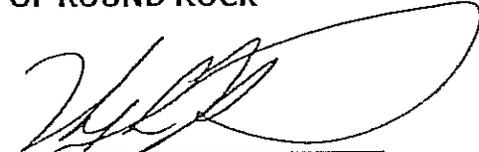
**25. ASSIGNMENT.** This Agreement may be assigned by Purchaser only with the written consent of Authority, which consent shall not be unreasonably withheld or delayed. Only assignment of this entire Agreement will be approved. Releases of lesser obligations must be authorized under Section 18., Water Surplus to Purchaser's Needs, above.

**26. TERMS OF AGREEMENT.** The term of this Agreement shall begin on the Effective Date, Section 3., and shall end on the fifty (50) year anniversary of the Effective Date. If Authority is able to extend or renew its LCRA Contract, Authority and Purchaser agree to negotiate in good faith regarding terms for extension or renewal of this Agreement.

If Purchaser is current on all payments due Authority under this Agreement, Purchaser may terminate this contract, in whole or in part, on February 15 of any year following the expiration of ten (10) years measured from the Effective Date by providing six (6) months prior written notice to Authority, that is by August 15 of the year preceding the February 15 termination date.

This Agreement shall be null and void in the event that the interbasin transfer permit referenced in Section 3, above, is not issued by the TNRCC with the two (2) years of the date of filing of the application for said interbasin transfer permit.

**CITY OF ROUND ROCK**

By:   
Name: NYLE MAXWELL  
Title: MAYOR

**BRAZOS RIVER AUTHORITY**

By: \_\_\_\_\_  
Phillip J. Ford  
General Manager/CEO

ATTEST:

Christine R. Martinez

ATTEST:

\_\_\_\_\_  
Assistant Secretary

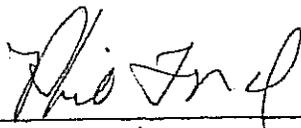
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**CITY OF ROUND ROCK**

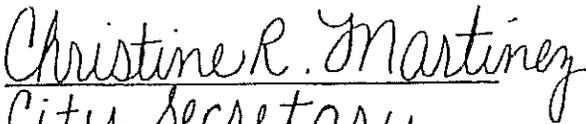
**BRAZOS RIVER AUTHORITY**

By:   
Name: NYLE MAXWELL  
Title: MAYOR

By:   
Phillip J. Ford  
General Manager/CEO

ATTEST:

ATTEST:

  
Christine R. Martinez  
City Secretary

  
Assistant Secretary



# SYSTEM WATER AVAILABILITY AGREEMENT

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*Brazos River Authority  
P. O. Box 7555  
Waco, Texas 76714-7555  
(254) 776-1441*



**CITY OF ROUND ROCK**

**SYSTEM WATER AVAILABILITY AGREEMENT  
FOR COLORADO RIVER BASIN WATER  
BETWEEN  
BRAZOS RIVER AUTHORITY  
AND  
CITY OF ROUND ROCK**

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AGREEMENT made and entered into this the 13<sup>th</sup> day of December 2006, by and between **BRAZOS RIVER AUTHORITY** ("Authority"), a river authority of the State of Texas, and **CITY OF ROUND ROCK** ("Purchaser") of Williamson County, Texas.

1. **RECITALS.** Authority owns and operates various lakes in the Brazos River Basin. Authority also has entered into contracts with the United States of America by virtue of which it has obtained the right to utilize for water supply purposes a portion of the usable storage space in various lakes owned and operated by the United States Army Corps of Engineers. Authority is authorized by the State of Texas to store State waters in the lakes owned by Authority and various lakes owned and operated by the United States Army Corps of Engineers in the Brazos River Basin, hereinafter collectively called the "System", and to make such stored waters available for beneficial use.

Authority is authorized to operate the System as a hydrologic unit pursuant to an order of the Texas Water Commission (formerly Texas Natural Resource Conservation Commission "TNRCC", now Texas Commission on Environmental Quality "TCEQ") issued on July 23, 1964 ("System Operation Order"). The Final Determination of All Claims of Water Rights in the Brazos River Basin and the San Jacinto-Brazos Coastal Basin Maintained by the Brazos River Authority, Fort Bend County W.C.I.D. No. 1 and Galveston County Water Authority ("Final Determination") issued on June 26, 1985, by TCEQ clarified and amplified the System Operation Order. Under the System Operation Order as adjudicated by the Final Determination, Authority is authorized to operate the System as a hydrologic unit to more efficiently utilize the reservoirs that make up the System to make water available to meet the needs of Authority's customers. Authority and Purchaser acknowledge that the LCRA Water (as defined below) is not part of the System Operation Order.

Authority has also acquired the right to divert and use 25,000 acre-feet of water per year from the Colorado River Basin made available from the Lower Colorado River Authority (LCRA) under the "Water Sale Contract by and between Lower Colorado River Authority and Brazos River Authority Purchaser", dated October 2000 (LCRA Contract) pursuant to the terms of House Bill 1437 of the 76<sup>th</sup> Texas Legislative Session and codified under Section 27 of the LCRA Enabling Act. It is from the 25,000 acre-foot of water per year from the Colorado

*R-06-07-27-11C3  
Amended*

River Basin ( the "LCRA" Water") that Purchaser now wishes to contract for Authority to make available 9,484 acre-feet of water per Calendar Year under the terms and conditions herein provided.

**2. DEFINITIONS.**

- a) The term "Agreement" means this agreement.
- b) The term "Area of Use" means that certain area in Williamson County that lies outside of the watershed of the Colorado River, but excludes those municipalities which were customers of the Lower Colorado River Authority as of May 20, 1997, and who are located in watersheds of both the Colorado and Brazos Rivers.
- c) The term "Authority" shall mean Brazos River Authority.
- d) The term "Board" shall mean the Board of Directors of Brazos River Authority.
- e) The term "Federal Contracts" shall mean those contracts with the United States of America whereby Authority has acquired, is acquiring, or may acquire conservation storage capacity in Federal Reservoirs. The parties hereto acknowledge that the term "Federal Contracts" does not appear elsewhere in this Agreement.
- f) The term "Federal Reservoirs" shall include the following:
  - Aquilla Dam and Reservoir
  - Belton Dam and Reservoir
  - Georgetown Dam and Reservoir
  - Granger Dam and Reservoir
  - Proctor Dam and Reservoir
  - Somerville Dam and Reservoir
  - Stillhouse Hollow Dam and Reservoir
  - Whitney Dam and Reservoir
- g) The term "Fiscal Year" shall mean Authority's fiscal year from September 1 through August 31, or such other annual fiscal year period as Authority may later determine.
- h) The term "Highest Lawful Rate" shall mean the maximum rate which Authority may charge on obligations payable under this Agreement without violation of any applicable law or any applicable lawful regulation of any agency of the State of Texas or of the United States having jurisdiction of the matter.
- i) The term "LCRA" means Lower Colorado River Authority.
- j) The term "LCRA Contract" means the "Water Sale Contract by and between Lower Colorado River Authority and Brazos River Authority, Purchaser" dated October 2000.
- k) The term "LCRA Rates" means the LCRA rates and charges for sale of water for municipal purposes as delineated in Section II. B. of the LCRA Contract.
- l) The term "LCRA Water" means the 25,000 acre-feet of water per year purchased by Brazos River Authority from LCRA pursuant to House Bill 1437 of the 76<sup>th</sup> Texas Legislature Session.

m) The term "Municipal Use" shall mean the use of potable water within a community or municipality and its environs or ETJ for domestic, recreational, commercial, or industrial purposes or for the watering of golf courses, parks and parkways.

n) The term "Purchaser" shall mean City of Round Rock.

o) The term "System" shall mean Authority's Water Supply System and shall include certain of Authority's facilities and properties insofar as they are related to making water available from the System, to wit, as follows: Morris Sheppard Dam and Possum Kingdom Reservoir, DeCordova Bend Dam and Lake Granbury, Sterling C. Robertson Dam and Lake Limestone, Authority's conservation storage in the Federal Reservoirs, and the LCRA Water obtained pursuant to the LCRA Contract, together with all future extensions, improvements, enlargements, and additions to and replacements of the System, and all replacements thereof whether from surface water supplies, groundwater, or a combination thereof, specifically added to the System by resolution of the Board; provided that, notwithstanding the foregoing, the term System shall not include (i) any of Authority's facilities and properties not specifically included in the System by the terms of this Agreement or not added by a subsequent resolution of the Board, and (ii) any water supply, wastewater or other facilities which have been or are declared not to be a part of the System and which may be acquired or constructed by Authority with the proceeds from the issuance of "Special Facilities Bonds," which are hereby defined as being special revenue obligations of Authority which are not secured by or payable from the revenues of the System but which are secured by and payable solely from special contract revenues or payments received from any persons or other legal entity or entities in connection with such special facilities.

p) The term "System Agreements" means those certain raw water contracts titled "System Water Availability Agreement Between Brazos River Authority and City of Round Rock.

q) The term "System Operation Order" shall mean that certain order of the TCEQ or its predecessor dated July 23, 1964, as adjudicated by order of the TCEQ or its predecessor on June 26, 1985, in the Final Determination of all Claims of Water Rights in the Brazos River Basin and the San Jacinto-Brazos Coastal Basin Maintained by the Brazos River Authority, Fort Bend County W.C.I.D. No. 1 and Galveston County Water Authority. The parties hereto acknowledge that the LCRA Water is not covered by the "System Operation Order."

r) The term "System Rate" or "SR" shall mean the rate per acre-foot of water established by Authority from time to time under its system-wide pricing methodology.

s) The term "Total Annual Budgeted System Costs" shall mean the amounts approved by Authority as estimated costs of the System in the annual budgets adopted by Authority for a given Fiscal Year including, without limitation, amounts budgeted to meet Annual System Operation and Maintenance Expenses and Annual Capital Related Costs. The parties hereto acknowledge that the term "Total Annual Budgeted System Costs" does not appear elsewhere in this Agreement.

t) The term "Total System Billing Units" shall mean the total amount of water (expressed in acre-feet) determined by Authority under accepted engineering practice as necessary to be reserved from firm yield produced by storage in the System to fulfill its commitments for which Authority receives payment under long term (in excess of five years) water sales contracts with Purchaser and Authority's other customers; provided, however, such term shall not include amounts of water required by appropriate governmental authority to be reserved in the System for use for bay and estuary purposes, in-stream uses, or for other similar environmental, public, or other beneficial uses to the extent Authority is not adequately compensated for any such requirement. The parties hereto acknowledge that the term "Total System Billing Units" does not appear elsewhere in this Agreement.

**3. EFFECTIVE DATE.** The effective date of this Agreement is November 1, 2006.

**4. AVAILABILITY OF WATER.** While this Agreement remains in force, Authority agrees to make available to Purchaser an amount of water not to exceed 9,484 acre-feet of water per Calendar Year under the following conditions:

a) Notwithstanding anything herein to the contrary, Authority's obligation to make water available to Purchaser under this Agreement is subject to, and limited by, the rights of Authority to obtain the LCRA Water pursuant to the LCRA Contract. Purchaser acknowledges that Purchaser has received a copy of the LCRA Contract and is familiar with the rights of Authority thereunder, and the limitations on Authority's rights thereunder to obtain the LCRA Water.

b) Authority may interrupt or curtail the water supplied to Purchaser under this Agreement to the extent Authority experiences interruption or curtailment of water supplied to it under the LCRA Contract for any reason.

c) Water supplied under this Agreement shall only be used within the Area of Use.

d) Purchaser acquires no property rights in the water made available to it under this Agreement beyond the right to have the water made available to it for diversion and use under the terms of this Agreement. This right of use extends to direct reuse (flange to flange) of the water available under this Agreement. Purchaser represents, and Authority relies on such representation, that all water to be made available by Authority under this Agreement to Purchaser shall be used solely for Municipal Use.

**5. PRICING STRUCTURE**

a) The pricing structure for water rates under this Agreement is dependent upon the pricing structure of water made available to the Authority under the LCRA Contract.

b) The LCRA Water is provided to Authority under the LCRA Contract pursuant to the following pricing structure:

(1) The "Water Rate" for LCRA Water is charged for water diverted and used during a calendar year. The current Water Rate is \$115.00 per acre-foot of water per year.

(2) The "Reserved Water Charge" for LCRA Water is charged for water under contract but not diverted and used during a calendar year. The Reserved Water Charge is 50% of the Water Rate, or currently \$57.50 per acre-foot of water per year.

(3) The "Inverted Block Rate" for LCRA Water is charged for all water used in excess of the total contractual amount and is currently \$219.00 per acre-foot of water per year.

(4) The "Conservation Charge" for LCRA Water is currently 25% of the Water Rate, the Reserved Water Charge, or the Inverted Block Rate, as applicable.

(5) The current "Total LCRA Rates" for LCRA Water are as follows:

(a) The "Total LCRA Water Rate" is the Water Rate + the Conservation Charge, currently \$143.75 an acre-foot.

(b) The "Total LCRA Reserved Water Charge" is the Reserved Water Charge + the Conservation Charge, currently \$71.875 an acre-foot.

(c) The "Total LCRA Inverted Block Rate" is the Inverted Block Rate + the Conservation Charge, currently \$250.00 an acre-foot.

(d) The Authority hereby makes water available to Purchaser at the cost the Authority is required to pay LCRA for water.

(e) The Purchaser hereby acknowledges the fact that it is responsible for paying to the Authority all costs charged to the Authority by LCRA for the 9,484 acre-feet of LCRA Water contemplated in this Agreement.

c) Purchaser acknowledges the fact that the LCRA has the ability to increase rates at any time without notice, which in turn will simultaneously increase the rates to be paid under this Agreement.

## **6. DATE AND PLACE OF PAYMENTS.**

a) Payments to be made hereunder shall be made at Authority's office in Waco, McLennan County, Texas. Authority contemplates that by September 1 of each Fiscal Year it will have adopted budgets for Authority for said Fiscal Year and established the System Rate. Total LCRA Rates will be adopted as set by the LCRA, which may be subsequent to September 1. Payments for each Fiscal Year may be made under one of three payment options from which Purchaser will select at the beginning of each Fiscal Year. The payment due at the beginning of each Fiscal Year will be for the water agreed to be provided during the next calendar year and shall be based on the Total LCRA Reserved Water Charge. Annual payments for water provided at the Total LCRA Reserved Water Charge shall be made on or before September 15 each Fiscal Year. The payment due at the beginning of each Fiscal Year will be for the water agreed to be provided during the next calendar year. Annual

payments shall be made on or before September 15 each Fiscal Year. Quarterly payments shall be made on or before September 15, December 15, March 15, and June 15 each Fiscal Year. Monthly payments shall be made on or before the fifteenth of each month each Fiscal Year. Quarterly payments or monthly payments shall include a multiplier to be applied to the annual payment to allow Authority to recover interest lost on any unpaid balance plus a service charge for administrative costs, including but not limited to costs involving the billing, accounting, and collecting for the quarterly or monthly payments. The multiplier to recover lost interest revenue and the service charge for administrative costs shall be determined on an annual basis and shall be just and reasonable. Since the Effective Date of this Agreement is November 1, 2006, the amount of water available to Purchaser and the payment owed by Purchaser will be prorated for the remaining months of the Calendar Year 2006.

b) The charge for any water actually diverted and used during the next calendar year will be billed to Purchaser on a monthly basis based on actual diversion and usage for the previous month at the Total LCRA Water Rate.

**7. SOURCE OF PAYMENTS.** The payments to be made hereunder by Purchaser shall constitute operating expenses of Purchaser's water works system or Purchaser's combined water works and sewer system. Purchaser shall charge rates for services of its water works system or its combined water works and sewer systems that will be sufficient to pay the operating and maintenance expenses thereof, including the payments provided for hereunder, and the interest on and principal of, as the same come due and mature, obligations issued by Purchaser now or hereafter payable from the revenues of said system or systems.

**8. INTEREST ON PAST DUE PAYMENT; COLLECTION.** In the event of failure of Purchaser to make any payment to Authority provided to be made in this Agreement at the time when same shall be due, the past due payment shall bear interest at the lesser of the highest rate allowed by applicable law or 18 percent per year. Regardless of any other provision contained in this Agreement, Authority shall never be entitled to receive, collect, or apply as interest under this Agreement any amount of money determined at a rate which exceeds the Highest Lawful Rate. If Authority ever charges, receives, collects, or applies as interest an amount in excess of that permitted by application of the Highest Lawful Rate, then any such amount which would be excessive interest shall be deemed a partial prepayment of amounts payable under this Agreement which do not constitute interest and shall be treated hereunder as such; and if all other obligations payable under this Agreement shall have been paid in full, then Authority shall refund the amount of such excessive interest.

**9. REMEDIES FOR NONPAYMENT OR DEFAULT.** Should Purchaser fail to make any payment to Authority when due hereunder or otherwise be in default under this Agreement, Authority at its sole option and in addition to and without impairing any other remedy available to it on account of

the default, may elect to either (i) suspend its duty to make available water to Purchaser under this Agreement or (ii) terminate this Agreement, by providing written notice of such suspension or termination delivered to Purchaser on or before 30 days before the date specified in said notice of suspension or termination, provided that the nonpayment or other default with respect to which notice of suspension or termination of this Agreement has been given, shall not be cured by the date specified in such notice. Nothing in this Agreement shall be construed in any manner so as to abridge, limit, or deprive either party hereunto of any means which it would otherwise have of enforcing any right or remedy either in law or in equity for breach of any of the provisions hereof.

**10. REMEDIES FOR OVERUSE.** Purchaser recognizes that any diversion of water in excess of its contractual amount may impact Authority's ability to make available water to Authority's other raw water customers. Purchaser agrees that if for any reason it needs to exceed the contractual annual amount of water to be made available to it under this Agreement, Purchaser will give written notice to Authority 30 days in advance of the need for such additional water and in such notice will state the reason for the additional need, the amount of water needed to be made available, and the duration of the need. Authority, in its sole discretion, may make all or a portion of the requested water available.

Should Authority determine that it can make all or a portion of the requested water available without adversely impacting its ability to make water available to its other customers, Purchaser agrees to pay for such water to be made available in advance at a rate that is equal to the then current Total LCRA Inverted Block Rate.

Should Purchaser fail to notify Authority of its need for additional water to be made available, and exceed the contractual annual amount of water to be made available to it, or should Purchaser, after notification of Authority and Authority's determination that additional water is not available for Purchaser's use, nonetheless exceed the contractual amount of water to be made available to it, Authority may cancel this Agreement by providing written notice of such cancellation delivered to Purchaser on or before thirty (30) days before the date specified in said notice of cancellation provided the overuse to which notice of cancellation of the Agreement has been given shall not be cured by the date specified in such notice.

Nothing in this Agreement shall be construed in any manner so as to abridge, limit, or deprive either party hereunto of any means which it would otherwise have of enforcing any right or remedy either in law or in equity for breach of any of the provisions hereof.

**11. FACILITIES.** All new facilities that are located in the Area of Use that are used to transport raw water that is purchased pursuant to this Agreement exclusively may be owned and operated by LCRA, at its sole option. All new facilities or all substantial expansions to facilities that are located in the Area of Use that treat water or transport treated water that is purchased pursuant to this Agreement and that are constructed by BRA or LCRA shall be Brazos-Colorado Alliance projects. The LCRA may own, at its sole option, a portion of any such facilities that is commensurate with the percentage that LCRA water (i.e., water supplied under the LCRA Contract) bears to the total amount of water supplied by BRA and LCRA for treatment or transportation by such facilities. For example, if twenty-five percent (25%) of the water used at an Alliance facility is supplied by LCRA under the LCRA Contract, the LCRA may own twenty-five (25%) percent of that facility. All such facilities in the Area of Use, however, shall be operated by BRA.

All new facilities and all substantial expansions to facilities that are located in the Area of Use that treat or transport treated water purchased pursuant to this Agreement that are constructed by Purchaser may be owned and/or operated by Purchaser if such ownership and/or operation is desired by Purchaser.

Purchaser acknowledges that the economics of scale and efficiencies of use made possible by regionalization of water treatment facilities are highly desirable. Purchaser, therefore, agrees to negotiate in good faith with BRA and LCRA to maximize the potential for regionalization of water treatment and transportation facilities, either new facilities or substantial expansion of facilities, either new facilities or substantial expansion of facilities located in the Area of Use used to treat or transport water that is purchased pursuant to this Agreement.

**12. METERING.** Purchaser agrees that, at its sole cost and expense, it shall install, operate and maintain meters for the accurate measuring of all water diverted by Purchaser under this Agreement in order to aid Authority in accurately reporting actual water usage to the TCEQ as required by applicable law or regulation. Such meter or meters shall be tested and calibrated for accuracy by and at the expense of Purchaser once each fiscal year at intervals of approximately 12 months, and a report of such test and calibration shall be furnished to Authority. Authority shall be given at least two prior days notice of the time of any test and calibration of Purchaser's meters, or any of them, and Authority shall have the right to have a representative present at each test to observe the test and any adjustments found thereby to be necessary. Authority shall have the right to inspect and check the accuracy of Purchaser's meter or meters at any time during usual business hours after not less than one nor more than five (5) days notice. In the event any question arises at any time as to the accuracy of any such meter, such meter shall be tested promptly upon demand of Authority, the expense of such test to be borne by Authority if the meter is found to be correct and by Purchaser if it is found to be incorrect. Readings within 2% of accuracy, plus or minus, shall be considered correct. If, as a result

of any test, any meter is found to be registering inaccurately (i.e., in excess of 2% of accuracy, plus or minus), the readings of such meter shall be corrected at the rate of its inaccuracy for any period which is definitely known and agreed upon, but in case the period is not definitely known and agreed upon, then the shorter of the following periods shall be used as the basis for correction:

- a) a period extending back either 60 days from the date of demand for the test or, if no demand for the test was made, 60 days from the date of the test; or
- b) a period extending back half of the time elapsed since the last previous test;

and the records of readings shall be adjusted accordingly. Following each test of a meter, Purchaser shall cause the same to be calibrated to register accurately.

**13. REPORTING.** Purchaser agrees that it will keep accurate records of the daily readings from the meter or meters installed pursuant to Section 12., Metering, above. These records shall be subject to inspection by Authority at reasonable times and places. Purchaser shall submit reports to Authority by the 10th day of each month showing the amount of water diverted under this Agreement each day during the preceding month.

**14. SYSTEM AGREEMENT.** This Agreement does not affect the rights and obligations of Authority and Purchaser under the System Agreements.

**15. CONSERVATION OF WATER.** It is the intent of the parties to this Agreement to provide to the maximum extent practicable for the conservation of water, and Purchaser agrees that it is a condition of this Agreement that it shall maintain and operate its facilities in a manner that will prevent unnecessary waste of water. Authority, in accordance with applicable law or regulation, may from time to time adopt reasonable rules and regulations relating to water conservation. Purchaser agrees to abide by the "Brazos River Authority Drought Contingency Policy" adopted by the Board on January 16, 1989, or any subsequent Drought Contingency Policy duly adopted by the Board and any Drought Contingency Plans developed under the Drought Contingency Policy. If required by applicable law or regulation or by Authority, Purchaser agrees to implement a water conservation and drought management program in accordance with a water conservation plan and that the water made available and diverted by Purchaser pursuant to this Agreement will be used in accordance with such conservation plan, and with the regulations of the Texas Commission on Environmental Quality (or other appropriate regulating authority) applicable to retail public utilities. Purchaser further agrees to make available its water conservation and drought contingency programs to Authority and LCRA for review. If required by applicable law or regulation Purchaser agrees that, in the event Purchaser furnishes water or water services to a third party that in turn will furnish the water or services to the ultimate consumer, the requirements relative to water conservation shall be met through contractual agreements between

Purchaser and the third party providing for the establishment and implementation of a water conservation program in compliance with such applicable law or regulation.

If Purchaser fails to comply with its water conservation plan, Authority may, at its sole option terminate this Agreement without recourse unless such default is cured within thirty (30) days or, if the nature of such default is not susceptible to being cured within such thirty (30) day period, such longer period of time during which Purchaser diligently prosecutes the cure of such default, not to exceed ninety (90) days of Purchaser's receipt of written notice of such default.

**16. WATER QUALITY.** As a further condition of this Agreement, Purchaser also agrees that it will comply with applicable water quality standards of the State in the diversion, use, reuse, or discharge of water made available hereunder. Should Purchaser be determined by any competent legal authority to have degraded the quality of water of the State or to have violated any water quality standard established by law or lawfully adopted regulation, and subsequently fail to take action with reasonable diligence to correct such deficiency as directed by competent legal authority, such failure shall constitute an event of default under this Agreement.

Authority, in accordance with applicable law or regulation, may from time to time adopt reasonable rules and regulations relating to water quality protection. If required by applicable law or regulation or by Authority, Purchaser agrees to implement appropriate water quality protection measures including, without limitation, a non-point source water pollution abatement program in accordance with a non-point source water pollution abatement plan.

**17. WATER SURPLUS TO PURCHASER'S NEEDS.** Purchaser may not unilaterally cancel this Agreement or reduce the amounts of water agreed to be made available to it and for which availability it is obligated to pay under the terms of Sections 5. and 6., above, except as provided in Section 24, below. Purchaser may not sell or make available to others the water agreed to be made available to it under this Agreement, except in the case of Municipal Use, as potable treated water. However, should Purchaser determine that it has water surplus to its anticipated needs from the water to be made available by Authority under this Agreement, Purchaser may notify Authority as to the amount of water no longer needed to be made available to it. Authority will use reasonable efforts to find a third party who is able and willing to pay for such availability for a period to the end of this Agreement. If Authority is successful in finding such a third party suitable to it to acquire Purchaser's interest in its available surplus for a period of time to the end of this Agreement, this Agreement will be amended to reduce the amount of water to be made available to Purchaser by the amount of availability paid for by such third party, and Purchaser will be relieved of the obligation to make payments for such availability of water.

**18. SHORTAGES.** Authority makes no guarantee that any lakes or other sources of supply in the Colorado River Basin will be maintained at any specific level at any particular time. Purchaser bears all transportation losses prior to final diversion. It is fully understood by the parties hereto that the level of lakes or other sources of supply in the Colorado River Basin will vary as a result of weather conditions beyond the control of Authority, and that this instrument is merely an agreement to require Authority to make available water when and if water is available to Authority under the Authority's LCRA Contract, and to allow Purchaser to make withdrawals of the water subject to the general law on distribution and allocation of water during shortages of supply.

Authority covenants that it will use its best reasonable efforts to maintain and preserve its rights under the LCRA Contract. If for any reason the availability of water to Authority under the LCRA Contract is restricted, impaired, or otherwise limited, Authority agrees, and Purchaser covenants, that Authority may fairly and equitably apportion and ration the available water supply from the LCRA Contract among all its several customers receiving water from Authority as a result of the LCRA Contract, including Purchaser.

**19. FORCE MAJEURE.** Notwithstanding anything herein to the contrary, neither party hereto shall be under any liability or be deemed in default with respect to its obligations under this Agreement for any failure to perform or for delay in performing such party's obligations hereunder (except for the obligation to pay money) where such failure or delay is due to force majeure, while and to the extent that such performance is prevented by such cause. The term force majeure means acts of God, fire, storm, flood, war, riots, sabotage, drought, lack of availability of water due to sedimentation, low inflows of water to, or lack of water supply from the Colorado River basin to be made available under the LCRA Contract, strikes or other differences with labor (whether or not within the power of the parties to settle same), decrees or orders of the courts or other governmental authority, or other similar or dissimilar causes not within the reasonable control of such party and not due to negligence of such party. Each party shall use due diligence to resume performance of any obligation suspended by force majeure at the earliest practicable time.

**20. WAIVER.** Any waiver at any time by any party of its rights with respect to default under this Agreement shall not be deemed a waiver of such rights with respect to any subsequent default or matter.

**21. NOTICES AND CERTIFICATIONS.** Notices and certifications provided for in this Agreement shall be in writing. The same shall be delivered by mailing certified mail, postage paid, return receipt requested, to the respective parties at the following addresses:

**Authority:** Brazos River Authority  
P.O. Box 7555  
Waco, Texas 76714-7555  
Telephone: (254) 761-3100  
Fax: (254) 761-3207

**Purchaser:** City of Round Rock  
221 E. Main St.  
Round Rock, Texas 78664  
Telephone: 512- 218-5400  
Fax: 512-218-7097

Either party may change its address as shown above by written notice to the other party. Notices shall be deemed to have been delivered on the business day following their deposit in the United States mail, postage paid, and properly addressed and certified.

**22. OTHER REQUIREMENTS.** This Agreement is subject to all conditions, provisions, and limitations included in Authority's water rights from the LCRA Contract. Further, this Agreement is subject to all applicable Federal, State and local laws, and any applicable ordinances, rules, orders and regulations of any local, State or Federal governmental authority having jurisdiction. However, nothing contained in this Agreement shall be construed as a waiver of any right to question or contest any law, ordinance, order, rule, or regulation of any governmental authority.

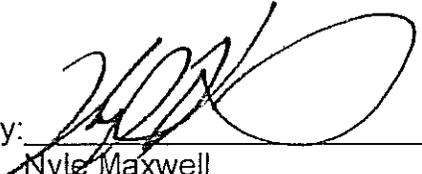
**23. SEVERABILITY.** The provisions of this Agreement are severable, and if for any reason any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement and this Agreement shall remain in effect and be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Agreement.

**24. ASSIGNMENT.** This Agreement may be assigned by Purchaser only with the written consent of Authority, which consent shall not be unreasonably withheld or delayed. Only assignment of this entire Agreement will be approved. Releases of lesser obligations must be authorized under Section 17., Water Surplus to Purchaser's Needs, above.

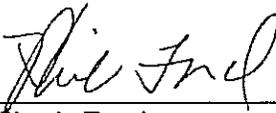
**25. TERM OF AGREEMENT.** The term of this Agreement shall begin on the Effective Date, Section 3., and shall end on August 31, 2051. If Authority is able to extend or renew its LCRA Contract, Authority and Purchaser agree to negotiate in good faith regarding terms for extension or renewal of this Agreement.

If Purchaser is current on all payments due Authority under this Agreement, Purchaser may terminate this Agreement, in whole or in part, on February 15 of any year following the expiration of ten (10) years measured from the Effective Date of the LCRA Contract by providing six (6) months prior written notice to Authority, that is by August 15 of the year preceding the February 15 termination date.

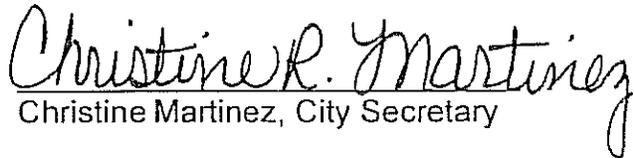
**CITY OF ROUND ROCK**

By:   
Nyle Maxwell  
Mayor

**BRAZOS RIVER AUTHORITY**

By:   
Phillip J. Ford  
General Manager/CEO

ATTEST:

  
Christine Martinez, City Secretary

ATTEST:

