

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 31, 2012

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. 2012-0778-UCR; Consideration of a request for a Commission order approving a contract designating service areas between the City of Austin (Austin), Certificate of Convenience and Necessity (CCN) No. 11322, 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 September 19, 2012, agenda on a request for an order approving contracts designating water service areas between the City of Austin (Austin) 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 Austin on January 3, 2012, and declared administratively complete on March 27, 2012;
6. Texas Water Code, Section 13.248 contract between Marble Falls and LCRA executed on December 9, 2011;
7. Certificates of Convenience and Necessity (CCN) Nos. 11670 and 11322;
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 Austin and LCRA giving approval to the ED for the above final maps.

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. 2012-0778-UCR

APPLICATION NO. 37244-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
AUSTIN AND THE	§	
LOWER COLORADO RIVER	§	
AUTHORITY IN	§	
TRAVIS COUNTY, TEXAS	§	ENVIRONMENTAL QUALITY

ORDER

A request for a Commission order approving a contract designating service areas between the City of Austin (Austin), Certificate of Convenience and Necessity (CCN) No. 11322, and the Lower Colorado River Authority (LCRA), Certificate of Convenience and Necessity (CCN) No. 11670, in Travis 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 December 9, 2011, Austin 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, LCRA will transfer a portion of its CCN area (Glenlake Water System) to Austin in order for this system currently being served by LCRA to be served by Austin. The contract states that LCRA will designate that portion of its CCN area to Austin for an agreed upon consideration. The total acreage amount to be transferred is approximately 694.23 acres; there are facilities and approximately 392 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.

Austin is capable of rendering continuous and adequate water service to every customer in the Glenlake Water System as described by contract. The CCN transfer, which results in Austin being the sole retail water service provider for the Glenlake Water System, 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 a portion of the Lower Colorado River Authority's CCN No. 11670 and designating that retail water service shall be provided by the City of Austin, CCN No. 11322, in those areas, is hereby approved.

CCN No. 11322 in Travis County, held by the City of Austin, is hereby amended in accordance with the contract.

CCN No. 11670 in Travis 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 Travis 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:** August 31, 2012
THRU: Bridget Bohac, Chief Clerk
FROM: Environmental Law Division
SUBJECT: **TCEQ Docket No. 2012-0778-UCR.** Consideration of a request for a Commission order approving a contract designating service areas between the City of Austin and the Lower Colorado River Authority

DESCRIPTION OF APPLICATION

Applicant: The City of Austin
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 Austin ("The City"), water certificate of convenience and necessity ("CCN") No. 11322, and the Lower Colorado River Authority ("LCRA"), CCN No. 11670, provide retail water service in Travis County, Texas. On December 9, 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 a water system and approximately 694.23 acres contained in its CCN area to the City for agreed upon consideration. Facilities and approximately 392 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 January 3, 2012, and declared administratively complete on March 27, 2012;
2. Agreement between the City and LCRA executed on December 9, 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 the City. 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 Austin. 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 (239-4761)
Sheresia Perryman, Water Supply Division (239-3654)

CAPTION
City of Austin / LCRA
Application No. 37244-C

TCEQ Docket No. 2012-0778-UCR. Consideration of a request for a Commission Order approving a contract designating service areas between the City of Austin, Certificate of Convenience and Necessity (CCN) No. 11322, and the Lower Colorado River Authority (LCRA), CCN No. 11670, in Travis County, Texas, pursuant to section 13.248 of the Texas Water Code. Currently, LCRA holds a CCN for the area in question. Under the contract, LCRA will transfer the approximate 694.23 acres to the City of Austin. The City of Austin will be the sole retail water service provider in this area. Facilities and approximately 392 customers will also be transferred. (Kayla Murray, Sheresia Perryman)

TCEQ Interoffice Memorandum

To: Environmental Law Division

Thru: Lisa Fuentes
Sheresla Perryman
Utilities Financial Review

From:  Debi Loockerman C.P.A.

Date: April 16, 2012

Subject: Contract Service Agreement Pursuant to Texas Water Code Section 13.248, between the City of Austin, Certificate of Convenience and Necessity (CCN) No. 11322, to Transfer a Portion of CCN No. 11670 from Lower Colorado River Authority (LCRA); In Travis County; Application No. 37244-C

CCN: 600135198; RN: 101208072 (City of Austin)
CCN: 600253637; RN: 101454155 (LCRA)

In my opinion, the City of Austin, CCN No. 11322, and LCRA, CCN No. 11670, have demonstrated adequate financial and managerial capability to provide service to the area contracted for release and transfer. No new area is being transferred to LCRA by this agreement. These conclusions are based on information provided by the applicants prior to this date and may not reflect any changes in the applicants' status subsequent to this date.

Background

City of Austin and LCRA entered an agreement as of December 9, 2011 to transfer approximately 694 acres and approximately 400 current customers from LCRA's CCN to the City of Austin's CCN. The contract within the application indicates that the City will pay approximately \$2 million for the area and customers. Both the City of Austin and LCRA have comprehensive annual financial reports (CAFR) which include unqualified auditors' opinions that the financial statements present fairly, in all material respects, the financial position of the entities in conformity with accounting principles generally accepted in the U.S.A. The opinions were issued by Deloitte & Touche LLP (City of Austin), and Baker Tilly Virchow Krause, LLP (LCRA). City of Austin received the Certificate of Achievement for Excellence in Financial Reporting for the Fiscal Year Ended September 30, 2010.

The City of Austin provides service to more than 200,000 connections according to the TCEQ water utilities database and its water system meets TCEQ requirements for a system "Superior Rating". LCRA provides retail water service to more than 4,200 connections and is divesting itself of retail water services which constitutes less than 3% of its total annual revenues. This transaction constitutes less than 1% of either entity's fixed asset base, annual revenues, and less than 1% of the City of Austin's customer base. The transaction will not have a material effect on either entity's financial and managerial ability to provide service.



City of Austin

Austin Water Utility, P.O. Box 1088, Austin, TX 78767

SP

January 3, 2012

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

Via Hand-Delivery

Re: The City of Austin and the Lower Colorado River Authority's Water CCN Transfer Pursuant to Texas Water Code § 13.248 of the Glenlake Water System (PWS ID No. 2270167; RN104099239)

Dear Sir/Madam:

The City of Austin ("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 Austin (Water CCN No. 11322; RN101208072). The Agreement transfers the CCN areas, customers, and facilities of Glenlake Water System from LCRA to the City.

Other than the CCN areas, customers, and facilities associated with the Glenlake 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.

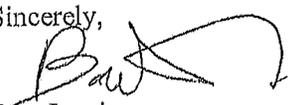
The City respectfully requests that the Texas Commission on Environmental Quality ("TCEQ"), pursuant to Texas Water Code § 13.248, approve this Agreement designating areas and customers to be served by the City and LCRA, and transfer the CCN areas and customers for the Glenlake Water System to the City and include those areas and customers in the City's CCN No. 11322.

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

1. A copy of the Agreement for Sale of Water System Assets and associated documents;
2. Mapping and CD containing GIS information required for a CCN transfer;
3. List of the Customers for the Glenlake Water System; and
4. List of the Landowners for the Glenlake Water System.

If you need additional information or have any questions, please do not hesitate to contact me at 512-072-0118 or lisa.martinez@austintexas.gov.

Sincerely,


Bart Jennings
Austin Water Utility

Enclosures

cc: Madison Jechow, Attorney for the Lower Colorado River Authority
Sharon Smith, Assistant City Attorney, City Law Department

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PURCHASE AGREEMENT
FOR THE GLENLAKE WATER SYSTEM

THIS PURCHASE AGREEMENT FOR THE GLENLAKE WATER SYSTEM (this "Agreement") by and between the LOWER COLORADO RIVER AUTHORITY, a conservation and reclamation district and political subdivision of the State of Texas ("LCRA" or "Seller") and the City of Austin, Texas, a home-rule municipal corporation ("Buyer" or "City") is made and entered into effective the 9th day of December, 2011, which is the date this Agreement is executed by LCRA (the "Effective Date").

RECITALS

A. LCRA owns certain water distribution and storage facilities, and appurtenances thereto, serving the subdivisions platted under the names Glenlake and Westminster Glen in and around the City, which facilities are more fully described herein (the "System").

B. Buyer desires to acquire the System.

C. The LCRA Board of Directors has determined that the System is no longer necessary, convenient, or of beneficial use to the business of LCRA.

D. The Purchase Price (defined herein) is reflective of a negotiated agreement for sale of the System the terms of which have been approved by the governing bodies of both LCRA and Buyer.

E. The actions to be taken by Buyer and LCRA under this Agreement are authorized by, among other laws, section 791.026 of the Texas Government Code, and sections 552.014 and 272.001(b)(5) of the Texas Local Government Code.

F. LCRA desires to sell the System to Buyer under the terms and conditions more particularly provided in this Agreement.

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 1
PURCHASE AND SALE OF THE SYSTEM ASSETS

Section 1.1 Transfer of Water System Assets by LCRA. Reference to the "Closing Date" (as defined in Section 5.2) shall include the "Actual Closing Date" where applicable. Subject and pursuant to the terms and conditions set forth in this Agreement, on the Closing Date, LCRA will transfer and convey the following assets, and Buyer will purchase from LCRA the following assets:

(a) Facilities. All of the water distribution and storage facilities, and appurtenances thereto, including system control and alarm facilities, associated equipment and tools, associated office and storage facilities, personal property, machines, electrical equipment, and miscellaneous inventory of parts and supplies and equipment; and any other tangible assets of LCRA that are related to ownership and operation of the System listed on Schedule 1 of Exhibit A attached hereto and incorporated herein for all purposes (collectively the "*Facilities*").

- (i) The Facilities listed are derived from an inventory ("*Inventory*") of the Facilities jointly completed by LCRA and Buyer prior to the Effective Date.
- (ii) The Inventory will be updated at Closing to delete any items no longer owned by LCRA as a result of normal operation and maintenance of the System and to add items purchased by LCRA as a result of normal operation and maintenance of the System and to be transferred to Buyer. Any nonmaterial update to the Inventory and Facilities will not affect the Purchase Price absent written amendment to this Agreement approved by both parties.
- (iii) The Facilities will be transferred AS-IS with no warranties, representations, or guarantees, other than:
 - (A) third-party warranties related to the System to the extent same are assignable in accordance with Section 5.4, and
 - (B) those listed in Section 3.2.

(b) 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 System Assets (defined below), including but not limited to 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*"). Any files, records, information, or data that are privileged under the attorney-client privilege or privileged under other law may be excluded from the Intangible Assets. LCRA shall cooperate with Buyer to obtain all necessary approvals for the assignment of any intangible assets. The Intangible Assets will be transferred AS-IS with no warranties, representations or guarantees, other than:

- (i) third-party warranties related to the System to the extent same are assignable as provided by Section 5.4, and
- (ii) those listed in Section 3.2.

(c) Property. All land and interests therein, including without limitation real property, contract rights, 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, if any, 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 will be transferred AS-IS, with no warranties, representations or guarantees (other than those listed in Section 3.2); provided, however, the conveyance will be by special warranty conveyance instrument.

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

LCRA will not convey to Buyer any revenues collected prior to the Closing. LCRA will deliver promptly to Buyer the meter reading ("*Final Reading*") for each customer of the System to be measured on the next regularly-scheduled meter-read date after the Closing Date in an electronic form acceptable to Buyer, and LCRA will be entitled to bill and collect revenue from the water customers based on the Final Reading. LCRA agrees that it is responsible for the collection of such revenues for water utility service prior to Final Reading. Buyer shall bill customers and shall collect all associated revenue after the Final Reading.

LCRA will be solely responsible for the timely payment of all services rendered by third-parties, contractual obligations, or other accounts payable, for services provided or billed prior to the Closing. LCRA will hold the Buyer harmless from any claims related to such matters. Buyer shall be responsible for goods and services purchased for the System after the Closing Date and payment of any related bills. Buyer will hold LCRA harmless from any claims related to such matters.

Section 1.2 Purchase Price. The *Purchase Price* (herein so called) for the System Assets will be the sum of the following:

- (a) One million nine hundred ninety three thousand dollars and no cents (\$1,993,000.00);
- (b) One thousand dollars and no cents (\$1,000.00) for a phase one environmental site assessment of the Property (the "*ESA*"); and,

- (c) any costs of repairs (other than routine maintenance), replacements, expansions, enlargements, extensions or improvements to the Assets between execution of this Agreement and Closing (as defined herein): (A) as determined by LCRA to be necessary for continued operation of the Assets in compliance with, or to be mandated by, applicable local, state, or federal regulations or as expressly required in writing by City ("Required Improvements"), or (B) as determined by LCRA to be necessary to prevent imminent harm to public health or safety, or to the environment or to the Assets ("Emergency Improvements"), all as more specifically described in Article IV of this Agreement.

Section 1.3 Earnest Money. For the purpose of securing the performance of Buyer under the terms of this Contract, not later than thirty-five (35) days after the Effective Date, Buyer will pay to LCRA an amount approximately equal to one percent (1%) of the Purchase Price, said amount being twenty thousand United States Dollars and no cents (\$20,000) (the "*Earnest Money*"). On the Closing Date, the Earnest Money will be applied to the Purchase Price. If Closing does not occur due to default by Buyer, as described in Article 6 below, the Earnest Money will be retained by LCRA to be used for any lawful purpose including offsetting LCRA expenses incurred in preparing for the conveyance of the System to Buyer.

ARTICLE 2 REVIEW ITEMS

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

(a) copies of all non-privileged (where the privilege arises under the attorney-client privilege or other law) 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, engineering reports (including, without limitation, endangered species, environmental, and governmental inspection reports of LCRA related to the ownership or operation of the System Assets or relating to or in respect of the physical condition or operation of System Assets), and existing claims against LCRA related to the System;

(b) copies of all easements, including public utility easements, necessary to accommodate all parts of the Facilities; and,

(c) a copy of the existing ESA for each portion of the Property for which LCRA currently possesses fee title

LCRA will use reasonable efforts to make the Review Items available to Buyer in electronic

format so that the Review Items may be viewed remotely and LCRA agrees to provide such Review Items in an electronic format at no cost to Buyer. Buyer agrees that, for any Review Item that LCRA makes available to Buyer in electronic format, LCRA will have satisfied its obligations under this Section; provided, however, that LCRA will deliver any existing hard copies of the Review Items to Buyer at Closing at no cost to Buyer. LCRA represents, warrants, and covenants that all Review Items provided to Buyer in connection with Buyer's investigation and due diligence of the System Assets shall, in the case of documents and materials, be originals or true and correct copies of originals or, in the case of other information, be materially true, correct, and complete.

Section 2.2 System Assets Review. For a period of thirty (30) days beginning on the Effective Date (the "*Review Period*"), Buyer will 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 System Assets, including review of all easements necessary for providing water service with the System Assets in compliance with TCEQ or other applicable regulations, which Buyer determines necessary in Buyer's sole discretion. In the event that Buyer substantially disturbs or substantially disrupts any of the System Assets during the Review Period, Buyer will be obligated to restore the System Assets or any item related thereto substantially to its prior condition to the extent Buyer's review, investigation, or examination changed same and this obligation will survive any termination of this Agreement. LCRA may, at LCRA's option, accompany Buyer during any such inspections. LCRA agrees to use reasonable efforts and due diligence to provide Buyer's reasonably requested information during the Review Period. Notwithstanding any provisions herein or elsewhere to the contrary, Buyer will be entitled to terminate this Agreement on or before the expiration of the Review Period upon written notice to LCRA. In the event Buyer terminates this Agreement after expiration of the Review Period: (i) the City will pay the Earnest Money to be applied in accordance with Section 1.3 of this Agreement; and, (ii) by such termination by Buyer, Buyer: (A) will be deemed to have fully released and discharged LCRA from any claims, rights or causes of action that Buyer might otherwise have or assert against LCRA related to LCRA's sale of the System Assets to any third party, (B) will have fully consented to LCRA's sale of the System Assets to any third party, (C) will have consented to LCRA's assignment and transfer to said third party of the System Assets including any contracts between LCRA and Buyer related thereto other than this Agreement, and (D) agrees to execute any documents necessary to effect any of the said matters.

Section 2.3 Title Commitment. During the Review Period, Buyer, within its sole discretion and at its sole cost and expense, may also procure a commitment for title insurance on any of the Property that Buyer desires. LCRA shall not be required to provide an owner's policy of title insurance for any portions of the Property, but LCRA shall otherwise cooperate with Buyer in the review by Buyer of any title commitment applied for, or obtained by, Buyer. Buyer will have fourteen (14) days after receipt of the title commitment with respect to any particular portion of the Property to review such title commitment and to deliver to LCRA written notice by hand delivery or overnight delivery, receipt requested, of any objections to the matters set forth in such title commitment if such title matters demonstrate that LCRA has made any false or misleading covenants or representations in this Agreement. Any items to which Buyer does not object within this 14-day period will be deemed to be "Permitted Exceptions." As to items to which Buyer timely makes objections to in writing to LCRA, LCRA shall have a period of ten

(10) days during which it may, but it shall have no obligation to, cooperate with Buyer to attempt to effectuate the cure of such objections. At the end of said fourteen (14) day period (if no objections are made by Buyer) or the ten (10) day period (if objections are made by Buyer), Buyer will have the right, as its sole and exclusive remedies, to either:

- (i) terminate this Agreement, which termination by Buyer will constitute a waiver of any right of consent or approval possessed by Buyer and related to LCRA's sale of the System Assets as more fully set forth in Section 2.2; or
- (ii) waive such title objections and proceed to Closing.

ARTICLE 3 REPRESENTATIONS AND COVENANTS

Section 3.1 Buyer's Representations and Warranties. Buyer 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 Buyer is duly authorized to do so; (b) Buyer 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 Buyer and is enforceable against Buyer in accordance with its terms, subject to applicable law; and (d) neither the execution or delivery of this Agreement nor the performance of Buyer's obligations under this Agreement violates, or will violate, any contract or agreement to which Buyer is a party or by which Buyer is otherwise bound except as may be expressly provided otherwise herein. The aforesaid representations and warranties will survive the Closing.

Section 3.2 LCRA's Representations and Warranties. LCRA represents and warrants to Buyer 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; (e) other than as set forth in **Schedule 4 of Exhibit A** (the "*Required Consent*"), there are no consents or approvals needed for LCRA to transfer the System Assets to Buyer at Closing as contemplated herein. LCRA represents that it has no knowledge that any Facilities in the System are located outside the Property being conveyed to Buyer or public utility easements or public rights-of-way; (f) LCRA has not allowed any third-party liens, claims, pledges, or material encumbrances on the System Assets; (g) except for potable water supply agreements with River Place Municipal Utility District included in the Intangible Assets, LCRA's contracts with third-parties do not contain a provision that requires the contract to continue past the Closing (defined herein) and do not contain a provision that will require the Buyer to pay any fees or charges directly related to the act of terminating such contract at or after the Closing; (h) there are no Required Improvements

under construction or planned for construction prior to Closing; and, (i) the amounts identified in Section 1.2 are accurate and valid. The aforesaid representations and warranties will survive the Closing. For purposes of this Section and Agreement, encumbrances are not material if they are easements, rights-of-way, ordinances, licenses or other similar encumbrances affecting the System that do not, individually or in the aggregate, prohibit, impair, or interfere with the current operation of the System and that do not render title to any of the System Assets unmarketable.

Section 3.3 Covenants. In addition to LCRA's and Buyer's other agreements and undertakings hereunder, LCRA and Buyer hereby covenant and agree with each other that:

(a) **Notices Received.** LCRA, at its sole cost and expense, will promptly deliver to Buyer copies of any written notices of which LCRA receives or gains actual knowledge and possession alleging the occurrence of any default or alleged default under any of the contracts included in the System Assets, or any violation or alleged violation of any law, regulation, order, or other requirement of any governmental authority having jurisdiction over the System Assets, including a proposed compliance order, or any tort claims relating to LCRA's ownership or operation of the System Assets. LCRA agrees to resolve such matters at no cost to Buyer and shall hold Buyer harmless in such.

(b) **Liens, Claims, Pledges, Encumbrances, and Agreements.** The System Assets will be transferred **AS-IS** without any representations, warranties or guarantees as to liens, claims, pledges, and encumbrances except as noted in Section 3.2.

(c) **Notice to TCEQ.** Buyer, at Buyer's sole cost and expense, will deliver to the TCEQ all required notices and applications for the Required Consent and any other approval, if any, with respect to the change in ownership of the System Assets not later than fifteen (15) business days after the Effective Date. Buyer will seek diligently any TCEQ approval of same. LCRA will have the right to review any filings made with the TCEQ by Buyer prior to the filing of same. Thereafter, LCRA agrees to support the Buyer's application for such approval provided that LCRA is not required to incur any third-party costs associated with the preparation and filing of the TCEQ application. LCRA agrees that it shall use its internal resources for such support of Buyer's application without charge to Buyer.

(d) **Ongoing Projects.** LCRA agrees that it will not enter into any new contracts or amendments to existing third-party contracts with related to the System after the Effective Date of this Agreement without the express written consent of the Buyer unless such contracts are for Required Improvements or Emergency Improvements (defined herein) and will terminate upon the completion of such improvements.

Section 3.4 Closing Updates. At Closing, LCRA will provide to Buyer the LCRA Closing Certificate (so called herein) which will certify, represent, and warrant to Buyer, as of the date of Closing, that (i) each and every of the LCRA covenants contained in Section 3.3(a) and (b) of this Agreement has been fully satisfied, and (ii) each and every of the representations

and warranties contained in Sections 3.2 and 5.4 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 noncompliance will be indicated and described on the LCRA Closing Certificate. In addition, LCRA will provide to Buyer a certified copy of the Board resolution determining that the System Assets are no longer necessary, convenient, or of beneficial use to the business of LCRA. The obligation of the Buyer to close this transaction is expressly conditioned upon the representations and warranties contained in Sections 3.2 and 5.4 hereof being true and correct on the date of Closing and the LCRA covenants contained in Section 3.3(a) and (b) hereof being fully satisfied on the date of Closing.

At Closing, Buyer will provide to LCRA a Buyer Closing Certificate (so called herein) which will certify, represent and warrant to LCRA, as of the date of Closing, that each and every of the representations and warranties contained in Section 3.1 of this Agreement are and continue to be true and correct and the Buyer covenant contained in Section 3.3(c) being fully satisfied 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 noncompliance will be indicated and described on the Buyer Closing Certificate. The obligation of the LCRA to close this transaction is expressly conditioned upon the representations and warranties contained on Section 3.1 and Section 3.2 hereof being true and correct and the Buyer covenant contained in Section 3.3(c) being fully satisfied on the date of Closing.

ARTICLE 4 MAINTENANCE AND CASUALTY PRIOR TO CLOSING

Section 4.1 Operation of Assets by LCRA Pending Closing. The parties agree that between the Effective Date and the Closing Date, LCRA may operate the Assets substantially in accordance with its past practices and procedures, in compliance with local, state and federal regulations, and in a manner generally consistent with accepted industry standards.

Section 4.2 Capital Projects and Repairs by LCRA Pending Closing. The parties agree that between the Effective Date and the Closing Date: (i) LCRA may design, engineer, or construct any Required Improvements or any Emergency Improvements and the costs of same will be added to the Purchase Price as provided in Section 1.2; and, (ii) LCRA will not design, engineer or construct such changes to the Facilities other than Required Improvements or Emergency Improvements without the prior express written consent of Buyer. Any such contracts for construction that remain in effect at Closing will be assigned by LCRA to Buyer.

Section 4.3 Required Improvements and Emergency Improvements Designed or Constructed Prior to Closing. LCRA will provide Buyer with a report quarterly beginning ninety days after the Effective Date describing the status of the plans for, or design or construction of, Required Improvements, or Emergency Improvements, including the estimated cost and cost-to-date thereof. Within five (5) days prior to Closing, LCRA shall provide with a final report regarding same including the costs to be added to the Purchase Price as provided by Section 1.2.

Section 4.4 Contracted Services Beyond Closing. LCRA agrees that Buyer has the right to continue, at its sole discretion, any existing operation and maintenance contracts with third-parties as part of a transition period after the Closing Date.

Section 4.5 Casualty. In the event the System Assets or any part thereof should be damaged by any casualty prior to Closing, LCRA will pay to Buyer, at Closing or any date of receipt of said funds after Closing, 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 property, and the sale will be closed without the LCRA repairing any such damage if repair or replacement is not necessary for continued operation of the System Assets pending Closing. Buyer 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). If repair or replacement is necessary for the continued operation of the System Assets pending Closing, at Buyer's option or if required to meet regulatory requirements or an emergency, LCRA will repair or replace any damaged property necessary for continued operation of the System Assets, subject to Buyer review and approval of the plans for and execution of the repair or replacement, which approval will not be withheld or delayed unreasonably. LCRA will apply insurance proceeds received, if any, in replacement of the damaged property to such repair or replacement. Any costs of such repair or replacement that are not covered by Insurance Proceeds will be added to the Purchase Price and paid to LCRA at Closing if: (i) Buyer opted and agreed for LCRA to proceed with such repair or replacement; (ii) such repair or replacement was a Required Improvement for which Buyer approved plans; or, (iii) such repair or replacement was an Emergency Improvement. Buyer shall remain entitled, regardless, to receive in a timely manner any surplus insurance proceeds remaining after LCRA's repair or replacement of the System Assets.

ARTICLE 5 CLOSING

Section 5.1 Time and Place of Closing. The Closing Date will be such date as may be agreed between the parties or as provided in Section 5.2 below. The parties agree to use commercially reasonable efforts to complete Closing as soon as possible but in any event not later than March 28, 2012, unless otherwise mutually agreed. The Closing of the transaction contemplated by this Agreement (the "*Closing*") will be held at 10:00 a.m., local time on the Closing Date, at the offices of LCRA or at such other time and place as may be agreed between the parties. All matters to take place at the Closing will take place simultaneously, and no delivery will be considered to have been made until all such proceedings have been completed.

Section 5.2 Conditions to Closing. Both parties recognize and understand that the Required Consent from TCEQ is required but may not be received by the Closing Date. The Parties agree to proceed with Closing not later than March 28, 2012, regardless if TCEQ has approved or taken no action on the transaction. The parties agree that if TCEQ does not approve the sales transaction, then the following will occur: 1) the parties will negotiate in good faith for a period not to exceed ninety (90) days ("*Negotiation Period*") toward a mutually acceptable lawful and commercially reasonable agreement under which the Buyer would, to the extent practicable, obtain the rights and benefits under the System and assume the economic burdens and obligations with respect to the System (including, for example, subcontracting or leasing to

the Buyer); or 2) in the event the parties are not able to reach agreement by the end of the Negotiation Period, the parties will calculate a true-up so that each party's financial status is returned to the same as prior to the execution of this agreement, and compensate each other accordingly. In other words, the LCRA will return to the City all funds received from the City, and the City will return all revenues collected (minus payments for goods and services made) for the period after the Closing. Such financial reconciliation shall be completed within 45 days of the end of the Negotiation Period.

Section 5.3 LCRA Delivery. At the Closing, LCRA will deliver or cause to be delivered to Buyer, at LCRA's sole cost and expense, each of the following items:

(a) A duly executed and acknowledged Special Warranty Deed conveying LCRA's interest in the fee simple Property currently owned by LCRA but indicating that the Property is accepted in its AS-IS condition with no warranties, representations, or guarantees as provided by Section 5.4, except those provided in Section 3.2;

(b) A Bill of Sale and Assignment ("*Assignment*") duly executed by Buyer and LCRA, transferring and assigning to Buyer all of LCRA's interest in the Facilities and the Intangible Assets, but indicating that the same are accepted in their AS-IS condition with no warranties, representations, or guarantees, other than:

(i) third-party warranties related to the System to the extent same are assignable as provided by Section 5.4, and

(ii) those provided in Section 3.2;

(c) The Assignment will provide for Buyer's assumption of all of LCRA's obligations and liabilities under or related to the Facilities or Intangible Assets, subject to LCRA's commitment to reasonably cooperate as to certain consents as provided in Section 1.1(b) above. The Assignment will contain as an exhibit an updated list of the Facilities, Property, and Intangible Assets;

(d) An instrument assigning to Buyer all of LCRA's interests in any easements, licenses, or rights-of-way included in the Property but indicating that the interests in any easements, licenses, or rights-of-way included in the Property are accepted in their AS-IS condition without any representations, warranties, or guarantees as provided by Section 5.4, except those provided in Section 3.2. If any documents forming easements, licenses, or rights-of-way do not permit assignment, Buyer will be responsible for securing such consents but LCRA shall cooperate reasonably to assist in Buyer's obtaining same provided that LCRA will not be required to incur any third-party expenses or make any payments to third parties in doing so. LCRA agrees it shall use its internal resources for such support of the Buyer's application without charge to the Buyer;

(e) A full and complete release of Buyer's obligations under the Purchased Receivables;

(f) The LCRA Closing Certificate in form specified in Section 3.4 duly executed and acknowledged by LCRA;

(g) Any other additional documents and instruments as in the mutual opinion of Buyer's counsel and LCRA's counsel are reasonably necessary to the proper consummation of this transaction;

(h) All combinations and/or keys to all locks related to the System Assets;

(i) To the extent reasonably available, the originals of all matters agreed to be transferred to Buyer at Closing, unless otherwise noted, pursuant to Section 1.1 of this Agreement; and

(j) A signature on a letter to be jointly drafted by LCRA and Buyer to be sent to the customers of the System Assets informing them of the change in ownership of the System Assets, change in water rates (if applicable), and any other information LCRA and Buyer determine is necessary or useful to the customers. Buyer agrees to deliver such letter to customers of the System Assets promptly following Closing;

LCRA and Buyer agree that all conveyance documents shall be in a form and content that is mutually acceptable.

Section 5.4 LCRA'S Disclaimer of Warranty. IT IS THE EXPLICIT INTENT OF LCRA AND BUYER, AND LCRA AND BUYER HEREBY AGREE, THAT NEITHER LCRA, NOR ANY OF ITS AFFILIATES OR REPRESENTATIVES, HAS MADE OR IS MAKING ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING ANY IMPLIED REPRESENTATION OR WARRANTY AS TO THE CONDITION, MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS OF THE ASSETS FOR ANY PARTICULAR PURPOSE EXCEPT THOSE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT. BUYER ACKNOWLEDGES AND AGREES THAT EXCEPT FOR THE SPECIAL WARRANTY OF TITLE TO THE PROPERTY AS DESCRIBED AND PROVIDED IN THIS AGREEMENT, AT CLOSING BUYER IS ACCEPTING THE ASSETS IN THEIR "AS-IS, WHERE-IS" CONDITION "WITH ALL FAULTS" AND DEFECTS IN EXISTENCE AS OF THE CLOSING AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS, OR GUARANTEES, EITHER EXPRESS OR IMPLIED, AS TO THEIR CONDITION, VALUE, QUALITY, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, OR ANY OTHER WARRANTY OF ANY KIND, NATURE, OR TYPE WHATSOEVER FROM OR ON BEHALF OF LCRA. THE FOREGOING DISCLAIMER DOES NOT APPLY TO THIRD-PARTY WARRANTIES RELATED TO THE ASSETS TO THE EXTENT SAME ARE ASSIGNABLE AND ARE ASSIGNED. BUYER ASSUMES ALL RESPONSIBILITY FOR ANY DAMAGES CAUSED BY THE CONDITIONS ON THE PROPERTY UPON TRANSFER OF TITLE. BUYER AGREES TO ADDRESS ANY ENVIRONMENTAL SITE CONDITIONS AS REQUIRED BY LAW. Any instruments of transfer for the System Assets will reference this Agreement by Buyer. Notwithstanding the foregoing, Buyer may terminate the Agreement according to the provisions set forth in this Agreement including, but not limited to, Section 2.2.

Section 5.5 Buyer Delivery. At the Closing, Buyer will deliver to LCRA the following items:

- (a) Buyer's Closing Certificate pursuant to Section 3.4 of this Agreement.
- (b) The Purchase Price, in good funds.
- (c) Such evidence or documents as may reasonably be required by the LCRA evidencing the capacity of Buyer to close the transaction and the authority of the person or persons who are executing the various documents on behalf of Buyer in connection with the sale of the System Assets.
- (d) Copies of documents evidencing that Buyer has obtained the Required Consent listed in **Schedule 4 of Exhibit A**; each document relating to an agreement to which LCRA is a party will either terminate or assign to Buyer the rights and obligations of the underlying agreement and further will release and fully discharge LCRA from any obligations under or related to the underlying agreement.
- (e) Any other additional documents or instruments as in the mutual opinion of Buyer's counsel and LCRA's counsel are reasonably necessary to the proper consummation of this transaction.

Section 5.6 Adjustments and Prorations. At Closing, the following items will be adjusted:

- (a) Those expenses listed in Section 1.2 of this Agreement;
- (b) If any adjustments pursuant to this Section 5.6 are, within six (6) months of Closing, found to be erroneous, then either party hereto who is entitled to additional monies will invoice the other party for such additional amounts as may be owing, and such amount will be paid within thirty (30) days from receipt of the invoice. This covenant will not merge with the instruments of conveyance, transfer, or assignment to be delivered hereunder but will survive the Closing.

The parties acknowledge and agree that this section will not apply to retail customer service deposits, which deposits LCRA will return to customers so that Buyer will be responsible for obtaining any new customer deposits in its sole discretion after Closing.

Section 5.7 Possession. Possession of the System Assets for ownership and operation will be delivered to Buyer by LCRA at the Closing.

Section 5.8 Costs and Expenses. Unless expressly provided herein that LCRA will pay certain costs and expenses, all costs and expenses in connection with the transaction contemplated by this Agreement will be borne by Buyer.

**ARTICLE 6
REMEDIES**

Section 6.1 Buyer'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 such to which Buyer timely objects, Buyer will have the following remedies as Buyer'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, in which event LCRA promptly will return the Earnest Money, if previously paid to LCRA, to Buyer; 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 6.2 LCRA's Remedies for Default. Notwithstanding any express provision of this Agreement to the contrary, in the event Buyer fails or refuses to timely comply with Buyer's obligations hereunder or is unable to do so as a result of Buyer's acts or failure to timely act: (1) LCRA may terminate this Agreement by giving Buyer written notice of such election and the City will pay the Earnest Money as provided in Section 1.3, unless previously paid by Buyer to LCRA, only after Buyer has been given notice of such default and a reasonable period to cure; and, (2) such default by Buyer will constitute a waiver of any right of consent or approval possessed by Buyer and related to the System Assets.

**ARTICLE 7
GENERAL PROVISIONS**

Section 7.1 Notices. All notices and other communications hereunder will be in writing and will be delivered by one of the following means: hand delivery; expedited courier delivery; mailed by registered or certified mail, return receipt requested, postage prepaid; or, electronic mail provided that a duplicate of the same notice or communication is also mailed by first-class mail on the same date of the electronic mail. All notices and communications hereunder will be addressed as follows, and will be deemed effective upon actual delivery if delivered by hand or by expedited courier delivery or, if mailed, three business days after deposit in the United States mail:

(a) if to LCRA, to:

Dennis B. Daniel
Manager, Customer and Business Strategy
LCRA
P. O. Box 220
Austin, Texas 78767-0220
Phone: (512) 473-3297
Email: Dennis.Daniel@LCRA.org

with a copy to:

Madison Jechow
Associate General Counsel
LCRA
P. O. Box 220
Austin, Texas 78767-0220
Phone: (512) 473-4067
Email: Madison.Jechow@LCRA.org

(b) if to Buyer, to:

Bart Jennings
Austin Water
P.O. Box 1088
Austin, TX 78767
Phone: (512) 972-0118
Email: bart.jennings@austintexas.gov

with a copy to:

Sharon Smith
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, TX 78767
Phone: (512) 974-7773
Email: sharon.smith@austintexas.gov

Any party may change its address for receiving notice by giving notice of a new address in the manner herein provided.

Section 7.2 Headings and Defined Terms. Descriptive headings are for convenience only and will not control or affect the meaning or construction of any provision of this Agreement.

Section 7.3 Assignment. Assignment of this Agreement by the parties is prohibited without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed. This Agreement will be binding upon and inure to the benefit of the parties and their successors and assigns.

Section 7.4 Governing Law and Forum. This Agreement will be construed and interpreted in accordance with the law of the State of Texas and the obligations of the parties hereto are and will be performable in Travis County, Texas. 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 7.5 No Oral Modification. This Agreement may not be modified or amended, except by an agreement in writing signed by both the LCRA and Buyer.

Section 7.6 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 will be effective only if in writing and signed by the party waiving such conditions or obligations. No waiver or waivers of any breach or default (or any breaches or defaults) of any term, covenant, condition or liability under this contract, or of performance by the other parties of any duty or obligation under this contract, will be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances.

Section 7.7 Time of Essence. Time is of the essence of this Agreement.

Section 7.8 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 will be binding upon the parties hereto or will affect or be effective to interpret, change, or restrict the provisions of this Agreement except by an amended agreement in writing signed by both the LCRA and Buyer.

Section 7.9 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 will 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 7.10 Counterpart Execution. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It will not be necessary that the signature of all persons required to bind any party appear on each counterpart. All counterparts will collectively constitute a single instrument. It will 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 7.11 Holidays. In the event that the date upon which any duties or obligations hereunder to be performed will occur upon a Saturday, Sunday or legal holiday, then, in such event, the due date for performance of any duty or obligation will thereupon be automatically extended to the next succeeding business day.

Section 7.12 Effective Date. The Effective Date of this Agreement shall be the date set forth on the first page hereof.

Section 7.13 Hold Harmless. To the extent allowed by Texas law, LCRA will not assert against Buyer any of the following that may be asserted against LCRA: 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, to the extent caused, directly or indirectly, by LCRA's ownership of the System Assets and filed prior to Closing, but not to the extent such claims or damages arise from the gross negligence or willful misconduct of Buyer or its contractors, agents, servants, employees or other persons for whose conduct it may be responsible. To the extent allowed by Texas law, Buyer will not assert against LCRA any of the following that may be asserted against Buyer: 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, to the extent caused, directly or indirectly, by Buyer's ownership of the System Assets and filed after Closing, but not to the extent such claims or damages arise from the gross negligence or willful misconduct of LCRA or its contractors, agents, servants, employees or other persons for whose conduct it may be responsible. The provisions of this Section 7.13 will survive the Closing.

Section 7.14 Exhibits. The following Exhibits are attached hereto:

<u>Exhibit A</u>	System Assets
Schedule 1	Facilities
Schedule 2	Intangible Assets
Schedule 3	Property
Schedule 4	Required Consent

Section 7.15 Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto and their successors and assigns, any benefits, rights or remedies under or by reason of this Agreement.

Section 7.16 Force Majeure. For purposes of this Agreement, the term "force majeure" means those situations or conditions that are beyond the control of LCRA and Buyer, respectively, and that, after the exercise of due diligence to remedy such situation or condition, render each respective party unable, wholly or in part, to carry out the covenants contained herein. Such force majeure includes, but is not limited to, acts of God, acts of the public enemy, orders of any kind of the government or agencies of the United States or of the State of Texas, or any civil or military authority, earthquakes, or fires insofar as each of the foregoing are reasonably related to the System and beyond the reasonable control of the respective parties.

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: Rebecca S. Motal
Rebecca S. Motal
General Manager



CITY OF AUSTIN, TEXAS

By: _____
Rudy Garza
Assistant City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

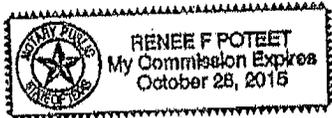
This instrument was acknowledged before me on _____, 2011, by Rudy Garza, Assistant City Manager, for the City of Austin, Texas, a home-rule municipal corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on December 8, 2011, by Rebecca S. Motal, General Manager, for the Lower Colorado River Authority, a conservation and reclamation district of the State of Texas, on behalf of said district.



Renee F. Poteet
Notary Public, State of Texas

LOWER COLORADO RIVER AUTHORITY

By: _____
Rebecca S. Motil
General Manager



CITY OF AUSTIN, TEXAS

By: _____
Rudy Garza
Assistant City Manager

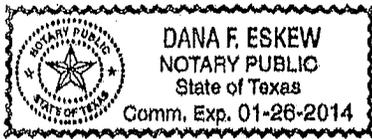
ACKNOWLEDGMENT

STATE OF TEXAS

§
§
§

COUNTY OF TRAVIS

This instrument was acknowledged before me on December 9th, 2011, by Rudy Garza, Assistant City Manager, for the City of Austin, Texas, a home-rule municipal corporation, on behalf of said municipal corporation.



Dana F. Eskew
Notary Public, State of Texas

ACKNOWLEDGMENT

STATE OF TEXAS

§
§
§

COUNTY OF TRAVIS

This instrument was acknowledged before me on _____, 2011, by Rebecca S. Motal, General Manager, for the Lower Colorado River Authority, a conservation and reclamation district of the State of Texas, on behalf of said district.

Notary Public, State of Texas

EXHIBIT A

SYSTEM ASSETS

SCHEDULE 1 - FACILITIES

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

Glenlake Water System
 Asset Listing as of 08/31/2011

Unit	Asset ID	FERC Code	Sum Cost	Sum Accum Depr	Sum NetV	As of Date	Project	Project Title	Descr	Acq Date	Location	Quantity	Class	Financing	Facile ID	Category	Oper/Use
ILCRA	0400288P	11850841	3,536.86	1,074.68	2,462.18	8/31/2011	1001615	Glenlake WSC	structures & improvements	6/28/2001	GLENLAKE	1.0000	STRNMP	D	8509041	WATR	WTRCO
ILCRA	0400288Z	11850841	42,947.59	19,699.72	23,247.87	8/31/2011	1001615	Glenlake WSC	supply mains	6/28/2001	GLENLAKE	1.0000	DISTRPIPE	D	8509041	WATR	WTRCO
ILCRA	00000400445	118503312	24,583.15	5,825.65	18,757.50	8/31/2011	1003970	General Additions - WTC Regional	Distribution Mains	7/1/2003	GLENLAKE	1.0000	DISTRMARN	D	W40	WATR	WTRCO
ILCRA	00000400555	118503460	2,074.06	1,594.12	481.94	8/31/2011	1002727	Glenlake Rehab and Line Ext.	COMMUNICATION EQUIPMENT	6/30/2003	GLENLAKE	1.0000	COMMEQUIP	D	8509046	WATR	WTRCO
			74,891.61		51,041.49												

Glenlake Water System

Asset Listing

December 1, 2011

Facilities

Asset

12" Interconnect with River Place MUD
6" Finished Water Meter with River Place MUD
3" Finished Water Meter with River Place MUD
65,000 Gallon Bolted Steel Ground Storage Tank
30,000 Gallon Bolted Steel Ground Storage Tank
10,000 Gallon Hydropneumatic Tank
2 – 32 GPM High Service Pumps

Abandoned Treatment Plant

Asset

12,000 Gallon Clarifier
600 Gallon Surge Tank
65,000 Gallon Clear Well
2 Pressure Filters

Distribution System

Quantity Size and Asset

4934 LF	4" PVC Pipe
12854 LF	6" AC Pipe
146 LF	6" DI Pipe
2485 LF	6" PVC Pipe
15349 LF	8" AC Pipe
9208 LF	8" PVC Pipe
131 LF	10" Unknown Pipe
2909 LF	12" AC Pipe
241 LF	12" DI Pipe
6779 LF	12" PVC Pipe
92	Fire Hydrants
1	Reduced Pressure Control Valve
14	Air Control Valves
117	Gate Valves

December 1, 2011

Distribution System Information derived
from City of Austin GIS Pipeline Data

EXHIBIT A

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 System Assets, including but not limited to:

- LCRA's portion of water certificate of convenience and necessity number 11670 that pertains to the System in Buyer and any adjoining, certificated areas.
-

EXHIBIT A

SYSTEM ASSETS

SCHEDULE 3 - PROPERTY

Tracts and Easements:

See attached list.

Glenlake Water System
Property and Easements
November 28, 2011

Document 2000171011 – Assignment of Easement dated October 24, 2000

- Grants of Easements to Glenlake Water Supply Corporation and River Place Municipal Utility District from Mabe, Inc. dated November 25 and 26, 1996, recorded in Volume 12822, Pages 1 and 8 of the Real Property Records of Travis County, Texas; and,
- That certain water line easement at Lake Austin Metropolitan Park granted to Glen Lake Developers by the City of Austin by Resolution adopted November 9, 1978, recorded in Volume 6881, Page 1236 of the Real Property Records of Travis County, TX.

Document 2000171010 – General Warranty Deed dated October 24, 2000

- Lots 43 and 52, of Glenlake, Phase 1, a subdivision in Travis County, Texas according to the map or plat of record in Volume 77, Page 233 of the Plat Records of Travis County, TX.

In addition, LCRA will quitclaim its interest, if any, in that certain Grant of Easement to Glenlake Water Supply Corporation from Mabe, Inc., dated June 1, 1999, and recorded as instrument no. 1999071878, Travis County Official Public Records, which Grant of Easement was subject to a Right of Reverter as provided therein.

EXHIBIT A

SYSTEM ASSETS

SCHEDULE 4 - REQUIRED CONSENT

1. Approval by Texas Commission on Environmental Quality of transfer to Buyer that portion of water certificate of convenience and necessity number 11670 that pertains to the System and any adjoining, certificated areas.
-



Texas Commission On Environmental Quality

By These Presents Be It Known To All That

City of Austin

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. 11322

to provide continuous and adequate water utility service to that service area or those service areas in Bastrop, Hays, Travis and Williamson Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 37244-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 Austin 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

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

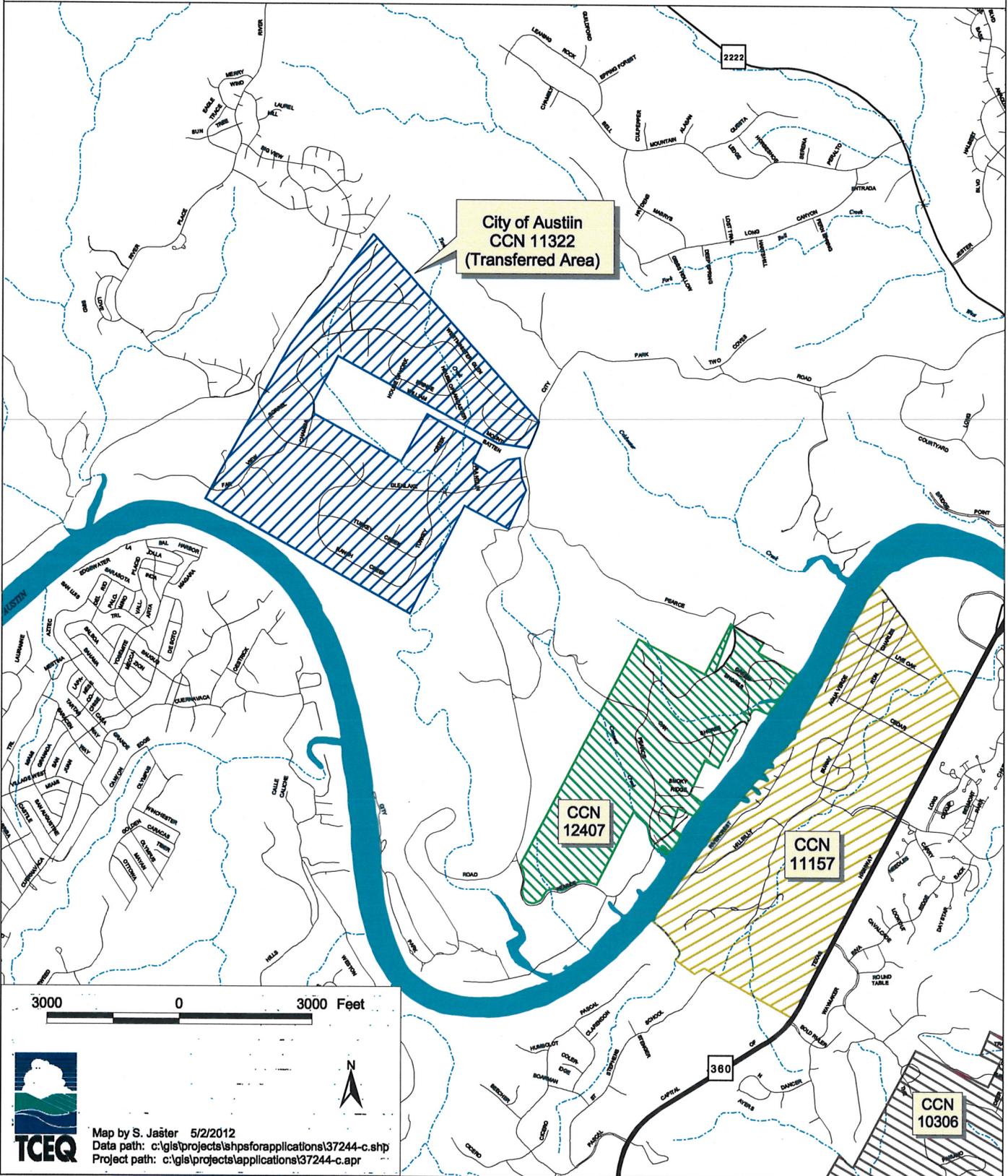
Certificate of Convenience and Necessity No. 11670

to provide continuous and adequate water utility service to that service area or those service areas in Burnet, Gillespie, Hays, Lampasas, Llano, Matagorda, Mills, San Saba and Travis Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 37244-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

City of Austin
Portion of Water Service Area
CCN No. 11322
Application No. 37244-C (13.248 Contract Service Agreement
from the City of Austin, CCN No. 11322
to Transfer a Portion of CCN No. 11670
from Lower Colorado River Authority in Travis County)



Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 31, 2012

Bart Jennings
Austin Water Utility
P.O. Box 1088
Austin, Texas 78767
Fax: (512) 974-6490

Madison Jechow
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767

Re: TCEQ Docket No. 2012-0778-UCR; Consideration of a request for a Commission order approving a contract designating service areas between the City of Austin (Austin), Certificate of Convenience and Necessity (CCN) No. 11322, and the Lower Colorado River Authority (LCRA), CCN No. 11670

Dear Mr. Jennings 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 September 19, 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.

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 Sheresia Perryman from the Water Supply Division at 1-512-239-3654 or me at 1-512-239-4761.

Sincerely,


Kayla Murray

Staff Attorney
Environmental Law Division

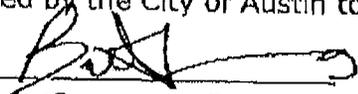
Enclosure

CONSENT FORM

Applicant's Name: City of Austin
Application Nos.: 37244-C

- I concur with the map transmitted by letter dated May 22, 2012.
- I do not concur with and intend to respond to the map transmitted by letter dated May 22, 2012. I understand that I have 14 days from the date of this letter to provide my response.

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

Signature: 

Printed Name: Bart Jennings

Relationship to Applicant: AWU Strategic Manager

Date signed: 6/1/12

Mail or Fax to:
 Sheresia Perryman
 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 Austin
Application Nos.: 37244-C

- I concur with the map transmitted by letter dated May 22, 2012.
- I do not concur with and intend to respond to the map transmitted by letter dated May 22, 2012. I understand that I have 14 days from the date of this letter to provide my response.

I am authorized by Lower Colorado River Authority to sign this form.

Signature: Rebecca S Motal

Printed Name: Rebecca S Motal

Relationship to Applicant: General Mgr

Date signed: 6-15-2012



Mail or Fax to:
Sheresia Perryman
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

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WATER SUPPLY DIV.
TCEQ