

**UTILITY FACILITIES CONSTRUCTION  
AND  
WATER SERVICE AGREEMENT**

This Utility Facilities Construction and Water Service Agreement ("Agreement") is made this 7<sup>th</sup> day of December, 2004, between the Lower Colorado River Authority, a political subdivision of the State of Texas (the "LCRA") and William L. Formby, sometimes referred to in this Agreement individually as a "Landowner." It is contemplated that one or more utility districts may be created under either Chapter 51 or Chapter 54 of the Texas Water Code upon certain of the land that is to be served under this Agreement. Upon final creation of any such district (a "District"), certain of the rights and obligations of the owner of the property contained within that District may be assigned to and be assumed by the District.

**RECITALS**

- A. LCRA proposes to construct a water transmission line, hydropneumatic tank, pump station and related improvements, as more fully described on the attached Exhibit A (the "Project") in order to provide potable water services to certain tracts in the area, located in Travis County, Texas, which are more fully depicted on the attached Exhibit A (the "Property" or "Tracts").
- B. Landowner is owner of a tract of land depicted on Exhibit B (the "Tract"), and further is one of the owners of the Tracts or Property (which owners are sometimes collectively referred to hereafter as "Landowners"), and Landowner is willing, in consideration of LCRA's commitment of water service to its respective Tract as described in this Agreement, to provide fiscal security and/or funds for the costs of the Project.
- C. LCRA is willing to construct, own and operate the Project and to commit and provide potable water service to the Property, all as set forth in this Agreement.
- D. Landowner intends to construct the internal water facilities that will be required to provide service to the Property and is willing to convey or lease these facilities to LCRA, provided that, as to any of the land that is included within a District, such conveyance does not impair the District's ability to issue tax-exempt bonds for the purpose of financing the acquisition of such facilities, as provided in Article 5.02.

**ARTICLE I  
DEFINITIONS**

"Completion Date" means the date upon which LCRA sends Landowner a letter acknowledging the receipt of issuance of a certificate of substantial completion for any facilities described in this Agreement, issued by the design engineer, confirming that the facilities in question are available for use for their intended purposes.

"District" means a utility district created under Chapter 51 or 54, Texas Water Code, over any portion of the Property.

"FWS Measures" means the "Interim Water Quality Protection Measures, U.S. Fish and Wildlife Service Recommendations for Protection of Water Quality of the Edwards Aquifer" dated September 1, 2000, and attached as "Appendix 4" to that certain biological opinion dated October 13, 2000, to Mr. Wayne Lea, Department of the Army, Fort Worth District, Corps of Engineers, from David C. Frederick, U.S. Department of the Interior, Fish and Wildlife Service, Austin, Texas, which is attached as Exhibit L.

"Internal Facilities" means the facilities necessary to provide potable water services within each of the Tracts, but does not include private customer service lines or other infrastructure located within an individually platted lot intended to provide service to and be owned and operated by a single retail utility customer.

"LCRA System" means the Project following the Completion Date, and all other facilities of LCRA required to provide service to the Property.

"LUE" means one living unit equivalent of water service, which is based on one single-family residential unit receiving water service through a 5/8-inch meter or, for structures receiving water through larger meters, the equivalent based on the LUE equivalency table attached as Exhibit C.

"Project" means the water transmission main extending from LCRA's West Travis County Regional Water System along Hamilton Pool Road to the Property and related hydropneumatic tank, pump station and improvements, as more fully described on Exhibit A.

"Projected Connections" means the total number of LUEs projected to connect to the Internal Facilities within each of the Tracts, as set forth on Exhibit D.

"Property" means all of the Tracts of land described in Exhibit B.

"Schedule" means LCRA's Schedule for Rates, Fees, Charges, and Terms and Conditions of Retail Water Service, as amended from time to time by LCRA Board of Directors, for the area that includes the Property.

"Subsequent User Fee" means the fee provided in Article 3.03.

"TCEQ" means the Texas Commission on Environmental Quality or any successor agency.

"Tract" means the land owned by a single Landowner, as shown on Exhibit B.

## **ARTICLE II**

### **CONSTRUCTION OF PROJECT AND LETTERS OF CREDIT**

- 2.01 Design. The Project will be designed by Murfee Engineering, Inc., or another engineer mutually approved by LCRA and Landowner (the "Project Engineer"). LCRA agrees to cause the Project Engineer to begin the design for the Project not later than thirty (30) days after delivery of the Design Letter of Credit to LCRA. LCRA may require Project Engineer to provide alternative designs for the Project. LCRA agrees to use reasonable due diligence in completing the design for the Project -- for so long as an event of force

majeure does not prevent LCRA from diligently proceeding with the design for the Project -- to allow for bidding of the Project by the deadline provided in Article 2.04.

- 2.02 Permits. Landowner shall acquire the necessary permits, licenses and easements to install and operate the Internal Facilities and shall comply with applicable laws, regulations and ordinances. LCRA shall acquire the necessary permits, licenses and easements to install and operate the LCRA System, and shall comply with applicable laws, regulations and ordinances.
- 2.03 Easements. All easements within a Tract reasonably required for the Project will be dedicated to LCRA at no cost by the owner of the Tract. Easements dedicated to LCRA must have a minimum width of fifteen (15) feet, unless otherwise provided by LCRA. Easements which are located outside of the Property will be acquired by LCRA, utilizing LCRA's power of condemnation, if necessary. The cost of acquisition of any easements located outside of the Property will be included in the costs of the Project.
- 2.04 Bidding and Contract Award. LCRA agrees to advertise for sealed, competitive bids for the construction of the Project within thirty (30) days after completion of the design. LCRA may solicit bids for alternative designs for the Project. The bid documents will require that substantial completion of the Project be achieved within one hundred fifty (150) working days of issuance of the notice to proceed, and the construction contract will include a provision for liquidated damages of One Thousand and No/100 Dollars (\$1,000.00) per day for each day thereafter until the Completion Date of the Project occurs. Any such damages payable by the contractor due to a delay in completion will be collected by LCRA and paid to Landowner, on a pro rata basis, according to the Allocation Percentages, as defined in Article 2.05. LCRA recognizes that completion of the Project in a timely manner is of critical importance to Landowner. LCRA agrees to use reasonable diligence in acquiring all necessary easements for the Project, preparing and finalizing designs and plans for the Project, reviewing bids for the construction of the Project, awarding a contract for construction of the Project, issuing a notice to proceed for construction of the Project and constructing and completing the Project. LCRA agrees to use commercially reasonable efforts to enforce the construction contract and all other Project-related contracts in order to complete the Project in accordance with the construction schedule attached as Exhibit E; and, without limiting the generality of the foregoing, LCRA agrees to diligently and promptly pursue all available legal remedies as necessary in connection therewith. The contract for construction of the Project will be awarded to the best evaluated bidder. LCRA may award a contract based on a bid for an alternative design provided that the minimum requirements of the Project as described in this Agreement and its exhibits are met and further provided that LCRA, and not Landowner, is responsible for the cost differential between the alternative bids and the cost of the design of the alternative bid.
- 2.05 Funding and Letters of Credit. In consideration of LCRA's commitment to design and construct the Project and provide service to the Tracts, and LCRA's other commitments to Landowner contained in this Agreement, Landowner agrees to pay a pro rata share of the cost of design, permitting, financing and construction of the Project, as estimated on Exhibit F (the "Construction Cost Estimate"), based on the allocation percentages set

forth on Exhibit D (the "Allocation Percentages"). Landowner further agrees to post with LCRA an irrevocable letter of credit ("Letter of Credit"), as provided in this Article, as fiscal security for its pro rata share of the cost of design, permitting, financing and construction of the Project.

- a. Each Letter of Credit will be issued by a federally insured bank with branch offices in the United States that has been rated "A2" or higher by Moody's Investor Services, Inc. ("Issuing Bank"), and will be in substantially the form attached as Exhibit H. LCRA shall have the right to approve the Issuing Bank, such approval shall not be unreasonably withheld or delayed.
- b. The Design Letters of Credit and the Construction Letters of Credit, as defined below, will be issued for a term expiring no sooner than December 31, 2006. Any replacement Letters of Credit will be issued for a term of not less than one year. At least thirty (30) days prior to the expiration of any Letter of Credit, Landowner will deliver to LCRA a substitute Letter of Credit that complies with the requirements of this Agreement and contains substantially the same terms and conditions of the existing Letter of Credit. Upon LCRA's receipt of a substitute Letter of Credit, it will release the original Letter of Credit to Landowner, and Landowner will be entitled to terminate the original Letter of Credit. If Landowner fails to timely deliver a required substitute Letter of Credit, LCRA may draw on the existing Letter of Credit in its entirety prior to its expiration following at least three (3) days prior written notice to Landowner.
- c. If the credit rating of an Issuing Bank falls below "A2," or if an Issuing Bank is sold, LCRA may give written notice (the "Credit Rating Notice") to Landowner and require Landowner to provide a substitute Letter of Credit that satisfies the requirements of this Agreement. In such event, Landowner must provide LCRA with a substitute Letter of Credit that satisfies the requirements of this Agreement within fifteen (15) days after receiving the Credit Rating Notice. Upon LCRA's receipt of a substitute Letter of Credit, LCRA will release the original Letter of Credit to Landowner, and Landowner will be entitled to terminate the original Letter of Credit. If Landowner fails to provide LCRA with a substitute Letter of Credit as required, LCRA may draw on the existing Letter of Credit.
- d. If LCRA draws on a Letter of Credit under this Article 2.05, the proceeds of the Letter of Credit will be held in an interest-bearing account and will be used solely to fund the responsible Landowner's draws that would otherwise be due under Article 2.09 of this Agreement.

**2.06 Projected Connections Relative to Letters of Credit.** Landowner has projected that the number of water service connections per year within Landowner's Tract ("Projected Connections") set forth on Exhibit D will be made to the System during the time periods indicated on Exhibit D.

- a. The Projected Connections are based on an estimated Completion Date for the Project 19 months from the date of this Agreement (the "Projected Completion Date"). If LCRA fails to substantially complete the Project by the Projected Completion Date,

then, in addition to all other remedies provided herein, the estimated dates for the Projected Connections set forth on Exhibit D will be extended by a period of time corresponding to the length of time between the Projected Completion Date and the actual Completion Date for the Project.

- b. The Projected Connections are subject to revision following review of the plats, deed restrictions, restrictive covenants and/or conservation easements in accordance with the FWS Measures as provided in this Agreement. The parties agree that the per LUE amount based on the Letters of Credit, which amount currently is projected to be \$6,882 per LUE, as well as the Allocation Percentages, shall be revised pro rata among the Landowners.

2.07 Design Letter of Credit. By January 31, 2005, Landowner will deliver to LCRA a Letter of Credit in an amount equal to ten percent (10%) of Landowner's estimated pro rata share of the cost of the Project, which will be determined by multiplying the Construction Cost Estimate by Landowner's Allocation Percentage, which amount is intended to approximate Landowner's pro rata share of the costs of design of the Project (the "Design LOC"). Except as provided in Article 2.05 or Article 2.08, LCRA may not draw against any Design LOC until the Completion Date for the Project. Thereafter, LCRA shall be entitled to draw against the Design LOC as provided in Article 2.09.

2.08 Construction Letter of Credit. Within thirty (30) days of the opening of sealed, competitive bids for the construction of the Project, Landowner will deliver to LCRA a Letter of Credit in an amount equal to ninety percent (90%) of Landowner's estimated pro rata share of the cost of the Project, which will be determined by multiplying the Construction Cost Estimate by Landowner's Allocation Percentage, which amount is intended to approximate Landowner's pro rata share of the costs of construction of the Project (the "Construction LOC"). If Landowner fails to deliver its Construction LOC as required under this Article ("Defaulting Landowner"), then LCRA shall be entitled to: i) draw all of the Defaulting Landowner's Design LOC and retain the funds received therefrom; ii) reduce the size of the Project pro rata to the Defaulting Landowner's Allocation Percentage; and, iii) require the non-defaulting Landowners to true up their Letters of Credit in accordance with Article 2.11. Except as provided in Article 2.05, LCRA may not draw against any Construction LOC until the Completion Date for the Project. Thereafter, LCRA shall be entitled to draw against the Construction LOC as provided in Article 2.09.

2.09 LCRA Draws on Letters of Credit. In January of each year commencing with the first full calendar year following the Projected Completion Date for the Project, LCRA will determine the number of retail water service connections within the Property and each of the Tracts as of December 31 of the prior calendar year, and will give thirty (30) days' written notice to Landowner of its determination and any sums due from Landowner under this Article. Unless LCRA receives written notice of dispute regarding the determination contained in LCRA's notice, LCRA will be entitled to draw against the Letters of Credit as provided in this Article.

- a. If the cumulative number of actual connections within Landowner's Tract as of

December 31 of the preceding year is less than the total Projected Connections for the Tract for such year, as set forth on Exhibit D, LCRA may draw against the Letters of Credit posted by Landowner in an amount equal to \$6,882 per LUE for each LUE by which the cumulative number of Projected Connections for the Tract exceeds the cumulative number of actual connections, however, Landowner will receive credit towards the number of actual connections (i) in an amount equal to any LUEs for which LCRA has previously drawn against Landowner's Letters of Credit and (ii) for a pro rata portion calculated, based on LUEs, of any retail service connections receiving service through the Project that are located outside of the Property ("Subsequent User Connections"). If the cumulative number of actual connections within a Tract exceeds the cumulative number of Projected Connections for the Tract on December 31 of the preceding year, Landowner may reduce its Letters of Credit by an amount equal to \$6,882 for each LUE by which the cumulative number of actual connections for Landowner's Tract exceeds the Projected Connections for the Tract. This reduction will be adjusted based upon (i) any reductions in the Letter of Credit made in prior years and (ii) any additional credit a Landowner is entitled to based on Subsequent User Connections made during the prior year.

- b. Landowner will receive a credit against, or reduction in, the Letters of Credit in the amount of the per-LUE fee assessed by LCRA for connections to the Project equivalent to \$6,882 per LUE for each \$6,882 that is drawn on under Landowner's Letters of Credit.

2.10 Return of Letters of Credit. LCRA will return the Letter of Credit to Landowner, to the extent not previously drawn upon by LCRA, upon the earlier of: (a) thirty (30) days after the date when a total of 230 LUEs, located within the Property and/or Subsequent User Connections are receiving service through the Project; or (b) June 30, 2014.

2.11 True-up of Letters of Credit. The total amount of the Letters of Credit, \$5,023,513, is based on the Construction Cost Estimate attached as Exhibit F. If the actual cost of design, permitting, financing and construction of the Project, based on the bid amount of the best evaluated bid, differs from the Construction Cost Estimate, then, within thirty (30) days after opening bids for the Project, LCRA will give written notice to Landowner, accompanied by an amended Exhibit F in which the construction cost is adjusted to equal the actual bid amount of the best evaluated bid and actual or projected easement acquisition costs, plus fifteen (15%) for costs of engineering, 3.5% for permitting, thirteen percent (13%) for costs of project management and G & A, twenty percent (20%) for contingency, and interest and coverage calculated in accordance with the spreadsheet attached as Exhibit G (the "Adjustment Notice"). Within thirty (30) days after receipt of the Adjustment Notice, Landowner will deliver substitute or amended Letters of Credit equal to its pro rata share of the adjusted construction cost, as set forth in the Adjustment Notice.

- a. If the Letters of Credit are adjusted pursuant to this Article, the amount per LUE also will be adjusted accordingly – for purposes of reducing or drawing upon the Letters of Credit pursuant to this Article II – by dividing the adjusted Letters of Credit by the number of Projected Connections.

- b. In the event Landowner fails to timely deliver an amended Letter of Credit in accordance with this article (a "Defaulting Landowner"), LCRA shall be entitled to: i) draw all of the Defaulting Landowner's Design LOC and retain the funds received therefrom; ii) reduce the size of the Project pro rata to the Defaulting Landowner's Allocation Percentage; and, iii) require the non-defaulting Landowners to true up their Letters of Credit pro rata to the remaining allocation percentages in accordance with this article. In the event of default under this article by one or more of the Landowners representing more than fifty percent (50%) of the Allocation Percentages, LCRA shall be entitled to: i) draw all of the Design LOCs for each Defaulting Landowner and retain the funds received therefrom; and, ii) terminate this Agreement by providing thirty (30) days prior written notice to non-defaulting Landowner(s).

**ARTICLE III**  
**SERVICE FROM THE PROJECT:**  
**COMMITMENT OF SERVICE**

- 3.01 **Commitment to Provide Service.** Following the Completion Date for the Project, LCRA will commit to provide and will provide a continuous and adequate supply of treated water service to the Tract in the amounts specified on **Exhibit D**, in accordance with TCEQ regulations, subject to: (a) construction of all Internal Facilities required to provide retail water service within a Tract; (b) the Schedule, as amended from time to time by LCRA Board of Directors; (c) the applicable Policies, Rules and Regulations of LCRA ("Policies"), as amended from time to time by LCRA Board; and (d) this Agreement, a Service Agreement, and any additional agreements between LCRA and Landowner or any applicable District. Any person or entity requesting service must execute a Service Agreement and pay all tap and other new service fees according to the Schedule before LCRA commences service to such person or entity.
- 3.02 **Impact Fees; Assignment of Capacity.** LCRA intends to adopt impact fees for the Project pursuant to the authority granted by Chapter 395, Local Government Code, as amended. Upon payment of the applicable impact fee to LCRA, the paying Landowner will have a guaranteed reservation of capacity in the Project for the number of LUEs of service for which the impact fees were paid, and may assign all or any portion of such capacity (a) to any District that includes the Tract in question, or (b) to any person or entity within the Landowner's Tract, provided that written notice of such assignment is provided to LCRA.
- 3.03 **Service to Other Users and Subsequent User Fees.** Landowner agrees that, subject to the reservation by LCRA of the capacity in the Project allocated to Landowner, as described on **Exhibit D**, LCRA may utilize excess capacity in the Project to serve persons or entities located outside of the Property within the 1280 or 1420 pressure zones ("Subsequent Users"). Landowner will receive credit against, or reduction in, the Letters of Credit, on a pro rata basis, based on their respective Allocation Percentages, and based on the amount of the per-LUE fee set forth in Article 2.06(b) of this Agreement, for each Subsequent User Connection made by LCRA on or before ten (10) years from the Completion Date, as described in Article 2.09(a).

**ARTICLE IV**  
**GOVERNMENTAL APPROVALS AND CONSENTS**

4.01 Service Subject to State and Local Approvals. LCRA will not provide water services under this Agreement unless all necessary permits, certificates or approvals are obtained from the TCEQ and any other applicable local government bodies. LCRA may seek a certificate of convenience and necessity to provide water services ("CCN") covering any Tract that Landowner does not intend to include within a District. Any District created over any Tract may seek a CCN for the property contained within its boundaries. LCRA agrees that it will not protest the creation of any such District or any application for a CCN by a District permitted under this Article unless the related Landowner is in default of material obligations provided in this Agreement. Landowner agrees that it will not protest any application for a CCN by LCRA permitted under this Article unless LCRA is in default of material obligations provided in this Agreement. If a CCN for a Tract is held by a District, LCRA will be given notice and a right of first refusal to acquire the CCN on the same terms offered by a third party to the District prior to any transfer of the District's CCN to any third party.

4.02 Compliance with FWS Measures.

- a. Landowner acknowledges that LCRA is committed to extending potable water service to the Property in a manner that provides water quality protections for the Property and surrounding areas. In consideration of this and the other covenants of this Agreement:
  - i. Landowner agrees that water service from the Project will be subject to compliance in the development of the Tract with the FWS Measures attached as "Exhibit L" as minimum requirements;
  - ii. alternatively, in the event that the U.S. Fish and Wildlife Service determines that a regional plan for the area including the Tract is consistent with the requirements of the Endangered Species Act, and if LCRA determines that said regional plan incorporates water quality protections that are more protective than those contained in the FWS Measures, and if Travis County adopts said regional plan, then Landowner agrees to develop in accordance with said regional plan any portions of the Tracts for which preliminary plats have not been accepted by Travis County prior to the adoption by Travis County of said regional plan.

For purposes of this article, "accepted by Travis County" shall mean the determination by Travis County that a preliminary plat is administratively complete.

- b. Landowner agrees to impose and record enforceable plats, deed restrictions, restrictive covenants and/or conservation easements that permanently protect and preserve the physical features required by the FWS Measures.
  - i. The plats, deed restrictions and/or restrictive covenants shall run with the land and:



1. require compliance with the FWS Measures;
2. depict the physical boundaries of water quality protection features such as filter strips, buffer zones, greenbelt areas and other critical environmental features per the FWS Measures;
3. take into account the impact of effluent irrigation or septic tank fields on water quality protection features consistent with the FWS Measures (e.g., wastewater drain fields are not allowed to serve as water quality buffer areas);
4. require that all water quality protection features, including any filter strips, buffer zones, greenbelt areas and impervious cover limitations, depicted or provided for on the plat or incorporated in the development of a lot shall be maintained for water quality protection and shall not be altered, damaged, or covered, except as provided in the FWS Measures;
5. provide that the restrictions against altering the physical elements of the water quality protection features shall be enforceable by the owner of any real property interest in any of the Tract described on the plat as well as by any governmental entity with jurisdiction over platting or subdivision of the Tract or over the roads within the Tract, by any proceeding at law or in equity; and,
6. require the use of the water conservation measures set forth in Exhibit I attached, or similar measures approved by LCRA.

The deed restrictions and/or restrictive covenants shall be recorded either in the form of plat notes contained on each final subdivision plat or a separate document referred to on the final plat. The plat notes and deed restrictions/restrictive covenants shall contain language substantially similar to that contained in Exhibit J attached, or similar language approved by LCRA.

- ii. The conservation easements, if any, within each final plat of a Tract shall be executed and recorded prior to the approval of the final plat and prior to the delivery of any water by LCRA to the same platted section of the Tract. The conservation easements shall be granted in favor of Travis County or other holder authorized pursuant to Chapter 183 of the Texas Natural Resources Code, as amended.
- iii. Landowner agrees to submit to LCRA and to Travis County the proposed plats, deed restrictions, restrictive covenants and conservation easements for the Tract, or any portion thereof, not later than forty-five (45) days prior to any final plat approval for the same Tract, or any portion thereof, to Travis County. The submission of the proposed plats, deed restrictions, restrictive covenants and conservation easements to LCRA shall include submission of

the items included in Exhibit K attached hereto. Landowner agrees to incorporate into the final plats, deed restrictions, restrictive covenants and/or conservation easements any comments provided by LCRA or Travis County that are consistent with the FWS Measures; provided, however, that LCRA will provide its comments not later than thirty (30) days following the respective Landowner's submission of the draft plats, deed restrictions, restrictive covenants, and/or conservation easements.

- c. Landowner further agrees to provide to LCRA and Travis County a certification from Landowner's engineer: (i) before any final subdivision plat covering a portion of a Tract is accepted by Travis County, confirming that the project incorporates enforceable restrictions -- by plat, deed restrictions, restrictive covenants and/or conservation easements -- that provide that any physical elements of the FWS Measures, such as buffer zones and impervious cover, shall not be altered; and, (ii) within thirty (30) days of the Completion Date for any Internal Facilities within Landowner's Tract, confirming that the subdivision has been constructed in accordance with the FWS Measures.
- d. Following the Completion Date for the Project, Landowner may not use groundwater for any purposes, whether potable, irrigation or commercial, on any subdivided portion of a Tract that is less than ten (10) acres in total size. Landowner shall include the same restrictions on groundwater use in the deed restrictions for the Tract.
- e. Landowner acknowledges and agrees that, if centralized wastewater treatment is proposed for the Tract, wastewater treatment facilities for the Tract must employ treatment levels at least as stringent as those required by the TCEQ rules for the Edwards Aquifer in Travis County (Texas Administrative Code, title 30, chapter 213, as amended) applicable to the Tract. Landowner further agrees that any no-discharge permit for a centralized wastewater treatment facility serving the Tract shall, at a minimum, achieve the following level of effluent treatment: five milligrams per liter of biochemical oxygen demand, based on a 30-day average; five milligrams per liter of total suspended solids, based on a thirty-day average; and two milligrams per liter of ammonia nitrogen, based on a thirty-day average.

#### **ARTICLE V** **REIMBURSEMENT**

- 5.01 **Reimbursement for Impact Fees.** Any District will have the right to reimburse Landowner for sums paid to LCRA for the reservation of or purchase of capacity in the Project, whether such sums are paid through contributions of cash, draws against the Letters of Credit, or the payment of impact fees, through the issuance of bonds or any other funds lawfully available to such District.
- 5.02 **Reimbursement for Internal Facilities.** It is contemplated that any District created over all or any portion of the Property will construct or acquire all Internal Facilities required to provide retail service to the land within its boundaries, and will issue tax exempt bonds for purposes of financing such acquisition or construction. If the conveyance to and the

provision of retail service by LCRA will not impair the ability of a District to issue tax-exempt bonds for purposes of financing the acquisition of the Internal Facilities within a District's boundaries, the Internal Facilities will be conveyed to LCRA for ownership, operation and maintenance as contemplated in Article VI. If, however, such a conveyance and retail service by LCRA would impair the ability of the District to finance the acquisition of any Internal Facilities with tax-exempt bonds, the District and LCRA will negotiate in good faith toward and enter into a mutually acceptable lease or operating agreement covering such Internal Facilities so that LCRA may provide retail service to the Tract without affecting the District's issuance of tax-exempt bonds.

## **ARTICLE VI**

### **INTERNAL FACILITIES**

- 6.01 **Construction of Internal Facilities.** Landowner will construct and install all Internal Facilities necessary to provide water services within its respective Tract. Subject to Article 5.02, above, these Internal Facilities will be constructed, conveyed and/or leased to LCRA, in phases, in accordance with the terms and conditions of this Article following their respective Completion Dates. If any Internal Facilities will not be conveyed or leased to LCRA, this Article VI will not be applicable to the construction, ownership or operation of those Internal Facilities.
- 6.02 **Evaluations Prior to Construction.**
- a. Prior to construction of the Internal Facilities, LCRA shall be granted access to, with prior notice to Landowner, and the right to inspect all real property and easements associated with any phase of the Internal Facilities for the purpose of cultural resource assessments and investigations conducted by LCRA staff archeologists in conformance with Chapter 191 of the Texas Natural Resource Code, referred to as the "Antiquities Code," and the "Memorandum of Agreement between the "Lower Colorado River Authority and The Texas Antiquities Committee." Landowner acknowledges and agrees that LCRA may rely on the results of these investigations in reviewing and approving the final plans and specifications for the Internal Facilities.
  - b. To provide for construction of the Internal Facilities in a manner that protects water quality in accordance with the FWS Measures, Landowner shall develop and submit to LCRA for review and approval a pre-construction plan for water quality monitoring consistent with Exhibit K within sixty (60) days of the preliminary plan approved by Travis County. LCRA will complete its review of the pre-construction monitoring plan and provide any comments within 30 days of submission; in the event LCRA fails to meet this deadline, Landowner may provide written notice to LCRA and request a written response from LCRA within seven (7) days, and in the event LCRA fails to respond within seven (7) days of Landowner's written notice, the plan shall be deemed approved as submitted. After approval of the monitoring plan by LCRA, Landowner shall perform pre-construction water quality monitoring according to the approved plan. LCRA agrees to bear the costs of laboratory analysis of water quality monitoring samples. Clearing, grading or other land disturbance (other than surveying or testing) within the Tract will not commence until completion

of water quality monitoring as prescribed by the plan. The results of this monitoring program will be used by LCRA to establish a baseline for pollutant concentrations during storm events and to further allow for comparison to determine if water quality impacts during construction are occurring. LCRA shall have the right to access the Tract at any and all times to monitor, or observe monitoring of, water quality within the Tract with prior notice to the Landowner.

6.03 Construction-Related Water Quality Control Plan; Enforcement. To provide for construction of the Internal Facilities, and other construction within the Tract, in a manner that protects water quality in accordance with the FWS Measures, Landowner shall develop and submit to LCRA for review and approval a construction-related water quality control plan consistent with Exhibit K not later than its submission of any plans or specifications for the Internal Facilities, as provided in this Article 6. The construction-related water quality control plan shall incorporate best management practices, such as those contained in the technical manuals referenced in the FWS Measures, designed to maintain water quality during construction at levels consistent with the baseline observed during the monitoring program. LCRA will complete its review of the construction-related water quality control plan and provide any comments within 30 days of submission; in the event LCRA fails to meet this deadline, Landowner may provide written notice to LCRA and request a written response from LCRA within seven (7) days, and in the event LCRA fails to respond within seven (7) days of Landowner's written notice, the plan shall be deemed approved as submitted. Approval will require modification of said plan by Landowner to address any LCRA comments that are consistent with the FWS Measures.

- a. The parties acknowledge and agree that a construction-related water quality control plan may be tied to, and specifically designed for, a particular phase of development in the Tract, as construction within the Tract may occur in phases. Each phase of construction within the Tract, however, must be covered by a construction-related water quality control plan. For each phase of development in the Tract, land clearing, land grading and construction shall not commence until the construction-related water quality control plan has been approved and all construction-related permits or approvals required by federal, state or local jurisdictions have been obtained.
- b. Following approval of any such construction-related water quality control plan, LCRA shall have the right to access the Tract at any and all times, with prior notice to Landowner, to observe construction activity and its impacts or to sample and monitor water quality. Landowner agrees to immediately cease all construction activities, whether related to the Internal Facilities or other improvements within the Tract, upon written notice from LCRA that construction has deviated from the approved plan or that baseline water quality standards (based on pre-construction stormwater run-off monitoring) provided in the approved plan have not been met as determined in LCRA's sole discretion, and Landowner further agrees to not recommence construction activities within the Tract until further notice from LCRA that the deficiencies and any resulting damage have been remedied, as determined by LCRA in its sole discretion.

- c. In the event of any dispute between Landowner and LCRA arising under this article, regardless of whether the dispute relates to the approval of said water quality control plan or its application to construction within the Tract, the parties agree to mediate said dispute in accordance with Article 9.07 prior to pursuing any other remedies under this agreement; provided, however, that Landowner agrees that LCRA may enforce the cessation of construction as provided in this paragraph by a request for injunctive relief before any court of competent jurisdiction during the resolution of any dispute arising under this paragraph.
- d. The agreements and covenants contained in this Article 6.03 shall survive any and all Closing(s) of the conveyance of the Internal Facilities to LCRA.

**6.04 Design of Internal Facilities.**

- a. All Internal Facilities must be designed by a Registered Professional Engineer in order to provide continuous and adequate water services in accordance with LCRA Schedule, LCRA Policies and the specifications to be approved by LCRA.
- b. Landowner will submit all final plans and specifications for construction of the Internal Facilities to LCRA for review and approval prior to commencement of construction of the Internal Facilities. LCRA will complete its review and approval within 30 days of submission; in the event LCRA fails to meet this deadline, Landowner may provide written notice to LCRA and request a written response from LCRA within seven (7) days, and in the event LCRA fails to respond within seven (7) days of Landowner's written notice, the plan shall be deemed approved as submitted. Otherwise, the plans and specifications will be deemed to be approved. LCRA initially designates Kevin Critendon, P.E. Manager of Water and Wastewater Engineering and Construction, 3700 Lake Austin Blvd., Austin, Texas, 78703, telephone (512) 473-3503, fax (512) 397-6722, as its agent to review and approve plans and specification, construction contracts and change orders. Changes to this designation may be made by providing written notice in accordance with this Agreement. Any variance to the plans and specifications approved or deemed approved by LCRA or requirements contained in this Agreement must be submitted in writing to LCRA and will be subject to LCRA's approval.
- c. All Internal Facilities must be constructed in compliance with the approved plans and specifications, including any variances approved by LCRA, as well as any federal, state or local regulatory requirements. Construction contracts will be bid and awarded in the manner required by the Water Code and the rules of the TCEQ.
- d. Prior to the Completion Date of any phase of the Internal Facilities, the constructing Landowner will provide LCRA with a certificate of substantial completion from the project engineer, certifying that the Internal Facilities have been completed in accordance with the approved plans and specifications, including any variances approved by LCRA.

- 6.05 Payment for Construction of the Internal Facilities. Landowner will be responsible for the cost of construction of all Internal Facilities within Landowner's Tract, including costs incurred in connection with obtaining governmental approvals, certificates, permits, easements, rights-of-way, or sites required as part of the Internal Facilities, subject to any right of Landowner to reimbursement from a District. LCRA will not be liable to any contractor, engineer, attorney, materialman or other party employed or contracted with by Landowner in connection with the construction of the Internal Facilities. All construction contracts and other agreements entered into for the acquisition of construction of the Internal Facilities will contain the following provision: "Contractor shall look solely to \_\_\_\_\_ [Landowner] for payment of all sums due under this Agreement. Nothing in this agreement shall create any relationship between Contractor and the Lower Colorado River Authority, and the Lower Colorado River Authority shall have no obligation to Contractor for any sums due under this Agreement."
- 6.06 Inspection of Facilities. LCRA will have access to, with prior notice to Landowner, and the right to inspect all phases of the construction of the Internal Facilities. No portion of the Internal Facilities will be covered until LCRA has the opportunity to inspect it. LCRA, or its designee, will be entitled to charge the responsible Landowner for the actual cost of each inspection until such time as LCRA adopts a Schedule for the LCRA System, and thereafter at the rate prescribed in the Schedule.
- 6.07 Duty to Repair and Warranty. Landowner will require the contractor for the construction of any phase of the Internal Facilities (the "Contractor") to repair or cause to be repaired all defects in materials, equipment, or workmanship appearing in the Internal Facilities within one year from the Completion Date ("Warranty Period"). The Contractor will be required, upon receipt of written notice from LCRA of the discovery of any defects, promptly and at its own cost, to remedy the defects and replace any property damaged as a result of the defect. In case of an emergency where delay would cause serious risk of loss or damage to LCRA or its customers, or if the Contractor, after notice, fails to proceed promptly with the remedy within thirty (30) days or within another period of time which has been agreed to in writing, LCRA may have defects in the Internal Facilities corrected in compliance with the terms of this warranty and guarantee, which will be incorporated into each contract for the construction of the Internal Facilities, and the Contractor will be liable for all expenses incurred by LCRA in so doing. In addition, the Contractor will be required to provide Landowner with a maintenance bond that meets the requirements of Article 6.10, which maintenance bond will be transferred to LCRA at Closing, as defined in Article 6.15.
- 6.08 Assignment of Warranty Obligations. Landowner will obtain and assign to LCRA, by written instrument in a form approved by counsel for LCRA, a complying warranty from any manufacturer, supplier, or Contractor for all warranties required under the specifications for any phase of the Internal Facilities.
- 6.09 General Requirements for Performance and Payment Bonds.
- a. Landowner and LCRA will agree upon an estimated cost of each phase of the Internal

those which do not materially impair the value of the Interests to be Acquired or LCRA's intended use, with a covenant on the part of Landowner that Landowner has a lawful right to transfer and deliver such property.

6.19 Representations and Warranties. By the execution of this Agreement and again by execution of any instruments of conveyance, transfer or assignment at Closing, Landowner, except to the extent specifically disclosed at time of Closing, represents and warrants to LCRA that:

- a. The execution, delivery and performance of this Agreement has been (or Closing will have been) duly authorized by all necessary action on the part of Landowner, and the person executing this Agreement on behalf of Landowner has the full authority to do so;
- b. Except as previously disclosed to LCRA in writing prior to Closing, to Landowner's current, actual knowledge this Agreement does not contravene any law or any governmental rule, regulation or order applicable to Landowner.
- c. Except as previously disclosed to LCRA in writing prior to Closing, to Landowner's current, actual knowledge the execution, delivery and performance of this Agreement does not contravene the provision of or constitute a default under the terms of any indenture, mortgage, contract, resolution or other instrument to which the District is a party or by which Landowner is bound;
- d. Except as previously disclosed to LCRA in writing prior to Closing, to Landowner's current, actual knowledge, there are no actions, suits, inquiries, or proceedings pending or to the knowledge of the officials of Landowner threatened against or affecting Landowner before any court or administrative body or agency that would materially adversely affect the execution, delivery, or performance by Landowner of this Agreement; and
- e. Except as previously disclosed to LCRA in writing prior to Closing, to Landowner's current, actual knowledge, there are no defects, impairments, impediments, defaults, breaches, encumbrances or other similar problems with respect to (A) the quality, layout or physical condition or state of repair of the Interests to be Acquired, (B) the location of the Interests to be Acquired in any flood plain, floodway or special flood hazard area, (C) compliance by Landowner in relation to the Interests to be Acquired with any laws, rules, ordinances, or regulations of any applicable governmental authority, including zoning and other land use regulations, and (D) Landowner's compliance with any applicable, lawful enforceable environmental protection, pollution or related land use laws, rules, regulations and orders or requirements, including, but not limited to, those pertaining to the use, handling, generating, treating, storing or disposing of any hazardous waste, hazardous substances, petroleum product storage tanks or asbestos, those pertaining to public drinking water systems or utilities and those pertaining to protection of endangered or threatened species.

- f. Possession. Possession of the Internal Facilities will be delivered to LCRA by Landowner at the Closing either through an ownership or leasehold interest. Upon Closing or following lease to LCRA, LCRA will assume all liability associated with the operation of the Internal Facilities.
- 6.20 Costs and Expenses. All costs and expenses in connection with the transaction contemplated by this Agreement will be allocated as follows:
- a. LCRA will pay for LCRA's attorney's fees, costs of recording easements and other costs stipulated to be paid by LCRA under the other provisions of this Agreement.
  - b. Landowner will be responsible for Landowner's attorney fees, costs of releasing liens, and other expenses stipulated to be paid by Landowner under other provisions of this Agreement.

#### **ARTICLE VII** **SEVERAL OBLIGATIONS**

7.01. Landowner is responsible only for the performance of its obligations under this Agreement. The LCRA agrees to look solely to Landowner for the performance of Landowner's obligations under this Agreement. No Landowner will have any liability to the LCRA for the non-performance or breach of this Agreement by another Landowner.

#### **ARTICLE VIII** **GENERAL PROVISIONS**

8.01 Remedies.

- a. LCRA's Remedies. Article II of this Agreement provides specific remedies to LCRA with respect to Landowner's obligations to provide fiscal security in the form of the Letters of Credit and funding through the connection of customers to the Project. The remedies set forth in Article II are the sole and exclusive remedies of the LCRA in the event of a default by Landowner under that Article. If Landowner fails to timely comply with any other obligation of Landowner under this Agreement following written notice of default from LCRA, or if, at any Closing under Article VI, any of Landowner's representations, warranties or covenants contained in this Agreement are not true or have been breached, the LCRA will have the following, as its sole and exclusive remedies: (1) to enforce this Agreement by specific performance, injunction, or similar remedy; (2) to withhold water service to any phased portion of the Tract to which the default applies until the default is cured; and/or (3) to waive, prior to or at Closing, if applicable, the default and proceed under this Agreement in accordance with the remaining terms hereof. If Landowner fails or refuses to timely comply with any of its obligations under this Agreement, other than obligations under Article II, after a Closing, LCRA may exercise any remedies available to it under this Agreement or as provided by law or equity as to Landowner.
- b. Landowner's Remedies. The failure of LCRA to timely complete the Project and to provide service to the Property in accordance with the terms of this Agreement would



cause substantial damage to Landowner and, in such case, except to the extent performance by LCRA is excused by force majeure, Landowner will have all remedies available at law or in equity, including, but not limited to, a suit for damages. If LCRA fails or refuses, following written notice of default from Landowner, to timely comply with any of LCRA's other obligations hereunder or is unable to do so as a result of LCRA's acts or failure to act, Landowner will have the following remedies: (a) to enforce this Agreement by specific performance, injunction, or similar remedy; or, (b) to waive, prior to or at a Closing under Article VI if applicable, the default and proceed under this Agreement in accordance with the remaining terms hereof. If, after a Closing, Landowner determines that any of LCRA's representations, warranties or covenants contained herein which applied to, and survived the Closing, are not true, then in such limited event Landowner may avail itself of any remedy at law or in equity to which Landowner may be entitled.

- 8.02 Opportunity to Cure Default. Before a party may exercise any remedy given to it pursuant to this Agreement, that party must provide written notice to the other party specifying the default, and it must allow the other party thirty (30) days (or longer if otherwise provided by this Agreement) after receipt of the notice to cure the default. The provisions of this article shall not apply to LCRA's rights to draw on Letters of Credit as expressly provided in Article II.
- 8.03 Attorneys Fees. In the event any party to this Agreement is required to initiate legal proceedings to enforce its rights or the performance of another party's obligations under this Agreement, the prevailing party will be entitled to recover from the non-prevailing party all of its costs incurred in connection with the legal proceedings, including reasonable attorneys' fees and costs of court.
- 8.04 Third Party Claims. In the event of any third party lawsuit or other claim relating to the validity of this Agreement or any actions taken hereunder, the LCRA and Landowner agree to cooperate in the defense of such suit or claims, and to use their respective best efforts to resolve the suit or claim without diminution in their respective rights and obligations under this Agreement; provided, however, that neither party will be required to incur costs on behalf of the other party.

## ARTICLE IX MISCELLANEOUS

- 9.01 Entire Agreement and Amendments. This Agreement, including all Exhibits, constitutes the entire agreement and understanding between the Parties concerning the subject matter hereof and supersedes previous negotiations, understandings, discussions, correspondence or representations. Neither this Agreement nor its Exhibits shall be amended, modified or changed except by a writing executed by both Parties. No verbal representation of any negotiator, engineer, officer, employee or agent of either Party shall vary the written terms of this Agreement. No waiver of any right under this Agreement shall be effective unless it is contained in a writing signed by the Party granting the waiver.

9.02 Assignability. Except for an assignment by a Landowner to a District which contains all or part of the Tract, or to a subsequent purchaser of all or part of the Tract, or as expressly provided otherwise in this Agreement, no party may assign its rights or obligations under this Agreement to a third party unless the assignor first obtains the written consent of this Agreement's other party, which consent will not be unreasonably withheld or delayed. No assignment authorized by this Agreement shall be effective, however, until the non-assigning party has received: i) a written instrument, executed by both assignor and assignee, by which the assignee assumes all obligations of the assignor arising under this Agreement; and, ii) if Landowner assigns this Agreement to an assignee, the assignee's substitute Letter(s) of Credit, in exchange for the release of Landowner's Letter(s) of Credit.

9.03 Severability. If any of the terms or conditions of this Agreement, or the application of any term or condition, is held invalid as to any person or circumstances by any court of appropriate jurisdiction, the remainder of this Agreement, and the application of its terms and conditions will not be affected thereby.

9.04 Force Majeure. If either party is rendered unable by *force majeure* to carry out any of its obligations under this Agreement, in whole or in part, then the obligations of that party, to the extent affected by the force majeure, will be suspended during the continuance of the inability; provided, however, that due diligence is exercised to resume performance at the earliest practical time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the party whose contractual obligations are affected will give notice including the full particulars of the force majeure to the other party. The cause, as far as possible, will be remedied with all reasonable diligence.

The term "force majeure" includes acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, incidents of terrorism, orders of the government of the United States, the State of Texas or any political subdivisions thereof with appropriate jurisdiction, insurrections, riots, epidemics, landslides, lighting, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and civil disturbances, explosions, breakage, or accidents to equipment, pipelines, or canals, partial or complete failure of water supply and any other incapacities of either party, whether similar to those enumerated or otherwise, that are not within the control of the party claiming the inability and that could not have been avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts will be entirely within the discretion of the party having the difficulty and that the requirement that any force majeure be remedied with all reasonable dispatch will not require the settlement of strikes and lockouts by acceding to the demands of the opposing party if the settlement is unfavorable in the judgment of the party having the difficulty.

9.05 Notice. Any notice to be given under this Agreement must be in writing and may be effected by personal delivery, by facsimile transmission, or by sending said notices by registered or certified mail, return receipt requested, to the address set forth below. Notice provided by facsimile transmission must also be provided by first-class mail. Notice will be deemed given when delivered by personal delivery or confirmed facsimile,

or when deposited with the United States Postal Service with sufficient postage affixed. Any notice mailed to LCRA will be addressed:

Lower Colorado River Authority  
Attn: Executive Manager, Water & Wastewater Utility Services  
P.O. Box 220  
Austin, Texas 78767-0220  
(512) 473-3200  
Fax (512) 473-3551

With a copy to its counsel:

Lower Colorado River Authority  
Attn: Madison Jechow, Associate General Counsel  
P.O. Box 220  
Austin, Texas 78767-0220  
Fax (512) 473-4010

Any such notice mailed to Landowner will be addressed:

William L. Formby  
3825 Lake Austin Blvd #402  
Austin, Texas 78703  
Fax: (512) 477-4400

With a copy to:

WINN CHAPMAN  
2112 RIO GRANDE  
AUSTIN, TX. 78705

Any party may change the address or facsimile number for notice to it by giving notice of such change in accordance with the provisions of this paragraph.

- 9.06 No Third-Party Beneficiaries. The terms and conditions of this Agreement are intended for the sole benefit of Landowner and LCRA. Nothing in this Agreement, express or implied, is intended to confer any benefits, rights or remedies upon a third party.
- 9.07 Alternative Dispute Resolution. In the event of a contract dispute or default, the Parties shall attempt in good faith to resolve disagreements for a period of thirty (30) days. In the event they are unable to resolve said dispute within said thirty (30)-day period, then either party may serve notice on the other party of a demand for mediation. The mediation shall be conducted by a mediator certified by the State of Texas as agreed upon by the parties. In the event the parties cannot agree on a mediator, then each party shall elect a mediator and the two mediators shall select a third mediator who will serve as

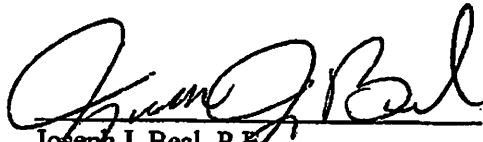
mediator to the dispute. In the event said mediator is not able to resolve the dispute through mediation, he shall so certify to the parties who then may institute legal proceedings to resolve the dispute. No litigation may be filed prior to mediation except as expressly provided elsewhere in this Agreement. The parties to the mediation shall bear mediation costs equally. The provisions of this article shall not apply to LCRA's rights to draw on Letters of Credit as expressly provided in this Agreement.

- 9.08 Governing Law. This Agreement will be construed under and in accordance with the laws of the State of Texas and all obligations of the parties and expressly deemed performable in Travis County, Texas.
- 9.09 Venue. Venue for any suit arising hereunder will be in Travis County, Texas.
- 9.10 Effective Date. This Agreement will be effective from and after the date of due execution by the last party to sign this Agreement (the "Effective Date").
- 9.11 Exhibits. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A – The Project and Depictions of the Tract  
Exhibit B – Description of Landowner's Tract  
Exhibit C – LUE Equivalency Table  
Exhibit D – Schedule of Projected Connections and Allocation Percentages  
Exhibit E – Construction Schedule  
Exhibit F – Construction Cost Estimate  
Exhibit G – Spreadsheet Related to Construction Cost Estimate  
Exhibit H – Form of Letter of Credit  
Exhibit I – Water Conservation Measures  
Exhibit J – Language for Plat Notes and Deed Restrictions/Restrictive Covenants  
Exhibit K – Required Submittals for LCRA Review  
Exhibit L – FWS Measures

LCRA:

By:

  
Joseph J. Beal, P.E.  
General Manager



Dec. 7, 2004

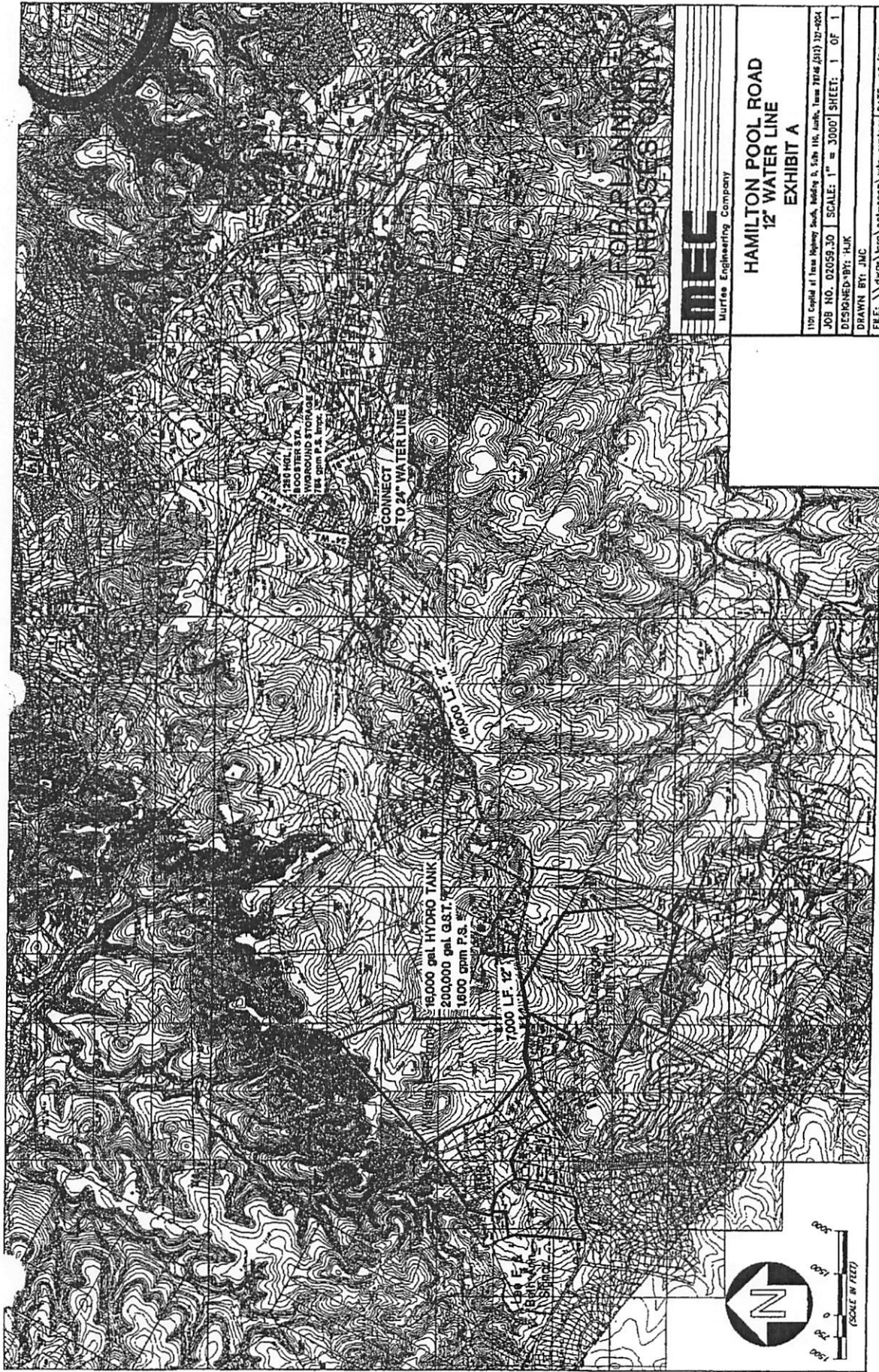
Date Approved and Accepted by LCRA

LANDOWNER:

By:   
William L. Formby

**EXHIBIT A**

**The Project and Depiction of the Tracts**



Murree Engineering Company

HAMILTON POOL ROAD  
12" WATER LINE  
EXHIBIT A

1101 Capital of Texas Highway South, Building B, Suite 110, Austin, Texas 78746 (512) 327-4004  
JOB NO. 02059.30 | SCALE: 1" = 3000' | SHEET: 1 OF 1  
DESIGNED BY: HJK  
DRAWN BY: JMC  
FILE: \\dnp\bro\set-ten\wtr-system\DATE: 12/04

**EXHIBIT B**

**Description of Landowner's Tract**



FILM CODE  
00005377330

SPECIAL WARRANTY DEED WITH VENDOR'S LIEN

THE STATE OF TEXAS  
COUNTY OF TRAVIS

§  
§  
§

KNOW ALL PERSONS BY THESE PRESENTS:

That MARLEE BAKER, PARKER C. FOLSE, III, and PAUL GABRIEL FOLSE (collectively, "Grantors"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration to the undersigned paid by the Grantee herein named, the receipt and sufficiency of which are hereby acknowledged, and for the further consideration of the execution and delivery by Grantee of his one certain Real Estate Lien Note of even date herewith in the principal sum of ONE MILLION ONE HUNDRED THIRTY-ONE THOUSAND ONE HUNDRED NINETY-ONE AND 20/100 DOLLARS (\$1,131,191.20) (the "Note"), payable to the order of Grantors, as therein provided, bearing interest at the rate therein specified and containing provisions for acceleration of maturity and for attorney's fees, the payment of which Note is secured by the Vendor's Lien retained herein and is additionally secured by a Deed of Trust of even date herewith to R. Alan Haywood, Trustee; have GRANTED, SOLD and CONVEYED, and by these presents do GRANT, SELL and CONVEY unto WILLIAM L. FORMBY ("Grantee"), the following-described real property in Travis County, Texas, to wit:

443.7304 acres of land, more or less, out of the Samuel Wildy Survey No. 528 and the F.S. Roy Survey No. 430 in Travis County, Texas, being that same tract of land described as the "Baker Ranch" in Deed of Partition recorded in Volume 12542, Page 0260 of the Real Property Records of Travis County, Texas, and being more particularly described on Exhibit A attached hereto and made a part hereof (the "Property"), together with all buildings, structures and improvements located thereon, and all tangible personal property, equipment and fixtures of any kind attached to or used in connection with the ownership, maintenance or operation thereof.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging, unto Grantee, his heirs, executors, administrators, successors and assigns forever; and Grantors do hereby bind themselves, their heirs, executors, administrators, successors and assigns to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee, his heirs, executors, administrators, successors and assigns, against every person whosoever lawfully claiming or to claim the same or

P:\ADMIN\12597-1\DEED, 01/03/96

REAL PROPERTY RECORDS  
TRAVIS COUNTY, TEXAS

12597 1098

Exhibit B

any part thereof, by, through and under Grantors, but not otherwise.

The Vendor's Lien against and Superior Title to the Property are retained until the Note and all other sums payable thereunder, shall have been paid in full in accordance with the terms thereof, when this Deed shall become absolute.

This conveyance is made by Grantors and accepted by Grantee subject to the following:

1. Deed of Trust recorded in Volume 12452, Page 317 of the Real Property Records of Travis County, Texas.
2. Liens with respect to State Inheritance Taxes and Federal Estate Taxes payable by the Estate of Lillie Lee Baker Hudson, Deceased.

Current ad valorem taxes on the Property having been prorated, the payment thereof for 1996 and subsequent years is assumed by Grantee, and Grantee assumes and shall be responsible for the payment of any and all "roll back" or other taxes or assessments levied against the Property for all periods (whether pertaining to periods prior to or after the date hereof) arising out of the change in the ownership or use of the Property.

This Deed may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

EXECUTED by the Grantors on the dates of their respective acknowledgements to be effective the 5th day of January, 1996.

Marlee Baker  
MARLEE BAKER

Parker C. Folsbe, III  
PARKER C. FOLSE, III

Paul Gabriel Folsbe  
PAUL GABRIEL FOLSE

Address for Grantee:

3825 lake Austin Blvd.  
Suite 402  
Austin, Texas 78703

REAL PROPERTY RECORDS  
TRAVIS COUNTY, TEXAS

12597 1099

2

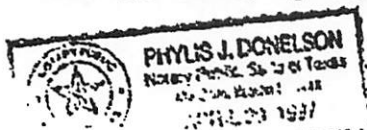
P:\ADMIN\12597.1\1099,01/05/96

Exhibit B

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 5<sup>th</sup> day of January, 1996, by MARLEE BAKER.



Phyllis J. Donelson  
Notary Public, State of Texas  
Print name: \_\_\_\_\_

STATE OF WASHINGTON §

COUNTY OF KING §

This instrument was acknowledged before me on the 4<sup>th</sup> day of January, 1996, by PARKER C. POLSE, III.

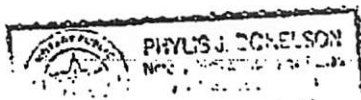


Rosemary C. Dolan  
Notary Public, State of Washington  
Print name: Rosemary C. Dolan

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 5<sup>th</sup> day of January, 1996, by PAUL GABRIEL POLSE.



Phyllis J. Donelson  
Notary Public, State of Texas  
Print name: \_\_\_\_\_

After recording, return to:

REAL PROPERTY RECORDS  
TRAVIS COUNTY, TEXAS

12597 1100

3

9:14AM TUE JAN 11 1996

Exhibit B

# Oak Hill Surveying Co., Inc.

612 Hwy. 290 West • Austin, TX 78735 • (512) 892-2972  
Fax • (512) 892-2973

September 8, 1995

FIELD NOTES DESCRIBING A 443.7304 ACRE TRACT OF LAND OUT OF THE SAMEL WILBY SURVEY NO. 528 AND THE F.S. ROY SURVEY NO. 430, SITUATED IN TRAVIS COUNTY, TEXAS, BEING OUT OF AND A PORTION OF THAT CERTAIN 1234.86 ACRE TRACT OF LAND CONVEYED TO J. HENRY HUDSON BY DEED RECORDED IN VOLUME 728, PAGE 614 OF THE TRAVIS COUNTY DEED RECORDS, SAID 443.7304 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a fence corner post situated on the North R.O.W. line of R.M. Highway No. 3238 (also known as Hamilton Pool Road) at the Southeast corner of that certain 16.37 acre tract of land conveyed to Wanda P. Grindstaff by Deed Recorded in Volume 5744, Page 1001 of the Travis County Deed Records, same being the Southwest corner of the herein described tract.

THENCE, along the fenced Northeast boundary line of said 16.37 acre tract the following two (2) courses:

1. N 36°47'00" W for 43.43 feet to a fence post.
2. N 50°24'15" W for 1699.08 feet to an iron pin found.

THENCE, along the fenced East boundary line of that certain tract of land conveyed to Lou Blocker and Frank W. Mead by Deed Recorded in Volume 3236, Page 1167 of the Travis County Deed Records the following ten (10) courses:

1. N 22°34'51" W for 1249.58 feet to an iron pin found.
2. N 26°29'26" W for 660.43 feet to an iron pin found.
3. N 29°44'00" W for 674.38 feet to a 60-D Nail set in a fence corner post situated at the most westerly corner of the herein described tract.
4. N23°32'55" E for 141.01 feet to a 60-D nail set in a fence corner post.
5. N54°54'58" E for 125.76 feet to a 60-D nail set in a fence corner post.
6. N 49°33'30" E for 1896.75 feet to an iron pipe found.
7. N 47°59'53" E for 269.12 feet to an iron pipe found.
8. N 48°51'58" E for 933.90 feet to a fence post.
9. N 48°01'22" E for 382.47 feet to an iron pin set.
10. N 48°22'37" E for 1032.50 feet to an iron pin set for the Northeast corner of the herein described tract.

THENCE, through the interior of said 1234.86 acre tract the following six (6) courses:

1. S 23°00'56" E for 2166.87 feet to an iron pin set.
2. N 86°46'24" E for 300.00 feet to an iron pin set.
3. S 20°51'37" E for 656.32 feet to an iron pin set.
4. S 79°17'44" W for 445.11 feet to a 60-D nail set in a fence post.
5. N 68°56'12" W for 134.89 feet to an iron pin set.
6. S 0°39'37" E for 3883.61 feet to an iron pin set on said North R.O.W. line of R.M. Highway No. 3238 at the Southeast corner of the herein described tract.

THENCE, along said North R.O.W. line the following eight (8) courses:

REAL PROPERTY RECORDS  
TRAVIS COUNTY, TEXAS

12597 1101

Exhibit B

September 8, 1993  
443,7306 Acme Trench  
Page 2

1. An arc distance of 553.82 feet along a curve to the right whose elements are:  $I = 17^{\circ}03'38''$ ,  $R = 1859.92'$ , and whose subchord bears  $S 88^{\circ}53'47'' W$  for 551.77 feet to a concrete monument found.
2.  $N 82^{\circ}35'02'' W$  for 286.18 feet to a concrete monument found.
3. An arc distance of 289.65 feet along a curve to the left having a radius of 1919.86 feet and whose chord bears  $N 86^{\circ}47'54'' W$  for 289.39 feet to a concrete monument found.
4.  $N 83^{\circ}51'11'' W$  for 108.09 feet to a concrete monument found.
5.  $S 79^{\circ}41'50'' W$  for 103.63 feet to a concrete monument found.
6.  $S 77^{\circ}26'31'' W$  for 238.44 feet to a concrete monument found.
7.  $S 75^{\circ}53'51'' W$  for 96.68 feet to a concrete monument found.
8.  $S 75^{\circ}59'40'' W$  for 310.39 feet to the POINT OF BEGINNING of the herein described tract containing 443.7304 acres of land.

I HEREBY CERTIFY that these notes were prepared from a survey made on the ground under my supervision according to law and are true and correct to the best of my knowledge.

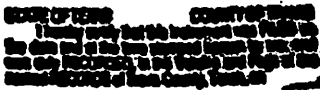
RETURN TO: KATHY NURN  
HERITAGE TITLE  
58 SAN JACINTO BLVD. STE. 400  
AUSTIN, TEXAS 78701  
OFF 518709

James F. Johnson, R.F.L.S. No. 4918

**FILED**

96 JAN -5 PM 4:01

**DANA DEBEAUVOR  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS**



**JAN 5 1970**



**Clare Albarran**  
COUNTY CLERK  
TRANS COUNTY, TEXAS

**RECORDERS MEMORANDUM:  
ORIGINALS OF POOR QUALITY**

**REAL PROPERTY RECORDS  
TRAVIS COUNTY, TEXAS**

**12597      1102**

RECEIVED: ADDRESSING THROUGH: 2008 SEPT: 16:00:00 RECEIVED: 417.00  
CHARGED: IMPRINT FILE NAME: L/S% THRU: 0000: L/S%  
FILE IN: CHECK 00%

## Exhibit B

**EXHIBIT C**

**LUE Equivalency Table**

METER TYPE	METER SIZE	NUMBER OF LUES
SIMPLE	5/8"	1.0
SIMPLE	¾"	1.5
SIMPLE	1"	2.5
SIMPLE	1 1/2"	5.0
SIMPLE	2"	8.0
COMPOUND	2"	8.0
TURBINE	2"	10.0
COMPOUND	3"	16.0
TURBINE	3"	24.0
COMPOUND	4"	25.0
TURBINE	4"	42.0
COMPOUND	6"	50.0
TURBINE	6"	92.0
COMPOUND	8"	80.0
TURBINE	8"	160.0
COMPOUND	10"	115.0
TURBINE	10"	250.0
TURBINE	12"	330.0

**EXHIBIT D**

**Schedule of Projected Connections  
and Allocation Percentages**

<b><u>Year</u></b>	<b><u>Projected Connections</u></b>
2005	0
2006	0
2007	30
2008	30
2009	30
2010	30
2011	30
2012	40
2013	40

**Allocated Percentages**

**McHargue Family II, Ltd.: 63.8%, based on 468 Projected Connections**

**William L. Formby: 31.3%, based on 230 Projected Connections**

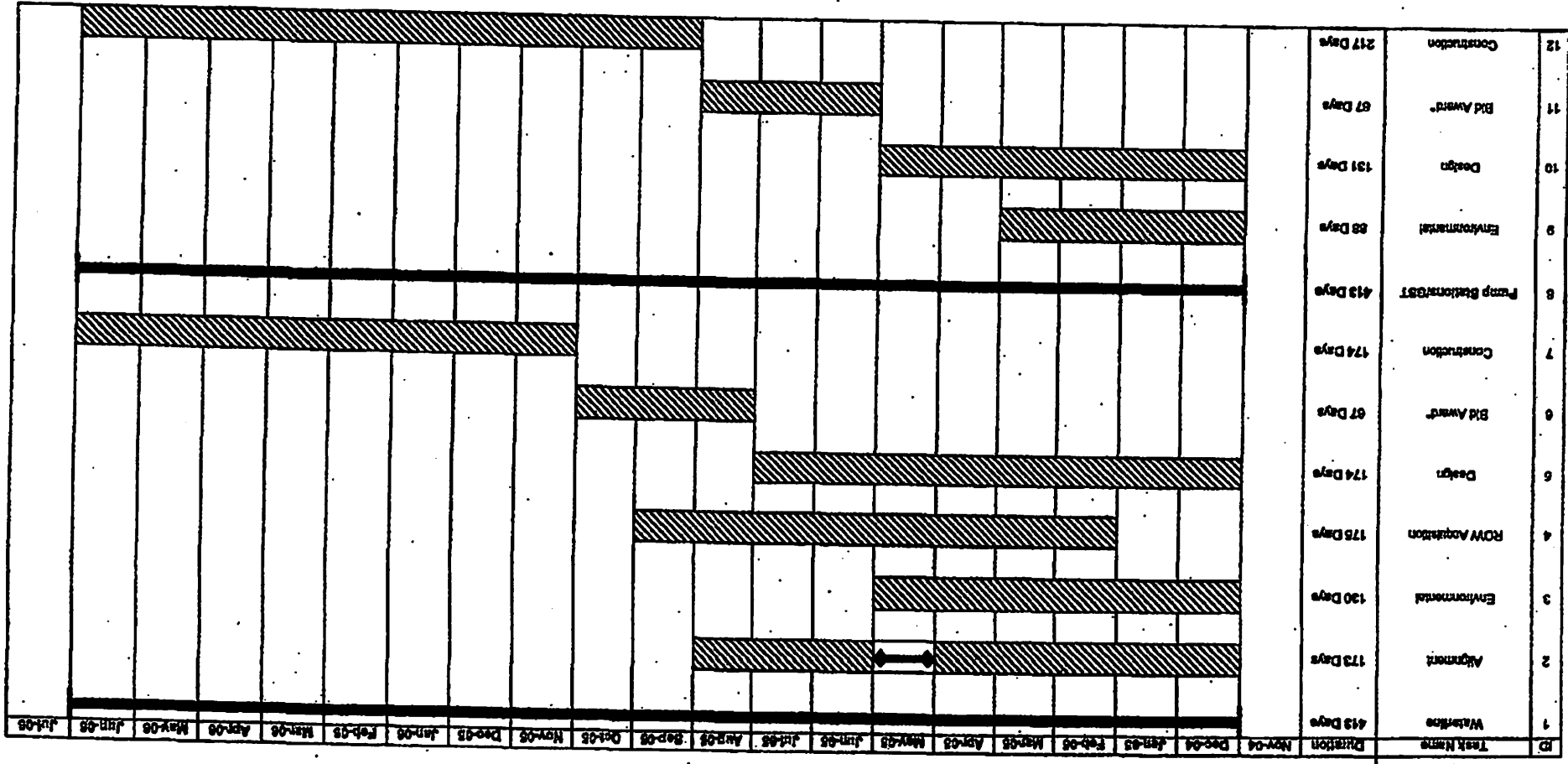
**BRSJ, Ltd., and Lee F. and Beth Ann Signor: 4.9%, based on 36 Projected Connections**

**EXHIBIT E**

**Construction Schedule**



EXHIBIT B  
 Hamilton Popul Road  
 Water System  
 Estimated Construction Schedule



\* Bid date subject to plans and specifications approvals, environmental approvals, assessment acquisition and governmental approvals

**EXHIBIT F**

**Construction Cost Estimate**

11/28/2004 8:28 AM

**EXHIBIT F**  
**Construction Cost Estimate**

Hamilton Pool Road Water System					
November 23, 2004					
Item	Description	Quantity	Unit	Unit Cost	Cost
LCRA Pump	784 gpm @ 250'	1	LS	\$ 290,000.00	\$ 290,000.00
Waterline	12"	25,000	LF	\$ 63.60	\$ 1,587,500.00
Ground Storage Tank		200,000	gal	\$ 0.70	\$ 140,000.00
Hydropneumatic Tank	18,000 gallon	1	LS	\$ 60,000.00	\$ 60,000.00
Pressure Pump Station	1,600 gpm @ 175'	1	LS	\$ 450,000.00	\$ 450,000.00
Sub-total Construction					\$ 2,527,500.00
Essements					\$ 60,000.00
Contingency @ 20 %					\$ 517,500.00
Engineering @ 1.5%					\$ 48,750.00
LCRA Inspection Fee @ 3.5%					\$ 88,462.50
LCRA @ 13%					\$ 475,697.63
<b>TOTAL</b>					<b>\$ 4,134,910.13</b>

**EXHIBIT G**

**Spreadsheet Related to Construction Cost Estimate**

Year	Annual Allocated Expenditures	Cumulative	Outstanding Debt Regional	Capitalized Interest	Annual Interest Expense & Coverage	Principal Retirement	Impact Fee Take or Pay	Actual LUE Connection	LOC Draw Down	Amount Available	
		Expenditures Regional								for Principal Retirement	LOC Reduction
Formby											
1	\$1,302,780	\$1,302,780	\$1,302,780	\$29,984	\$0	\$0	0	0	\$0	\$0	\$0
2	\$0	\$1,302,780	\$1,332,744	\$30,863	\$0	\$0	0	0	\$0	\$0	\$0
3	\$0	\$1,302,780	\$1,363,397	\$0	\$39,198	\$0	30	0	\$205,500	\$166,302	\$205,500
4	\$0	\$1,302,780	\$1,393,397	\$0	\$39,198	\$166,302	30	0	\$205,500	\$166,302	\$411,000
5	\$0	\$1,302,780	\$1,197,094	\$0	\$34,418	\$166,302	30	0	\$205,500	\$171,084	\$816,500
6	\$0	\$1,302,780	\$1,030,792	\$0	\$29,835	\$171,084	30	0	\$205,500	\$175,865	\$822,000
7	\$0	\$1,302,780	\$858,709	\$0	\$24,717	\$175,865	30	0	\$205,500	\$180,783	\$1,027,500
8	\$0	\$1,302,780	\$683,844	\$0	\$19,691	\$180,783	40	0	\$274,000	\$254,339	\$1,301,500
9	\$0	\$1,302,780	\$503,060	\$0	\$14,463	\$254,339	40	0	\$274,000	\$259,537	\$1,575,500
10	\$0	\$1,302,780	\$240,721	\$0	\$7,151	\$259,537	0	0	\$0	\$0	\$1,575,500
11	\$0	\$1,302,780	\$0	\$0	\$0	\$0	0	0	\$0	\$0	\$1,575,500
12	\$0	\$1,302,780	\$0	\$0	\$0	\$0	0	0	\$0	\$0	\$1,575,500
13	\$0	\$1,302,780	\$0	\$0	\$0	\$0	0	0	\$0	\$0	\$1,575,500
14	\$0	\$1,302,780	\$0	\$0	\$0	\$0	0	0	\$0	\$0	\$1,575,500
15	\$0	\$1,302,780	\$0	\$0	\$0	\$0	0	0	\$0	\$0	\$1,575,500
16	\$0	\$1,302,780	\$0	\$0	\$0	\$0	0	0	\$0	\$0	\$1,575,500
Hudson											
1	\$2,828,216	\$2,828,216	\$2,828,216	\$80,449	\$0	\$0	0	0	\$0	\$0	\$0
2	\$0	\$2,828,216	\$2,688,665	\$81,639	\$0	\$0	0	0	\$0	\$0	\$0
3	\$0	\$2,828,216	\$2,750,505	\$0	\$79,077	\$0	20	0	\$137,000	\$57,923	\$137,000
4	\$0	\$2,828,216	\$2,750,505	\$0	\$79,077	\$57,923	30	0	\$205,500	\$129,423	\$342,500
5	\$0	\$2,828,216	\$2,692,662	\$0	\$77,412	\$129,423	63	0	\$587,180	\$489,768	\$909,660
6	\$0	\$2,828,216	\$2,606,159	\$0	\$75,777	\$489,768	63	0	\$587,180	\$493,403	\$1,478,660
7	\$0	\$2,828,216	\$2,076,391	\$0	\$59,696	\$489,403	63	0	\$587,180	\$507,484	\$2,044,040
8	\$0	\$2,828,216	\$1,582,968	\$0	\$45,511	\$507,484	63	0	\$588,650	\$523,039	\$2,612,690
9	\$0	\$2,828,216	\$1,075,504	\$0	\$30,921	\$523,039	66	0	\$589,100	\$558,179	\$3,201,690
10	\$0	\$2,828,216	\$552,465	\$0	\$15,693	\$558,179	0	0	\$0	\$0	\$3,201,690
11	\$0	\$2,828,216	\$0	\$0	\$0	\$0	0	0	\$0	\$0	\$3,201,690
12	\$0	\$2,828,216	\$0	\$0	\$0	\$0	0	0	\$0	\$0	\$3,201,690
13	\$0	\$2,828,216	\$0	\$0	\$0	\$0	0	0	\$0	\$0	\$3,201,690
14	\$0	\$2,828,216	\$0	\$0	\$0	\$0	0	0	\$0	\$0	\$3,201,690
15	\$0	\$2,828,216	\$0	\$0	\$0	\$0	0	0	\$0	\$0	\$3,201,690
16	\$0	\$2,828,216	\$0	\$0	\$0	\$0	0	0	\$0	\$0	\$3,201,690
BRSJ, LTD. (Madrone Ranch) and Signor											
1	\$203,913	\$203,913	\$203,913	\$4,890	\$0	\$0	0	0	\$0	\$0	\$0
2	\$0	\$203,913	\$208,603	\$4,708	\$0	\$0	0	0	\$0	\$0	\$0
3	\$0	\$203,913	\$213,401	\$0	\$8,135	\$0	10	0	\$68,500	\$62,365	\$68,500
4	\$0	\$203,913	\$213,401	\$0	\$8,135	\$62,365	6	0	\$41,100	\$34,965	\$106,000
5	\$0	\$203,913	\$151,037	\$0	\$4,342	\$34,965	4	0	\$27,400	\$23,068	\$137,000
6	\$0	\$203,913	\$116,072	\$0	\$3,237	\$23,068	4	0	\$27,400	\$24,063	\$164,400
7	\$0	\$203,913	\$83,014	\$0	\$2,674	\$24,063	4	0	\$27,400	\$24,726	\$191,600
8	\$0	\$203,913	\$48,951	\$0	\$1,982	\$24,726	4	0	\$27,400	\$25,419	\$219,200
9	\$0	\$203,913	\$44,225	\$0	\$1,271	\$25,419	4	0	\$27,400	\$26,129	\$246,600
10	\$0	\$203,913	\$18,808	\$0	\$541	\$26,129	0	0	\$0	\$0	\$246,600
11	\$0	\$203,913	\$0	\$0	\$0	\$0	0	0	\$0	\$0	\$246,600
12	\$0	\$203,913	\$0	\$0	\$0	\$0	0	0	\$0	\$0	\$246,600
13	\$0	\$203,913	\$0	\$0	\$0	\$0	0	0	\$0	\$0	\$246,600
14	\$0	\$203,913	\$0	\$0	\$0	\$0	0	0	\$0	\$0	\$246,600
15	\$0	\$203,913	\$0	\$0	\$0	\$0	0	0	\$0	\$0	\$246,600
16	\$0	\$203,913	\$0	\$0	\$0	\$0	0	0	\$0	\$0	\$246,600
Project Costs						\$4,134,910					
Capitalized Interest						\$192,399					
Total Debt Issued						\$4,327,309					
Total Amount of Principal Retired						\$4,351,154					
Interest and Coverage Required						\$696,211					
Total LOC Required						\$5,023,513					
LOC Draw Down						\$6,862					
LOC Required											
Formby		\$1,582,751									
Hudson		\$3,193,028									
Signor		\$247,735									
Total		\$5,023,513									

EXHIBIT "G"

## EXHIBIT H

### Form of Letter of Credit

[Date]

**Beneficiary:**

Lower Colorado River Authority

Attn: Executive Manager, Water & Wastewater Utility Services

3700 Lake Austin Blvd.

Austin, Texas 78703

Ladies and Gentlemen:

We hereby issue this irrevocable standby letter of credit ("Letter of Credit") in your favor by the order of our client \_\_\_\_\_ [Landowner], for U.S. Dollars \_\_\_\_\_ and 00/100 (\$\_\_\_\_.00) available for payment to you by means of cashier's check upon presentation of the original of this Letter of Credit as well as an original Beneficiary's Statement, in the form of either "Exhibit 1" or "Exhibit 2" attached hereto, as applicable, signed by your authorized representative. This Letter of Credit is extended in order to satisfy \_\_\_\_\_ [Landowner]'s obligations pursuant to that certain Utility Facilities Construction and Water Services Agreement ("Agreement") dated \_\_\_\_\_, between the Lower Colorado River Authority ("LCRA") and \_\_\_\_\_ [Landowner].

Special conditions agreed upon between LCRA and \_\_\_\_\_ [Landowner] per Agreement:

- 1) In January of each year beginning in January 2007, LCRA will review the number of retail water service connections that were made to the LCRA System by December 31 of the preceding year. Based on this review:
  - a) the aggregate balance of this Letter of Credit will be reduced, pursuant to the terms of Article II of the Agreement, by the amount of \$\_\_\_\_ for each LUE located within the \_\_\_\_\_ Development that connected to the System for wastewater services by December 31 of the previous calendar year; and,
  - b) LCRA shall be entitled to draw on the Letter of Credit in the amount of \$\_\_\_\_ multiplied by the sum of: (i) the number of LUEs by which the cumulative number of Projected Connections, according to Article II of the Agreement, exceeds the cumulative number of actual water service connections to the System as of December 31 of the previous calendar year; minus, (ii) the number of LUEs for which LCRA previously has drawn payment from this Letter of Credit (or any predecessor letter to this Letter of Credit) in any previous year.
- 2) The Agreement provides that the date by which LCRA shall be entitled to draw on the Letter of Credit may be postponed – pursuant to Article II of the Agreement in the event LCRA fails to substantially complete the Project by \_\_\_\_\_ [date], by the same amount of time that it takes the LCRA to obtain a certificate of substantial completion for the Project beyond \_\_\_\_\_ [date].

**EXHIBIT H-1**  
**BENEFICIARY'S STATEMENT**

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

"I, the undersigned, an authorized representative of the Lower Colorado River Authority ("LCRA"), do hereby certify that:

- (a) \_\_\_\_\_ ("Landowner") is developing the \_\_\_\_\_ Development in Travis County, which development receives water service from LCRA;
- (b) Your financial institution issued to LCRA the attached letter of credit ("Letter of Credit") on behalf of Landowner related to Landowner's obligations pursuant to that certain Utility Facilities Construction and Water Services Agreement ("Agreement") dated \_\_\_\_\_, between LCRA and Landowner;
- (c) During the previous calendar year, LCRA received impact fees for \_\_\_\_\_ LUEs of water service connections in the \_\_\_\_\_ Development; accordingly, pursuant to the Agreement (particularly Article II), availability of funds under this Letter of Credit will be reduced by the amount of \_\_\_\_\_ dollars (\$\_\_\_\_.00) multiplied by the \_\_\_\_\_ LUEs for which LCRA received impact fees for a total reduction of \_\_\_\_\_ dollars (\$\_\_\_\_.00);
- (d) The cumulative number of Projected Connections, according to Article II of the Agreement, exceeded the cumulative number of actual water service connections to the LCRA System, as of December 31 of the previous calendar year, by \_\_\_\_\_ LUEs; accordingly, pursuant to the Agreement (particularly Article II), LCRA is entitled to draw from the Letter of Credit the amount of \_\_\_\_\_ dollars (\$\_\_\_\_.00) multiplied by \_\_\_\_\_ LUEs, for a total draw of \_\_\_\_\_ dollars (\$\_\_\_\_.00);
- (e) LCRA further requests that your financial institution amend this letter to reduce the total funds availability by an amount equal to the amounts of the reduction and draw discussed in the preceding paragraphs of this Beneficiary's Statement; and,
- (f) This draw request is made in conformity with the terms of the Agreement, particularly Article II thereof.

LOWER COLORADO RIVER AUTHORITY

\_\_\_\_\_  
Authorized Representative

**EXHIBIT H-2**  
**BENEFICIARY'S STATEMENT**

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

"I, the undersigned, an authorized representative of the Lower Colorado River Authority, do hereby certify that:

- (a) the Letter of Credit is scheduled to expire by its own terms in less than thirty (30) days;
- (b) LCRA provided written notice to \_\_\_\_\_ [Landowner], in accordance with the terms of the Agreement between LCRA and Landowner, prior to the date of this statement that requested \_\_\_\_\_ [Landowner] to provide LCRA an acceptable amendment extending the expiration date of this Letter of Credit or a substitute letter of credit in an amount equal to the remaining balance available under this Letter of Credit;
- (c) LCRA has not received an acceptable amendment to this letter of credit extending the maturity or a new, substitute letter of credit as requested;
- (d) LCRA is authorized to draw on the entire remaining balance of the Letter of Credit in accordance with that certain Utility Facilities Construction Water Services Agreement ("Agreement") dated \_\_\_\_\_ [date] between the Lower Colorado River Authority and \_\_\_\_\_ [Landowner];
- (e) The amount of this draft is \_\_\_\_\_ United States dollars (\$ \_\_\_\_\_), which amount represents an amount currently available for drawing under your Irrevocable Standby Letter of Credit No. \_\_\_\_\_;
- (f) This draw request is made in conformity with the terms of the Agreement, particularly Article II thereof.

LOWER COLORADO RIVER AUTHORITY

\_\_\_\_\_  
Authorized Representative



## **EXHIBIT I**

### **WATER CONSERVATION MEASURES**

#### **I. Mandatory Requirements**

- A. Landscape irrigation systems shall not be mandatory.
- B. Landscape irrigation systems, if installed, will be required to include the following water conservation features:
  - 1. Rain and/or moisture sensors.
  - 2. Backflow prevention device installed in accordance with applicable state laws.
  - 3. Pressure reducing valve and/or remote control valves for each station with flow control.
  - 4. Pressure reducing valve, for which pressure reducing valve installed in-line at the meter and serving house as well as irrigation system, is acceptable.
  - 5. Zoning of irrigation system based on plant water requirements.
  - 6. Multiple cycle controllers with an irrigation water budget feature.
  - 7. Minimization of overspray onto hardscapes by design, maintenance and scheduling practices. Due to overspray, subsurface drip irrigation is encouraged but not required.
- C. Contractors installing irrigation systems must provide system design plans to the homeowner.
- D. Spray irrigation for each home/business shall be limited to 2.5 times the foundation footprint, with a 12,000 sq foot maximum. The footprint may include both the house and the garage, but not the driveway or patio.
- E. All irrigated and newly planted turf areas will have a minimum soil depth of 4 to 6 inches. Builders and owners will import soil if needed to achieve sufficient soil depth. Soil in these areas may be either native soil from the site or imported, improved soil. Improved soil will be a mix of no less than twenty percent compost blended with sand and loam. Caliche shall not be considered as soil.
- F. Builders must provide homeowners a landscape option using only trees, shrubs and flowers selected from a native and adapted plant list approved by LCRA or Travis County.
- G. Landscape companies providing maintenance on all common areas and individual landscapes must only use integrated pest management (IPM) to minimize exposure of storm water runoff to chemicals (fertilizers, herbicides and pesticides). IPM prohibits routine and "preventive" broadcast application of broad-spectrum chemical pesticides in the absence of evidence of active pests. IPM techniques include the following:
  - 1. Accurately identify pest or disease problem before considering treatment;
  - 2. Explore cultural or mechanical controls (i.e. modification of irrigation, pruning, etc);
  - 3. Look for biological control options (i.e. predatory insects for pest control, Bt for caterpillar control, etc.);
  - 4. Consider chemical control only if other options fail;
  - 5. Utilize least-toxic and targeted chemical controls;
  - 6. Baits are preferable to broad-spectrum chemical application;
  - 7. Follow instructions on chemical labels exactly; and,
  - 8. Perform periodic monitoring for early detection of potential problems.

- H. Landscape companies providing maintenance on all common areas and individual landscapes must only use the following fertilizer practices:
  - 1. Fertilization of turf areas shall not be required;
  - 2. In turf areas that are to be fertilized, natural or certified organic fertilizers with less than 4% phosphorus shall be used; and,
  - 3. Fertilizer shall be applied at a rate of ½ pound of nitrogen per 1000 square feet, not to exceed a total of one pound of nitrogen per 1000 square feet per year.
- I. Builders or property managers must present IPM plans and fertilizer practices that meet the deed restriction requirements to home buyers at the time of closing.
- J. As passed by HB 645 in the 2003 Texas Legislative session, the homeowners or property owners association documents (including declaration of covenants, articles of incorporation, bylaws, or any other document of the association which binds members of the association) shall not restrict the property owner from:
  - 1. implementing measures promoting solid-waste composting of vegetation, including grass clippings, leaves or brush, or leaving grass clippings uncollected on grass;
  - 2. installing rain barrels or a rainwater harvesting system; or
  - 3. implementing efficient irrigation systems, including underground drip or other drip systems.
- K. The homeowners or property owners association documents (including declaration of covenants, articles of incorporation, bylaws, or any other document of the association which binds members of the association) shall not require:
  - 1. a defined irrigation schedule specified by the association except if that defined irrigation schedule is mandated by the association's water supplier in order to curtail outdoor water use.
  - 2. maintenance of the landscape to a specified level that requires the property owner to irrigate his or her landscape,
  - 3. installation or maintenance of any specific variety or limited choice of varieties of turf grass.
  - 4. the homeowner to install a minimum percentage of turf in the landscape.

## **II. Suggested Guidelines**

Builders and individual lot owners shall be encouraged and adopt the following where economically feasible and allowed by federal, state and local law and regulations:

- 1. No more than fifty percent of the landscape should be planted in turf. Builders and owners are encouraged to use St. Augustine turf only in shaded areas. Builders and owners will reuse native soils whenever possible.
- 2. Shrubs and flowers should be selected from native and adapted plant list approved by the LCRA or Travis County. The use of invasive plants will be avoided.
- 3. Include rainwater storage and gutters sized appropriately to catch rainwater from the rooftop.
- 4. Galvanized metal roofs are encouraged to encourage rainwater storage.
- 5. Include low water use appliances. This includes not only toilets and showerheads, but also dishwashers and clothes washers.

6. Incorporate treated effluent/rain water/storm water systems to meet certain irrigation water needs, including common areas.
7. Maintain a minimum of two inches of mulch in all shrub and bed areas.

## **EXHIBIT J**

### **Language for Plat Notes and Deed Restrictions/Restrictive Covenants**

#### **Plat Notes**

It is declared that all of the property of the subdivision shall be held, sold, and conveyed subject to the following restrictions and conditions: All water quality protection features, including any filter strips, buffer zones, greenbelt areas and impervious cover limitations, depicted or provided for on this plat or incorporated in the development of a lot shall be maintained for water quality protection and shall not be altered, damaged, or covered. This restriction against altering the physical elements of the water quality protection measures shall run with the land, and the owner of any real property interest in any of the property described on this plat, as well as any governmental entity with jurisdiction over platting or subdivision of the Tract or over the roads within the Tract, shall have the right to enforce this restriction by any proceeding at law or in equity.

It is declared that all of the property of the subdivision shall be held, sold, and conveyed subject to the following restrictions, covenants, and conditions contained in the deed restrictions on file at Vol. \_\_\_\_\_, Page \_\_\_\_\_, Real Property Records of \_\_\_\_\_ County, Texas.

#### **Deed Restrictions/Restrictive Covenants**

All water quality protection features, including any filter strips, buffer zones, greenbelt areas and impervious cover limitations depicted or provided for on the plat for the \_\_\_\_\_ subdivision or incorporated in the development of a lot shall be maintained for water quality protection and shall not be altered, damaged, or covered. This restriction against altering the physical elements of the water quality protection measures shall run with the land, and the owner of any real property interest in any of the property described on the plat for the \_\_\_\_\_ subdivision, as well as any governmental entity with jurisdiction over platting or subdivision of the Tract or over the roads within the Tract, shall have the right to enforce this restriction by any proceeding at law or in equity.

## **EXHIBIT K**

### **Required Submittals for LCRA Review Of Proposed Plats, Deed Restrictions, Restrictive Covenants and Conservation Easements**

1. Landowner shall submit an environmental assessment by a professional environmental firm that identifies all sensitive environmental features on site. Assessment shall identify appropriate setback distance from all features, including stream setbacks and buffer zones per the FWS Measures.
2. If centralized wastewater treatment is proposed for the Tract, Landowner shall submit proposed wastewater treatment plans with documentation showing non-degradation of surface or ground water. Otherwise, Landowner must comply with applicable on-site septic system regulations.
3. Landowner shall submit a Stormwater Management Plan that details the structural and non-structural measures that will be employed to ensure no increase in stormwater pollutant loads and ensure preservation of the current form and function of the drainage network. In order for review agencies to determine the adequacy of the Stormwater Management Plan, the following items shall be required:
  - a. Data showing current levels of regulated pollutants, and, if available, historic stream flow data for streams on the Tracts that drain at least 40 acres. This is necessary baseline data for planning and monitoring the effectiveness of water quality and quantity treatment measures.
  - b. Detailed plans showing the siting and sizing of structural water quality measures to mitigate the impact of increased volume and frequency of runoff from the impervious areas. Roads that have curbs, gutters and most likely storm drains will serve high-density development areas. This concentrated runoff will need to be treated via water quality ponds that at least capture the runoff from the 1-year, 3-hour storm for the developed areas. Technical support documents need to demonstrate that Best Management Practices (BMPs) will not increase stormwater pollutant loading and will retain the existing hydrology of the watershed and receiving streams as practicable. The plans need to show that the treated water is conveyed in a non-erosive manner from the BMP to the receiving stream.
4. Landowner shall submit maintenance plans for structural and non-structural BMPs. Plans shall include language that names the party responsible for maintenance of BMPs. Language regarding the responsible party shall be included on subsequent submittals for platting and site development.
5. Landowner shall submit an Integrated Pest Management Plan (IPM) that details the plans for minimization of chemicals and fertilizers that may be applied to landscape areas. As with the BMP maintenance plans, the IPM Plan shall name the party responsible for enforcement and implementation of the IPM Plan.

**EXHIBIT L**

**FWS Measures**

## Appendix 4. Interim Water Quality Protection Measures

### U.S. Fish and Wildlife Service Recommendations for Protection of Water Quality of the Edwards Aquifer

September 1, 2000

These recommendations were produced with the intent of identifying measures that would achieve an objective of "non-degradation" of water quality for projects within the Edwards Aquifer. While true "non-degradation" is not technically possible today, these recommendations strive to maintain current water quality. Anyone implementing projects following these recommendations is encouraged to go beyond water quality maintenance and demonstrate ways that the project can achieve improved water quality.

These recommendations to protect water quality are current as of the date listed above and will change as new information becomes available. They are not rules, regulations, laws or requirements. These recommendations were formulated by reviewing existing scientific information, existing rules and regulations, and by working closely with water quality engineers and biologists. These recommendations pertain to the protection of water quality for Federally listed endangered and threatened species. These measures do not address other possible impacts to Federally listed endangered or threatened species.

It is recognized that strict adherence to any general set of development recommendations may be problematic at the project level. Problems that arise are usually very site-specific and should be dealt with on a case-by-case basis. Variations from these recommendations could be used and still achieve the "non-degradation" objective. In cases where flexibility is appropriate, variations should be designed to achieve the "non-degradation" objective.

#### 1. Buffer Zones.

Buffer zones (undisturbed natural areas) should be established for the stream drainage system and for sensitive environmental features within the Edwards Aquifer watersheds.

- A. Buffer zones should remain free of construction, development, or other alterations. The number of roadways crossing through the buffer zones should be minimized and constructed only when necessary to safely access property that cannot otherwise be accessed. Other alterations within buffer zones could include utility crossings, but only when necessary, fences, low impact parks, and open space. Low impact park development within the buffer zone should be limited to trails, picnic facilities, and similar construction.

Low-impact development design is defined not only by impervious cover, but also by a philosophy of development planning, engineering design and construction, and tenant occupation that reduces the impact upon the surrounding environment. The goal of low-impact development design is to produce a product with the least effect upon the natural biota and the hydrologic regime of the site. A source of guidance for such design may be obtained from Low-Impact Development Design Manual (hereafter LIDDM), Department of Environmental Resources, Prince George's County, Maryland, November 1997. Site specifics will affect the applicability of the measures to the Central Texas area.

## 2. Low-impact development design.

C. Sensitive environmental features should have a minimum buffer of 150 feet around the feature (radius). If the drainage to a feature is greater than 150 feet in length, then the minimum buffer should be expanded to a minimum of 300 feet for the area draining into the feature. Sensitive environmental features include caves, sinkholes, faults with solution-enlarged openings, fracture zones with solution-enlarged openings, springs, seeps, or any area that holds water or supports mesic vegetation for sustained periods. Possible sensitive features and sensitive features as defined by the Instructions to Geologists for Geologic Assessment on the Edwards Aquifer Recharge Transition Zone, TNRCC document 0586 (Rev. 6/1/99) should have these buffers established.

B. Each stream should have an undisturbed native vegetation buffer on each side as follows:

Streams draining 640 acres (one square mile) or greater should have a minimum buffer of 300 feet from the centerline on each side of the stream.

Streams draining less than 640 acres but 320 or more acres should have a minimum buffer of 200 feet from the centerline on each side of the stream.

Streams draining less than 320 acres but 128 or more acres should have a minimum buffer of 100 feet from the centerline on each side of the stream.

Streams or swales draining less than 128 acres but 40 or more acres should have a minimum buffer of 50 feet from the centerline on each side of the drainage.

Streams or swales draining less than 40 acres but 5 or more acres should have a minimum buffer of 25 feet from the centerline on each side of the drainage.

that does not significantly alter the existing vegetation. Parking lots and roads are not considered low impact. Neither golf course development nor wastewater effluent irrigation should take place in the buffer zone. Stormwater from development should be dispersed into overland flow patterns before reaching the buffer zones.



Recharge zone development should be limited to no more than 15% impervious cover in the uplands zone. Contributing zone development should be limited to no more than 20% impervious cover in the uplands zone. The uplands zone includes all land not within a buffer zone and not within golf course turf areas subject to fertilizer, pesticide and herbicide applications. Buffer zones and golf course turf areas should not be included in impervious cover calculations.

Preservation of large, undisturbed upland areas through the use of innovative site design techniques that, for example, cluster development is encouraged. Cluster development should also incorporate design principles that: reduce roadway widths, reduce residential street lengths using alternate street layouts that increase the number of homes per unit length, reduce residential street right-of-way widths, minimize the use of residential street cul-de-sacs using alternative turnaround designs, use vegetated channels instead of curb and gutters, and use subdivision designs that incorporate, where appropriate, narrower lot frontages. Additional recommendations for low impact designs include the use of non-toxic building materials, water conservation, rainwater harvesting, wastewater recycling, and regrading.

### 3. Provisions for increased development intensity.

Onsite development intensity may be increased if additional land, conservation easement, or development rights are acquired offsite. Offsite land should be located in the same watershed and aquifer zone as the development. Offsite land being used to offset higher development on a project should not include areas that would be part of a buffer system under these recommendations.

In the recharge zone, development should not exceed a maximum of 30% on-site impervious cover of the upland zone (developed site) when sufficient offsite land is provided. Such offsite land should be maintained in an undeveloped condition (25 acre tracts or larger) in perpetuity such that the effective impervious cover (developed land plus offsite land) does not exceed 10% impervious cover. In the contributing zone, development should not exceed 35% on-site impervious cover of the upland zone when sufficient offsite land is provided. Such offsite land should be maintained in an undeveloped condition in perpetuity such that the effective impervious cover of the combined tracts does not exceed 15%. Golf course areas receiving fertilizer, pesticide, and herbicide applications should be excluded from the uplands area calculation and should not be used to calculate allowable impervious cover. The offsite acreage may be reduced when more sensitive land can be preserved; however, this consideration should be made on a case-by-case basis.

Offsite land should be in a low impervious cover condition (2 percent or less) in perpetuity. Conservation easements or deed restrictions should be used to ensure permanent protection. Offsite lands should also have provisions made for appropriate long term management, which

could include a property owner, home-owners association, river authority, municipality, county or land trust. Offsite land should be in large contiguous areas and used to augment existing conservation efforts, to the greatest extent practical.

#### 4. Stormwater quality treatment.

The stormwater management goal should be to prevent degradation of the aquifer and surface water by meeting specific non-degradation performance objectives. Satisfying the non-degradation goal should be demonstrated by meeting the following two objectives:

The development should not result in an increase in annual average stormwater pollutant loads over pre-development conditions for discharges from the site.

The development should preserve the current form and function of the drainage network/stream system. This may be achieved by either non-structural or structural means, depending upon the nature of the development.

The use of vegetative practices is encouraged to meet the goals of non-degradation and erosion control. Key to the success of vegetative practices is providing a low impact development design incorporating elements that more closely mimic the existing hydrologic setting. Developments or portions of developments at 10% impervious cover or lower should be able to achieve such designs. Non-structural approaches are encouraged whenever feasible in order to avoid concentrating runoff patterns. Relying primarily on vegetative and other non-structural approaches increases the likelihood of long-term water quality protection as well as minimizing future maintenance responsibilities. Developments or portions of a development with impervious cover greater than 10% are encouraged to rely on such practices to achieve non-degradation, though it is understood that permanent structural best management practices should be employed in many instances. When non-structural controls are used to achieve non-degradation, then it should be demonstrated for streambank erosion that the pre-development levels of stream flow are maintained for streams draining at least 40 acres. If the site to be developed lies within a contributing area of less than 40 acres, or if there is no defined channel at the outlet, then pre-development levels of flow should be maintained for the point(s) of the greatest drainage area within the development. When structural controls are used, capturing the runoff from the 1-year, 3-hour storm event, and releasing it over a 24-hour or greater period should accomplish stream channel erosion protection.

**5. Construction-related erosion and sedimentation controls.**

Development should incorporate an erosion control plan in accordance with the temporary best management practices of the Nonpoint Source Pollution Control Technical Manual and/or the Technical Guidance Manual on Best Management Practices (June 1999, TNRCC, RG-348). Temporary erosion and sedimentation control plans should also be applied to individual lots as they are developed through appropriate mechanisms.

**6. Maintenance plans.**

Plans for maintenance of structural water quality and erosion controls should be prepared and implemented in accordance with the Nonpoint Source Pollution Control Technical Manual and/or the Technical Guidance Manual on Best Management Practices (June 1999, TNRCC, RG-348). Documentation should be provided that ensures that sufficient annual funding exists to properly maintain stormwater treatment facilities.

**7. Environmental education.**

An educational program should be implemented to inform the public about the sensitivity of the aquifer and their potential impacts on water quality. The developer or owner of the project should include within the development plans an environmental educational program for residential, industrial, and/or commercial developments. Topics may include information about endangered aquatic species, karst geology, best management practices, buffer zone maintenance, fertilizer application, pesticide use, organic gardening, and disposal of hazardous household chemicals. Materials used should be obtained from the Fish and Wildlife Service, TNRCC, American Water Works Association, National Ground Water Association, Water Environment Federation, or from another appropriate source. Development of kiosks, displays, video, and/or other media to present material covering a variety of non-point source pollution control topics should be encouraged. Alternative educational efforts, such as site-specific recharge feature displays and educational nature trails should also be encouraged. Similarly, all developments should include an integrated pest management plan to minimize exposure of stormwater runoff to chemicals (fertilizers, herbicides and pesticides).