

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 15, 2011

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

Re: TCEQ Docket No. 2011-1444-UCR; Consideration of a request for a Commission order approving a contract designating service areas between the City of Marble Falls (Marble Falls), Certificate of Convenience and Necessity (CCN) No. 11137, and the Lower Colorado River Authority (LCRA), CCN No. 11670

Dear Ms. Bohac:

Transmitted herewith for filing with the Texas Commission on Environmental Quality (Commission or TCEQ) are the following items to be filed as backup materials for the January 11, 2012, agenda on a request for an order approving contracts designating water service areas between the City of Marble Falls (Marble Falls) and the Lower Colorado River Authority (LCRA),

1. Proposed Order;
2. Agenda Executive Summary;
3. Caption;
4. Staff memo detailing financial, managerial, and technical capabilities of Marble Falls to provide continuous and adequate service to the affected area;
5. Request for Commission order approving a Texas Water Code Section 13.248 agreement filed by Marble Falls on June 6, 2011, and declared administratively complete on July 8, 2011;
6. Texas Water Code, Section 13.248 contract between Marble Falls and LCRA executed on April 22, 2011;
7. Certificates of Convenience and Necessity (CCN) Nos. 11670 and 11137;
8. Proposed map of the service areas subject to the section 13.248 agreement;
9. Notices Mailed to Parties; and
10. Consent forms signed by representatives for both Marble Falls and LCRA giving approval to the ED for the above final maps.

Ms. Bridget Bohac, Chief Clerk
December 15, 2011
Page 2

Please do not hesitate to contact me at (512) 239-4761 if you have any questions regarding this material. Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in black ink that reads "Kayla Murray". The signature is written in a cursive, flowing style.

Kayla Murray, Staff Attorney
Environmental Law Division

Enclosures

cc: Mailing list

**TCEQ DOCKET NO. 2011-1444-UCR
APPLICATION NO. 37058-C**

IN THE MATTER OF THE	§	BEFORE THE TEXAS
REQUEST FOR AN ORDER	§	
APPROVING THE CONTRACT	§	
DESIGNATING SERVICE AREAS	§	
BETWEEN THE CITY OF	§	COMMISSION ON
MARBLE FALLS AND THE	§	
LOWER COLORADO RIVER	§	
AUTHORITY IN	§	
BURNET COUNTY, TEXAS	§	ENVIRONMENTAL QUALITY

ORDER

A request for a Commission order approving a contract designating service areas between the City of Marble Falls (Marble Falls), Certificate of Convenience and Necessity (CCN) No. 11137, and the Lower Colorado River Authority (LCRA), Certificate of Convenience and Necessity (CCN) No. 11670, in Burnet County, Texas, was presented to the Texas Commission on Environmental Quality (TCEQ or Commission) for approval pursuant to Section 13.248 of the Texas Water Code, and Title 30 of the Texas Administrative Code, Section 291.117.

On April 22, 2011, Marble Falls and LCRA entered into a Water Supply Contract (Contract) regarding their respective water service areas pursuant to Section 13.248 of the Texas Water Code. Under the contract, the LCRA will transfer a portion of its CCN area (Hamilton Creek Water System and South Road Water System) to Marble Falls. LCRA is the sole landowner of the area at

issue and wishes for the two systems currently being served by LCRA to be served by Marble Falls. The contract states that LCRA will designate that portion of its CCN area to Marble Falls for an agreed upon consideration. The total acreage amount to be transferred is approximately 1,817 acres; there are facilities and 99 customers that will be transferred. The Agreement is attached to this Order.

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.

TEXAS WATER CODE, §13.248.

The Commission held a hearing on the request at the January 11, 2012, agenda and found the request had merit.

Marble Falls is capable of rendering continuous and adequate water service to every customer in the Hamilton Creek and South Road Water Systems as described by contract. The CCN transfer, which results in Marble Falls being the sole retail water service provider for the Hamilton Creek and South Road Water Systems, 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:

The contract transferring portions of the Lower Colorado River Authority's CCN No. 11670 and designating that retail water service shall be provided by the City of Marble Falls, CCN No. 11137, in those areas, is hereby approved.

CCN No. 11137 in Burnet County, held by the City of Marble Falls, is hereby amended in accordance with the contract.

CCN No. 11670 in Burnet County, held by the Lower Colorado River Authority, is hereby amended in accordance with the contract.

The Executive Director is directed to redraw the maps of the respective CCNs as provided in the contract and as set forth on the map attached to this Order, and to amend the Commission's official water service area map for Burnet County, Texas.

The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to the parties.

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

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

TO: Texas Commission on Environmental Quality **DATE:** December 15, 2011
THRU: Bridget Bohac, Chief Clerk
FROM: Environmental Law Division
SUBJECT: **TCEQ Docket No. 2011-1444-UCR.** Consideration of a request for a Commission order approving a contract designating service areas between the City of Marble Falls and the Lower Colorado River Authority

DESCRIPTION OF APPLICATION

Applicant: The City of Marble Falls
Regulated Activity: Retail water 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

The City of Marble Falls ("The City"), water certificate of convenience and necessity ("CCN") No. 11137, and the Lower Colorado River Authority ("LCRA"), CCN No. 11670, provide retail water service in Burnet County, Texas. On April 22, 2011, the City and LCRA entered into an agreement regarding their respective water service areas pursuant to §13.248 of the Texas Water Code. Under the agreement, LCRA will transfer two water systems contained in its CCN area comprising approximately 1,817 acres to the City for an agreed upon consideration. Facilities and 99 customers will also be transferred.

LEGAL AUTHORITY

The Texas Water Code prohibits a utility from providing retail sewer utility service directly or indirectly to the public without first obtaining a CCN from the Commission. *TWC § 13.242(a)*. Conversely, a municipality is not required to obtain a CCN to provide

retail sewer service.¹ However, a municipality may not provide service to areas that are within the certificated area of another retail public utility without first obtaining written consent from that retail public utility. *TWC § 13.242(b)*.

The Texas Water Code and TCEQ's regulations allow retail public utilities to enter into service area agreements and have the Commission affirm the agreements by amending the entities' respective CCNs. *TWC § 13.248; see also 30 TAC § 291.117 (incorporating § 13.248 into TCEQ's rules)*.² However, a retail public utility must receive consent to obtain or amend a CCN within the corporate boundaries or extraterritorial jurisdiction ("ETJ") of a municipality with a population of 500,000 or more. *30 TAC § 291.105(b)(1)*. Therefore, an amendment of a CCN to effect a service area agreement within such an area also requires consent from the municipality.

A transfer of a water or sewer system that includes the transfer of customers and/or facilities may also require separate Commission approval for the transfer of customers and/or facilities. *TWC § 13.301*.³

The request to approve a Section 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 or amended CCNs. *30 TAC § 291.106(b)(3)(A)*. The Commission may approve the service area agreement at an agenda hearing pursuant to Section 13.248 of the Texas Water Code with the appropriate notice 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 A municipality is a "retail public utility" under Section 13.002(19) of the Texas Water Code and is not a "utility" under Section 13.002(23). Therefore, the *TWC § 13.242(a)* requirement that a "utility" must obtain a CCN before providing retail water utility service does not apply to a municipality.

² Section 13.248 of the Texas Water Code provides:

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.

³ Section 13.301 of the Texas Water Code requires some applicants to also demonstrate "adequate financial, managerial, and technical capability for providing continuous and adequate service to the service area being acquired and to any areas currently certificated to the person" for the separate transaction relating to the transfer of facilities and/or customers.

1. Request for a Commission order approving a Texas Water Code 13.248 agreement filed by the City on June 6, 2011, and declared administratively complete on July 8, 2011;
2. Agreement between the City and LCRA executed on April 22, 2011;
3. Financial, managerial, and technical analysis of the City's ability to operate in the affected area;
4. Proposed Order;
5. Final proposed maps of the water service areas subject to the 13.248 agreement; and
6. Consent forms signed by representatives for both the City and LCRA which give approval to the ED for the above final maps.

STAFF RECOMMENDATION

Based upon the facts stated in the application and the supporting documentation submitted by the City and LCRA, staff supports the request for a Commission order approving a contract transferring this portion of LCRA's water service area to LCRA. Staff has confirmed that both parties are retail public utilities with active water CCNs and that the area the parties are seeking to transfer is certificated to LCRA and is within the city limits of the City of Marble Falls. Further, staff is satisfied that the City possesses the adequate financial, managerial, and technical capability to provide continuous and adequate service to the areas being transferred. Finally, the parties have reviewed the ED's proposed final maps and have signed consent forms showing approval for the proposed maps.

STAFF CONTACTS

Kayla Murray, Environmental Law Division (239-64761)
Heidi Graham, Water Supply Division (239-0844)

CAPTION
City of Marble Falls / LCRA
Application No. 37058-C

TCEQ Docket No. 2011-1444-UCR. Consideration of a request for a Commission Order approving a contract designating service areas between the City of Marble Falls (Marble Falls), Certificate of Convenience and Necessity (CCN) No. 11137, and the Lower Colorado River Authority (LCRA), (CCN) No. 11670, in Burnet County, Texas, pursuant to section 13.248 of the Texas Water Code. Currently, LCRA holds a CCN for the area in question. Marble Falls and LCRA have agreed that the area would be better served by a single water utility provider. Under the contract, LCRA will transfer approximately 1,817 acres of its CCN area to Marble Falls and Marble Falls will be the sole retail water service provider in this area. Under the agreement, facilities and 99 customers will be transferred. (Kayla Murray, Heidi Graham)

TCEQ Interoffice Memorandum

To: Environmental Law Division

Date: July 25, 2011

Thru: Lisa Fuentes
Heidi Graham

From:  Debi Loockerman, C.P.A.

Subject: Contract Service Agreement Pursuant to Texas Water Code Section 13.248, from the Lower Colorado River Authority (LCRA), Certificate of Convenience and Necessity (CCN) No. 11670, to Transfer a Portion of CCN No. 11670 to the City of Marble Falls, CCN No. 11137 in Burnet County; Application No. 37058-C

CN: 600622906; RN: 101174761 (transferee/City of Marble Falls)

CN: 600253637; transferred RN: 101177723 and 101450534 (transferor/LCRA)

In my opinion, the City of Marble Falls (Marble Falls), CCN No. 11137, has demonstrated adequate financial, managerial and technical capability to provide service to the area contracted for release and transfer. These conclusions are based on information provided by the applicant prior to this date and may not reflect any changes in the applicant's status subsequent to this date.

Background

LCRA and Marble Falls entered an agreement as of April 22, 2011 to transfer a total of 1,811 acres from LCRA's CCN to Marble Falls' CCN. Compensation listed in the contract includes \$110 and other good and valuable consideration.

Marble Falls provides service to more than 3,000 connections according to the TCEQ Water Utilities Database (WUD). The amount of area being transferred is less than 12% of either of the affected CCN areas. The number of connections being transferred is approximately 98, less than 4% of the area being transferred. The original cost of the systems being transferred is estimated to be less than \$500,000 (over \$5,000 per connection).

I have reviewed the unqualified auditor's opinion and attached financial statements for Marble Falls for the fiscal year ended September 30, 2010. Marble Falls received the "Certificate of Achievement for Excellence in Financial Reporting" from the Government Finance Officers Association for its 2009 presentation of financial statements. The balance sheet for the water system showed total assets of \$35,222,981, long-term debt of \$16,931,564, and net assets (equity) of \$16,571,671, for a ratio of debt to equity of 1.02:1. A ratio of less than one to one is preferred when determining financial capability. The statement of net assets for 9/30/2010 indicates cash of \$4,581,328. The management discussion and analysis indicates that Marble Falls is experienced "unprecedented growth". The City's bonds are rated "A" by Standard and Pools.

The statement of revenues and expenses for the water utility showed a net operating loss before transfers of \$537,111 after covering depreciation expense of \$1,330,775 and interest expense of \$777,636. Funds available from operations for debt service totals \$1,571,300. Debt Service for 2011 is \$1,679,688. The Debt service coverage ratio is therefore .935. Although the ratios in this analysis do not meet the preferred criteria for financial capability, just noting the cash balance of Marble Falls, the estimated original cost and the number of connections transferred supports an opinion that the transaction is not material when compared with Marble Falls overall operations. The amount of area slightly in excess of the normal materiality criteria of 10% of current CCN area, however, the estimated original cost of the plant being transferred is less than 2% of Marble Falls total plant.

Bickerstaff Heath Delgado Acosta LLP

8711 S. MoPac Expressway Building One, Suite 800 Austin, Texas 78746 (512) 472-8021 Fax (512) 820-5698 www.bickerstaff.com

June 6, 2011

Via Hand-Delivery

Texas Commission on Environmental Quality
Utilities and District Section, MC 153
Water Supply Division, Building F
12100 Park 35 Circle
Austin, TX 78753

RECEIVED
TCEQ
WATER SUPPLY DIV.
JUN 6 PM 3:42

Re: The City of Marble Falls and the Lower Colorado River Authority's Water CCN Transfer Pursuant to Texas Water Code § 13.248 of the Hamilton Creek Water System (PWS ID No. 0270116; RN101177723) and the South Road Water System (PWS ID No. 10270028; RN101450534)

Dear Sir/Madam:

The City of Marble Falls ("City") (CN600622906) and the Lower Colorado River Authority ("LCRA") (CN600253637) have entered into an Agreement for Sale of Water System Assets ("Agreement") that provides for the transfer of portions of LCRA's Water CCN No. 11670 to the City of Marble Falls (Water CCN No. 11137; RN101174761). The Agreement transfers the CCN areas, customers, and facilities of two LCRA water systems:

- (1) Hamilton Creek Water System – PWS ID No. 0270116; RN101177723; and
- (2) South Road Water System – PWS ID No. 0270028; RN101450534.

Other than the CCN areas, customers, and facilities associated with the Hamilton Creek Water System and the South Road Water System, no other portions of LCRA's water utility system or CCN have been or will be conveyed or transferred to the City under the Agreement.

The City respectfully requests that the Texas Commission on Environmental Quality ("TCEQ"), pursuant to Texas Water Code § 13.248, approve this Agreement designating areas and customers to be served by the City and LCRA, and transfer the CCN areas and customers for the Hamilton Creek Water System and the South Road Water System to the City and include those areas and customers in Marble Falls Water CCN No. 11137.

To facilitate your processing of this request, enclosed is the following:

1. \$100.00 filing fee;
2. A copy of the Agreement for Sale of Water System Assets and associated documents;

June 6, 2011
Page 2

3. Mapping and CD containing GIS information required for a CCN transfer;
4. List of the Customers for the Hamilton Creek Water System and the South Road Water System.

If you need additional information or have any questions, please do not hesitate to contact me at 512-472-8021 or erogers@bickerstaff.com.

Sincerely,



Emily W. Rogers
Attorney for the City of Marble Falls, Texas

EWR/dfb
Enclosures

cc: *(without attachments)*
Patty Akers, City Attorney for the City of Marble Falls, Texas
Ralph Hendricks, City Manager for the City of Marble Falls, Texas
Madison Jechow, Attorney for the Lower Colorado River Authority

RECEIVED

APR 29 2011

City of Marble Falls
City Secretary's Office

**AGREEMENT FOR SALE
OF WATER SYSTEM ASSETS**

THIS AGREEMENT FOR SALE OF WATER 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 MARBLE FALLS, TEXAS, a municipal corporation ("the City") is made and entered into effective the 22nd day of April, 2011.

RECITALS

- A. In April 2002, LCRA acquired the water system that previously was owned and operated by the Hamilton Creek Water Supply Corporation ("Hamilton Creek") pursuant to that "Agreement for Acquisition of Water System Assets" dated April 25, 2001, between Hamilton Creek and LCRA. The area served by the Hamilton Creek system is shown on Exhibit A.
- B. In January 2002, LCRA acquired the water system that previously was owned and operated by the South Road Water Supply Corporation ("South Road") pursuant to that "Agreement for Acquisition of Water System Assets" dated September 1, 2000, between South Road and LCRA. The area served by the South Road system also is shown on Exhibit A.
- C. The City provides wholesale treated water to LCRA for service to both Hamilton Creek and South Road.
- D. The City now desires to acquire from LCRA the water systems serving Hamilton Creek and South Road, the facilities, intangible assets and property for which are referred to herein as the "Water System Assets."
- E. The LCRA Board of Directors has determined that LCRA's interest in the Water System Assets is no longer necessary, convenient or of beneficial use to the business of LCRA contingent on City acceptance of the Water System Assets.

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 WATER SYSTEM ASSETS

Section 1.1. Transfer of Water 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:

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T.O.E.D.
WATER SUPPLY DIV.

- (a) Facilities. (i) all of the pipes, pumps, storage facilities, valves, fixtures, meters, and equipment owned by LCRA at Hamilton Creek and South Road, together with all improvements, structures, electrical equipment, and other equipment and tangible assets listed on Schedule 1 of Exhibit B 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 Water System Assets at Hamilton Creek and South Road (collectively the "Facilities"). A complete inventory ("Inventory") of the Facilities that are owned by LCRA and necessary for the operation of the Water 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 Water System Assets, including but not limited to those more particularly described on Schedule 2 of Exhibit B 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 B 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 Property does not include that certain tract of land conveyed to LCRA by South Road Water Supply Corporation by instrument filed in Vol. 1037, Page 795, Official Public Records of Burnet County, Texas, which tract is also known as "Lot 8, Los Escondidos Subdivision," provided that LCRA will convey to the City a water line easement and right-of-way along the western boundary of said lot as depicted in the survey attached to Exhibit B, Schedule 3.

The Facilities, Intangible Assets, and Property at Hamilton Creek and South Road are collectively referred to herein as the "Water System Assets."

Section 1.2. Purchase Price and Payment.

- (a) The Purchase Price (herein so called) for the Water System Assets shall be TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration as set forth in this Agreement.
- (b) LCRA acknowledges that the City intends, following Closing, and upon the Delivery Date hereinafter defined, to provide exclusive retail water services in the service areas at Hamilton Creek and South Road formerly served by LCRA as depicted in Exhibit A.

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 ONE HUNDRED AND NO/100 DOLLARS (\$100.00) ("Independent Contract Consideration"), which amount the parties bargained for and agreed to as consideration for the LCRA's grant to the City of the right for the Feasibility Review described in Section 2.2 below. 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. The parties acknowledge and agree that payment of Independent Contract Consideration is included in the initial option payment provided by the City to LCRA under a separate option agreement entered on or about the Effective Date.

**ARTICLE II
REVIEW ITEMS**

Section 2.1. Review Items. During the term of this Agreement, LCRA shall make available to the City 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 or control, copies of all non-attorney-client-privileged books, records, customer accounts and records, operating reports, trade account reports, accounts payable and receivable lists, cost-of-service studies and records of the Water System, vendor contracts, management agreements, maintenance records, utility maps, purchase or sale contracts, warranties and guaranties related to tangible assets, regulatory records, notices, and correspondence, most recent survey, deeds, easements, title commitments, title reports, licenses, permits, certificates, soil reports, plans and specifications of any Water System Assets, 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 Water System Assets or relating to or in respect of the physical condition or operation of Water System Assets); and,
- (b) True, accurate and complete copies of 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 earlier of: (a) the thirtieth (30th) day after the Effective Date, or, (b) May 8, 2011 (the "Review Period"), the City, its agents, employees, consultants, or invitees will have the right during normal business hours and upon reasonable prior notice to LCRA to enter upon the Property, Facilities, and the offices of the LCRA or its agents to conduct any and all reviews, investigations or examinations of the Review Items and the Water System Assets, including review of all easements necessary for providing water service with the Water System Assets in compliance with Texas Commission on Environmental Quality (TCEQ) or other applicable regulations, which the City determines necessary in the City's sole and absolute discretion. LCRA agrees to continue to provide the City reasonable opportunity to enter upon the Property and Facilities during normal business hours pending Closing. In the event that the City substantially disturbs or substantially disrupts any of the Water System Assets, the City will be obligated to restore the Water 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.

Section 2.3. Assessment of Environmental and Safety Conditions. The City acknowledges and agrees that LCRA, at LCRA's sole expense, has conducted an assessment of the environmental conditions of the Facilities and Property (called the "Assessment") and has made that Assessment available to the City for review prior to the Effective Date.

Section 2.4. Chemical Inventory. The City acknowledges and agrees that LCRA, at LCRA's sole expense, has made available to the City an inventory of all chemicals, MSDS sheets, and most current Texas Tier Two reports submitted to Texas Department of Health along with an inventory of all chemicals known to LCRA that have been used on the site of the Facilities prior to the Effective Date.

Section 2.5. Survey. The City acknowledges that LCRA, at LCRA's sole expense, has made available to the City a survey prepared by a duly licensed Texas land surveyor of the water line easement and right-of-way across Lot 8, Los Escondidos Subdivision. Within fifteen (15) days of the Effective Date, the City will notify LCRA of any unacceptable portions of the survey. LCRA promptly will undertake good faith efforts to eliminate or modify all of the unacceptable portions of the survey to the reasonable satisfaction of the City at LCRA's expense. The City's failure to timely give LCRA notice of any unacceptable portions of the survey will be deemed to be the City's approval of the survey.

Section 2.6. Termination During Review Period. Notwithstanding any provisions herein or elsewhere to the contrary, the City will be entitled to terminate this Agreement on or before the expiration of the Review Period for any reason at the City's sole discretion, in which event LCRA will be entitled to retain the Independent Contract Consideration as its sole remedy. In the event the City terminates, this Agreement under this section or otherwise, the City will pay any Title Company expenses accruing prior to the termination date.

ARTICLE III
REPRESENTATIONS AND COVENANTS

Section 3.1. The City's Representations and Warranties. The City represents and warrants to LCRA that to the best of its knowledge and belief 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 3.2. 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 and the same will be true on the date of Closing:

- (a) *Special Warranty.* The Property, Easements and Facilities (as applicable) will be conveyed with a special warranty providing that LCRA, its successors and assigns will warrant and forever defend the Property, Easements and Facilities (as applicable) to City, its successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof (except as to the express reservations from and exceptions to conveyance and warranty) when the claim is by, through, or under LCRA, but not otherwise.
- (b) *Litigation.* There is no litigation pending or threatened that would affect LCRA's ability to perform its obligations under this Agreement and there is no threatened or impending enforcement matter at TCEQ related to the water systems.
- (c) *Violation of Laws.* No notice of violation of any law, ordinance, regulation, or requirements affecting the Property, Easements or Facilities or LCRA's use of the Property, Easements or Facilities has been received and LCRA has no actual knowledge that the Property, Easements or Facilities have been illegally subdivided or otherwise held, managed, or maintained in violation of any federal, state, or local law.
- (d) *No Other Obligation to Sell or Restriction against Sale.* LCRA has not obligated itself to sell all or any portion of the Property, Easements or Facilities, to any other person and LCRA's performance of this Agreement will not cause a breach of any other agreement or obligation to which LCRA is a party.
- (e) *No Adverse Matters.* To the best of LCRA's knowledge, no legally enforceable adverse claims have been asserted against the Property, Easements or Facilities.
- (f) *Environmental Assessments.* LCRA has delivered all environmental site assessments related to the Property, Easements or Facilities in LCRA's possession or of which LCRA has knowledge to the City prior to the City's closing on or taking possession of the

Property, Easements or Facilities.

- (g) *Taxes.* The Property is not subject to an agricultural use exemption and the conveyance of the Property, Easements or Facilities pursuant to this Agreement will not give rise to rollback taxes being assessed or owed.
- (h) *Authority.* This Agreement has been duly authorized and approved by all required action of LCRA, it is a binding obligation of the LCRA and the signatories to this Agreement have full authority to execute the Agreement.
- (i) 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,
- (j) other than as set forth in **Schedule 4 of Exhibit B**, there are no consents or approvals needed for LCRA to transfer the Water System Assets to the City at Closing as contemplated herein.
- (k) These representations shall survive Closing.

Section 3.3. Covenants. In addition to LCRA's and the City's other agreements and undertakings hereunder, from and after the Effective Date through the Delivery Date, to survive the Closing Date and Delivery Date, LCRA hereby covenants and agrees that:

- (a) Notices Received. No notice of violation of any law, ordinance, regulation, or requirements affecting the Property or Facilities or LCRA's use of the Property or Facilities has been received, and LCRA has no actual knowledge that the Property or Facilities have been illegally subdivided or otherwise held, managed, or maintained in violation of any federal, state, or local law. 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 (i) the occurrence of any default or alleged default under any of the contracts included in the Water System Assets, (ii) any violation or alleged violation of any law, regulation, order or other requirement of any governmental authority having jurisdiction over the Water System Assets including a proposed compliance order, (iii) any tort claims relating to LCRA's ownership or operation of the Water System Assets, or (iv) any claims against easement rights.
- (b) Condemnation Proceeding. Upon obtaining knowledge of the institution of any proceedings for condemnation of the Water System Assets, or any portion thereof, or any proceeding arising out of injury or damage to the Water System Assets, or any portion thereof, LCRA will notify the City of such a proceeding as soon as reasonably possible thereafter.

- (c) Litigation, Arbitration, Administrative Proceedings. There is no threatened or impending enforcement matter at TCEQ related to the Water System Assets. Upon obtaining knowledge of the institution of any litigation, arbitration, or administrative hearing concerning or affecting the Water System Assets, LCRA will notify the City of such proceedings as soon as reasonably possible thereafter.
- (d) Agreements. No portion of the Water System Assets shall be subject to any agreements, including any management agreement or understanding respecting the Water System Assets, entered by LCRA after the Effective Date unless: (i) the City provides written consent to LCRA for such agreement; or, (ii) the agreement allows for termination without cause by the City.
- (e) Environmental Assessments. LCRA has provided the Assessment to the City as of the Effective Date, and LCRA will promptly deliver to the City any updates to the Assessment or any similar environmental assessment related to the Water Supply Assets of which LCRA has knowledge prior to the Delivery Date.
- (f) Debts, Liens or other Encumbrances. LCRA shall not incur any debt or obligation with regard to the Water System Assets not already identified in Exhibit C, Schedule 1, or incur any debt or obligation which would cause a lien or other encumbrance to be placed on the Property or Facilities unless the City provides written consent to LCRA for such debt or obligation.

Section 3.4 Excluded Liabilities/Indemnity.

- (a) LCRA and the City agree that in connection with the purchase and sale of the Water System Assets as contemplated by this Agreement the City does not assume and shall not be construed to have assumed any of the following liabilities, commitments or other obligations of LCRA (collectively, "Purchaser's Excluded Liabilities"):
 - (i) Any liabilities or obligations of LCRA relating to employees of LCRA;
 - (ii) Any liability or obligation of LCRA relating to any disease, illness or injury that arises out of or results from any act, omission, occurrence or state of facts prior to the Delivery Date;
 - (iii) Any liability or obligation relating to federal, state, or local income, franchise, sales, use, payroll, unemployment or withholding taxes of LCRA, including interest or penalties related thereto;
 - (iv) 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 Water System Assets by LCRA prior to Delivery Date, except to the extent such claims of damages arise from the gross negligence or willful misconduct of the City; and
 - (v) Any liability or obligation of LCRA, absolute or contingent, known or unknown, arising out of LCRA's ownership, operation, and maintenance of the

Water System Assets accruing prior to Delivery Date, except to the extent such claims of damages arise from the gross negligence or willful misconduct of the City.

- (b) To the extent provided by law, LCRA hereby agrees to indemnify, defend, and hold the City harmless from and against any and all losses, costs, liabilities, causes of action, claims, fines, judgments, damages or expenses (including, without limitation, interest, penalties and reasonable attorneys' fees) of every kind and nature which arise out of, result from, or relate to (i) the Excluded Liabilities; (ii) items listed in Section 3.3 of which LCRA had knowledge prior to Closing but failed to notify the City as required by Section 4.3 (iii) LCRA's ownership or operation of the Water System Assets, until the Delivery Date or (iv) any breach of LCRA's representations and warranties made in this Agreement. The provisions of this Section 3.4 shall survive the Closing Date and Delivery Date.

Section 3.5 Survival of Representations and Warranties/Indemnity. All representations, warranties and covenants made in this Agreement by LCRA shall be continuing and shall be true and correct on and as of the date of Closing with the same force and effect as if made at that time. All of the representations and warranties made by LCRA in this Agreement shall survive the Closing Date and Delivery Date. Should any of the representations, covenants or warranties set forth in this Agreement be found to be incorrect prior to Closing, or should LCRA learn of a claim, a material adverse change in condition, or other matter affecting the Water System Assets prior to Closing, which would be inconsistent with the representations, covenants or warranties made herein, or which would render one or more of them untrue, LCRA shall immediately notify the City of the matter in writing, and shall use all reasonable efforts to cure same to the City's reasonable satisfaction prior to Closing provided LCRA shall not be obligated to expend money in connection therewith.

Section 3.6. Disclaimer. Except for those representations, warranties, covenants and agreements expressly provided in this Agreement, City acknowledges and agrees that it is accepting the Water System Assets in their "as-is, where-is" condition "with all faults" and defects as of the Closing and specifically and expressly without any warranties, representations, or guarantees, either express or implied, as to its condition, fitness for any particular purpose, merchantability, or any other warranty of any kind, nature, or type whatsoever from or on behalf of LCRA other than third-party warranties related to the System to the extent same are assignable.

ARTICLE IV CASUALTY PRIOR TO CLOSING

Section 4.1. Casualty. Before the Delivery Date, LCRA shall be responsible for and shall ensure that all repairs are made to the Water System Assets that are required due to casualty or normal wear and tear. In the event LCRA is unable to complete repairs required due to casualty prior to Delivery Date, LCRA shall pay to City any funds actually received by LCRA from its third-party insurer as insurance proceeds relating to such casualty (the "Insurance Proceeds") for repair or replacement of the damaged Water System Assets promptly after receipt of those

funds and the Delivery Date. City acknowledges and agrees, however, that LCRA is self-insured for casualty events that result in damages of amounts less than One Hundred Thousand Dollars (\$100,000.00).

ARTICLE V CLOSING

Section 5.1. Time and Place of Closing and Delivery. The "Closing Date" will be the date on which the Review Period expires absent further agreement between LCRA and the City. The "Delivery Date" shall be 8:00 am on the Monday preceding the date that LCRA normally reads the customer meters for customer billing purposes but after the date on which the Texas Commission on Environmental Quality approves the Required Consents, upon which approval the Title Company will deliver all items placed in trust with the Title Company to the respective parties as provided herein. All matters to take place on the Delivery Date shall take place simultaneously, and no delivery shall be considered to have been made until the TCEQ approval is given. For purposes of this Agreement, the Title Company shall be Alamo Title Company, Attn: Taresa Hale, 9600 N. MoPac Expressway No. 125, Austin, TX 78759.

Section 5.2. LCRA Delivery on Closing Date. Upon the Closing Date, LCRA will deliver to the Title Company each of the following items, which the Title Company will hold in trust until the Delivery Date:

- (a) A Bill of Sale and Assignment ("Bill of Sale") duly executed by the City and LCRA, transferring and assigning to the City LCRA's rights, title and interest in the Facilities and the Intangible Assets. The Assignment shall provide for the City's assumption of all of LCRA's obligations and liabilities listed in Exhibit C, Schedule 1 of this Agreement related to the Facilities or Intangibles, except to the extent provided otherwise this Agreement.
- (b) An instrument, in a form acceptable to the City, assigning by special warranty to the City all of LCRA's interests in any easements, licenses or rights-of-way included in the Property, to the extent they are assignable. The special warranty will provide that LCRA, its successors and assigns will warrant and forever defend the Property to City, its successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof (except as to the express reservations from and exceptions to conveyance and warranty) when the claim is by, through, or under LCRA, but not otherwise.
- (c) An affidavit in a form reasonably acceptable to LCRA and the City in which LCRA certifies that the Water System Assets have been transferred to the City and further grants to the City a power of attorney or similar authorization to act on LCRA's behalf in order for the City to complete the transfer of the Hamilton Creek and South Road portion of CCN No. 11670.
- (d) A signature on a letter to be jointly drafted by LCRA and the City to be sent to the customers of the Water System Assets promptly following the Closing Date informing

them of the change in ownership of the Water System Assets, change in water rates, if applicable, and any other information LCRA and the City determine is necessary or useful to the customers.

- (e) Closing instructions for the Title Company to deliver the documents provided in this section to the City on the Delivery Date.

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.

Section 5.3. The City Delivery. On the Closing Date, the City shall deliver to the Title Company the following items:

- (a) The Purchase Price in the amount and manner specified in Section 1.2 hereof in good funds.
- (b) 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 Water System Assets.
- (c) The City will also execute the Bill of Sale as required in Section 5.2(a) above.
- (d) An executed agreement pursuant to Texas Water Code section 13.248 regarding transfer of that portion of CCN No. 11670 that relates to Hamilton Creek and South Road from LCRA to the City ("CCN Agreement"), which CCN Agreement shall be signed by both the City and LCRA on the Closing Date in duplicate originals. The City agrees to file such CCN Agreement with TCEQ within 7 days of the Closing Date and diligently seek approval of the CCN Agreement by the TCEQ. In the event the City fails to do so, LCRA may file such CCN Agreement and invoice the City for its costs in doing so, which invoice the City shall be pay 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 Date.
- (e) Any necessary documents to terminate the wholesale treated water contracts between the City and LCRA under which the City provides treated water to the Water System Assets, which documents the Title Company shall hold in trust pending the Delivery Date.
- (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.

ARTICLE VI
LCRA OPERATION UNTIL DELIVERY DATE

Section 6.1. LCRA Operation Until and Delivery on the Delivery Date. LCRA will continue to operate the Water System Assets until the Delivery Date. LCRA will continue to bill and collect revenue from customers of the Water Systems and to pay the obligations of the Water Systems until the Delivery Date. LCRA will deliver to the City on the Delivery Date combinations and/or keys to all locks related to the Water System Assets. LCRA will deliver promptly to the City the meter reading ("Final Reading") for each customer of the Water System to be measured on the next regularly scheduled meter-read date after the Delivery Date, and LCRA will be entitled to bill and collect revenue from the water customers based on the Final Reading.

Section 6.2. Adjustments and Prorations. At Delivery Date, the following items shall be adjusted or prorated between LCRA and the City:

- (a) LCRA shall pay to the City, in cash on or before the Delivery Date, the amount of any sums, prepaid by third parties or customers of the Water System to LCRA and held by LCRA pursuant to the provisions of any of the contracts included in the Water System Assets and the City assumes all liabilities and obligations for such amounts and will execute and deliver notices of the transfer and assumption to all affected third parties. The City shall pay LCRA, in cash at Closing, the amount of any sums prepaid by LCRA to third parties pursuant to the provisions of any of the obligations identified in Exhibit C Schedule I attached hereto.
- (b) If any adjustments pursuant to this Section 6.2 are, subsequent to Delivery Date are 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 Delivery Date.
- (c) Rents, water, and utility charges, chemical costs, supplies and any other items of operational expenses owing in connection with the Property or the Water Systems for the current year shall be prorated at the Delivery Date if such obligations are incurred on an annual basis. Rents, water, and utility charges, chemical costs, supplies and any other items of operational expenses owing in connection with the Property or Water Systems that are payable on a monthly or one time basis shall be paid when due until the Delivery Date. Any rents, water and utility charges and any other items of operational expenses due in connection with the Property or Water Systems after the Delivery Date shall be the obligation of the City.
- (d) LCRA shall continue to bill customers and shall be entitled to collect the associated revenue, including any past due amounts, until the Final Reading. The City shall bill customers and shall collect the associated revenue thereafter.

Section 6.3. Possession. Possession of the Water System Assets shall be delivered to the City by LCRA on the Delivery Date and the City will assume operations on the Delivery Date.

Section 6.4. Interim Operations Pending TCEQ Approval. If more than one year expires after the Closing Date, but prior to the Delivery Date, the parties agree to negotiate in good faith toward an interim operating agreement by which the City may assume operation of the Water System Assets pending approval by the TCEQ and the Delivery Date.

ARTICLE VII REMEDIES

Section 7.1. City's Remedies for Default. In the event LCRA fails or refuses to timely comply with LCRA's obligations hereunder, or any of LCRA's representations, warranties or covenants contained herein are not true or have 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: (a) to enforce this Agreement by specific performance, mandamus or similar remedy; or (b) to pursue any other remedies allowed by law or equity.

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 shall have the following remedies: (a) to enforce this Agreement by specific performance, mandamus or similar remedy; or (b) to pursue any other remedies allowed by law or equity.

Section 7.3. Enforcement of Provisions Surviving Closing. To the extent an obligation under the terms of this Agreement is stated to survive Closing Date and/or Delivery Date, it shall be deemed to survive as an obligation of that obligor after the termination of this Agreement, and, in the event of a default of that obligation, the default shall be subject to any specific remedies described in this Agreement. If no specific remedy is described in this Agreement for the particular default then the following remedies shall apply: (a) waiver of the default; (b) specific enforcement; (c) any other relief as may be provided by law or equity, including a suit for money damages; provided however, that the damages either Party may seek will be limited to actual damages.

Section 7.4. Attorney's Fees. In the event of any suit or other adjudication between the LCRA and the City to enforce any claim arising out of this Agreement or interpret the terms of this Agreement, the prevailing Party shall be entitled to recover its reasonable and necessary attorney's fees, expert witness fees, and all other costs and expenses incurred in resolving the suit or adjudication from the non-prevailing Party as provided by Texas Local Government Code, Chapter 271, Subchapter I.

ARTICLE VIII
GENERAL PROVISIONS

Section 8.1 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; provided, however, the parties will split costs for Title Company to hold conveyance instruments in trust until the Delivery Date. Each party shall bear their own attorney's fees and other expenses not otherwise stipulated to be paid by LCRA or the City under other provisions of this Agreement.

Section 8.2 Notice to TCEQ. The City, at the City's sole cost and expense, shall deliver to the Commission within 7 days after the Closing Date the CCN Agreement to seek the Required Consents and diligently shall seek approval of the CCN Agreement by the TCEQ. LCRA shall cooperate and assist the City to the extent reasonably necessary in obtaining approval of such Required Consents. This provision shall survive the Closing Date.

Section 8.3 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:
Suzanne Zarling
Executive Manager, Water Services
LCRA
P. O. Box 220 — Mail Stop R325
Austin, Texas 78767-0220
Phone: (512) 473-3297
Fax: (512) 473-3551

With a copy to:
Madison Jechow
Associate General Counsel
LCRA
P. O. Box 220 — Mail Stop H429
Austin, Texas 78767-0220
Fax: (512) 473-4010

- (b) If to the City, to:
City of Marble Falls
ATTN: City Manager
800 3rd St.
Marble Falls, TX 78654-5728
FAX: (830) 693-6737

With a copy to:
Patty Akers
City Attorney for Marble Falls
Akers & Boulware-Wells, LLP
6618 Sitio del Rio Blvd.,
Building E, Suite 102
Austin, Texas 78730
Phone (512) 600-2305

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

Section 8.5. 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 8.6. 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 8.7. 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 8.8. 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 8.9. Time of Essence. Time is of the essence of this Agreement.

Section 8.10. 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.

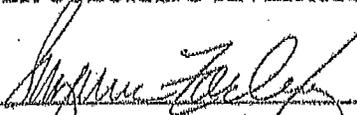
Section 8.11. Counterpart Execution. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of all persons required to bind any party appear on each counterpart. All counterparts shall collectively 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 8.12. 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 8.13. Effective Date. The Effective Date of this Agreement shall be the date executed by the last party to the Agreement.

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.

LOWER COLORADO RIVER AUTHORITY

By: 

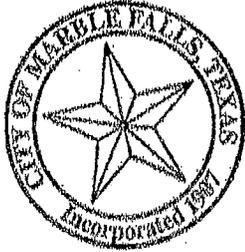
Name: SUZANNE ZARLING

Title: EXECUTIVE MANAGER, WATER

Date: April 22, 2011



THE CITY OF MARBLE FALLS, TEXAS



By: [Signature]
Name: George W. Russell
Title: Mayor
Date: 4-6-2011

Attest:

By: [Signature]
Name: Christina Lane
Title: City Secretary

EXHIBIT A
Hamilton Creek and South Road



0 0.125 0.25 0.5 Miles

City of Marble Falls Planning Map February 10, 2011

- Legend**
- EXISTING PERMANENT BASEMENT
 - PROPOSED PERMANENT BASEMENT
 - PROPOSED TEMPORARY BASEMENT
 - TRACT TO BE CONVEYED
 - LORA PROPERTY
 - MARBLE FALLS CITY LIMITS
 - LORA CON WATER
 - FENCE

Hanilton Creek LORA Water CON 11070

See Detail Above

South Road
LORA Water
CON 11070

TRACT TO BE CONVEYED

See Detail
Right

289

EXHIBIT A

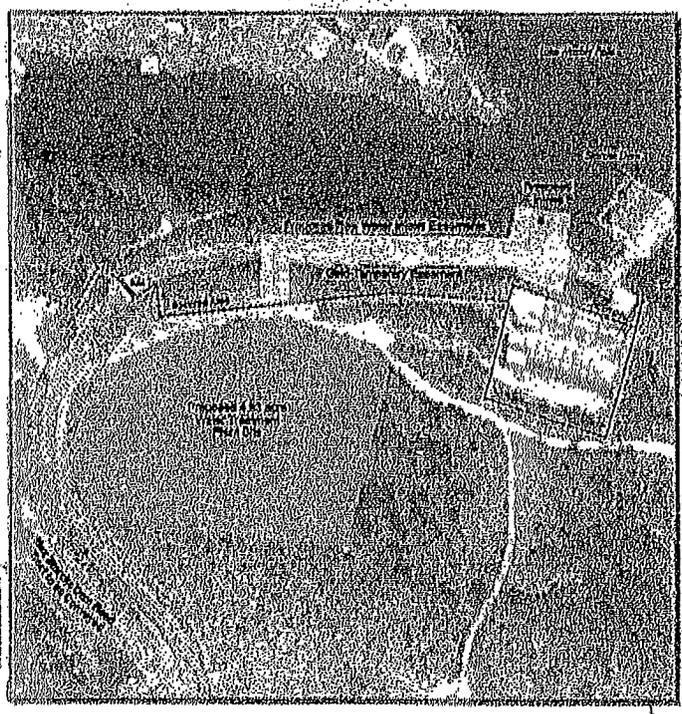


EXHIBIT B
WATER SYSTEM ASSETS

SCHEDULE 1 - FACILITIES

Being that equipment, facilities and related improvements reasonable and necessary to distribute water listed in the attached pages.

02004002425	09/21/2016	1001826	Meters & meter installations	1/1/2012	SOUTHROAD	1.0000	RES	WATR	WTRCO
02004002426	10/21/2016	1001826	Line Extension Los Escuderos	4/30/2006	SOUTHROAD	1.0000	WTR	WATR	WTRCO
0400243	10/21/2016	1001826	FINISHED WATER TRANSMISSION MA	1/1/1992	SOUTHROAD	1.0000	SSOSSL	WATR	WTRCO
0400243	11/21/2016	1001825	DISTRIBUTION PIPE & VALVES	1/1/2002	SOUTHROAD	1.0000	WTR	WATR	WTRCO

EXHIBIT B - SCHEDULE 1 - South Road Assets

EXHIBIT B
WATER SYSTEM ASSETS

SCHEDULE 2 - INTANGIBLE ASSETS

All contracts, leases, option rights, permits, certificates, licenses, reimbursement rights, service agreements, deposits, warranties from vendors or manufacturers or other third parties, regulatory correspondence, as-built plans and specifications, engineering reports, files, records, information, data, and other intangible assets of LCRA that are related to the ongoing operation and ownership of the Water System Assets, including but not limited to:

- these portions of CCN No. 11670 that relate to Hamilton Creek and South Road.

**EXHIBIT B
WATER SYSTEM ASSETS**

SCHEDULE 3 - PROPERTY

Easements: All volume and page references are to Burnet County official public records.

Volume 1166 Page 0984 Grantor: Free Energy Grantee: LCRA Filed July 17, 2003. 1.24 acres. 20 foot wide easement.
Volume 822 Page 633 Grantor: John Whitman and Wesley Whitman Grantee: Hamilton Creek Water Supply Corporation Filed October 16, 1998 20 foot wide easement with a 45 circle radius easement on one end. 1.84 acres.
Volume 797, Page 564 Grantor: O.O. "Peewee" Fleshner and Florence Irene Fleshner Grantee: Hamilton Creek Water Supply Corporation Filed May 8, 1998 36 foot wide easement 257 feet long. 0.213 acres.
Volume 797 Page 151 Grantor: C.B. "Brad" Collins and Diana Collins Grantee: Hamilton Creek Water Supply Corporation Filed May 14, 1998 40 feet wide and 40 feet long 0.0367 acres
Volume 797 Page 156 Grantor: Stanley Arthur Slocum and Faye Elizabeth Slocum Grantee: Hamilton Creek Water Supply Corporation Filed May 6, 1998 50 foot wide easement 260 feet long 0.2984 acres
South Road Water System Lot 8 Los Escondidos Easement To be retained and reserved when the lot is sold. 15 foot wide easement 130.62 feet long 0.045 acres

EXHIBIT B
WATER SYSTEM ASSETS

SCHEDULE 3 - PROPERTY - page 2

All public utility easements of record in Los Escondidos, South Shore Acres and Riviera Village Subdivisions in Burnet County, Texas, including, but not limited to, that certain 30' non-exclusive utility easement between Lot Nos. Twenty-nine (29) and Thirty-one (31), and Lot Nos. Thirty (30) and Thirty-two (32), of Los Escondidos, a subdivision in Burnet County, Texas, as shown on plat recorded in Volume 1, Page 38 of the Plat Records of Burnet County, Texas.

EXHIBIT B

WATER SYSTEM ASSETS

SCHEDULE 4 - REQUIRED CONSENTS

TCEQ approval of agreement under Texas Water Code section 13.248 regarding transfer of those portions of CCN No. 11670 that relate to Hamilton Creek and South Road (also known in this agreement as the CCN Agreement).

**EXHIBIT C
SCHEDULE 1**

**DEBTS AND OBLIGATIONS ASSOCIATED WITH THE HAMILTON CREEK AND
SOUTH ROAD WATER SYSTEMS**

None, other than obligations arising under the Intangible Assets listed in Exhibit B, Schedule 2.

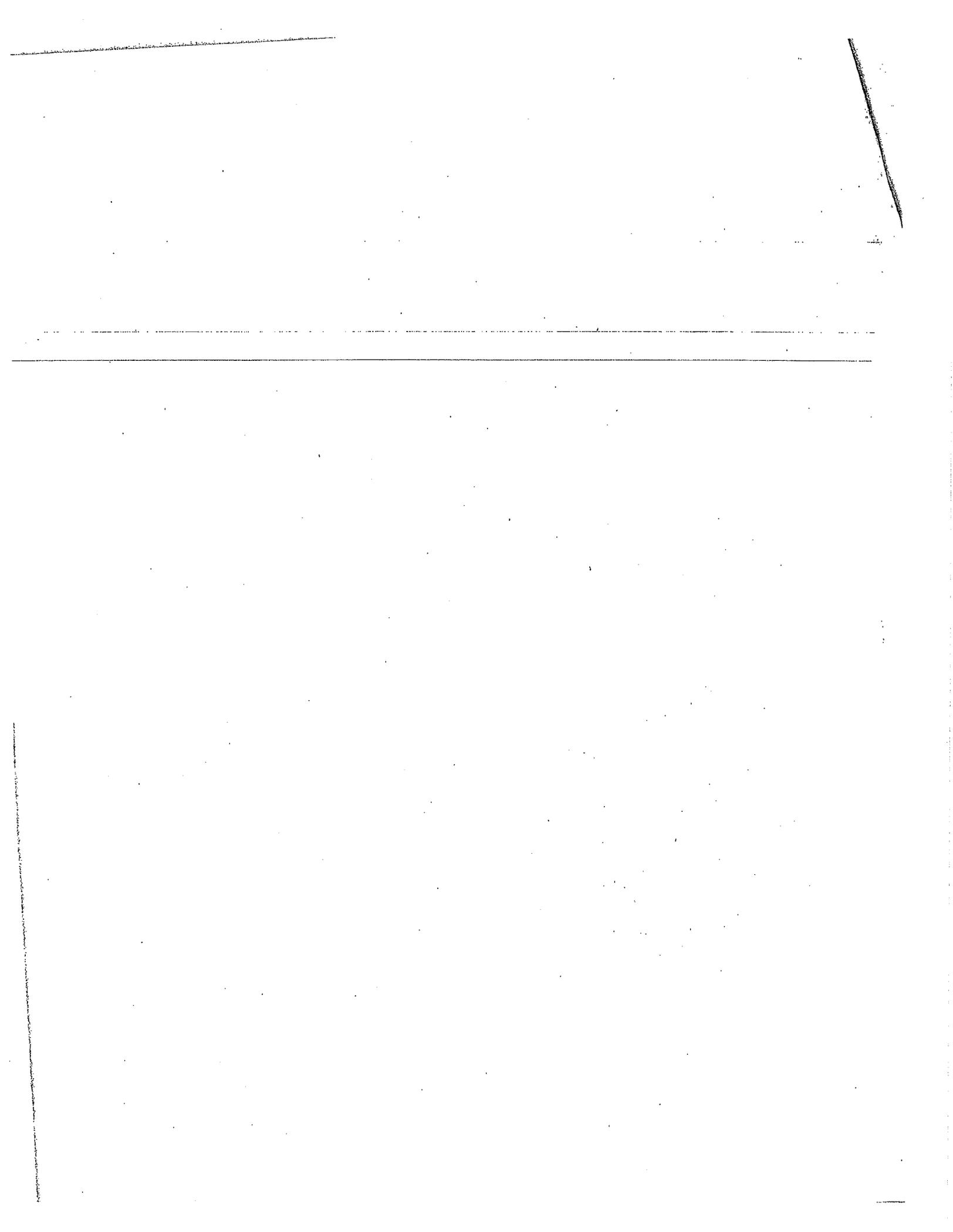
Book is one of 15A (Hamilton Creek), 19A (Southroad) and Account Status is one of Active, Incomplete

RECEIVED

2011 JUN 6 PM 3:44
 WATER SUPPLY DIV.
 MARBLE FALLS

Customer #	Account #	Name	Service Address	Town/Chy	Book
00604757	00500727	JOHNNA & MICHAEL BISHOP	473 ADVENTURE TRL	MARBLE FALLS	015A
00002763	00426690	RON BOWDEN	1108 CR 342C	MARBLE FALLS	015A
00608806	00437777	BRAD BOWEN	1131 CR 342C	MARBLE FALLS	015A
00608806	00426693	BRAD BOWEN	1125 CR 342C	MARBLE FALLS	015A
00002778	00426704	TIM BROWN	2008 CR 342C	MARBLE FALLS	015A
00400846	00426670	BARRY BURTON	632 CR 342C	MARBLE FALLS	015A
00002774	00426700	FLOYD E CASEY	1423 CR 342C	MARBLE FALLS	015A
00002741	00426667	BRAD COLLINS	310 ADVENTURE TRAIL	MARBLE FALLS	015A
00404530	00432105	DENNIS CORNELISON	222 HATCHETT HILL	HAMILTON CREEK	015A
00002766	00426692	TREY FISHER	1111 CR 342C	MARBLE FALLS	015A
00002740	00426666	O FLESHNER	240 ADVENTURE TRAIL	MARBLE FALLS	015A
00002751	00426677	JOSE FLORES	807 CR 342C	MARBLE FALLS	015A
00605983	00426680	LISA FOWLER	517 ADVENTURE TRAIL	MARBLE FALLS	015A
00607572	00426697	DELA GREENWAY	1321 CR 342C	MARBLE FALLS	015A
00609517	00426671	MIKE GROUNDS	610 CR 342C	MARBLE FALLS	015A
00002757	00431211	DAVID HARGRAVES	981 CR 342C	MARBLE FALLS	015A
00002757	00426683	DAVID HARGRAVES	919 CR 342C	MARBLE FALLS	015A
00002770	00426696	CHARLIE HATCHETT	343 HATCHETT HILL	MARBLE FALLS	015A
00002756	00426682	BRUCE HINSON	903 CR 342C	MARBLE FALLS	015A
00408460	00426695	ILONA LAWSON	1200 CR 342C	MARBLE FALLS	015A
00404593	00507114	LCRA AUTO FLUSH VALVES	END OF ROAD	MARBLE FALLS	015A
00002772	00426698	JOE LEWIS	108 HATCHETT HILL	MARBLE FALLS	015A
00002773	00426699	LOUIS LONG	983 ADVENTURE TRAIL HAMILTON C	MARBLE FALLS	015A
00002777	00426703	MIKE LOVE	1801 CR 342C	MARBLE FALLS	015A
00002746	00426672	WARREN LYDA	2900 HWY1481 EAST	MARBLE FALLS	015A
00411714	00426674	MARGARET MCMAHAN	637 CR 342C	MARBLE FALLS	015A
00411329	00426676	MARIE MCNEILL	704 CR 342C	MARBLE FALLS	015A
00609582	00426687	JOE MELUGIN	1020 CR 342C	MARBLE FALLS	015A
00002759	00426685	GREG MODDLE	1000 CR 342 C	MARBLE FALLS	015A
00002779	00426705	WALTER OCHS	2015 ROLLING HILL	MARBLE FALLS	015A
00002765	00426689	PRICE PORTER	1104 CR 342C	MARBLE FALLS	015A
00606770	00426679	JACKIE RADEKA	241 ADVENTURE TRAIL	MARBLE FALLS	015A
00401754	00429223	CLINTON RHODES	1401 CR 342 C	MARBLE FALLS	015A
00002768	00426694	JAMES SCHMIDT	1215 CR 342C	MARBLE FALLS	015A
00608998	00426702	RANDY SEELY	2025 CR 342 C	MARBLE FALLS	015A
00605520	00426673	LEE SMITH	700 CR 342C	MARBLE FALLS	015A
00408235	00426688	TOM SMITH	575 ADVENTURE TRAIL	MARBLE FALLS	015A
00405751	00426675	THE LANDRUM TRUST	735 CR 342C	MARBLE FALLS	015A
00002752	00426678	RANDY TOMISON	806 CR 342 C	MARBLE FALLS	015A
00002743	00426669	SUZETTE WILLS	150 ADVENTURE TRAIL	MARBLE FALLS	015A
00408993	00437221	BOB WOMBLE	930 CR 342C	HAMILTON CREEK	015A
00411926	00428264	GENE AMES III	800 LOS ESCONDIDOS	MARBLE FALLS	019A
00404629	00428246	AUDREY ANDERSON	511 LOS ESCONDIDOS	MARBLE FALLS	019A
00605084	00428278	JOSEPH BARNES	1410 LOS ESCONDIDOS	MARBLE FALLS	019A
00402546	00430008	ROBERT BARTZ	510 LOS ESCONDIDOS	MARBLE FALLS	019A
00410014	00428273	ROY E BODE	308 CALLE DOS	MARBLE FALLS	019A
00605334	00428225	GARY BOLTON	212 CALLE DOS	MARBLE FALLS	019A
00400792	00428223	KARYN B BOLTON	200 CALLE DOS	MARBLE FALLS	019A
00608225	00428259	LINDA & BRICE BORMANN	95 GATEWAY NORTH	MARBLE FALLS	019A
00400830	00428277	PAT BURTON	1404 LOS ESCONDIDOS	MARBLE FALLS	019A
00410910	00428288	DON COMEDY	837 LOS ESCONDIDOS	MARBLE FALLS	019A
00400811	00428257	ALLEN CRYER	1338 LOS ESCONDIDOS	MARBLE FALLS	019A
00407331	00428265	BRENT CUMMINGS	916 LOS ESCONDIDOS	MARBLE FALLS	019A

00409687	00428275	CHARLES D DILLON	1450 LOS ESCONDIDOS	MARBLE FALLS	019A
00400829	00428276	DUKE DILLON	1438 LOS ESCONDIDOS	MARBLE FALLS	019A
00400820	00428266	PATRICK FLYNN	830 LOS ESCONDIDOS	MARBLE FALLS	019A
00400847	00428290	STEPHANIE FORE	1222 LOS ESCONDIDOS	MARBLE FALLS	019A
00410043	00438456	FRANK W GIESBER	1430 LOS ESCONDIDOS	MARBLE FALLS	019A
00401778	00429234	JEFF GREGOREZYK	1110 LOS ESCONDIDOS	MARBLE FALLS	019A
00400800	00428240	THEODORE GUERRY	502 LOS ESCONDIDOS	MARBLE FALLS	019A
00400810	00428256	WAYNE HAASS	1341 LOS ESCONDIDOS	MARBLE FALLS	019A
00409627	00429246	JOHN R HAMILTON	300 CALLE DOS -	MARBLE FALLS	019A
00609045	00428293	HEATHER HARRIS	1107 LOS ESCONDIDOS	MARBLE FALLS	019A
00403583	00428282	MYRRIS HEARN	835 LOS ESCONDIDOS	MARBLE FALLS	019A
00400795	00428227	SULEJMAN HODZIC	304 CALLE DOS	MARBLE FALLS	019A
00404607	00428258	ATTILA E HUSZKA	1044 LOS ESCONDIDOS	MARBLE FALLS	019A
00400834	00428281	JACK IRICK	512 LOS ESCONDIDOS	MARBLE FALLS	019A
00405400	00428250	JCO PARTNERSHIP LTD	702 LOS ESCONDIDOS	MARBLE FALLS	019A
00608098	00428237	RAYE KILPATRICK	112 CALLE UNO	MARBLE FALLS	019A
00606411	00428268	JAMES & MARGARET LAMPTON	222 CALLE DOS	MARBLE FALLS	019A
00402012	00428242	SHARON M LANCE	504 LOS ESCONDIDOS	MARBLE FALLS	019A
00002665	00429409	LCRA	6" SOUTHMASTER METER RD	MARBLE FALLS	019A
00002665	00429408	LCRA	2" SOUTHMASTER METER RD	BUCHANAN DAM	019A
00411541	00442931	LCRA	ACROSS FROM PUMP HOUSE BY FLAG	BUCHANAN DAM	019A
00401780	00428272	KERRY LOADER	1240 LOS ESCONDIDOS	MARBLE FALLS	019A
00400815	00428261	CHARLES MC CURLEY JR	1246 LOS ESCONDIDOS	MARBLE FALLS	019A
00400825	00428271	BIRNEY MCLAUGHLIN	1402 LOS ESCONDIDOS	MARBLE FALLS	019A
00607958	00431148	PETER & KAREN MOMMSEN	602 LOS ESCONDIDOS	MARBLE FALLS	019A
00411036	00428230	JOHN MOODY	801 LOS ESCONDIDOS	MARBLE FALLS	019A
00400802	00428244	JERRY POST	507 LOS ESCONDIDOS	MARBLE FALLS	019A
00404988	00428267	ANN M REASER	1010 LOS ESCONDIDOS RD	MARBLE FALLS	019A
00408557	00428289	LIBBI REEDER	1038 LOS ESCONDIDOS	MARBLE FALLS	019A
00609046	00428279	TOM ROBINSON	600 LOS ESCONDIDOS	MARBLE FALLS	019A
00400845	00428287	SUSAN ROWAN	1428 LOS ESCONDIDOS	MARBLE FALLS	019A
00607347	00428254	ROBERT RUFF	1204 LOS ESCONDIDOS RD	MARBLE FALLS	019A
00606214	00428252	KEVIN SCHAUTTEET	1026 LOS ESCONDIDOS	MARBLE FALLS	019A
00403365	00430835	BRYAN SCHNELLE	506 LOS ESCONDIDOS	MARBLE FALLS	019A
00408598	00428280	WAYNE SCHROEDER	420 LOS ESCONDIDOS ST	MARBLE FALLS	019A
00403473	00430910	STEVEN W SHROUT	604 LOS ESCONDIDOS	MARBLE FALLS	019A
00400817	00428263	JOE SLOVACEK	1314 LOS ESCONDIDOS	MARBLE FALLS	019A
00604756	00428255	JOSEPH SLOVACEK	1315 LOS ESCONDIDOS	MARBLE FALLS	019A
00403579	00431033	H DALE TUCKER	1326 LOS ESCONDIDOS	MARBLE FALLS	019A
00400797	00428233	TRISH VON HALLA	219 CALLE UNO	MARBLE FALLS	019A
00607489	00428286	LINDA S WALDROOP	91 GATEWAY N	MARBLE FALLS	019A
00400823	00440586	BEVERLY WALKER	226 CALLE DOS	MARBLE FALLS	019A
00410423	00428270	SALLY ANN WALTON	700 LOS ESCONDIDOS	MARBLE FALLS	019A
00411285	00428238	DONALD WARREN	415 LOS ESCONDIDOS LOT 52	MARBLE FALLS	019A
00607933	00428291	BEN WARTON	515 LOS ESCONDIDOS	MARBLE FALLS	019A
00400804	00428248	EDNA W WHISENANT	601 LOS ESCONDIDOS	MARBLE FALLS	019A
00604832	00501012	ROY WILTY	410 LOS ESCONDIDOS	MARBLE FALLS	019A
00607993	00428262	DIANA WOOD	1125 LOS ESCONDIDOS	MARBLE FALLS	019A
00404287	00428269	DOROTHY W ZUBER	220 CALLE DOS	MARBLE FALLS	019A





Texas Commission On Environmental Quality

**By These Presents Be It Known To All That The
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. 11670

to provide continuous and adequate water utility service to that service area or those service areas in Burnet County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 37058-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 The
City of Marble Falls**

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

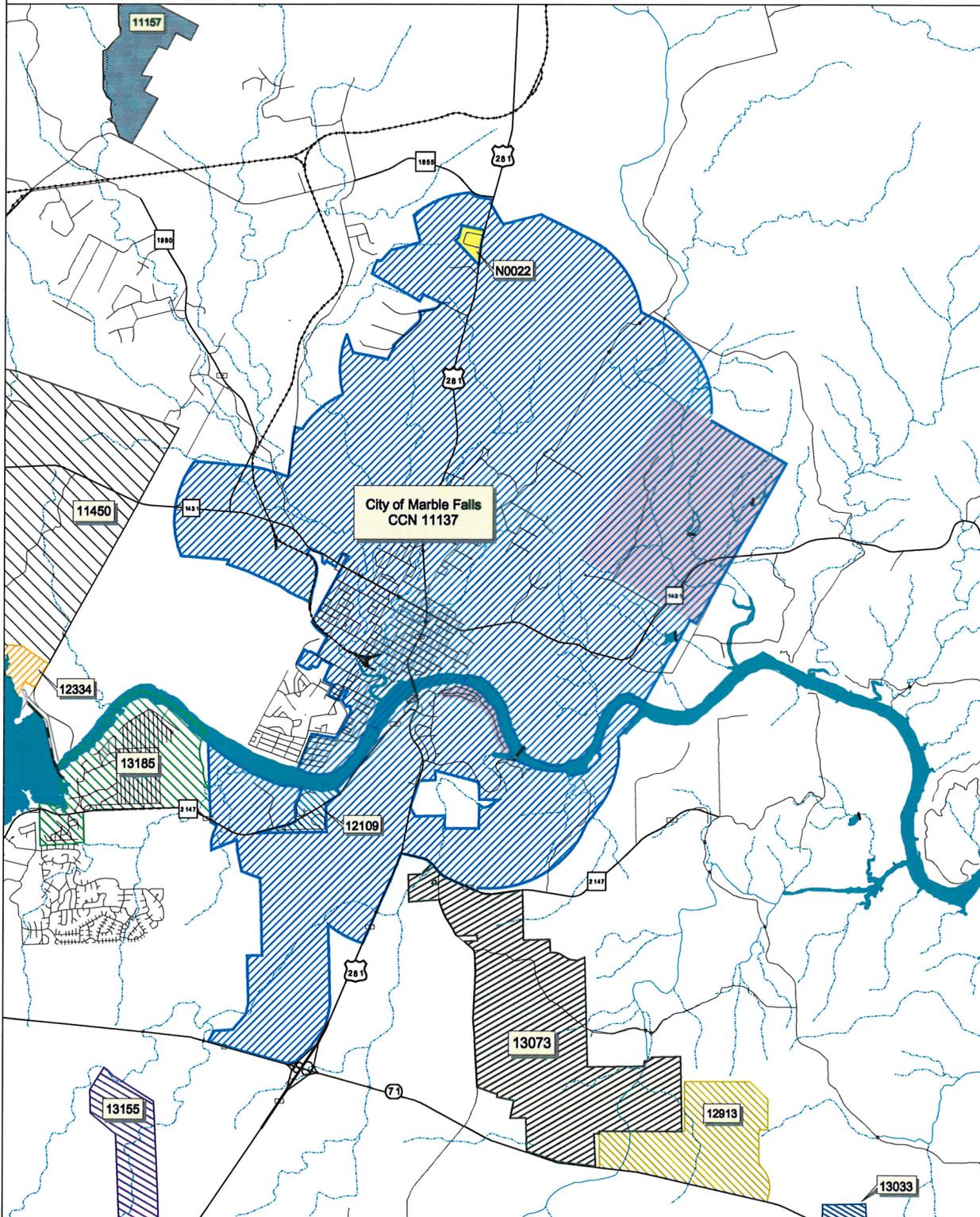
Certificate of Convenience and Necessity No. 11137

to provide continuous and adequate water utility service to that service area or those service areas in Burnet County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 37058-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 Marble Falls 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

City of Marble Falls
Water Service Area
CCN No. 11137
Application No. 37058-C (13.248 Contract Service Agreement
to Transfer a Portion of CCN No. 11670 from Lower Colorado River Authority
in Burnet County)





Transferred Areas





1 inch = 1 mile

Water CCN Service Areas

-  11137 - CITY OF MARBLE FALLS
-  11157 - AQUA UTILITIES INC
-  11450 - CITY OF GRANITE SHOALS
-  12109 - CHANNEL OAKS WATER SYSTEM
-  12334 - HIGHLAND UTILITIES INC
-  12913 - DOUBLE HORN WSC INC
-  13033 - SH WSC
-  13073 - CAPSTONE WATER SYSTEM
-  13155 - COLIBRI RANCHES WATER SYSTEM
-  13185 - CITY OF COTTONWOOD SHORES
-  N0022 - N R WSC



Map by S. Jester 9/22/2011
 Data path: c:\gis\projects\shp\for\applications\37058-c.shp
 Project path: c:\gis\projects\applications\37058-c.spr

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 15, 2011

Emily Rogers
Bickerstaff Heath Delgado Acosta, LLP
3711 S. MoPac Expressway, Bldg. 1, Suite 300
Austin, Texas 78746
Fax: (512) 320-5638

Madison Jechow, Associate General Counsel
LCRA
P.O. Box 220
Austin, TX 78767-0220
Fax: (512)-473-4067

Re: TCEQ Docket No. 2011-1444-UCR; Consideration of a request for a Commission order approving a contract designating service areas between the City of Marble Falls (Marble Falls), Certificate of Convenience and Necessity (CCN) No. 11137, and the Lower Colorado River Authority (LCRA), CCN No. 11670

Dear Ms. Rogers and Mr. Jechow:

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 January 11, 2012, beginning at 9:30 a.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. At least one of you will need to attend the Agenda to explain the agreement and to answer any questions the Commissioners may have. Ms. Rogers has agreed to notify the customers who will be transferred of the hearing date.

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 questions about this matter, you may contact Heidi Graham from the Water Supply Division at 1-512-239-0844 or me at 1-512-239-4761.

Sincerely,

A handwritten signature in black ink that reads "Kayla Murray". The signature is written in a cursive style with a large, prominent "K" and "M".

Kayla Murray
Staff Attorney
Environmental Law Division

Enclosure

CONSENT FORM

Applicant=s Name: LCRA
Application No.: 37058-C

I concur with the map created 9/22/2011 as a result of the above mentioned application.

I do not concur with the map created 9/22/2011 and intend to respond by letter dated _____.

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

Signature: 

Printed Name: Leah Manning, P.E., PMP

Relationship to Applicant: Manager, Operations Support

Date signed: 10/18/11



Mail to or fax to:
Heidi Graham
Utilities & Districts Section, MC 159
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 Marble Falls
Application No.: 37058-C

- I concur with the map created 9/22/2011 as a result of the above mentioned application.
- I do not concur with the map created 9/22/2011 and intend to respond by letter dated _____.

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

Signature: 

Printed Name: Ralph Hendricks

Relationship to Applicant: City Manager

Date signed: Oct 19, 2011

Mail to or fax to:
Heidi Graham
Utilities & Districts Section, MC 159
Water Supply Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
Fax (512) 239-6972