

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 7, 2008

Ms. LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC-105
Austin, Texas 78711-3087

CHIEF CLERK'S OFFICE

2008 NOV -7 PM 4:05

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Re: TCEQ Docket No. 2008-0648-UCR; Consideration of a request for a Commission Order approving a contract designating service areas between the Lower Colorado River Authority (LCRA) and the City of Smithville (City).

Dear Ms. Castañuela:

Enclosed for filing with the Texas Commission on Environmental Quality (Commission) is the original plus seven copies of the following backup materials for the November 19, 2008, agenda item on the above referenced matter:

1. Agenda Executive Summary;
2. Caption;
3. Staff memo detailing financial, managerial, and technical capabilities of the City to provide continuous and adequate service in the affected area;
4. Request for Commission order approving a Texas Water Code section 13.248 agreement filed by LCRA on September 21, 2007, and declared administratively complete on October 31, 2007;
5. Texas Water Code section 13.248 agreement between LCRA and the City executed on August 9, 2007;
6. Proposed map of the service area subject to the section 13.248 agreement;
7. Map consents;
8. CCN Nos. 20377 and 20769; and
9. Proposed Order.

Please do not hesitate to contact me at 239-0575 if you have any questions regarding this material. Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in cursive script that reads "Stefanie Skogen".

Stefanie Skogen
Staff Attorney
Environmental Law Division

Enclosure

cc: Heidi Graham, Water Supply Division, MC-153
Mailing List

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 7, 2008

Leigh Sebastian
Lower Colorado River Authority
P.O. Box 220 – Mail Stop H424
Austin, Texas 78767-0220

Mark A. Bunte
City of Smithville
P.O. Box 449
Smithville, Texas 78957

Re: TCEQ Docket No. 2008-0648-UCR; Consideration of a request for a Commission Order approving a contract designating service areas between the Lower Colorado River Authority (LCRA) and the City of Smithville (City).

Dear Ms. Sebastian and Mr. Bunte:

This letter is to inform you that the above-referenced application has been set on the Agenda for consideration by the Texas Commission on Environmental Quality (TCEQ). This Agenda will occur on November 19, 2008, at 1 p.m. in Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas. Included with this letter are the Agenda backup materials to be considered by the Commission.

Persons with disabilities who plan to attend this hearing and who need special accommodations at the Agenda should call the TCEQ Office of Public Assistance at 1-800-687-4040 or 1-800-RELAY-TX (TDD) at least one week prior to the hearing. If you have any procedural questions, you may contact the TCEQ Office of Public Interest Counsel at 1-512-239-6363. If you have any other questions about this matter, you may contact me at 1-512-239-0575.

Sincerely,

A handwritten signature in cursive script that reads "Stefanie Skogen".

Stefanie Skogen
Staff Attorney
Environmental Law Division

Enclosure

cc: Heidi Graham, Water Supply Division, MC-153
Mailing List

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

TO: Texas Commission on Environmental Quality **DATE:** November 7, 2008
THRU: LaDonna Castañuela, Chief Clerk
FROM: Stefanie Skogen, Environmental Law Division
SUBJECT: **TCEQ Docket No. 2008-0648-UCR.** Consideration of a request for a Commission Order approving a contract designating service areas between the Lower Colorado River Authority (LCRA) and the City of Smithville

DESCRIPTION OF APPLICATION

Applicant: LCRA and the City of Smithville
Regulated Activity: Retail sewer utility service
Type of Application: Request for a Commission Order approving a contract
Commission Action: Hearing regarding approval of the contract
Authority: Texas Water Code § 13.248 and 30 Texas Administrative Code § 291.117

FACTUAL BACKGROUND

LCRA, sewer certificate of convenience and necessity (CCN) No. 20769, and the City of Smithville (City), sewer CCN No. 20377, provide retail sewer service in Bastrop County, Texas. On August 9, 2007, LCRA and the City entered into an agreement regarding their respective sewer service areas pursuant to section 13.248 of the Texas Water Code. Under the agreement, LCRA will sell its interest in a wastewater treatment plant and other improvements to the City of Smithville. Along with the sale, LCRA will transfer a portion of CCN No. 20769 to the City, thereby incorporating the area into CCN No. 20377. The parties finalized the sale of the plant and other improvements on December 19, 2007. There is one customer in the transferred area that will now be served by the City of Smithville.

Both parties have reviewed the CCN map to be issued with the Commission's Order and have approved it.

LEGAL AUTHORITY

The Texas Water Code prohibits a utility, a utility operated by an affected county, or a water supply corporation from rendering retail water or sewer utility service directly or indirectly to the

public without first obtaining a CCN.¹ Conversely, a municipality is not required to obtain a CCN to provide retail water service.² However, a municipality may not provide service to areas that are outside its corporate boundaries but within the CCN of another retail public utility without first obtaining written consent from that retail public utility.³ The Texas Water Code and TCEQ rules allow retail public utilities to enter into service area agreements and have the Commission affirm the agreements by amending the entities' respective CCNs.⁴

The request to approve a 13.248 agreement is not subject to the notice provisions of title 30, section 291.106 of the Texas Administrative Code, which apply to applications for new and amended CCNs. The Commission may approve the service area agreement pursuant to section 13.248 of the Texas Water Code with appropriate notice provided under the Open Meetings Act. The Executive Director will mail notice of the hearing upon the setting of an Agenda date.

BASIS FOR STAFF RECOMMENDATION

The following items were considered in developing the staff's recommendation:

1. Request for a Commission Order approving the 13.248 agreement filed by LCRA on September 13, 2007 (Application No. 35821-C);
2. Agreement between LCRA and the City, executed on August 9, 2007;
3. Map of the service area subject to the 13.248 agreement submitted by LCRA; and
4. Financial, managerial, and technical analysis of the City to operate in the affected area.

STAFF RECOMMENDATION

Staff has confirmed that both parties are retail public utilities with active sewer CCNs and that the area the parties are seeking to transfer is either dually certificated to both parties or abuts the CCN of the entity receiving the CCN. The facilities to be transferred are already part of the City's sewer system, but LCRA has operated and owned an interest in them. LCRA is transferring its ownership interest and the operation of the plant to the City, along with the CCN

¹ TEX. WATER CODE ANN. § 13.242(a) (Vernon Supp. 2006).

² A municipality is a "retail public utility" under section 13.002(19) of the Texas Water Code but is not a "utility" under section 13.002(23). Therefore, the section 13.242(a) requirement that a "utility" must obtain a CCN before providing retail water utility service does not apply to a municipality.

³ *Id.* § 13.242(b).

⁴ TEX. WATER CODE ANN. § 13.248 (Vernon 2000); 30 TEX. ADMIN. CODE § 291.117 (West 2008). Section 13.248 states, "Contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity."

for that area. The one customer to be transferred from LCRA's service to the City's service has agreed to the change. Further, staff is satisfied that the City possesses the adequate financial, managerial, and technical capability to provide continuous and adequate service to the area being transferred. The City already serves approximately 2,000 sewer connections and is ranked superior. Its utility fund has a debt service coverage ratio of 16.7:1.⁵ Therefore, based on the facts stated in the application and the supporting documentation submitted by LCRA, staff supports the request for a Commission Order approving a contract designating service areas between LCRA and the City.

STAFF CONTACTS

Stefanie Skogen, Environmental Law Division (239-0575)
Heidi Graham, Water Supply Division (239-0844)

⁵ A retail public utility's debt service coverage ratio should be above 1:1. More than 1.25:1 is considered to be good.

CAPTION
LOWER COLORADO RIVER AUTHORITY
Application No. 35821-C

TCEQ Docket No. 2008-0648-UCR. Consideration of a request for a Commission Order approving a contract designating service areas between the Lower Colorado River Authority (LCRA), sewer certificate of convenience and necessity (CCN) No. 20769, and the City of Smithville, sewer CCN No. 20377, in Bastrop County, Texas, pursuant to section 13.248 of the Texas Water Code. The City of Smithville is purchasing sewer facilities from LCRA that serve the area being transferred and will provide service to the customer being transferred. Under the contract, LCRA will transfer a portion of its sewer CCN to the City of Smithville along with the purchased facilities. (Stefanie Skogen, Heidi Graham)

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Environmental Law Division **Date:** January 18, 2008
Thru: Heidi Graham/Tammy Benter
From: Dan Smith
Subject: Contract Service Agreement Pursuant to Texas Water Code, Section 13.248, from the City of Smithville, Certificate of Convenience and Necessity (CCN) No. 20377, to Transfer a Portion of CCN No. 20769 from Lower Colorado River Authority (LCRA) in Bastrop County; Application No. 35821-C

CN: 600643894; RN: 101386290

In my opinion, the City of Smithville has demonstrated adequate financial, managerial and technical capability to provide service to the area contracted for transfer.

Signed: Dan Smith Date: January 18, 2008

The City of Smithville and LCRA entered an agreement September 26, 1997 for construction of a new wastewater treatment plant and other improvements to the City's wastewater system, in addition to LCRA's operation of the wastewater treatment plants. In the process, Smithville had CCN equal to their water CCN, generally for their city limits. LCRA applied for and received, sewer CCN area for surrounding area, approximately Smithville's extraterritorial jurisdiction area, and another are to the northwest. The totals of Smithville's sewer CCN area is 1440 acres and LCRA's is another 6456 acres.

Now, Smithville has asked LCRA to sell their interests and related CCN area to Smithville. They have entered a contract dated August 9, 2007, which does not specify an amount, but states the price shall be that amount necessary to defease the outstanding LCRA debt associated with the Wastewater System Assets, at execution of the agreement estimated to be approximately \$2.5 mil. LCRA will notify Smithville of the price ten days before closing.

I have reviewed an unqualified audit for the City of Smithville for the fiscal year ended 9/30/06. The balance sheet shows utility fund total assets of \$5,222,498,

long-term liabilities of \$709,940, and net assets (equity) of \$3,882,073 for a debt-to-equity ratio of .18:1. The debt-to-equity ratio of both general fund and utility is .68:1. The statement of revenues and expenses showed a net income before transfers of \$1,024,551 after covering depreciation expense of \$216,864 and interest expense of \$26,575. So cash available for debt service was \$1,267,990 and required debt service was \$76,053 for a high debt service coverage ratio of 16.7:1 for the utility fund only. Adding general fund interest and principal obligations to these figures (but not tax revenues) reduces the debt service coverage ratio to a still good, 2.5:1.

The present area of the City of Smithville's water and sewer CCNs is 1440 acres. The additional area of LCRA's sewer CCN is 6456 acres, or about a 450% increase. However, the system infrastructure would be substantially complete and additional capital requirement should not be substantial.

Smithville presently provides water service to approximately 2,000 connections and is ranked superior. The area has grown in population and should continue, so revenues should continue to increase.

This information supports a finding of adequate financial and managerial capability to provide service to the area requested.



September 13, 2007

VIA HAND DELIVERY

Tammy Holguin-Benter
Utilities & Districts Section
Water Permits & Resource Management Division
Texas Commission on Environmental Quality
12100 Park 35 Circle
Building F, Room 31050
Austin, Texas 78711-3087

RECEIVED
SEP 24 2007
TEXAS COMMISSION
ON
ENVIRONMENTAL QUALITY

Re: Texas Water Code §13.248 Agreement between the Lower Colorado River Authority (CCN No. 20769) and the City of Smithville (CCN No. 20377)

Dear Ms. Benter:

Enclosed please find the following:

- 1) Four copies of the Agreement for Sale of Wastewater System Assets (the Agreement) between the Lower Colorado River Authority (LCRA) and the City of Smithville (the City);
- 2) Four copies of the map depicting the service area to be transferred from LCRA to the City;
- 3) CD with the electronic data used to create the service area map; and
- 4) One Hundred and ⁰⁰/₁₀₀ Dollars for the filing fee.

The Agreement transfers LCRA's interests in the Smithville wastewater system assets to the City, including the service area that is depicted on the map.

In accordance with 30 TEX. ADMIN. CODE §291.117, LCRA and Smithville respectfully request that the Agreement between them be noticed and set on the Texas Commission on Environmental Quality agenda so that the Agreement may be considered and incorporated into the appropriate areas of public convenience and necessity, as set forth in Texas Water Code §13.248.

Please do not hesitate to contact me at (512) 473-4024 should you have any questions or concerns regarding this request. Thank you in advance for your attention to this matter.

Sincerely,

Leigh Sebastian
Associate General Counsel

RECEIVED
SEP 21 2007
TEXAS COMMISSION
ON
ENVIRONMENTAL QUALITY

**AGREEMENT FOR SALE
OF WASTEWATER SYSTEM ASSETS**

THIS AGREEMENT FOR SALE OF WASTEWATER SYSTEM ASSETS (the "Agreement") by and between the LOWER COLORADO RIVER AUTHORITY, a conservation and reclamation district and political subdivision of the State of Texas ("LCRA") and the CITY OF SMITHVILLE, TEXAS, a municipal corporation ("the City"), and, is made and entered into effective the 9th day of August, 2007.

RECITALS

- A. The City and LCRA entered into a "Wastewater treatment Plant Ownership and Operating Agreement" dated September 26, 1997 (the "Ownership and Operating Agreement") for the construction of a new wastewater treatment plant and other improvements to the City's wastewater system in addition to LCRA's operation of the wastewater treatment plants.
- B. LCRA owns an interest in the new wastewater treatment plant and in other improvements to the City's wastewater system as defined in the Ownership and Operating Agreement.
- C. Pursuant to Section 10.1 of the Ownership and Operating Agreement, the City has requested that LCRA sell its interest in the wastewater system assets.
- D. LCRA will sell its interest in the Wastewater System Assets to the City under the terms and conditions more particularly provided in this Agreement, subject to the LCRA Board of Directors determining that LCRA's interest in the Wastewater System Assets is no longer necessary, convenient or of beneficial use to the business of LCRA.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the parties hereto agree as follows:

**ARTICLE I
PURCHASE AND SALE OF THE WASTEWATER SYSTEM ASSETS**

Section 1.1. Transfer of Wastewater System Assets by LCRA. Subject and pursuant to the terms and conditions set forth in this Agreement, on the Closing Date (as defined below), LCRA shall transfer the following assets, and the City shall purchase from LCRA the following assets:

- (a) Facilities. (i) all of the wastewater treatment, collection and disposal system owned by LCRA, together with all improvements, structures, laterals, service pumps, lift stations, air compressors, electrical equipment, effluent holding ponds, irrigation facilities, and other equipment and tangible assets listed on **Schedule 1 of Exhibit A** attached hereto

and incorporated herein for all purposes; and (ii) any other tangible assets of LCRA which are relevant and necessary for the City's ownership and operation of the Wastewater System Assets (collectively the "Facilities"). A complete inventory ("Inventory") of the Facilities that are owned by LCRA and necessary for the operation of the Wastewater System Assets shall be taken prior to the expiration of the Review Period (defined below) by The City and LCRA. All items shown on the Inventory shall constitute a part of the Facilities to be transferred to the City at Closing. If any item listed on the Inventory is sold or transferred to any person following the completion of the Inventory, it shall be replaced by LCRA with an item of equal or better quality and type.

- (b) Intangible Assets. All contracts, option rights, permits, certificates, licenses, reimbursement rights, service agreements, deposits, warranties, records, regulatory correspondence, and other intangible assets of LCRA that are related to the ongoing operation and ownership of the Wastewater System Assets, including but not limited to the "Agreement for Wastewater Services between University of Texas M.D. Anderson Cancer Center and LCRA (M.D. Anderson Agreement No. 506-13-92111)" dated December 1, 2003 and those more particularly described on **Schedule 2 of Exhibit A** attached hereto and incorporated herein for all purposes (collectively referred to herein as the "Intangible Assets"). LCRA shall cooperate with The City to obtain all necessary approvals for the assignment of any intangible assets.
- (c) Property. All land and interests therein, including without limitation easements, licenses and rights-of-way owned or held by LCRA for the installation, use and maintenance of, or otherwise associated with the Facilities, all of which land and interests therein are more particularly described on **Schedule 3 of Exhibit A** attached hereto and incorporated herein by reference for all purposes, together with all and singular the rights, privileges, and appurtenances pertaining to said land and interests therein, including any right, title, and interest of LCRA in and to adjacent streets, alleys, or rights-of-way, together with any improvements, fixtures, and personal property of LCRA situated on and attached to said land and interests therein (collectively referred to herein as the "Property").

The Facilities, Intangible Assets, and Property are collectively referred to herein as the "Wastewater System Assets."

Section 1.2. Purchase Price and Payment.

- (a) The Purchase Price (herein so called) for the Wastewater System Assets shall be the amount necessary to defease the outstanding LCRA debt associated with the Wastewater System Assets, at execution of the agreement estimated to be approximately two million five hundred thousand dollars and no cents (\$2.5 million) and other good and valuable consideration as set forth in this Agreement. LCRA will notify the City of the purchase price ten (10) days in advance of the Closing Date.

- (b) wastewater services in the service area formerly served by LCRA. In further consideration of LCRA's transfer of the Wastewater System Assets to the City and the covenants made by LCRA pursuant to this Agreement, the City agrees to use its best efforts after Closing to provide retail wastewater services via the Facilities in compliance with the regulations and orders of the Texas Commission on Environmental Quality ("TCEQ"), or its successor agencies, and other local, state, and federal regulations.

Section 1.3. Independent Consideration. Contemporaneously with the execution of this Agreement, the City hereby delivers to LCRA, and LCRA hereby acknowledges the receipt of, a check in the amount of TEN AND NO/100 DOLLARS (\$10.00) ("Independent Contract Consideration"), which amount the parties bargained for and agreed to as consideration for the LCRA's grant to the City of the City's exclusive right to purchase the Wastewater System Assets pursuant to the terms hereof and for LCRA's execution, delivery and performance of this Agreement. This Independent Contract Consideration is in addition to and independent of any other consideration or payment provided in this Agreement, is nonrefundable under any circumstances, shall not be credited to the Purchase Price and shall be retained by LCRA notwithstanding any other provisions of this Agreement.

Section 1.4. Retention of Employees. The City agrees that persons currently employed by LCRA to maintain and operate the Wastewater System Assets shall be extended offers of employment by the City at Closing on terms and conditions similar to those by which they are employed by LCRA for a minimum of six months with an opportunity to become regular full-time employees of the City in conformance with the City's existing personnel or employment policies.

ARTICLE II **REVIEW ITEMS**

Section 2.1. Review Items. Following the Effective Date, LCRA shall make available at the City's request for reasonable inspection and copying (at the City's expense) by the City during normal working hours at the Facilities or at the offices of LCRA or its agents, the following (the "Review Items"):

- (a) To the extent same are reasonably available to or in LCRA's possession, copies of all non-attorney-client-privileged books, records, operating reports, trade account reports, accounts payable and receivable lists, vendor contracts, management agreements, maintenance records, purchase or sale contracts, regulatory records and correspondence, deeds, easements, licenses, permits, certificates, soil reports, inspection reports and engineering reports (including, without limitation, endangered species, environmental and governmental inspection reports of LCRA related to the ownership or operation of the Wastewater System Assets or relating to or in respect of the physical condition or operation of Wastewater System Assets); and,

- (b) To the extent same are reasonably available to or in LCRA's possession, all easements, including sanitary and public utility easements, necessary to accommodate all parts of the Facilities.

Section 2.2. Feasibility Review. During the period beginning on the Effective Date and continuing until the thirtieth (30th) day prior to the Closing Date (the "Review Period"), the City shall have the right during normal business hours and upon reasonable prior notice to LCRA, to conduct any and all reviews, investigations or examinations of the Review Items and the Wastewater System Assets, including review of all sanitary easements and other easements necessary for providing wastewater service with the Wastewater System Assets in compliance with TCEQ or other applicable regulations, which the City determines necessary in the City's sole and absolute discretion. In the event that the City substantially disturbs or substantially disrupts any of the Wastewater System Assets during the Review Period, the City shall be obligated to restore the Wastewater System Assets or any item related thereto substantially to its prior condition to the extent the City's review, investigation or examination changed same and this obligation shall survive any termination of this Agreement. LCRA may, at LCRA's option, accompany the City during any such inspections. Notwithstanding any provisions herein or elsewhere to the contrary, the City shall be entitled to terminate this Agreement on or before the expiration of the Review Period.

Section 2.3. Assessment of Environmental and Safety Conditions. Within thirty (30) days after the City's approval of the survey, as provided in **Section 3.1.** below, LCRA, at LCRA's sole expense, shall conduct an assessment of the environmental conditions of the Facilities and Property (called the "Assessment"). The Assessment shall identify potential environmental and safety related liabilities associated with the Facilities and Property, including but not limited to the presence, the suspected presence, release or suspected release of any hazardous substance, petroleum hydrocarbons, or hazardous waste material or any conditions that the City may identify as a potential threat to general health or safety. The City shall have until expiration of the Review Period to review the Assessment. Based on the Assessment, the City shall have the right to terminate this Agreement prior to the expiration of the Review Period.

Section 2.4. Chemical Inventory. Within thirty (30) days after the Effective Date, LCRA shall make available an inventory of all chemicals, and MSDS sheets, currently on site of the Facilities and all chemicals known to LCRA that have been used on the site of the Facilities. In addition, LCRA shall provide copies of the most current Texas Tier Two reports submitted for the previous calendar year to the Texas Department of Health.

Section 2.5. Failure to Provide Review Items. LCRA's failure to provide the City any information regarding the Wastewater System Assets as provided in this Agreement may result in the City's termination of the Agreement.

ARTICLE III
SURVEY ISSUES

Section 3.1. Survey.

- (a) Within thirty (30) days after the Effective Date hereof, the City, at the City's sole cost and expense, shall procure a current plat or survey of such portions of the Property as the City selects, prepared by a duly licensed Texas land surveyor. The survey shall be staked on the ground, and the plat or exhibit drawing shall show the location of all improvements, highways, streets, roads, railroads, rivers, creeks, or other water courses, fences, easements, and rights-of-way on or adjacent to the Property, if any, and shall contain the surveyor's certification that there are no encroachments on the Property and shall set forth the number of total acres comprising the Property, together with a metes and bounds description thereof.
- (b) The City shall within thirty (30) days after receipt of the survey review the same. Within the thirty (30) day period, the City shall notify LCRA in writing of its approval of the survey, or, in the event any portion of the survey is unacceptable to the City, then the City shall notify LCRA in writing of the unacceptable portions of the survey. LCRA shall promptly undertake to eliminate or modify all of the unacceptable portions to the reasonable satisfaction of the City. In the event LCRA is unable to do so within thirty (30) days after receipt of written notice, the City shall have the right to either (1) terminate this Agreement, or (2) waive such survey matters and proceed to Closing. The City's failure to give LCRA this written notice shall be deemed to be The City's approval of the survey.

ARTICLE IV
REPRESENTATIONS AND COVENANTS

Section 4.1. The City's Representations and Warranties. The City represents and warrants to LCRA that the following are true, accurate and complete as of the Effective Date: (a) each of the persons executing this Agreement on behalf of the City is duly authorized to do so; (b) the City has full right and authority to enter into this Agreement and to consummate the transaction described in this Agreement; (c) this Agreement constitutes the valid and legally binding obligations of the City and is enforceable against the City in accordance with its terms; and (d) neither the execution or delivery of this Agreement nor the performance of the City's obligations under this Agreement violates, or will violate, any contract or agreement to which the City is a party or by which the City is otherwise bound.

Section 4.2. LCRA's Representations and Warranties. LCRA represents and warrants to The City that the following are true, accurate and complete, as of the Effective Date: (a) each of the persons executing this Agreement on behalf of LCRA is duly authorized to do so; (b) LCRA has full right and authority to enter this Agreement and to consummate the transaction described in this Agreement; (c) this Agreement constitutes the valid and legally binding obligation of LCRA, and is enforceable against LCRA in accordance with its terms, subject to applicable law; (d) neither the execution or delivery of this Agreement nor the performance of LCRA's obligations under this Agreement violates, or will violate, any contract or agreement to which

LCRA is a party or by which LCRA is otherwise bound; and, (e) other than as set forth in **Schedule 4 of Exhibit A** and as referenced in Section 4.3(d) (the "Required Consents"), there are no consents or approvals needed for LCRA to transfer the Wastewater System Assets to The City at Closing as contemplated herein.

Section 4.3. Covenants. In addition to LCRA's and the City's other agreements and undertakings hereunder, LCRA and the City hereby covenant and agree with each other that:

- (a) **Notices Received.** LCRA, at its sole cost and expense, will promptly deliver to the City copies of any written notices or promptly inform the City of any other notices received or of which LCRA gains actual knowledge and possession alleging the occurrence of any default or alleged default under any of the contracts included in the Wastewater System Assets, or any violation or alleged violation of any law, regulation, order or other requirement of any governmental authority having jurisdiction over the Wastewater System Assets including a proposed compliance order, or any tort claims relating to LCRA's ownership or operation of the Wastewater System Assets.
- (b) **Liens, Claims, Pledges, Encumbrances and Agreements.** No portion of the Wastewater System Assets shall be subject at the Closing to any liens, claims, pledges or encumbrances or any agreements, including any management agreement or understanding respecting the Wastewater System Assets, so that the City shall receive all of the Wastewater System Assets free and clear of any such liens, claims, pledges or encumbrances or any agreements, including any management agreement(s).
- (c) **Notice to Texas Commission on Environmental Quality.** The City, at the City's sole cost and expense, shall deliver to the TCEQ all required notices and applications for approval, if any, with respect to the change in ownership of the Wastewater System Assets and the transfer of deposits and obtain any approval, if required, of same. LCRA shall have the right to review any filings made with the TCEQ prior to the filing of same and LCRA shall otherwise cooperate and assist the City to the extent reasonably necessary in obtaining such approvals.

Section 4.4. Closing Updates.

- (a) At Closing, LCRA shall provide to the City a **LCRA Closing Certificate** (so called herein) which shall certify, represent and warrant to The City, as of the date of Closing that (i) each and every of the covenants contained in Section 4.3(a) and (b) of this Agreement has been fully satisfied, and (ii) each and every of the representations and warranties contained in Sections 4.2 and 6.4 of this Agreement are and continue to be true and correct on the date of Closing, provided, should an event occurring during the pendency of this Agreement make any of such representations and warranties not correct on the date of Closing, such non-compliance shall be indicated and described on the LCRA Closing Certificate. In addition, LCRA will provide to the City a Board resolution determining that the LCRA's interest in the Wastewater System Assets is no longer necessary, convenient or beneficial use to the business of LCRA. The obligation of the

City to close this transaction is expressly conditioned upon the representations and warranties contained in Sections 4.2 and 6.4 hereof being true and correct on the date of Closing and the covenants contained in Section 4.3(a) and (b) hereof being fully satisfied on the date of Closing.

- (b) At Closing, the City shall provide to LCRA The City Closing Certificate (so called herein) which shall certify, represent and warrant to LCRA, as of the date of Closing that (i) each and every of the covenants contained in Section 4.3(c) of this Agreement has been fully satisfied and (ii) each and every of the representations and warranties contained in Section 4.1 of this Agreement are and continue to be true and correct on the date of Closing, provided, should an event occurring during the pendency of this Agreement make any of such representations and warranties not correct on the date of Closing, such non-compliance shall be indicated and described on the City Closing Certificate. The obligation of the LCRA to close this transaction is expressly conditioned upon the representations and warranties contained on Section 4.1 hereof being true and correct on the date of Closing and the covenants in Section 4.3(c) being fully satisfied on the date of Closing.

ARTICLE V **CASUALTY PRIOR TO CLOSING**

Section 5.1. Casualty. In the event the Wastewater System Assets or any of them should be damaged by any casualty prior to Closing, and the cost of repairing such damage, as estimated by an engineer, architect or contractor retained by the City and mutually agreeable to the City and LCRA, is:

- (a) less than or equal to TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00), then the LCRA shall, at LCRA's sole cost and expense, repair such damage as promptly as is reasonably possible, restoring the damaged property at least to its condition immediately prior to such damage; and in such event, the City may elect to defer Closing until such repair is made, or the City may elect to close and to withhold from LCRA One Hundred Fifty Percent (150%) of the funds necessary to make such repairs until the LCRA has repaired such damage pursuant to the provisions hereof; or if said cost is
- (b) more than TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00), then the City may elect to terminate this Agreement and receive a full, prompt refund of the Earnest Money. The City must make the election to terminate this Agreement within ten (10) days after receiving written notice of casualty damage provided in accordance with **Section 7.1** of this Agreement. If the City does not so elect to terminate this Agreement, then the Closing shall occur as scheduled, whereupon the LCRA shall pay to the City, at Closing, any funds actually received in replacement of the damaged property by LCRA as insurance proceeds relating to such casualty, and the sale shall be closed without the LCRA repairing any such damage. If, however, repair or replacement is necessary for the continued operation of the Wastewater System Assets pending Closing, LCRA may repair or replace any damaged property necessary for continued operation of the

Wastewater System Assets, and may apply insurance proceeds received in replacement of the damaged property to such repair or replacement, subject to the City's review and approval of the plans for and execution of the repair or replacement. The City shall remain entitled, regardless, to receive at Closing any insurance proceeds remaining after the repair or replacement of the Wastewater System Assets.

ARTICLE VI **CLOSING**

Section 6.1. Time and Place of Closing. The Closing Date shall be (i) December 30, 2007, or (ii) such other date as may be agreed between the parties or as provided in **Section 6.2** below. The Closing of the transaction contemplated by this Agreement (the "Closing") shall be held at 10 a.m., local time on the Closing Date, at the offices of Bastrop Abstract, 715 Chestnut St, Bastrop, Texas 78602, or at such other time and place as may be agreed between the parties. All matters to take place at the Closing shall take place simultaneously, and no delivery shall be considered to have been made until all such proceedings have been completed.

Section 6.2. Conditions to Closing. Notwithstanding anything in this Agreement to the contrary, it is specifically agreed that neither LCRA nor the City shall be under any obligation to close the transaction(s), or any portion thereof, contemplated by this Agreement, until: (a) the City has been able to issue, sell, deliver and receive payment for its bonds or other debt obligations or otherwise obtain funds in an amount sufficient to provide the City with the funds necessary to pay the Purchase Price; (b) all required notices or governmental approvals, if any, including, without limitation, any notification to, consent by or approval from TCEQ, have been given or obtained; (c) the Environmental Assessment/Habitat Conservation Plan for Issuance of an Endangered Species Act Section 10(a)(1)(B) Permit for Incidental Take of the Houston Toad (*Bufo houstonensis*) by Aqua Water Supply Corporation, Lower Colorado River Authority, Bluebonnet Electric Cooperative, Inc., and Austin Energy during the Routine Maintenance and Repair of Facilities and Installation of New Facilities in Portion of Bastrop and Lee Counties, Texas dated February 16, 2004 is amended to include the City; (d) all Required Consents have been provided to the City; (e) the City has offered employment to LCRA's employees currently operating and maintaining the Wastewater System Assets in accordance with **Section 1.4** above and (f) that the LCRA Board of Directors determined that the LCRA's interest in the Wastewater System Assets is no longer necessary, convenient, or of beneficial use to the business of LCRA. If any or all of these conditions have not occurred by the Closing Date, the Closing Date shall be extended for a reasonable period of time in order to allow the unresolved condition to be satisfied, provided in no event shall the Closing Date be extended beyond December 31, 2007, unless the required approval is still pending without resolution but is being pursued in good faith by the City and there is a reasonable likelihood of receiving such consent or approval, in which event the Closing Date shall continue to be extended periodically for reasonable periods of time to allow such consent or approval to be obtained.

Section 6.3. LCRA Delivery. At the Closing, LCRA shall deliver or cause to be delivered to the City, at the City's sole cost and expense, each of the following items:

LCRA-Smithville
WW Asset Sale Agreement

- (a) A Bill of Sale and Assignment ("Assignment") duly executed by the City and LCRA, transferring and assigning to the City the Facilities and the Contracts. The Assignment shall provide for the City's assumption of all of LCRA's obligations and liabilities under or related to the Facilities or Contracts, except to the extent provided otherwise in **Section 1.1 (b)** above. The Assignment shall contain as exhibits re-certified and updated lists of the Facilities and Contracts.
- (b) An instrument, in a form acceptable to the City, assigning to the City all of LCRA's interests in any easements, licenses or rights-of-way included in the Property.
- (c) The LCRA Closing Certificate in form specified in **Section 4.4(a)** duly executed and acknowledged by LCRA.
- (d) An affidavit(s) as to debts and liens in the form customarily used by the title companies, addressed to the City and executed by LCRA, if applicable. This document shall be prepared at the City's expense.
- (e) Any other additional documents and instruments as in the mutual opinion of the City's counsel and LCRA's counsel are reasonably necessary to the proper consummation of this transaction.
- (f) All combinations and/or keys to all locks related to the Wastewater System Assets.
- (g) To the extent reasonably available, the originals of all matters agreed to be transferred to the City at Closing, unless otherwise noted, pursuant to **Section 1.1** of this Agreement.

Section 6.4. LCRA's Additional Representations and Warranties. By the execution of this Agreement and again by execution of any instruments of conveyance, transfer or assignment at Closing, LCRA, except to the extent specifically set forth in **Schedule 5 of Exhibit A** attached hereto, represents and warrants that, to the best of LCRA's knowledge, there are no known defects in the Wastewater System Assets which have been concealed by LCRA or that are not apparent from a routine inspection of the system and LCRA's business records at Closing.

Section 6.5. The City Delivery. At the Closing, the City shall deliver to LCRA the following items:

- (a) The City's Closing Certificate pursuant to **Section 4.4(b)** of this Agreement.
- (b) A Certificate of the City's Secretary, Assistant Secretary, General Counsel, or Treasurer indicating that the City has all requisite power and authority to own the Wastewater System Assets, that all requisite corporate consents and approvals have been obtained and that the person executing the documents in furtherance of this Agreement has all requisite authority to do so.
- (c) The Purchase Price in the amount and manner specified in **Section 1.2** hereof in good

funds.

- (d) Such evidence or documents as may reasonably be required by the LCRA evidencing the capacity of the City to close the transaction and the authority of the person or persons who are executing the various documents on behalf of the City in connection with the sale of the Wastewater System Assets.
- (e) The City shall also execute the Assignment as required in **Section 6.3(a)** above.
- (f) Any other additional documents or instruments as in the mutual opinion of the City's counsel and LCRA's counsel are reasonably necessary to the proper consummation of this transaction.

Section 6.6. Adjustments and Prorations. At Closing, the following items shall be adjusted or prorated between LCRA and the City:

- (a) LCRA shall pay to the City, in cash at Closing, the amount of any sums, if any, prepaid by third parties to LCRA and held by LCRA pursuant to the provisions of any of the contracts included in the Wastewater System Assets and the City assumes all liabilities and obligations for such amounts and will execute and deliver notices of transfer and assumption of security deposit to all such third parties. The City shall pay LCRA, in cash at Closing, the amount of any sums, if any, prepaid by LCRA to third parties pursuant to the provisions of any of the Contracts included in the Wastewater System Assets.
- (b) If any adjustments pursuant to this **Section 6.6** are, subsequent to Closing, found to be erroneous, then either party hereto who is entitled to additional monies shall invoice the other party for such additional amounts as may be owing, and such amount shall be paid within thirty (30) days from receipt of the invoice. This covenant shall not merge with the instruments of conveyance, transfer or assignment to be delivered hereunder but shall survive the Closing.

Section 6.7. Possession. Possession of the Wastewater System Assets shall be delivered to the City by LCRA at the Closing.

Section 6.8. Costs and Expenses. Unless otherwise expressly provided, all costs and expenses in connection with the transaction contemplated by this Agreement shall be borne by the City, including but not limited to: LCRA's attorney's fees, costs of defeasing LCRA's outstanding debt associated with the Wastewater System Assets, and other expenses stipulated to be paid by LCRA under other provisions of this Agreement.

ARTICLE VII **REMEDIES**

Section 7.1. The City's Remedies for Default. Notwithstanding any express provision of this Agreement to the contrary, in the event LCRA fails or refuses to timely comply with LCRA's

obligations hereunder or at Closing, any of LCRA's representations, warranties or covenants contained herein is not true or has been breached or LCRA enters into any contracts prior to the Closing Date to which the City timely objects, the City shall have the following remedies as the City's sole and exclusive remedies: (a) to enforce this Agreement by specific performance, mandamus or similar remedy; (b) to terminate this Agreement prior to or at Closing by giving LCRA written notice of such election; or, (c) to waive prior to or at Closing, the applicable objection or condition and proceed to close the transaction contemplated hereby in accordance with the remaining terms hereof.

Section 7.2. LCRA's Remedies for Default. Notwithstanding any express provision of this Agreement to the contrary, in the event the City fails or refuses to timely comply with the City's obligations hereunder or is unable to do so as a result of the City's acts or failure to act, LCRA may terminate this Agreement as its sole remedy.

Section 7.3. Termination of Agreement. Should either party terminate this Agreement as provided herein, both LCRA and the City shall be relieved and released of all obligations, claims and liabilities hereunder, or as expressly otherwise provided herein.

ARTICLE VIII GENERAL PROVISIONS

Section 8.1. Notices. All notices and other communications hereunder shall be in writing and, shall be delivered by hand delivery, expedited courier delivery or mailed (if mailed, by registered or certified mail, return receipt requested, postage prepaid) addressed as follows, and shall be effective upon actual delivery if delivered by hand or by expedited courier delivery or, if mailed, three days after deposit in the United States mail:

(a) If to LCRA, to:

Scott Ahlstrom, P.E., P.M.P.
Manager, Water and Wastewater Utilities
LCRA
P. O. Box 220 – Mail Stop H200
Austin, Texas 78767-0220
Phone: (512) 473-3367
Fax: (512) 473-3551

With a copy to:

Leigh Sebastian
Associate General Counsel
LCRA
P. O. Box 220 – Mail Stop H424
Austin, Texas 78767-0220
Phone: (512) 473-4024

Fax: (512) 473-4010

(b) If to the City, to:

Mark A. Bunte, Mayor
P.O. Box 449
Smithville, Texas 78957
Phone: (512) 237-3282
Fax: (512) 237-4549

With a copy to:

Tex Middlebrook, City Manager
P.O. Box 449
Smithville, Texas 78957
Phone: (512) 237-3282
Fax: (512) 237-4549

Any party may change its address for receiving notice by giving notice of a new address in the manner herein provided; however, if mailed, notice of such new address will be effective only upon actual receipt by the other party.

Section 8.2. Headings. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

Section 8.3. Assignment. Assignment of this Agreement by the parties is prohibited without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. This Agreement shall be binding upon and inure to the benefit of the parties thereto and their successors and assigns.

Section 8.4. Governing Law and Forum. THIS AGREEMENT SHALL BE CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS AND THE OBLIGATIONS OF THE PARTIES HERETO ARE AND SHALL BE PERFORMABLE IN THE COUNTY WHEREIN THE PROPERTY IS LOCATED. BY EXECUTING THIS AGREEMENT, EACH PARTY HERETO EXPRESSLY (a) CONSENTS AND SUBMITS TO PERSONAL JURISDICTION AND VENUE CONSISTENT WITH THE PREVIOUS SENTENCE, (b) WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL CLAIMS AND DEFENSES THAT SUCH JURISDICTION AND VENUE ARE NOT PROPER OR CONVENIENT, AND (c) CONSENTS TO THE SERVICE OF PROCESS IN ANY MANNER AUTHORIZED BY TEXAS LAW.

Section 8.5. No Oral Modification. This Agreement may not be modified or amended, except by an agreement in writing signed by both the LCRA and the City.

Section 8.6. No Oral Waiver. The parties may waive any of the conditions contained herein or any of the obligations of the other party hereunder, but any such waiver shall be effective only if in writing and signed by the party waiving such conditions or obligations.

Section 8.7. Time of Essence. Time is of the essence of this Agreement.

Section 8.8. Total Agreement. This Agreement, including the Exhibits hereto, constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No representation, warranty, covenant, agreement or condition not expressed in this Agreement shall be binding upon the parties hereto or shall affect or be effective to interpret, change or restrict the provisions of this Agreement.

Section 8.9. Partial Invalidity. If any clause or provision of this Agreement is or should ever be held to be illegal, invalid, or unenforceable under any present or future law applicable to the terms hereof, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and that in lieu of each such clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable such that the intention of the parties is effected as closely as is possible.

Section 8.10. Counterpart Execution. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of all persons required to bind any party appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto.

Section 8.11. Holidays. In the event that the date upon which any duties or obligations hereunder to be performed shall occur upon a Saturday, Sunday or legal holiday, then, in such event, the due date for performance of any duty or obligation shall thereupon be automatically extended to the next succeeding business day.

Section 8.12. Effective Date. The Effective Date of this Agreement shall be the date set forth on the first page hereof.

Section 8.13. Hold Harmless. The City shall not be liable or responsible for, and shall be saved and held harmless by LCRA from and against any and all suits, actions, losses, damages, claims, or liability of any character, type, or description, including all expenses of litigation, court costs, and attorney's fees, for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, arising out of, or occasioned by, directly or indirectly, the operation of the Wastewater System Assets and accruing prior to Closing, except to the extent such claims of damages arise from the gross negligence or willful misconduct of the City.

IN WITNESS WHEREOF, each party hereto has signed this Agreement or caused this Agreement to be signed in its corporate name by its officer thereunto duly authorized, all as of the date first above written.

LCRA:

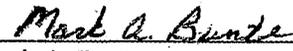
LOWER COLORADO RIVER AUTHORITY

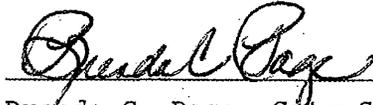
By: 
Scott Ahlstrom, P.E., P.M.P., Manager
Water and Wastewater Utility Services



THE CITY:

CITY OF SMITHVILLE

By: 
Mark A. Bunte, Mayor

Attest: 
Brenda C. Page, City Secretary

Exhibits Attached Hereto:

- Exhibit A - Wastewater System Assets
 - Schedule 1 - Facilities
 - Schedule 2 - Contracts
 - Schedule 3- Property
 - Schedule 4- Required Consents
 - Schedule 5 - Exceptions to LCRA's Representations and Warranties, If Any

EXHIBIT A – WASTEWATER SYSTEM ASSETS
Schedule 1 – Facilities

Being that equipment, facilities and related improvements reasonable and necessary to collect and treat wastewater, including but not limited to the following:

Main Facility:

- 1) All PVC Sanitary Sewer lines (approximately 4500' of 12" line, 6000' of 10" line and 12,500' of 8" line)
- 2) All PVC Force Main lines (approximately 1000' of 6" line and 7900' of 10" line)
- 3) All PVC Water lines (approximately 13,500 of 8" line)
- 4) All steel casing associated with the above noted lines (approximately 2000')
- 5) All manholes (approximately 66)
- 6) All fire hydrants (approximately 33)
- 7) One 2" Flush valve
- 8) One 2" Air vacuum valve
- 9) One force main outfall
- 10) One influent lift station
- 11) One treatment tank
- 12) One effluent pump station
- 13) One sludge pump station
- 14) One lab and blower building
- 15) One sludge drying bed
- 16) One chlorination system
- 17) All yard piping
- 18) All electrical wiring
- 19) The plant fence and access road/driveway

M.D. Anderson Collection System:

- 1) One lift station
- 2) Two four foot diameter manholes
- 3) All PVC Force Main lines (approximately 26,990' of 6" line)
- 4) All HDPE Force Main lines (approximately 770' of 6" line)
- 5) All steel casing associated with the above noted lines (approximately 780' of 10" casing)
- 6) Fifty-five 6" double clean-outs
- 7) Five combination air/vacuum valves with vents
- 8) Eight combination air/vacuum valves without vents

The Facilities do not include the following:

Gazley Creek WWTP

- 1 - refrigerator
- 1- MSA air pac.
- 1 - portable building
- 1 - portable air compressor
- 1- set hand tools
- 3- gym type lockers
- 1- Kubota mower # 51602
- 1-trailor # 10646
- 1-weed eater
- 1- four drawer file cabinet
- 1- Bobcat #
- 1- computer and printer/fax
- All lab supplies
- All cleaning supplies
- All office supplies
- 1-first aid kit

Willow Creek WWTP

- 1-chlorine emergency kit "A"
 - 5- gym type lockers
 - 1- MSA air pac.
 - 1- industrial mop & mop bucket
 - All cleaning supplies
 - All office supplies
 - All lab supplies
 - 2- two drawer file cabinets
 - 1- refrigerator (food)
 - 1- portable fan
 - 1- portable heater
 - 1- 2" portable pump
 - 1- Kenmore microwave
 - 1- Dell computer
 - 1- Cannon printer
 - 1- LCRA wall clock
 - 1- first aid kit
 - 1-vacum pump and glass beaker
 - 1- Ohaus scale
 - 1-MSDA information station
 - 2- grain scoops
- Note: Willow Creek hand tools are on LCRA truck # 51230

EXHIBIT A – WASTEWATER SYSTEM ASSETS

Schedule 2 – Contracts

All contracts, option rights, permits, certificates, licenses, reimbursement rights, service agreements, deposits, warranties, records, regulatory correspondence, and other intangible assets of LCRA that are related to the ongoing operation and ownership of the Wastewater System Assets, including but not limited to:

- Agreement for Wastewater Services between University of Texas M.D. Anderson Cancer Center and LCRA (M.D. Anderson Agreement No. 506-13-92111) dated December 1, 2003
- A portion of Certificate of Convenience and Necessity No. 20769 issued by the Texas Commission on Environmental Quality.
- Texas Pollutant Discharge Elimination System (TPDES) Permit No. 10286-003 (TX0113786)
- Environmental Assessment/Habitat Conservation Plan for Issuance of an Endangered Species Act Section 10(a)(1)(B) Permit for Incidental Take of the Houston Toad (*Bufo houstonensis*) by Aqua Water Supply Corporation, Lower Colorado River Authority, Bluebonnet Electric Cooperative, Inc., and Austin Energy during the Routine Maintenance and Repair of Facilities and Installation of New Facilities in Portion of Bastrop and Lee Counties, Texas dated February 16, 2004.

EXHIBIT A – WASTEWATER SYSTEM ASSETS
Schedule 3 – Property

Tracts

Easements

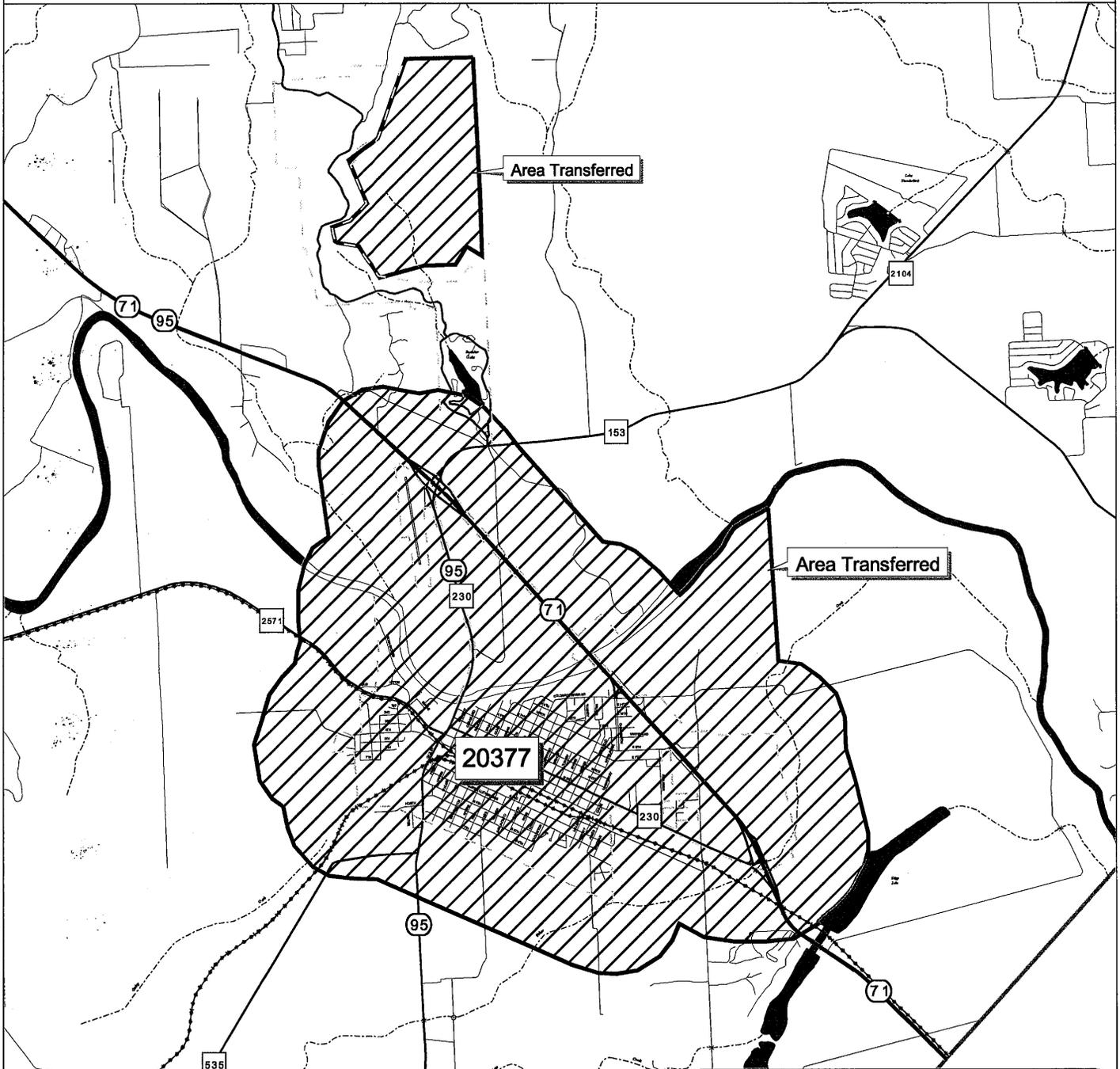
- A 0.053 acre easement for the lift station site from Board of Regents of the University of Texas System to Lower Colorado River Authority, dated March 31, 2006 as recorded in Document No. 200605491 of the Official Public Records of Bastrop County, Texas.
- B “Longhorn Easement Tract” from Longhorn Partners Pipeline to Lower Colorado River Authority, dated December 16, 2005 as recorded in Document No. 20063411 of the Official Public Records of Bastrop County, Texas.
- C Wastewater Line Easement and Right-of-Way from City of Smithville to Lower Colorado River Authority, dated September 27, 2005 as recorded in Document No. 200600529 of the Official Public Records of Bastrop County.
- D Miscellaneous Easement (Pipelines) ME20050086 from the State of Texas through the Commissioner of the General Land Office to Lower Colorado River Authority, dated June 15, 2007 as recorded in Document No. 200708711 of the Official Public Records of Bastrop County, Texas.
- E Easement acquired through the Award of Commissioners dated March 29, 2006 in said Cause No. 06-010507 styled *Lower Colorado River Authority vs. Jimmie Luecke Children Partnership, Ltd.* in the County Court at Law No. 1, Bastrop County, Texas.

EXHIBIT A – WASTEWATER SYSTEM ASSETS
Schedule 4 – Required Consents

Approval of Sale, Transfer, Merger Application by Texas Commission on Environmental Quality.

EXHIBIT A – WASTEWATER SYSTEM ASSETS
Schedule 5– Exceptions to LCRA's Representations and Warranties, If Any

City of Smithville / Lower Colorado River Authority 13.248 Agreement
Sewer Service Area
Application No. 35821-C (Contract Service Agreement from City of Smithville, CCN No. 20377
to Transfer a Portion of CCN No. 20769 from Lower Colorado River Authority
in Bastrop County)



Map by S. Jaster 4/4/2008
Data path: c:\gis\projects\shpsforapplications\35821-c.shp
and 35821-c_undo.shp
Project path: c:\gis\projects\applications\35821-c.apr

Sewer CCN Service Area
▨ 20377 - CITY OF SMITHVILLE
Area Transferred

1 0 1 Miles
1 inch = 1 mile

.....
CONSENT FORM

Applicant's Name: City of Smithville/LCRA 13.248 Agreement
Application No.: 35821-C

- I concur with the map created 4/3/2008 as a result of the above mentioned application.
- I do not concur with the map created 4/3/2008 and intend to respond by letter dated _____.

I am authorized by the LCRA, to sign this form.

Signature: Leigh Sebastian

Printed Name: Leigh Sebastian

Relationship to Applicant: attorney

Date signed: 4/8/08

Mail to or fax to:
Heidi Graham
Utilities & Districts Section, MC 153
Water Supply Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
Fax (512) 239-6972

.....
CONSENT FORM

Applicant=s Name: City of Smithville/LCRA 13.248 Agreement
Application No.: 35821-C

I concur with the map created 4/3/2008 as a result of the above mentioned application.

I do not concur with the map created 4/3/2008 and intend to respond by letter dated _____.

I am authorized by the City of Smithville, to sign this form.

Signature: *Tex Middlebrook*

Printed Name: Tex Middlebrook

Relationship to Applicant: City Manager

Date signed: 4-7-08

Mail to or fax to:
Heidi Graham
Utilities & Districts Section, MC 153
Water Supply Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
Fax (512) 239-6972

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Deanna Avalos
Office of the Chief Clerk

Date: _____, 2008

From: Amy Vargas
Administrative Support
Water Supply Division

Subject: Texas Water Code, §13.248 Application Approved by Commissioners,
Certificates to be Mailed

City of Smithville, CCN: 20377
CN: 600643894; RN: 101386290
Lower Colorado River Authority, CCN 20769
CN: 600253637; RN: 102687159
Application Number 35821-C

The item listed above was approved by the Commissioners on _____, 2008.
Please present the certificates to Deanna Avalos for mailing.

Contact Name: Heidi Graham

Date Stamp This Page Only



Texas Commission On Environmental Quality

By These Presents Be It Known To All That

Lower Colorado River Authority

having duly applied for certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled to and is hereby granted this

Certificate of Convenience and Necessity No. 20769

to provide continuous and adequate water utility service to that service area or those service areas in Bastrop County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 35821-C are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Lower Colorado River Authority to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this _____

For the Commission



Texas Commission On Environmental Quality

By These Presents Be It Known To All That

City of Smithville

having duly applied for certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled to and is hereby granted this

Certificate of Convenience and Necessity No. 20377

to provide continuous and adequate water utility service to that service area or those service areas in Bastrop County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 35821-C are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the City of Smithville to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this _____

For the Commission

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER approving an agreement designating service areas between the Lower Colorado River Authority and the City of Smithville pursuant to Texas Water Code Section 13.248; TCEQ Docket No. 2008-0648-UCR.

A request for a Commission Order approving a contract designating service areas between the Lower Colorado River Authority (LCRA), Certificate of Convenience and Necessity (CCN) No. 20769, and the City of Smithville (City), CCN No. 20377, in Bastrop County, Texas, was presented to the Texas Commission on Environmental Quality (Commission) for approval pursuant to section 13.248 of the Texas Water Code and title 30, section 291.117 of the Texas Administrative Code.

The parties entered into an agreement dated August 9, 2007, under which the City would purchase LCRA's interest in a wastewater treatment plant and other improvements. Along with the sale of the facilities, LCRA would transfer a portion of CCN No. 20769 to the City, thereby incorporating the area into the City's CCN area. The Agreement is attached to this Order. On December 19, 2007, the parties finalized the sale of LCRA's facilities. The City is proposing to provide service to the transferred area.

Contracts between retail public utilities that designate areas to be served and customers to be served by those retail public utilities, when approved by the Commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity. TEXAS WATER CODE § 13.248.

LCRA and the City have reviewed the CCN map attached to this Order and have approved it.

The Executive Director of the Commission mailed notice of the hearing date on which the Commission was to consider the request to LCRA, the City, and the customer to be transferred.

The Commission held a hearing on the request at its November 19, 2008, Agenda meeting and found the request had merit.

The City is capable of rendering continuous and adequate sewer service to every customer in the area covered by the Agreement. The transfer of LCRA's authority to provide service in the affected area, which results in the City as the sole service provider remaining in the area, is necessary for the service, accommodation, convenience, or safety of the public.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. The Agreement addressing the transfer of a portion of LCRA's CCN No. 20769 and designating that retail sewer service shall be provided by the City, CCN No. 20377, in that area is hereby approved.
2. CCN No. 20377, held by the City, and CCN No. 20769, held by LCRA, in Bastrop County are hereby amended in accordance with the Agreement.
3. The Executive Director is directed to redraw the City's CCN No. 20377 and LCRA's CCN No. 20769 as provided in the Agreement and as set forth on the map attached to this Order and to amend the Commission's official sewer service area map for Bastrop County, Texas.
4. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a

copy of this Order and the attached map to the parties.

5. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

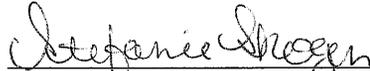
Issue Date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

For the Commission

CERTIFICATE OF SERVICE

I certify that on November 7, 2008, a copy of the foregoing document was sent by first class, agency mail, and/or facsimile to the persons on the attached Mailing List.


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