TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
INTEROFFICE MEMORANDUM

Date: June 6, 2025

To: Office of the Chief Clerk
Attn. Elisa Guerra and Georgia Carroll-Warren

From: Ruth Takeda, Staff Attorney
Office of Legal Services, Environmental Law Division

Subject: Transmittal of documents to SOAH for Administrative Record

Petitioner – Johnson County Power, LLC
Permit – ADJ 4106 (Certificate of Adjudication 12-4106), held by the City of Cleburne
Program area – Water Availability Division
SOAH Docket No. 582-25-17419
TCEQ Docket No. 2025-0521-WR

In a permit hearing, the record in a contested case includes copies of the public notices relating to the permit application, as well as affidavits of public notices that are filed by the applicant directly with the TCEQ's Office of the Chief Clerk (OCC). In addition, the record includes the following documents that are provided to the OCC by the staff of the TCEQ Executive Director (ED), 30 Tex. Admin. Code § 80.118. Documents included with this transmittal are indicated below:

_____The ED's final draft permit, which may include any special provisions or conditions.
_____The ED's technical memorandum/ memoranda regarding the application.
_____The compliance history of the applicant.
_____Copies of the public notices relating to the permit application, as well as affidavits regarding public notices.
__√__Any agency document determined by the ED to be necessary to reflect the administrative and technical review of the application. Specifically, included are the memorandum dated March 31, 2025, requesting the referral of the petition to the State office of Administrative Hearings; the response to the petition and motion to dismiss from the City of Cleburne filed with TCEQ's OCC; the petitioner's opposition to the City of Cleburne's response filed with TCEQ's OCC; and ADJ 12-4106.

An application is not included with this transmittal because this is a petition complaining that the City of Cleburne denied the petitioner water and citing Tex. Water Code § 11.041. **This water right proceeding is not governed by HB 801 or SB 709.**

This transmittal serves to also request that the OCC transmit the attached items, together with (a) the public notice documents (including the notice of hearing) and (b) where available for direct referrals only, the ED's Response to Comments to the State Office of Administrative Hearings.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
INTEROFFICE MEMORANDUM

Date: March 31, 2025

To: Laurie Gharis, Chief Clerk

Thru: Phillip Ledbetter, Director, Office of Legal Services
Tammy Mitchell, Special Counsel, Office of Legal Services
Charmaine Backens, Deputy Director, Environmental Law Division
Todd Galiga, Senior Attorney, Environmental Law Division

From: Ruth Takeda, Staff Attorney, Environmental Law Division

Subject: Complaint from Johnson County Power, LLC, concerning the denial of water by the City of Cleburne under Texas Water Code Section 11.041; Executive Director's request for referral to the State Office of Administrative Hearings; TCEQ Docket Number 2025-0521-WR

On March 21, 2025, Johnson County Power, LLC (Johnson County Power) filed a petition under Tex. Water Code Section 11.041, alleging that the City of Cleburne (Cleburne) fails or refuses to supply water which Johnson County Power is entitled to receive at rates that are reasonable and just. The water at issue is described as reclaimed, non-potable, stored or conserved cooling water; and in the petition, the water is referred to as "reuse" water. The petition, with its attachments, is attached to this memorandum.

In its petition, Johnson County Power alleges that Cleburne's primary source of water is a reservoir, Lake Pat Cleburne, in which Cleburne holds water rights under Certificate of Adjudication No. 12-4106 (Certificate). As amended, the Certificate authorizes Cleburne to impound state water for diversion and use, to discharge treated effluent (return flows) from outfalls authorized under its TPDES permit into a state watercourse, to convey the return flows via the bed and banks of the watercourse, and to divert the return flows from a downstream diversion point for agricultural, industrial, and municipal purposes of use.

Johnson County Power alleges that Tenaska IV Texas Partners, LTD partnered with the City to build a reuse water system to provide cooling water to a proposed power plant and entered into a contract in 1995 (1995 contract) for the purchase of the cooling water. The contract had a 23-year term; and the plant was subsequently built, as was a pipeline running from Cleburne's wastewater treatment plant to a 1,000,000-gallon storage tank on land previously owned by the power plant and conveyed to Cleburne for the storage tank installation. The water conveyed by pipeline is treated wastewater that would otherwise be discharged into a watercourse.

Johnson County Power alleges that in 2006, Brazos Electric Power Cooperative, Inc., purchased the plant from Tenaska and succeeded to the 1995 contract. When the 1995 contract expired, the parties entered a one-year contract in 2023 (2023 contract) and agreed that the price for the water would increase monthly by $0.12 per 1,000 gallons. Brazos Electric Power Cooperative, Inc., declared

bankruptcy in 2023. Johnson County Power acquired the plant and succeeded to the 2023 contract.

Johnson County Power alleges that the 2023 contract expired in 2024, and at the time of contract expiration, Johnson County Power paid $0.372 per 1,000 gallons for the water. After contract expiration, the price increased to $4.50 per 1,000 gallons pursuant to Cleburne Ordinance Section 51.0303, which had been amended in 2007. The amended ordinance set the price for reuse water at 75% of the potable water rate. The petition alleges that the ordinance rate resulted in an increase of over 1,200% for Johnson County Power.

Johnson County Power requests that the executive director (ED) review the petition, determine that probable grounds exist for its complaints, and refer the petition to the State Office of Administrative Hearings (SOAH) for an evidentiary hearing. Upon completion of the hearing, Johnson County Power requests that the Commission make specific findings pursuant to Tex. Water Code Section 11.041 and set a just and reasonable price for the water through consultation, if necessary, with the Texas Public Utility Commission.

Tex. Water Code Section 11.041 provides a petition process for relief if an entity can show that it is entitled to receive or use the water; that it is willing to pay a just and reasonable price for the water; that the party controlling the water supply has water not contracted to others and available for the petitioner's use; and that the party controlling the water supply fails to or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not reasonable and just or is discriminatory.

Under 30 Tex. Admin. Code Section 291.131, the ED performs a limited review of the petition to determine if the petition meets the requirements of 30 Tex. Admin. Code Section 291.129. Section 291.129 requires that petitioner file a written petition with TCEQ, accompanied by a filing fee; serve a copy of the petition on the party against whom the petitioner seeks relief; clearly state the statutory authority which the petitioner invokes, specific factual allegations, and the relief which the petitioner seeks; and attach applicable contract(s) to the petition. If the ED determines that the petition meets the requirements of Section 291.129, the ED shall forward the petition to SOAH for an evidentiary hearing under Tex. Water Code Sections 11.036 - 11.041, as applicable. An evidentiary hearing shall be held, and at the completion of the hearing, the Commission shall render a written decision.

Johnson County Power asserts that it has met the requirements of Tex. Water Code Section 11.041 because it has shown that it is entitled to receive or use the water from a conserved or stored supply; that it is willing and able to pay a just and reasonable price for the water; that Cleburne owns and controls the water, which is not contracted to others and available for Johnson County Power's use; that Cleburne's rates for the water are not reasonable or just, and are discriminatory; that it has paid the required $25.00 fee; and that the petition has been served on Cleburne as required by 30 Tex. Admin. Code Section 291.129.

The ED has conducted a preliminary investigation under 30 Tex. Admin. Code Section 291.131 and has concluded that Johnson County Power's petition meets the requirements of 30 Tex. Admin. Code Section 291.129. The ED requests that

this petition be referred to SOAH for a hearing on the issues addressed by Tex. Water Code Section 11.041.

Attachments

cc:

Kim Nygren, Deputy Director, Water Availability Division, Kim.Nygren@tceq.texas.gov

Garrett Arthur, Office of Public Interest Counsel, Garrett.Arthur@tceq.texas.gov

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TCEQ DOCKET NO. _____

PETITION OF JOHNSON COUNTY POWER, LLC FOR REVIEW OF UNREASONABLE WATER RATES CHARGED BY THE CITY OF CLEBURNE, TEXAS	**§**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

ORIGINAL PETITION CHALLENGING NON-POTABLE WATER RATES UNDER TEXAS WATER CODE §11.041

Johnson County Power, LLC ("***Petitioner***" or "***Johnson County Power***") files this Petition under Chapter 11 of the Texas Water Code.[1] Petitioner challenges water rates charged by the City of Cleburne, Texas, for reclaimed, non-potable, stored or conserved cooling water without a contract between the parties. In support, Petitioner respectfully shows as follows:

I. Parties

Petitioner Johnson County Power is a Delaware limited liability company that owns and operates the Johnson County Power Plant (the "***Plant***"), a 258 megawatt, baseload, combined cycle natural gas-fired power plant located within the city limits of the City of Cleburne, Texas.

Respondent is the City of Cleburne ("***Cleburne***"), Texas, a home-rule municipality, that provides to Petitioner the stored or conserved, non-potable water at issue in this case through a municipally owned retail public utility.[2]

[1] Specifically, Section 11.041 of the Texas Water Code.

[2] Texas Commission of Environmental Quality, City of Cleburne – Water System Detail Information, https://dww2.tceq.texas.gov/DWW/JSP/Fact.jsp?tinwsys_is_number=3891&tinwsys_st_code=TX&wsnumber=TX1260003%20%20%20&DWWState=TX&begin_date=&end_date=&counter=

II. Background[3]

Johnson County Power owns and operates the Plant. The Plant provides baseload, dispatchable power to the ERCOT market though its interconnection with the ERCOT grid. The Plant also has significant on-site fuel-oil storage that provides important fuel and energy security to the residents of Texas during periods of gas and electric scarcity in the ERCOT market.

In order to provide safe and reliable electricity, the Plant requires significant volumes of water for critical cooling purposes and other essential plant operations. In 1995, Johnson County Power's predecessor, Tenaska IV Texas Partners, LTD ("***Tenaska***"), partnered with Cleburne to build a reuse water system to provide cooling water to the then-proposed Plant for a 23-year term (later extended), which began when the Plant first purchased cooling water. The parties executed a water purchase agreement (the "***1995 Contract***"),[4] which provided that Tenaska would purchase reclaimed, non-potable effluent water from Cleburne's wastewater treatment facility (the "***reuse water***") for use as cooling water at the Plant. Exh. A., 1995 Contract at 1. Pursuant to that agreement, Tenaska conveyed a portion of power plant land for Cleburne to install a 1,000,000 gallon tank to store the reuse water used by the Plant. Exh. A., 1995 Contract §3(g),. Cleburne agreed to construct and operate a pipeline running to the tank to provide up to 300,000 gallons of reuse water per day. Exh. A., 1995 Contract §3(a).

Cleburne constructed the East Loop Pipeline to provide reuse water to the storage tank located next to the Plant. The East Loop Pipeline is an 8-mile long, 16-inch diameter pipeline originating at Cleburne's wastewater treatment plant and running north along Buffalo Creek before cutting west towards the industrial area between Chisholm Trail Parkway and Texas State Highway 174. The pipeline typically has delivered TCEQ Type 1 reclaimed water. *See* 30 Tex.

[3] The facts described herein are supported by the attached unsworn declaration of Joe Booth.
[4] The 1995 Contract is attached as Exhibit A of the attached declaration.

Admin. Code §210.32.[5] This reuse water is wastewater that has been treated by Cleburne's wastewater treatment plant and would otherwise be released into Buffalo Creek, but is instead conserved and transported to locations on the East Loop Pipeline.

To the best of Johnson County Power's knowledge, the reuse water transported on the East Loop Pipeline only serves two locations: (1) the Plant and (2) the Cleburne-owned John Warren Sports Complex. Thus, Johnson County Power, as the owner of the Plant, is the only third-party ratepayer receiving service from Cleburne's East Loop Pipeline system.

In 2006, Brazos Electric Power Cooperative, Inc. ("***Brazos***") purchased the Plant from Tenaska and succeeded to Tenaska's reuse water purchase agreement with Cleburne.

On September 11, 2007, the Cleburne City Council created a new reuse water rate by passing Am. Ord. 09-2007-46, which amended Cleburne City Ordinance §51.030 (the "***Rate Ordinance***").[6] At the time it was implemented, this ordinance rate did not affect the reuse water rate Brazos paid because the rates and terms of the 1995 Contract superseded any ordinance rate. This Rate Ordinance, setting the reuse water rate at 75% of the potable water rate, is untethered from any cost-of-service principle or other recognized utility rate-setting benchmark. Potable water is treated and delivered to ratepayers on an entirely separate water system. The capital costs of the East Loop Pipeline were fully recovered through the original 23-year term under the 1995 Contract, and the cost to treat the effluent to reuse water standards is already covered by the retail sewer service rates paid by Cleburne customers who generated the wastewater. Further, Cleburne is obligated by the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") and the EPA to treat the wastewater regardless of whether it sells water to reuse customers.[7]

[5] The Plant can function on either Type 1 or Type 2 reuse water.
[6] See Exhibit B of the attached declaration (the Rate Ordinance).
[7] Clean Water Act §21 (33 U.S.C. §1311); 40 C.F.R. part 122 (rules governing National Pollutant Discharge Elimination System); Tex. Water Code §26.023, §26.027 (requiring the Commission to

Because the 1995 Contract superseded any ordinance rate, Brazos continued to pay the same cost-of-service based rate Tenaska had previously paid, averaging around $0.20 per 1,000 gallons of reuse water.

The 1995 Contract was amended to extend its term until 2022 at the same reuse water rate. In February 2023, after the 1995 Contract expired, Brazos and Cleburne entered into a new 1-year extension of the 1995 Contract, at an initial rate of $0.24 per 1,000 gallons of reuse water (the "***2023 Contract***") and agreed to retroactively apply the original $0.20 rate to the period between the 1995 Contract's expiration and the effective date of the 2023 Contract.[8] The rate was set to increase each month of the term by $0.012 per 1,000 gallons. Exh. C., 2023 Contract §5(a). In the 2023 Contract, the parties acknowledged that the construction of the East Loop Pipeline facilities "necessary to deliver the Water to the Plant" was "funded by Brazos Electric" through its payment of water rates. Exh. C., 2023 Contract at 2.

In 2023, Brazos declared bankruptcy because of financial losses it incurred as a result of Winter Storm Uri. In June 2023, Brazos sold the Plant to Johnson County Power, who succeeded to the 2023 Contract.

In February 2024, the 2023 Contract expired. In the final month of that agreement, Johnson County Power paid Cleburne $0.372 per 1,000 gallons of reuse water. Thereafter, Cleburne began invoicing Johnson County Power for reuse water at the Ordinance rate of $4.50 per 1,000 gallons (75% of the $6.00 per 1,000 gallons of treated water rate that Cleburne charges to all of its potable water customers). The newly imposed reuse water rate of $4.50 per 1,000 gallons constitutes an

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create water quality standards and granting it the ability to issue discharge permits); 30 Tex. Admin. Code §309.2-309.4 (providing water quality standards that require wastewater treatment plants to treat wastewater before discharge into surface waters).

[8] See Exhibit C of the attached declaration (the 2023 Contract).

over 1,200% increase in Johnson County Power's rate for the stored/conserved water, which equates to an increase in Plant operating expenses of over $1 million per year.

The Ordinance rate is excessively high, and it is not based on any cost-of-service or other recognized utility ratemaking principle. According to Cleburne's 2023 and 2024 budgets, Cleburne has spent between $56,000 and $76,000 per year since 2020 to cover Cleburne's "expenses to operate the [East Loop Pipeline]."[9] These costs have been paid from Cleburne's Fund 65, which is solely funded by the revenue generated from Johnson County Power's reuse water payments. Given the 2023 Plant usage of about 350,027,000 gallons per year, and the cost of service of $76,000, a $0.22 per 1,000 gallons reuse water rate would have fully paid those expenses from Johnson County Power alone.[10] And according to Cleburne's website, Cleburne provides nearly 2 million gallons of reuse water per day through the East Loop Pipeline to industrial customers,[11] which means that a $0.10 per 1,000 gallon reuse water rate would have fully covered the $76,000 cost of service for the East Loop Pipeline.[12] The only other customer currently served by the East Loop Pipeline is the Cleburne-owned John Warren Sports Complex. The $4.50 per 1,000 gallon reuse water rate is neither reasonable nor just in light of Cleburne's cost of service.

Cleburne has continued to invoice Johnson County Power at a rate of $4.50 per 1,000 reuse water gallons, over 1,200% more than the prior contract rate and far more than is necessary to operate the water system and recover Cleburne's debt costs associated with the East Loop Pipeline.

Johnson County Power has attempted to negotiate with Cleburne to purchase reuse water at a reasonable rate. On July 11, 2024, Johnson County Power sent a letter through its attorneys

[9] See Exhibit D of the attached declaration (Cleburne's 2023 and 2024 budgets, Fund 65 data).
[10] $76,000 / 350,027,000 gallons = $0.22 per 1,000 gallons.
[11] City of Cleburne, Water and Wastewater Treatment, https://www.cleburne.net/298/Water-and-Wastewater-Treatment (last accessed Mar. 21, 2025).
[12] $76,000 / (2,000,000 gallons per day * 365 days) = $0.10 per 1,000 gallons.

asking for Cleburne to set a reasonable rate, and offering to pay a rate "that accurately reflects . . . [Cleburne's] reasonable costs of providing this critically important service."[13] However, Cleburne has refused to negotiate the reuse water rate, and will not provide reuse water at any price other than the $4.50 per 1,000 gallons arbitrarily set in the Rate Ordinance.

III. Jurisdiction

The Commission has jurisdiction over this conserved and stored water rate dispute under Texas Water Code §11.041 and the Commission's substantive rules in 30 Tex. Admin. Code §291.128-131. Water Code §11.041 provides:

> DENIAL OF WATER: COMPLAINT.
> (a) Any person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir, or lake or from any conserved or stored supply may present to the [Commission] a written petition showing:
>
> > (1) that he is entitled to receive or use the water;
> > (2) that he is willing and able to pay a just and reasonable price for the water;
> > (3) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and
> > (4) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not reasonable and just or is discriminatory.
>
> (b) If the petition is accompanied by a deposit of $25, the executive director shall have a preliminary investigation of the complaint made and determine whether or not there are probable grounds for the complaint.
>
> (c) If, after preliminary investigation, the executive director determines that probable grounds exist for the complaint, the [Commission] shall enter an order setting a time and place for a hearing on the petition.
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> . . .
>
> (f) The [Commission] shall hold a hearing on the complaint at the time and place stated in the order. It may hear evidence orally or by affidavit in support of or against the complaint, and it may hear arguments. The [Public Utility Commission] may participate in the hearing if necessary to present evidence on the price or rental demanded for the available water. On completion of the hearing, the [Commission] shall render a written decision. . . . .

[13] See Exhibit E of the attached declaration (July 11, 2024 Letter to Jeremy Hutt).

Tex. Water Code §11.041. Each of the jurisdictional requisites is met here:

- Petitioner Johnson County Power is entitled to receive or use water from a conserved or stored supply. Tex. Water Code §11.041(a)(1).
- Johnson County Power is willing and able to pay Cleburne a just and reasonable price for the water. Tex. Water Code §11.041(a)(2).
- Cleburne owns and controls the reuse water, which is not contracted to others and is available for Johnson County Power's use. Tex. Water Code §11.041(a)(3).
- Effective February 15, 2024, Cleburne charged and demanded rates from Johnson County Power that are not reasonable or just, and are discriminatory. Tex. Water Code §11.041(a)(4).
- Attached to this Petition is a filing fee of $25.00. Tex. Water Code §11.041(b).
- This Petition is being served on Cleburne, the party against whom Johnson County Power seeks relief, and other appropriate parties[14] as required by 30 Tex. Admin. Code §291.129.

Under the Commission's rules, petitions to review rates under Water Code §11.041 are referred to the State Office of Administrative Hearings ("SOAH") for an evidentiary hearing. 30 Tex. Admin. Code §291.131.

IV. Petitioner is entitled to receive or use the reuse water.

Johnson County Power is entitled to receive and use the reuse water. Cleburne is the only water supplier within the city limits of Cleburne, and enjoys a substantial monopoly over water in the area; there exists no feasible alternative source for cooling water for Johnson County Power. *Tex. Water Rights Comm'n v. City of Dallas*, 591 S.W.2d 609, 612 (Tex. App.—Austin 1979, writ

[14] Johnson County Power is not now aware of any "other appropriate parties."

ref'd n.r.e.) (holding petitioner was entitled to receive water in a Water Code §11.041 challenge where city supplier had acquired substantial water rights and "occup[ied] a monopolistic position"). Further, as a public utility, Cleburne is obligated to serve all customers within its service area. *City of San Antonio v. Tex. Water Comm'n*, 407 S.W.2d 752, 768 (Tex. 1966) (holding a water supplier "is under a duty to serve the public without discrimination").

Cleburne's primary source of water supply is Lake Pat Cleburne with water from Lake Aquilla and Lake Whitney. Cleburne currently has water rights for an annual diversion averaging 5.14 million gallons/day (MGD), 5,760 acre-feet per year (ac-ft/yr.), from Lake Pat Cleburne (Certificate of Adjudication 12-4106),[15] with a peak diversion rate of 35.674 MGD (39,960 ac-ft/yr.).[16] Cleburne has a contract with the Brazos River Authority (BRA) for 13.99 MGD (15,000 ac-ft/yr.).[17] Of these water rights, 8.66 MGD (9,700 ac-ft/yr.) are from Lake Whitney and 4.73 MGD (5,300 ac-ft/yr.) come from Lake Aquilla and will be diverted to the Cleburne Water Plant and Lake Pat Cleburne via pipeline. Cleburne also has the right, through Certificate of Adjudication 12-4106C, to divert up to a maximum of 7.5 MGD (8,400 ac-ft/yr.) from discharge/outflow points to be used as reuse water for agricultural, industrial, and municipal purposes.[18] Additionally, Cleburne has the potential to draw water from seven ground water wells with a combined capacity of 2.0 MGD (2,240 ac-ft/yr.). Cleburne has an effective monopoly on

[15] See Exhibit F of the attached declaration (Certificate of Adjudication 12-4106 and Amendments).

[16] See City of Cleburne Drought Contingency and Emergency Water Management Plan at 5 (April 2024), https://www.cleburne.net/DocumentCenter/View/7488/Drought-Contingency-and-Emergency-Water-Management-Plan-2024?bidId=.
Certificate of Adjudication 4258 also gives Cleburne the right to 720 acre-feet for industrial and municipal/domestic uses.

[17] Water Service Contract 1856 dated January 1, 1992, gives Cleburne the right to 4,700 acre-feet of municipal/domestic water, and 5,300 acre-feet of municipal/domestic water. Water Service Contract 12320 gives Cleburne the right to 5,000 acre-feet for agriculture, irrigation, mining, and municipal/domestic purposes.

[18] As set out in Certificate No. 12-4106C, approved on November 30, 2005.

reuse water within its incorporated limits, and thus Cleburne is obligated to serve the public with its reuse water. Johnson County Power is a longstanding customer of Cleburne's reuse water, and it is entitled to continue receiving and using the water.

V. Petitioner is willing to pay a just and reasonable price for the water.

Johnson County Power is willing to pay a just and reasonable price for the water. The Plant's owners facilitated the construction and operation of the East Loop Reuse Pipeline to serve the Plant, and they have paid for water from that pipeline for over 25 years. The reuse water is critical to the operation of the Plant, which provides baseload, dispatchable power to the ERCOT grid. In July 2024, Johnson County Power again offered to pay a price for the water that "accurately reflects . . . [Cleburne's] reasonable costs of providing this critically important service."[19] In an October 2024 letter to Cleburne's Mayor and City Council, Johnson County Power proposed a new contract with a "just and reasonable rate for [reuse water] that correlates to [Cleburne's] cost of providing the service." The proposed contract featured a rate of $0.36 per 1000 gallons, similar to final rate paid under the 2023 Contract. But Cleburne's City Council refused to engage in any negotiations regarding a new rate and has, to date, refused to even meet to discuss the terms and conditions for a new reuse water supply contract.[20]

VI. Cleburne has reuse water available that is not contracted to others.

Cleburne has reuse water available that is not contracted to others, and Cleburne is currently providing the water to Johnson County Power. Cleburne's Certificate of Adjudication gives Cleburne the rights to divert 7.5 MGD (8,400 ac-ft/yr.) from discharge/outflow points to be

[19] See Exhibit E of the attached declaration (July 11, 2024 Letter to Jeremy Hutt).
[20] See Exhibits G and H of the attached declaration (May 2024 and October 2024 Proposed Contracts).

used as reuse water for agricultural, industrial, and municipal purposes.[21] Cleburne currently uses at most 4 MGD (4,480 ac-ft/yr.) of reuse water, consisting of 2 MGD on the East Loop Pipeline, and 2 MGD pumped back to Lake Pat Cleburne for future use on the West Loop Pipeline.[22] Cleburne has not contracted the reuse water used by Johnson County Power to others, and the reuse water is available for Johnson County Power's use.

VII. Cleburne fails or refuses to supply the available reuse water at rates that are "reasonable and just" as required by the Water Code.

Finally, the rates charged by Cleburne are "not reasonable and just." Tex. Water Code §11.041(a)(4). Water suppliers cannot charge rates that are higher than necessary to earn a reasonable return based on cost-of-service. *See State v. Sw. Bell Tel. Co.,* 526 S.W.2d 526, 530 (Tex. 1975) (providing that utilities are entitled to "a fair return upon the value of that which it employs for the public convenience"); *Tex. Water Comm'n v. Boyt Realty Co.*, 10 S.W.3d 334, 342 (Tex. App.—Austin 1993, no writ) (providing for cost-of-service rates under Water Code §11.041); *City of Dallas*, 591 S.W.2d at 611 (Texas Water Rights Commission finding that rate that realized a 7.20% return was unreasonable "to the extent that the return exceeded six percent of the fair base value rate base"). Proper rates are determined by three factors: "(1) the utility's reasonable operating expenses; (2) the rate base; and (3) a reasonable rate of return." *Suburban Util. Corp. v. Pub. Util. Comm'n of Tex.*, 652 S.W.2d 358, 362 (Tex. 1983). Each of those factors supports the conclusion that Cleburne's reuse water rate is not reasonable or just.

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[21] See Exhibit F of the attached declaration (Certificate of Adjudication No. 12-4106 and Amendments).

[22] City of Cleburne, West Loop Reuse Pipeline, https://www.cleburne.net/1621/West-Loop-Reuse-Pipeline#:~:text=The%20City%20of%20Cleburne%20currently,Contractor:%20Blackrock%20Construction.

Considering cost-of-service, Cleburne's Ordinance Rate likely gives it an approximately 1,200% return on investment. As discussed above, according to Cleburne's budgetary data, Cleburne has spent between $56,000 and $76,000 per year since 2020 to operate and maintain the East Loop Pipeline. See Exh. D, Cleburne's 2023 and 2024 budgets, Fund 65 data. Cleburne's costs have been paid from an account solely funded by the revenue generated from the Plant's reuse water payments. At the 2023 Plant usage of about 350 million gallons per year and the cost of service of $76,000, a $0.22 per 1,000 gallons reuse water rate—$4.28 *less* than the one Cleburne is charging to Johnson County Power—would have fully paid for Cleburne's expenses. And according to Cleburne's website, Cleburne provides nearly 2 million gallons of water per day through the East Loop Pipeline to its two reuse customers, which means that a $0.10 per 1,000 gallon reuse water rate—$4.40 *less* than the current rate—would have fully covered the $76,000 cost of service for the East Loop Pipeline. The $4.50 per 1,000 gallon reuse water rate is wholly unjust and unreasonable in light of Cleburne's costs-of-service.

Cleburne's rate base is also insufficient to justify its unreasonable reuse water rates.[23] A cost-of-service rate allows utilities to recover a reasonable return on its invested capital used to provide the service, or its "rate base."[24] At most, Cleburne's rate base for the provision of reuse water should include the fair value of the East Loop Pipeline, the reuse water storage tank adjacent to the Plant, and a portion of Cleburne's wastewater treatment plant. The capital costs of the East Loop Pipeline were already *fully* recovered through the rates paid by the prior Plant owners under the original, 23-year term of the 1995 Contract and the 1-year term of the 2023 Contract. Exh. C., 2023 Contract at 2.

[23] Cleburne conducted a utility rate study in 2024. City of Cleburne Annual Budget, Fiscal Year 2025 at 4, https://www.cleburne.net/DocumentCenter/View/14982/FY-2025-City-of-Cleburne-Proposed-Budget?bidId=

[24] *See* Tex. Water Code § 13.185 (defining the components of a water utility's rate base).

Further, the costs attributable to the portion of Cleburne's wastewater treatment plant that treats wastewater to TCEQ Type 1 or 2 reuse water standards is likely already covered by the retail sewer service rates paid by Cleburne customers who generate the sewer water. Cleburne is required by the EPA and TCEQ regulations to treat all wastewater to acceptable effluent standards so that it can be discharged back into the waters of the State. [25] If Cleburne were not sending reuse to Johnson County Power, it would still be required to treat the wastewater to effluent discharge standards, which are effectively equivalent to the TCEQ Type 2 standards required for the reuse water piped to Johnson County Power. Thus, Cleburne's additional treatment costs are likely low or zero.

Cleburne's 1,200% return on the East Loop Pipeline and provision of reuse water is neither reasonable nor just. While there is no set percentage for a rate of return that is reasonable in all cases, there typically exists a "zone of reasonableness."[26] The Texas Water Rights Commission has held, in a prior municipal water rate case, that rates yielding a return of more than 6% were unreasonable. *City of Dallas*, 591 S.W.2d at 611. Recent rates of return approved by the Public Utility Commission of Texas ("PUCT") for water utilities have been consistently below 10%.[27] There is zero support in the law for a 1,200% return or even anything close to such a return. In

[25] TCEQ administers EPA-sanctioned Texas Pollutant Discharge Elimination System and issues discharge permits under Tex. Water Code § 26.027. TCEQ prescribes effluent discharge quality standards in 30 TAC § 309.

[26] *See City of Corpus Christi v. Pub. Util. Comm'n of Tex.*, 51 S.W.3d 231, 243 (Tex. 2001).

[27] *See Application of Monarch Utilities I L.P. for Authority to Change Rates*, PUCT Docket No. 50944, Order (Feb. 23, 2022) (ruling that a rate of return of 7.73% and a return on equity of 9% are reasonable); *See also Application of Crystal Springs Water Company, Inc. for Authority to Change Rates*, PUCT Docket No. 53234, Order (Dec. 14, 2023) (ruling that a rate of return of 7.03% and a return on equity of 8.95% are reasonable); *See also Application of Corix Utilities (Texas) Inc. for Authority to Change Rates*, PUCT Docket No. 53815, Order (Jun. 13, 2024) (ruling that a rate of return of 7.31% and a return on equity of 9% are reasonable).

sum, Cleburne is entitled to a reasonable and just rate, not one that results in a massive windfall for Cleburne.

VIII. Relief Requested

Johnson County Power respectfully requests the Executive Director review this petition, determine that probable grounds exist for these complaints, and refer the petition to the State Office of Administrative Hearings for an evidentiary hearing. Pursuant to Commission rules, that determination should be made "within ten days of the filing of the petition." 30 Tex. Admin. Code §291.131. Upon hearing, Johnson County Power requests that the Commission:

(1) Find that Johnson County Power is entitled to receive and use conserved and stored reuse water from Cleburne under Texas Water Code §11.041;

(2) Find that Johnson County Power is willing and able to pay a just and reasonable price for the reuse water used for critical cooling purposes at the Plant;

(3) Find that Cleburne has reuse water that is available for Johnson County Power's use that is not contracted to others;

(4) Find that Cleburne refuses to supply the available reuse water to Johnson County Power on terms that are reasonable and just, or that are not discriminatory;

(5) Order Cleburne to sell its available reuse water to Johnson County Power at a just and reasonable price to be set in this proceeding by the Commission or, if deemed necessary, through consultation with the PUCT under Texas Water Code §11.041(f); and

(6) Grant such other and further relief to which Johnson County Power is entitled.

Respectfully submitted,

/s/ *Marisa S. Giles*

Marisa Secco Giles
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Counsel for Petitioner,
Johnson County Power, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing petition was sent via U.S. first class mail, postage prepaid, and via email to the following on March 21, 2025.

Ashley D. Dierker, Cleburne City Attorney
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adierker@toase.com

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citysecretary@cleburne.net

Marisa S. Giles
Marisa Giles

TCEQ DOCKET NO. _____

PETITION OF JOHNSON COUNTY POWER, LLC FOR REVIEW OF UNREASONABLE WATER RATES CHARGED BY THE CITY OF CLEBURNE, TEXAS	**§**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

DECLARATION OF JOE BOOTH IN SUPPORT OF JOHNSON COUNTY POWER, LLC'S PETITION FOR REVIEW OF UNREASONABLE WATER RATES

1. My name is Joe Booth. My business address is 811 Sparks Dr, Cleburne, TX 76033. I am over eighteen (18) years of age and have never been convicted of a felony. I have personal knowledge of the facts contained herein, and they are true and correct to the best of my knowledge.

2. I am the Plant Manager at Johnson County Power, LLC's ("Johnson County Power") power plant (the "Plant") in Cleburne, Texas. As the Plant Manager, I am responsible for overseeing Plant operations, including ensuring the proper operation of the Plant's cooling systems. I am familiar with the Plant's water supply needs and its operational history. I am authorized to make this Declaration on Johnson County Power's behalf.

3. I am familiar with: the provision of reuse water for cooling purposes by the City of Cleburne ("Cleburne") to the Plant through the East Loop Reuse Pipeline; the 1995 water purchase agreement ("1995 Contract") between Tenaska IV Texas Partners, LTD ("Tenaska") and Cleburne; the 2007 Cleburne ordinance ("Rate Ordinance") that set the reuse water rate at 75% of the potable water rate; and the 2023 water purchase agreement ("2023 Contract") between Brazos Electric Power Cooperative, Inc. ("Brazos") and Cleburne, which Johnson County Power inherited.

4. I have been involved with Johnson County Power's multiple attempts to engage in discussions with Cleburne regarding the creation of a new reuse water purchase agreement with a reasonable rate. I am familiar with Johnson County Power's willingness to pay a reasonable and just rate for the reuse

water from Cleburne, and Cleburne's refusal to engage in discussions regarding the rate.

5. Johnson County Power is a Delaware limited liability company that owns and operates the Plant, a 258 megawatt, baseload, combined cycle natural gas-fired power generation plant located in the Cleburne Industrial Park, within the city limits of the City of Cleburne, Texas.

6. The Plant provides dispatchable power to the ERCOT power market through its interconnection with the ERCOT grid.

7. The Plant has on-site fuel oil storage that enables the Plant to produce critical power during natural gas supply interruptions caused by emergency events like extreme cold weather.

8. The Plant requires significant volumes of water for cooling purposes. If the Plant does not have a steady water supply, it is not able to run. If the cooling water supply were to be cut while the Plant was running, it would be forced to immediately shut down.

9. During normal operations, the Plant draws all of its cooling water from the on-site 1,000,000 gallon water tank that Tenaska originally conveyed to Cleburne in exchange for reuse water supply, as part of Tenaska's 1995 contract with Cleburne. On rare occasions, the Plant may receive potable water for cooling purposes if sufficient reuse water is not available.

10. The water tank is filled with reuse water by Cleburne from the 8-mile long, 16-inch diameter East Loop Reuse Pipeline that originates at Cleburne's wastewater treatment plant. The Plant has visibility of the water level in the tank, but has no control over filling the tank.

11. The East Loop Reuse Pipeline delivers reuse water to the tank, treated to either Type 1 or Type 2 TCEQ reuse standards.

12. I am only aware of the East Loop Pipeline serving two locations: (1) the Plant, and (2) the Cleburne-owned John Warren Sports Complex.

13. When Johnson County Power purchased the Plant in June 2023, it assumed the 2023 Contract

between Cleburne and Brazos, which is now expired.

14. From June 2023 to February 2024, Johnson County Power paid Cleburne for the reuse water under the 2023 Contract. In 2023, the average rate paid for reuse water delivered to the Plant was $0.31 per 1,000 gallons.

15. In February 2024, Cleburne began invoicing Johnson County Power for water at the ordinance reuse water rate of $4.50 per 1,000 gallons.

16. Upon receiving the February 2024 water invoice, I contacted Dee Boyd, a Cleburne Senior Accountant, asking whether the invoiced amount was a mistake.

17. On April 23, 2024, Rhonda Daughtery, Cleburne Director of Finance, notified me that the invoice was correct because the rate had changed when the 2023 Contract expired.

18. On April 24, 2024, I contacted Jeremy Hutt, the Cleburne Director of Public Works, to discuss the possibility of a new reuse water contract.

19. Mr. Hutt replied on April 29, 2024, asking me to draft an agreement for Cleburne's consideration. Mr. Hutt indicated that Cleburne would be happy to consider an agreement that made sense for both parties.

20. The Johnson County Power team and I drafted a proposed five-year contract that would essentially extend the provisions found in the 2023 Contract ("May 2024 Proposed Contract"). We sent the proposed contract to Mr. Hutt on May 13, 2024.

21. On May 24, 2024, Mr. Hutt responded, notifying us of Cleburne's intention to continue charging the much higher ordinance rate and stating that Cleburne does not have any procedures or processes for providing alternative rates to utility customers.

22. On July 11, 2024, Johnson County Power sent a letter through its attorneys asking for Cleburne to set a reasonable rate, and offering to pay a rate that accurately reflects Cleburne's

reasonable costs of providing reuse water.

23. In September 2024, after Cleburne's representatives dodged Johnson County Power's requests to set a meeting for months, Cleburne requested that Johnson County Power submit a proposed contract to be placed on the Cleburne City Council meeting agenda.

24. On October 7, 2024, Johnson County Power sent a cover letter and another proposed contract to Cleburne ("October 2024 Proposed Contract").

25. Cleburne City Council considered the proposed contract in a closed executive session during the November 12, 2024, Cleburne City Council meeting. On November 21, 2024, the City Attorney indicated that the Cleburne City Council agreed that a new reuse water contract is needed but that they are unwilling to negotiate a rate different than the unreasonable one reflected in the Rate Ordinance.

26. As described, Johnson County Power has attempted on multiple occasions to negotiate with Cleburne to purchase reuse water at a reasonable rate.

27. However, Cleburne has refused to engage in any rate negotiations and has to date not agreed to meet to discuss the terms and conditions for a new reuse water supply contract.

28. I am familiar with the documents attached to Johnson County Power's Petition in my role as Plant Manager. Attached to this Declaration are true and correct copies of the following documents referenced in Johnson County Power's Petition:

Exhibit A: 1995 Contract

Exhibit B: Rate Ordinance

Exhibit C: 2023 Contract

Exhibit D: Cleburne's 2023 and 2024 Budgets, Fund 65 Data

Exhibit E: July 11, 2024 Letter to Jeremy Hutt

Exhibit F: Certificate of Adjudication 12-4106 and Amendments

Exhibit G: May 2024 Proposed Contract

Exhibit H: October 2024 Proposed Contract

The jurat below is provided pursuant to Texas Civil Practice and Remedies Code § 132.001:

My name is Joe Booth, my date of birth is June 14, 1964, and my address is 811 Sparks Dr, Cleburne, TX 76033, and the United States of America. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Johnson County, State of Texas, on the 20th day of March, 2025.

Joe Booth

Joe Booth
Authorized Representative for Johnson County Power

EXHIBIT A

1995 Contract

GRAY WATER

AGREEMENT FOR SEWER EFFLUENT WATER PURCHASE

THIS AGREEMENT, dated the 27th day of June, 1995, is entered into between the CITY OF CLEBURNE, JOHNSON COUNTY, TEXAS, a municipal corporation, hereinafter sometimes referred to as "City", and TENASKA IV TEXAS PARTNERS, LTD., a limited partnership organized and existing under the laws of the State of Texas, hereinafter sometimes referred to as "Tenaska". City and Tenaska are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

RECITAL:

Tenaska intends to build and operate a 258 megawatt cogeneration plant and may in the future build and operate additional similar facilities in the Cleburne Industrial Park in Cleburne, Johnson County, Texas ("Plant"). Tenaska anticipates that the Plant will achieve commercial operation on or about January 1, 1997, but in no event sooner than September 1, 1996 ("Commercial Operation"). The Plant operations will require a substantial quantity of water for cooling tower makeup. Tenaska has agreed to build the Plant and the City has agreed to deliver to the Plant and sell to Tenaska and Tenaska agrees to buy effluent water from City's wastewater treatment facility for use as cooling tower makeup at the Plant (hereinafter such effluent water is referred to as "Water"). Tenaska agrees that, subject to the terms and conditions of this Agreement, the City may sell Water to other potential purchasers on the same basis as Water is sold to Tenaska. The City has also agreed to design, procure, construct, continually operate and maintain and finance the facilities necessary to deliver the Water to the Plant site.

NOW, THEREFORE, subject to the terms and conditions of this Agreement, the

Parties agree as follows:

1. PURPOSE. The purpose of this Agreement is to define the Parties' contractual rights and obligations relative to the supply and use of Water at the Plant.

2. TERM OF AGREEMENT. The term of this Agreement shall commence on the date hereof and shall extend for 23 years after the first date Tenaska purchases Water under this Agreement ("Commencement Date") unless earlier terminated in accordance with the provisions of paragraph 17 or extended in accordance with the provisions of paragraph 6(a).

3. SERVICE TO BE RENDERED. Services to be rendered shall include the following:

(a) The City shall exert its best efforts to accomplish the following within sixteen (16) months after the receipt by the City of the "Notice to Proceed" (defined in paragraph 8(a)): the City shall have designed, procured, constructed, funded and financed, and put in operating condition ("Construct", "Constructed", "Construction" or "Constructing") facilities necessary to provide, transport and deliver Water to the Delivery Point specified in paragraph 4(a), together with facilities necessary to store approximately one million (1,000,000) gallons of Water adjacent to the Plant site plus facilities necessary to transport up to 300,000 gallons per day of effluent water from the location of the Land (defined in paragraph 3(g) and to transport up to 150,000 gallons per day of distilled water (pursuant to the Distilled Water Agreement by and between the Parties dated December 1, 1994) from the location of the Land to Buffalo Creek in Johnson County for flow augmentation (hereinafter collectively the "Water Facilities"). Tenaska shall be offered the opportunity

to review and comment to the City upon the scope of the work to be performed, the estimated cost thereof and all plans and specifications for the Water Facilities (collectively "Plans and Specifications") prior to their finalization and implementation by the City. The City shall continually maintain and operate the Water Facilities during the term of this Agreement.

(b) If the City, after exerting its best efforts, does not meet the 16 month schedule described in (a) above, Tenaska will purchase, and City will sell, potable water from the City at then current industrial rates until the Water is made available.

(c) The City's responsibility for initially funding and financing the cost of Constructing the Water Facilities ("Cost of Finance" or "Financing") shall include funding all necessary and actual costs related to Construction of the Water Facilities and the City's issuance of its tax exempt bonds, if any, or other method of financing, utilized by City.

(d) Subject to Section 7 and the City being able to maintain its Minimum Supply and Flow Requirement (defined in paragraph 9(c)), at all times during the term of this Agreement the City will deliver to the Delivery Point and sell to Tenaska the quantity of Water--and if necessary in accordance with Section 5(a) a supplement of potable water in lieu of Water--required for use at the Plant as cooling tower makeup, not to exceed 1.7 million gallons per day. Water supplied shall be of a quality that meets the requirements specified on Exhibit "A" attached hereto.

(e) The City shall Construct and continually operate and maintain the Water Facilities in a manner consistent with (i) the terms and provisions of this Agreement, (ii) the Plans and Specifications, (iii) industry practice, and (iv) all applicable laws, statutes,

regulations and codes.

(f) Tenaska shall reimburse the City for the Cost of Financing, the principal amount of which shall not exceed actual costs, estimated to be Three Million Five Hundred Thousand Dollars ($3,500,000.00 U.S. Dollars), in accordance with the payback provisions set forth in paragraph 5.

(g) Within thirty (30) days after receipt of the Notice to Proceed pursuant to paragraph 8(a), Tenaska agrees to convey to the City an area of land adjacent to the Plant site which the Parties agree is suitable in size and location for locating a 1,000,000 gallon Water storage tank ("Land"). The Land shall be conveyed by Special Warranty deed to the City for the amount of Ten Dollars ($10.00). Tenaska shall pay all closing costs and shall secure Title Insurance. The Land shall be free of all liens or encumbrances except those permitted encumbrances the Parties agree will exist.

4. DELIVERY POINT AND METERING.

(a) The Delivery Point shall be at a point designated in writing by Tenaska and located on the Land as Tenaska may reasonably determine within thirty (30) days after the Notice to Proceed (hereinafter defined in paragraph 8(a)). Tenaska will bear the responsibility for maintaining the Water quality following receipt by Tenaska of Water at the Delivery Point.

(b) A metering station shall be owned, installed, continually operated and maintained, tested, calibrated and adjusted by the City, located between the Water Facilities and the Delivery Point as the Parties may agree, providing accurate and continuous measurements and recording of the quantity of Water. Metering equipment shall be tested

as agreed by the City and Tenaska. Acceptable accuracy shall be variation within plus or minus one percent (1%) of any given rate of flow within the turndown range of the meter for fluid velocities greater than one foot per second (1.0 fps). If such metering equipment is found to be in error by more than one percent (1%), then the Parties shall use their reasonable efforts to determine the quantity of Water actually delivered to the Delivery Point during the period affected by such error, and the equipment shall be adjusted to record accurately. City and Tenaska shall have the right to have a representative present at the time of any test.

(c) City and Tenaska shall each have upon reasonable notice, the ongoing right to have their respective representatives examine and audit the other Party's records concerning quantities and quality of Water supplied to Tenaska at the Delivery Point.

(d) The City shall supply Tenaska, upon request by Tenaska, a copy of regulatory chemical analysis reports as submitted to Texas Natural Resource Conservation Commission ("TNRCC") or its successor. In the event Tenaska desires a more comprehensive chemical analysis of the Water supplied, then the cost of such shall be borne by Tenaska.

(e) Each of the Parties shall immediately notify the other Party's Designated Representative (as identified in the notice provision of this Agreement), hereinafter named, of any emergency or condition of which the notifying Party knows which may affect the quality or quantity of Water in either Party's system.

5. RATES, INVOICING AND PAYMENT. Subject to the terms and conditions of paragraph 17, Tenaska shall not be required to pay for the Cost of Financing until such

time Water is made available to Tenaska by City, but such costs shall be included in the amount constituting the "Fixed Charge" set forth below. City shall render an invoice to Tenaska on or about the tenth (10th) day of each month for Water supplied during the previous month in an amount equal to the sum of the Fixed Charge (hereinafter defined in paragraph 5(a)) plus a Variable Charge (hereinafter defined in paragraph 5(b)) all in accordance with the provisions of paragraphs 5(c), (d), (e), (f) and (g).

(a) For each month during the term of this Agreement that a monthly debt service is owed by the City for Financing, the Fixed Charge will be equal to the amount of monthly debt service owed by the City during that month for Cost of Financing and, subject to the provisions of paragraph 7 of this Agreement, the Additional Facilities as defined in paragraph 6 of this Agreement. The Fixed Charge shall be paid monthly by Tenaska regardless of whether Tenaska receives its required Supply during such month. In the event the City does not, other than if caused by an Excusable Interruption or Minimum Supply or Flow Requirement, supply Water to Tenaska, as contracted for in Section 3(d) of this Agreement, during any Contract Year in an amount/quantity equal to at least ninety percent (90%) of Tenaska's required Supply ("Shortfall"), then the City will as soon as is reasonably practical, but in no event later than in the next immediate Contract Year, supply Tenaska with a credit of the actual cost paid by Tenaska of potable water for the Shortfall.

(b) For each month commencing at the time Water is made available to Tenaska by City and during the term of this Agreement, the Variable Charge will be equal to the quantity of Water delivered to the Delivery Point during each such month (including any Additional Quantities as defined in paragraph 6 of this Agreement) as determined by

the metering equipment multiplied by a Variable Rate (hereinafter defined) reasonably set to recover the City's actual variable costs, delineated on Exhibit "B" attached, of supplying Water ("Operating Costs"). Prior to August 31, 1996, and prior to August 31 of each succeeding year during the term of this Agreement, Tenaska shall provide to the City an estimate of the Plant's projected Water usage for the ensuing Contract Year. "Contract Year" means a year beginning October 1 and ending September 30. Prior to September 30, 1996, and repeated prior to September 30 of each ensuing year during the term of this Agreement, the City shall reasonably estimate the Variable Rate for Water to be delivered to the Plant under this Agreement during the ensuing Contract Year. The "Variable Rate" shall mean and will be equal to the City's budgeted Operating Costs divided by Tenaska's estimate of Water usage. The resultant Variable Rate, expressed in dollars per thousand gallons of Water, shall be communicated to Tenaska prior to September 30 of each year. Tenaska shall have the right to review the City's budget and other documentation which the City used to support the Variable Rate prior to October 1 of each Contract Year. Beginning on October 31 immediately following the Commencement Date and repeated annually each year until the October 31 immediately following the termination of this Agreement, the City shall provide Tenaska with a statement illustrating the reconciliation of actual expenses incurred in Supplying Water to the Delivery Point (the "Reconciliation Statement"). The Reconciliation Statement shall include and show the calculation of the difference between the actual costs incurred and the total Variable Charge paid by Tenaska during the previous Contract Year. The City shall refund to Tenaska any amounts overcollected through the Variable Rate during the previous Contract Year. Similarly,

Tenaska will pay any additional amount owed. If the City owes Tenaska a refund, such refund shall be paid on October 31 concurrent with the delivery of the Reconciliation Statement. If Tenaska owes the City an amount due to an undercollection by the City, such amount shall be paid within twenty (20) days following Tenaska's receipt of the Reconciliation Statement. To the extent practicable, the City shall maintain separate meters and accounts to allow for an audit by Tenaska of actual expenses incurred.

(c) On or about the tenth of each calendar month, beginning with the second month after the Commencement Date, City shall mail or personally deliver to Tenaska an invoice ("City's Invoice") for amounts due to City for Water Supplied during the previous month. City's Invoice shall state the quantity of Water Supplied during the period covered by the City's Invoice, the date of any indices used to calculate the price of Water, the total amount due to City, and any additional information reasonably requested by Tenaska to determine the accuracy of the City's Invoice. The remittance address shall be such address as may be reflected on the City's Invoice from time to time.

(d) Tenaska shall pay the amount indicated on the City's Invoice within ten (10) days after receipt. Subject to the obligations of Tenaska to promptly pay, Tenaska may dispute the amount indicated on the City's Invoice and make payment "under protest" by notifying the City in a writing accompanying the payment. Any refund of an amount paid "under protest" shall bear interest at the Interest Rate (hereinafter defined in paragraph 5(f) from the date of payment until the date of the refund.

(e) In the event an error is discovered with respect to any City Invoice, or with respect to any payment made pursuant to any invoice, such error shall be adjusted

within thirty (30) days following the discovery of the error.

(f) Any monthly charge which is not paid when due shall bear interest from the due date until paid at the Interest Rate in effect on the first business day of each calendar month in which interest accrues under this Agreement. "Interest Rate" shall mean a rate equal to the lesser of (i) the maximum rate of interest permitted by law, and (ii) the Wall Street Journal Prime Rate (the lowest of the benchmark rates of interest identified as the Prime or Base rate for commercial lending in the Wall Street Journal) as published on the date of the invoice that has gone unpaid (or the first day of publication thereafter) plus an additional three percent (3%).

(g) Each Party shall permit the other or its designated representative to examine, audit and copy all records and information necessary to confirm the accuracy of any invoices submitted pursuant to this paragraph 5.

6. ADDITIONAL QUANTITIES OF WATER AND ADDITIONAL FACILITIES.

(a) If, within 5 years after the Commencement Date, Tenaska proposes to expand the capacity of the Plant resulting in a need for an additional Supply of Water ("Additional Quantity"), Tenaska will provide reasonable notice to the City of the Additional Quantity needed and the estimated date that the Additional Quantity will be required "Additional Quantity Notice"). Subject to the Minimum Supply and Flow Requirement and Section 7, the City agrees to deliver and shall deliver to the Delivery Point and sell to Tenaska such Additional Quantity. Provided the purchase of Additional Quantities commences within seven years after the Commencement Date, the term for the delivery of

the Additional Quantity shall be 23 years from the first date that the Additional Quantity is purchased for the Plant, unless the term is earlier terminated as specifically allowed under this Agreement. In the event the Additional Facilities are Constructed, then the term of this Agreement shall also be 23 years from the first date that the Additional Quantity is purchased for the Plant. If Tenaska requests an Additional Quantity in excess of 1.7 million gallons per day, the City shall use its best efforts to Supply same, but the City in no event will be obligated to Supply more than 3.4 million gallons per day.

(b) The City shall exert its best efforts to accomplish the following: Within twenty-two (22) months following the receipt by the City of the Additional Quantity Notice, the City shall have Constructed and financed the "Additional Facilities" as shown on Exhibit "C" necessary to Supply the Additional Quantity to the Delivery Point. The City shall continually maintain and operate the Additional Facilities during the term of this Agreement. A general description of the Additional Facilities is described on Exhibit "C" attached hereto. Tenaska shall be offered the opportunity to review and comment to the City upon the scope of the work to be performed, the estimated cost thereof and all plans and specifications for the Construction of the Additional Facilities prior to the City proceeding to Finance or Construct the Additional Facilities.

7. OTHER USERS.

(a) The Parties recognize that the City may have other customers desiring to purchase effluent water from the City's wastewater treatment facility and the City shall have the right to provide same to such other customers on the same terms as set forth in this agreement subject to the condition that doing so will in no way interfere with the City

Supplying the full Water requirements for the Plant; and

(b) In the event and to the extent that the City utilizes the Water Facilities or any Additional Facilities to provide effluent water to a customer other than Tenaska, City shall use its best efforts to charge all customers using the same Water or Additional Facilities the same amount, pro rata, for the same amount of services. Accordingly, the Fixed Charge to be paid by Tenaska shall be redetermined in accordance with the procedure set out in paragraph 5(a) and reduced proportionately to reflect Tenaska's pro rata use of the Water Facilities and any Additional Facilities; provided, however, the City may use up to 300,000 gallons per day of effluent water for flow augmentation in Buffalo Creek without causing a reduction of the Fixed Charge or Variable Rate to be paid by Tenaska. The revision in the Fixed Charge shall become effective the first month that such water service is provided to the other customer; and

(c) In the event and to the extent that the City utilizes the Water Facilities or any Additional Facilities to provide effluent water to a customer other than Tenaska, the Variable Rate shall be redetermined in accordance with the procedure set out in paragraph 5(b), and reduced proportionately, using a new total quantity of effluent water which includes the expected use by such customer plus the Water. The revised Variable Rate shall become effective the first month that such water service is provided to the other customer. The Reconciliation Statement shall in such case reflect the reconciliation of costs for all uses of such water and the amount owed to or from Tenaska shall be determined according to Tenaska's pro rata share of the effluent water consumed during the relative Contract Year.

8. FINANCING OF FACILITIES AND ADDITIONAL FACILITIES.

(a) The City shall obtain Financing for the Construction of the Water Facilities, but shall not do so until City receives written notice from Tenaska to proceed with Construction of the Water Facilities ("Notice to Proceed"). Such notice shall include the required in-service date for the Water Facilities, which date shall be no earlier than sixteen (16) months following the date of the Notice to Proceed.

(b) The City shall obtain Financing for the Construction of the Additional Facilities, but shall not do so until City receives the Additional Quantity Notice. Such notice shall include the required in-service date for the Additional Facilities, which date shall be no earlier than twenty-two (22) months following the date of the Additional Quantity Notice.

(c) The City shall use its best efforts to achieve the lowest and best Construction cost subject to all Federal, State and Local laws (ie. bid and wage laws) and Cost of Financing with a term of not less than twenty (20) years for the Water Facilities and ten (10) years for the Additional Facilities. The City shall consult with Tenaska prior to and during the Financing process. The City shall not be obligated to enter into any Financing arrangement for the Water Facilities or the Additional Facilities which would violate any existing bond covenant, or jeopardize the ability to Finance City's need for Facilities to serve its citizens.

(d) Nothing in this Agreement shall require the City to pursue Financing and Construction of the Water Facilities or the Additional Facilities prior to the receipt of the Notice to Proceed or the Additional Quantity Notice respectively. Similarly, Tenaska shall not be obligated to pay Fixed Charges resulting from the City's Financing or Construction of the Water Facilities or the Additional Facilities unless Tenaska has given the Notice to

Proceed or the Additional Quantity Notice respectively, Construction and Financing are completed and Water is made available to Tenaska, except as provided in the letter agreement dated June ____, 1995, a copy of which is attached hereto as Exhibit "D".

9. CONTINUITY OF SERVICE.

(a) Interruptions for Necessary Scheduled Maintenance. Upon receipt by Tenaska from City of notice at least 5 days prior to any scheduled suspension, interruption, delay, reduction or other interference ("Notice of Interruption") of Supply ("Interruption, Interrupt or Interrupted"), City may temporarily Interrupt the Supply for a period not to exceed 48 hours to correct the reason for the Interruption. Whenever possible, a proposed Interruption shall be scheduled during a shut-down of the Plant. The Notice of Interruption shall specify the duration and extent of the proposed Interruption in the Water Supply and the reason therefor.

(b) Interruption Due to Uncontrollable Force.

(i) If the Supply is Interrupted as a result of an Excusable Interruption (as hereinafter defined), then during the Excusable Interruption the City shall not be obligated to deliver Water to Tenaska.

(ii) The term "Excusable Interruption" means acts of God; flood; earthquake; storm or other natural calamity; war; insurrection; riot; curtailment, order, regulation or restriction imposed by state or federal governmental authority; cutting of Water Supply lines at the hands of third parties; or any other cause beyond the reasonable control of the Party affected; construction of any facilities pursuant to this Agreement, and explosion or fires.

(iii) In the event that either Party is rendered unable, wholly or in part, by Excusable Interruption, to carry out its obligations under this Agreement, except for those obligations requiring the payment of money, and if such Party gives notice stating the reasons therefor to the other Party as soon as practicable after the occurrence being claimed as an Excusable Interruption then, insofar as and to the extent and for such reasonable time that such obligations are so affected (not including those obligations requiring the payment of money) by the Excusable Interruption, the performance obligations of such Party shall be suspended. The suspension of the Party's performance obligations shall be for no longer period than that necessary to cause such inability to be remedied with reasonable dispatch.

(c) Interruption Due to Minimum Supply and Flow Requirement. The City shall not be obligated to Supply Water to the Delivery Point for the period of time during which doing so would make it reasonably impossible for the City to maintain a minimum flow of water in Buffalo Creek of 300,000 gallons per day or more as may be required by the City for its State and Federal discharge permit(s) ("Minimum Supply and Flow Requirement").

10. TAXES. Each Party shall pay all sales, real or personal property taxes and assessments imposed on such Party pursuant to applicable law or local custom with respect to the activities of generation, transportation, delivery, sale, emission, disposal or use of Water.

11. ASSIGNMENT AND DELEGATION.

(a) Except as otherwise provided herein, no right or interest in this Agreement shall be assigned by either Tenaska or City without the written permission of the

other Party and no delegation of any obligation or of the performance of any obligation by either Tenaska or City shall be made without the written permission of the other Party, which permission shall not unreasonably be withheld; provided, however, nothing contained in this paragraph 11 shall be construed to restrict Tenaska in any manner from freely granting a security interest, transferring in trust, mortgaging, hypothecating, assigning or otherwise transferring Tenaska's right, title and interest, or delegating its duties under this Agreement to any institutional or commercial lender or other person, its successors or assigns providing credit or loans to Tenaska in connection with the financing, refinancing or operation of the Plant (a "Lender") or construed to restrict any Lender from exercising its rights or pursuing its remedies available under any loan agreements, security agreements or other instruments or documents between itself and Tenaska or otherwise available to such Lender at law or in equity; and that Tenaska may assign this Agreement, without the prior written permission of City, to Tenaska's Lender(s), and City will execute a consent to such assignment as may be reasonably requested by such Lender(s). Any attempted assignment or delegation shall be void and ineffective for all purposes unless made in conformity with this paragraph 11.

(b) Either Party may assign its rights and delegate its obligations to any subsidiary of such Party provided that no such assignment or delegation releases such Party from any of its obligations.

(c) Upon the request of Tenaska, City agrees to execute and deliver in favor of any Lender, a consent to assignment and estoppel certificate, in form and substance reasonably satisfactory to such Lender and to City, consenting to any assignment described

in paragraph 11(a) above, certifying that this Agreement is in full force and effect and containing any other provisions regarding this Agreement reasonably requested by such Lender.

12. RELEASE AND INDEMNITY.

(a) Tenaska agrees to release, defend, indemnify and hold harmless the City, its council members, officers, employees, agents and representatives (collectively "City Representatives") from that portion of any claims, actions, suits, losses, harm, liability, damages, costs and expenses, including, but not limited to, reasonably attorney's fees (collectively "Claim") arising out of the negligent act or omission of Tenaska in connection with this Agreement and the construction or operation of the Water system owned by Tenaska on its Plant site ("Water System"); provided, however, Tenaska shall not be required to release, defend, indemnify or hold harmless City Representatives from any portion of a Claim, caused by or resulting from the negligence of a City Representative. Where negligence by the Parties is concurrent and contributes to the cause of the same Claim, then the Parties shall be responsible and liable in proportion to the degree of their own negligence. Nothing in this Agreement shall be construed to preclude either Party from pursuing any remedy against a third party.

(b) City agrees to release, defend, indemnify and hold harmless Tenaska, its directors, officers, shareholders, employees, agents and representatives (collectively "Tenaska Representatives") from that portion of any claims, actions, suits, losses, harm, liability, damages, costs and expenses, including, but not limited to, reasonably attorney's fee (collectively "Claim") arising out of the negligent act or omission of City in connection with

this Agreement and the Construction or operation of the Water Facilities or Additional Facilities; provided, however, City shall not be required to release, defend, indemnify or hold harmless Tenaska Representatives from any portion of a Claim, caused by or resulting from the negligence of a Tenaska Representative. Where negligence by the Parties is concurrent and contributes to the cause of the same Claim, then the Parties shall be responsible and liable in proportion to the degree of their own negligence. Nothing in this Agreement shall be construed to preclude either Party from pursuing any remedy against a third party.

13. REPRESENTATIONS AND WARRANTIES. The representations and warranties made respectively by the Parties shall remain in existence during the term of this Agreement.

Tenaska represents and warrants that: Tenaska is a Texas limited partnership organized and existing under and by virtue of the laws of the State of Texas and has the power and authority to own its properties and to carry on the business as presently conducted and as represented in this Agreement.

City represents and warrants that:

(a) City is a municipal corporation duly organized, validly existing and in good standing under and by virtue of the laws of the State of Texas and has the corporate power and authority to own its properties and to carry on its business as presently conducted and as represented in this Agreement; and

(b) City has lawful authority to Supply Water as contracted for herein; and

(c) City has obtained or will obtain all permits necessary to comply with the

terms and provisions of this Agreement; and

(d) City has had its City Council approve this Agreement so City has the authority to execute this Agreement and comply with the terms and provisions hereof.

14. WAIVER OF SUBROGATION. Each Party shall ensure that any policy of insurance which it carries as insurance against property damage or against general liability for property damage or bodily injury (including death) that may occur in connection with the Construction, maintenance or operation of the Water Facilities, the Additional Facilities or the Plant Water System or any electrical system used in conjunction therewith shall either name the other Party as additional insured, or include a waiver of insurer's rights of subrogation against, the other Party, its successors and assigns, and the respective directors, officers, employees, agents and representatives of such other Party and its successors and assigns. Further, to the extent permitted by such policy, each Party shall waive such rights of subrogation. Notwithstanding the foregoing, nothing in this paragraph 14 shall affect the indemnity obligations set forth in paragraph 12.

15. MISCELLANEOUS PROVISIONS.

(a) Notices. Except as otherwise provided in this paragraph, any notice, request, authorization, invoice, payment, direction or other communication as allowed or required under this Agreement shall be given in writing or be delivered in person or by first class United States certified mail, properly addressed, return receipt requested with the required postage prepaid, to the intended recipient as follows:

TENASKA IV TEXAS PARTNERS, LTD.
ATTN: (Designated Representative) Mike Lebens
1044 North 115th Street, Suite 400
Omaha, NE 68154-4446
Phone: (402) 691-9500
Fax: (402) 691-9530

CITY OF CLEBURNE, TEXAS
ATTN: (Designated Representative) City Manager
P.O. Box 657
Cleburne, TX 76033-0657
Phone: (817) 645-0902
Fax: (817) 645-0926

Invoices and related payments may be sent by regular first class United States mail and are not subject to the requirement of being sent by certified mail. Invoices and payments may be sent to an address, different from the above, as may be specified upon thirty (30) days advance notice from time to time by the receiving Party. Such Party shall provide notice of its desired mailing address for invoices or payments as appropriate if different from the above address. Either Party may change its address or Designated Representative specified above by giving the other Party reasonable notice of such change in accordance with this paragraph. All notices, requests and authorization of directions or other communications by a Party shall be deemed delivered when mailed as provided in this paragraph or personally delivered to the other Party.

(b) Governmental Authority. This Agreement is subject to the rules, regulations, orders and other requirements, now or hereafter in effect, of all governmental authorities having jurisdiction over this Agreement, the Parties or either of them.

(c) No Partnership.This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, nor to impose any

partnership obligations or liability on either Party. Furthermore, neither Party shall have any right, power or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of or to otherwise bind the other Party.

(d) Nonwaiver. The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.

(e) Entire Agreement. This Agreement sets forth the entire agreement, and supersedes any and all prior agreements of the Parties with respect to the subject matter hereof.

(f) No Specified Third-Party Beneficiaries. Except as otherwise specifically provided in this Agreement, there are no third-party beneficiaries of this Agreement. Nothing contained in this Agreement is intended to confer any right or interest on anyone other than the Parties, their respective successors, assigns and legal representatives, and the third-party beneficiaries, if any, specifically identified in this Agreement.

(g) Amendment. No change, amendment or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by both Parties.

(h) Implementation. Each Party shall take such action (including, but not limited to, the execution, acknowledgement and delivery of documents) as may reasonably be requested by the other Party for the implementation or continuing performance of this

Agreement.

(i) Invalid Provision. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted; and to this end the terms and provisions of this Agreement are agreed to be severable.

(j) Applicable Law. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Texas, except to the extent such laws may be preempted by the laws of the United States of America.

(k) Venue. The venue of any litigation arising out of this Agreement shall be in Johnson County, State of Texas, or such other place as the Parties may agree in writing.

(l) Disputes/Default.

(A) Prior to either Party's right to claim that the other has defaulted or otherwise breached any obligation or other provision of this Agreement, the Parties shall first attempt to resolve the potential claim of default or breach in accordance with this subparagraph (1). Failure to adhere to this subparagraph l shall constitute a waiver of any right, remedy or relief provided by this Agreement to otherwise accrue as a result of such default or breach.

(B) In the event either Party claims the other is in material default or either Party disputes the validity of any agreement or warranty or representation under this Agreement or the other's interpretation or performance of any provision under this Agreement, including the other's failure to perform (any one or all considered to be a

"Dispute"), the disputing Party shall notify the other that a Dispute exists, specifying the nature and extent of the Dispute (the "Dispute Notice"). The Dispute Notice shall be delivered to the other Party within ten (10) days after the incident giving rise to the Dispute. The Parties shall then make a good faith attempt to resolve the Dispute. During such attempted Dispute resolution, the Parties shall continue to proceed in good faith and diligently perform their respective obligations under this Agreement.

(C) In the event the Dispute is not resolved within twenty (20) days after the delivery of the Dispute Notice, the disputing Party may then take legal action in law or equity subject to the restrictions and limitations imposed by this Agreement; provided, because the Parties agree that the nature and subject matter of this Agreement are so unique City and Tenaska shall also have available the remedy for specific performance. The venue of any litigation arising out of this Agreement shall be in Johnson County, State of Texas, or such other place as both the Parties may agree in writing.

(m) Interpretation and Fair Construction of Contract. This Agreement has been reviewed and approved by each of the Parties. In the event it should be determined that any provision of this Agreement is uncertain or ambiguous, the language in all parts of this Agreement shall be in all cases construed as a whole according to its fair meaning and not strictly construed for or against either Party.

16. CONSENT AND AGREEMENT LEGAL OPINION. The City acknowledges that, as a condition of obtaining financing for construction of the Plant, Tenaska's Lender(s) will require a collateral assignment of this Agreement. In connection therewith, such Lenders will require the City to execute a Consent and Agreement in a form satisfactory to

the Lenders, as well as deliver an opinion from legal counsel as to the organization and standing of the City, the validity and execution of this Agreement, and like matters. The City agrees to execute and deliver such Consent and Agreement and to deliver such opinion of legal counsel as such Lenders may reasonably require and in form and substance as the Lenders and City may reasonably agree.

17. TERMINATION. Tenaska may at any time in and at its sole discretion terminate this Agreement upon notice to the City ("Notice of Termination") provided that in the event of such termination Tenaska shall have the obligation to pay the City, on the date this Agreement terminates, an amount sufficient to pay the future debt service requirements and expenses related thereto, if any, of outstanding City debt for the Cost of Financing the Water Facilities and/or the Additional Facilities ("Balance"). Any such obligation shall be reduced in accordance with paragraph 7(b) to reflect Tenaska's pro rata share of Water usage if the Water Facilities or Additional Facilities are being used by the City to provide Water to a customer other than Tenaska. The Notice of Termination shall notify City of Tenaska's decision to terminate this Agreement as of a date specified in the Notice of Termination. A decision to terminate made in accordance with this paragraph 17 shall be enforceable without obligations in the future for Tenaska, with the exception of paying the Balance, if any, and any claim arising prior to the termination date.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives all as of the day and year first above written.

Attest:

By: Jean Hamilton

Attest:

By: Linda Wallace

LINDA WALLACE
Notary Public, State of Texas
My Commission Expires 01-19-1997

Attest:

CITY OF CLEBURNE, JOHNSON COUNTY

By:

Title: City Manager

TENASKA IV TEXAS PARTNERS, LTD.,

By: Tenaska IV Partners, Ltd., Managing Partner

By: Tenaska IV, Inc.
Managing Partner

By: Darrell Borchgrevink

Title: Vice President

EXHIBITS

1. Exhibit "A" - Water Quality Requirements
2. Exhibit "B" - Costs to be Included in the City's Operating Costs
3. Exhibit "C" - Description of Additional Facilities

EXHIBIT A

Water Quality Requirements

Compliance with the City's permit(s) for effluent discharges to Buffalo Creek.

EXHIBIT B

Costs to be Included in the City's Operating Costs

A. Labor cost for operating, maintaining and testing the Water Facilities, defined as 1/2-person per year, calculated as follows:

$$\frac{\text{Total Salary and Benefit Expense for City Water and Sewer Employees (Account \#'s \_\_\_\_\_)}}{\text{2 x Tenaska's Estimate of Annual Water Consumption}}$$

B. Cost of chemicals required to maintain Water quality.

C. Electricity cost for operating the Water Facilities, determined by maintaining a separate meter or meters for this purpose.

D. Costs of maintenance and repair for the Water Facilities, including supplies, materials, and labor performed by those other than City employees.

E. Testing costs (excluding labor performed by City employees).

F. Other costs of operating and maintaining the Water Facilities as may be required for regulatory compliance.

EXHIBIT C

(Description of Additional Facilities)

2 Vertical Turbine Pumps, each capable of a minimum of 3.4 million gallons per day at a minimum of 300 feet of total dynamic head.

EXHIBIT D

(Letter Agreement)

EXHIBIT B

Rate Ordinance

§ 51.030 RATES FOR TREATED WATER SERVICE.

(A) *Form of rate.* The monthly rate for treated water service to a customer consists of:

(1) Service demand charge; and

(2) A usage charge.

(B) *Billing cycle.* In this section, water used per month is based upon the billing cycle of the Utility Department.

(C) *Rate tables.* The Utility Manager shall charge customers for treated water service in accordance with the following tables:

(1) For utility accounts inside city limits.

Water Usage	***Rate/Month***
0 gallons and over	$6.00 per 1,000 gallons

Monthly Base Service Demand Charge	
3/4" meter	$22.53
1" meter	40.14
1 1/2" meter and larger	90.32

(2) For utility accounts outside city limits.

Water Usage	***Rate/Month***
0 gallons and over	$7.47 per 1,000 gallons

Monthly Base Service Demand Charge	
3/4" meter	$29.14
1" meter	40.14
1 1/2" meter and larger	90.32

(3) Treated water service rates include a rate for water rights from the Brazos River Authority (BRA) herein called the system water rate. The system water rate, which is adjusted annually by BRA, shall be passed through to the customers of the City of Cleburne's water utility. The treated water service rate shall be applied to the residential and commercial customers' base rates in § 51.030(C)(1) and (2).

(D) *Sprinkler system.* Water, separately metered, used solely for lawn sprinkler systems shall be billed according to the rate tables in division (C) of this section. No service demand charge shall be applied if zero usage is indicated on the meter.

(E) *Applicability of rates to meters.* The charges for water service in division (C) of this section apply to each meter which exists at a customer's premises.

(F) *Multi-family dwelling units.* All multi-family dwelling units of five or more units, which are not separately metered, shall be charged for services based on meter size and rates in the following tables:

Service Demand Charge Each Month			
For utility accounts inside city limits:		***For utility accounts outside city limits:***	
Meter (inches)	***Fee***	***Meter (inches)***	***Fee***
Service Demand Charge Each Month			
For utility accounts inside city limits:		***For utility accounts outside city limits:***	
Meter (inches)	***Fee***	***Meter (inches)***	***Fee***
¾	$ 22.53	¾	$ 29.14
1	38.09	1	49.26
1½	127.07	1½	163.92
2	381.20	2	491.75

2 ½	381.20	2 ½	491.75
3 and larger	381.20	3 and larger	491.75

Per 1,000 Gallons Charge Each Month			
For utility accounts inside city limits:		***For utility accounts outside city limits:***	
0 gallons and over, per 1,000 gallons	$6.00	0 gallons and over, per 1,000 gallons	$7.47

(G) *Rates where no meter exists.* If a customer is without a meter, the minimum usage charge is based on 1,333 cubic feet (10,000 gallons) of water used per month at the rate specified in division (C) of this section. In cases where a metering device is impracticable, a rate will be determined by the Utility Manager.

(H) *Reuse water.* All reuse water will be billed at 75% of the potable water rates as shown in division (C) *Rate Tables* above.

(Ord. 10-1993-36, passed 10-12-93; Am. Ord. 9-1994-43, passed 9-13-94; Am. Ord. 9-1996-67, passed 9-24-96; Am. Ord. 1-1997-03, passed 1-28-97; Am. Ord. 9-1997-70, passed 9-9-97; Am. Ord. 9-1998-52, passed 9-8-98; Am. Ord. 10-1998-67, passed 10-13-98; Am. Ord. 9-1999-86, passed 9-14-99; Am. Ord. 9-2000-41, passed 9-12-00; Am. Ord. 9-2001-63, passed 9-25-01; Am. Ord. 9-2002-67, passed 9-10-02; Am. Ord. 09-2003-41, passed 9-9-03; Am. Ord. 09-2004-53, passed 9-14-04; Am. Ord. 09-2005-57, passed 9-13-05; Am. Ord. 09-2006-75, passed 9-12-06; Am. Ord. 09-2007-46, passed 9-11-07; Am. Ord. 09-2008-56, passed 9-9-08; Am. Ord. 10-2009-60, passed 10-13-09; Am. Ord. 07-2010-35, passed 7-13-10; Am. Ord. 09-2010-54, passed 9- 14-10; Am. Ord. 09-2011-51, passed 9-13-11; Am. Ord. 08-2012-33, passed 8-28-2012; Am. Ord. 09-2013-52, passed 9-10-13; Am. Ord. 09-2014-80, passed 9-23-14; Am. Ord. 09-2019-58, passed 9-24-2019; Am. Ord. 09-2019-59, passed 9-24-2019; Am. Ord. 03-2023-16, passed 3-28-2023) Penalty, see § 51.999

EXHIBIT C

2023 Contract

Contract/Document Cover Sheet
For Submitting to City Manager and/or City Secretary

Submitted by: Julie Wooldridge Date: 2/15/2023

Department: Public Works

Contract Title: Brazos Electric Power Coop Agreement

Vendor/Other Party's Name Brazos Electric Power Cooperative, Inc

Council Meeting Approved Date: 2/14/2023 or ☐ N/A

Resolution/Ordinance # or Dept Contract #: RS02-2023-20

DESCRIPTION & TERMS

Purpose / Brief Description: An agreement w/Brazos Electric Power Cooperative, Inc to amend, reinstate, and replace the 1995 Water Contract.

Initial Length of Contract: 1 ☐ Months ☑ Years

Origination Date: 2/15/2023 Expiration Date: 2/15/2024

Renewal Options: ☐ N ☐ Y If yes, include details in description above.

Reviewed/Confirmed by (initials): Dept Director JC City Secretary _____

*All Fields Are Required

SEGREST & SEGREST, P.C.

ATTORNEYS AT LAW

28015 W. Hwy 84
McGregor, TX 76657

(254) 848-2600
Fax# (254) 848-2700

Philip R. Segrest
JaNelle S. Cobb
Daniel A. Schmidt

Bill Spears, Of Counsel
Shane M. Sanders, Of Counsel

Claude Segrest
(1904-1993)

February 1, 2023

Sent Federal Express

Ms. Ivy Peterson
City Secretary
City of Cleburne
City Hall
10 N. Robinson Street
Cleburne, Texas 76033

Re: Amended and Restated Agreement for Sewer Effluent Water Purchase between the City of Cleburne and Brazos Electric Power Cooperative, Inc. ("Amended Water Contract")

Dear Ms. Peterson:

Enclosed are triplicate originals of the Amended Water Contract for execution by the City of Cleburne (the "City"), if approved by the City Council at its meeting on February 14, 2023. It is my understanding from Ashley Derker, the City's attorney, that this matter will be posted for consideration by the City Council at the aforementioned meeting.

Please proceed to make the appropriate posting, and if the Amended Water Contract is approved for by the City Council for execution by the City, please have the City Manager execute all of the enclosed originals of the Amended Water Contract, retain one original for the City's records and return to me, via Federal Express, the remaining fully executed originals, for distribution to Brazos Electric.

If you have any questions, please do not hesitate to call me.

Yours truly,

Philip R. Segrest

Encl. 3 Original of the Amended Water Contract
Cc: Ashley Derker via email
Clifton Karnei via email
Josh Clevenger via email
Kyle Minnix via email

Execution Version

AMENDED AND RESTATED AGREEMENT FOR SEWER EFFLUENT WATER PURCHASE

This AMENDED AND RESTATED AGREEMENT FOR SEWER EFFLUENT WATER PURCHASE, (this "Agreement") dated the 1st day of March, 2023 ("Effective Date") is entered into between the CITY OF CLEBURNE, JOHNSON COUNTY, TEXAS, a municipal corporation, hereinafter sometimes referred to as "City", and BRAZOS ELECTRIC POWER COOPERATIVE, INC., a Texas electric cooperative corporation organized and existing under the laws of the State of Texas, hereinafter sometimes referred to as "Brazos Electric". City and Brazos Electric are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

RECITAL:

Brazos Electric operates a power generation plant and associated facilities in the Cleburne Industrial Park in Cleburne, Johnson County, Texas ("Plant"). The Plant's operations require a substantial quantity of water for various internal Plant requirements. The City and Tenaska IV Texas Partners, LTD entered into an Agreement for Sewer Effluent Water Purchase, dated June 27, 1995, which was assigned to Brazos Electric on May 3, 2006, in connection with Brazos Electric's acquisition of the Plant, which agreement has been subsequently amended ("1995 Water Contract"), pursuant to which the City has agreed to deliver to the Plant and sell to Brazos Electric and Brazos Electric has agreed to buy effluent water from City's wastewater treatment facility for use as needed at the Plant (hereinafter such effluent water is referred to as "Water"). The term of the 1995 Water Contract has been extended by agreement of the Parties to the Effective Date while the Parties have, in good faith, negotiated this Agreement and the Parties have fully performed their respective obligations pursuant to the 1995 Water Contract during such extension period. The Parties desire, by this Agreement, to amend and restate the 1995 Water Contract, in its entirety, so that from the Effective

Date, and during the term of this Agreement, as hereafter defined, the 1995 Water Contract shall be superseded by the terms and conditions of this Agreement, including the agreement by Brazos Electric that, subject to the terms and conditions of this Agreement, the City may sell Water to other potential purchasers on any terms the City may be able to negotiate with the other potential purchasers while adhering to Section 6 of this Agreement. The City previously designed, constructed (funded by Brazos Electric), continually operated, and maintained facilities necessary to deliver the Water to the Plant site.

NOW, THEREFORE, subject to the terms and conditions of this Agreement, the Parties agree as follows:

1. PURPOSE. The purpose of this Agreement is to amend, restate and replace the 1995 Water Contract, in its entirety, and to define the Parties' contractual rights and obligations relative to the supply and use of Water at the Plant during the Term of this Agreement, as hereafter defined.

2. TERM OF AGREEMENT. The term of this Agreement shall be for one (1) year, which shall commence on the Effective Date hereof and shall extend until the day before the first anniversary of the Effective Date, (the "Term") unless earlier terminated in accordance with the provisions of paragraph 14.

3. SERVICE TO BE RENDERED. Services to be rendered shall include the following:

(a) The City shall continually own, maintain and operate the Water Facilities during the Term of this Agreement. "Water Facilities" means facilities necessary to provide, transport, and deliver Water to the Delivery Point specified in paragraph 4(a), together with facilities necessary to store approximately one million (1,000,000) gallons of Water adjacent to the Plant on land owned by the City.

(b) Subject to the City being able to maintain its Minimum Supply and Flow Requirement (defined in paragraph 7(c)), at all times during the term of this Agreement, the City will deliver to the Delivery Point and sell to Brazos Electric the quantity of Water (and if necessary in accordance with Section 5(a) a supplement of potable water in lieu of Water) required for use at the Plant as needed. Water delivered to the Delivery Point shall be of a quality that meets the requirements specified on Exhibit "A" attached hereto.

(c) The City shall continually operate and maintain the Water Facilities in a manner consistent with: (i) the terms and provisions of this Agreement, (ii) the plans and specifications of the Water Facilities (iii) industry practice, and (iv) all applicable laws, statutes, regulations and codes.

4. DELIVERY POINT AND METERING.

(a) The Delivery Point shall be at the convergence of the property line and the twelve-inch (12") HDPE Reclaimed Water Main located generally southwest of the existing approximately one (1) million gallon tank (as shown in Exhibit "B"). Brazos Electric will bear the responsibility for maintaining the Water quality following receipt by Brazos Electric of Water at the Delivery Point.

(b) The City shall own and continually operate and maintain, test, calibrate and adjust metering equipment located between the Water Facilities and the Delivery Point. The metering equipment shall provide accurate and continuous measurements and recording of the quantity of Water delivered by the City to the Delivery Point and the Parties shall work together, in good faith, to allow Brazos Electric to have real-time access to such measurements and recordings. The metering equipment shall be tested for accuracy at least once each year in accordance with the standards for testing cold water meters as prescribed by the American Water Works Association. Acceptable accuracy shall be within plus or minus one percent (1%) of any given rate of flow within the turndown range of the meter for fluid velocities greater than one foot per second (1.0 fps). If such metering

equipment is found to be in error by more than one percent (1%), then the Parties shall use their reasonable efforts to determine the quantity of Water actually delivered to the Delivery Point during the period affected by such error, and the metering equipment shall be adjusted to record accurately. City and Brazos Electric shall have the right to have a representative present at the time of any such testing. Additional testing of the meter, beyond the annual inspection, can be performed at the expense of Brazos Electric.

(c) The City and Brazos Electric shall each have, upon reasonable notice, in no event less than ten (10) business days, the ongoing right to have their respective representatives examine and audit the other Parties records concerning quantities and quality of Water (including test records preformed on the metering equipment and the test results of Water) delivered by the City to Brazos Electric at the Delivery Point.

(d) The City shall provide Brazos Electric, upon request by Brazos Electric, a copy of regulatory chemical analysis reports as submitted by or on behalf of the City to Texas Commission on Environmental Quality ("TCEQ") or its successor up to one (1) year prior to the date of such request. In the event Brazos Electric desires a more comprehensive chemical analysis of the Water delivered to the Delivery Point, then the cost of such analysis shall be borne by Brazos Electric.

(e) Each of the Parties shall immediately notify the other Party's Designated Representative (as identified in the notice provision of this Agreement) of any emergency or condition of which the notifying Party knows which may affect the quality or quantity of Water in either Party's system.

5. RATES, INVOICING AND PAYMENT. City shall render an invoice to Brazos Electric on or about the tenth (10th) day of each month for Water delivered to the Delivery Point during

the previous month in an amount equal to the Rate, as defined in paragraph 5(a)) all in accordance with the provisions of paragraphs 5(b), (c), (d), (e), and (f).

(a) For each month during the Term the City will invoice and Brazos Electric will pay to the City a rate of $0.24/1,000 gallons of Water delivered to the Delivery Point during the previous month of the Term , adjusted, as follows (the "Rate"): During the Term the Parties agree that the Rate in this Section 5(a) shall be expressed as a rate in US dollars per thousand gallons of Water and increased each month during the Term by $0.012/1,000 gallons of Water, so that during any month of the Term, the Rate shall be $0.012/1,000 gallons of Water more than the previous month. An illustration of the calculation of the Rate during the Term is set forth on **Exhibit C**, attached hereto. The City intends that after the Term, the Rate for the Water will be a rate per 1,000 gallons of Water that may be set by City ordinance pursuant to Texas Water Code 13.042 as a codified rate to be charged to all purchasers of effluent water purchased from the City. During the Term of this Agreement the quantity of Water delivered to the Delivery Point during each such month shall be determined by the metering equipment. In the event the City does not, other than if caused by an Excusable Interruption or Minimum Supply or Flow Requirement, deliver Water to Brazos Electric at the Delivery Point, as contracted for in Section 3(b) of this Agreement, during any Contract Year an amount/quantity equal to at least ninety percent (90%) of the Water required to be delivered in Section 3(b) of this Agreement ("Shortfall"), then the City will, as soon as is reasonably practical, but in no event later than the next Contract Year, provide Brazos Electric with a credit against any outstanding amounts owed by Brazos Electric to the City, the actual cost paid by Brazos Electric of potable water for the Shortfall. "Contract Year" means a year beginning on the Effective Date and ending on the day before Effective Date anniversary. For purposes of this Section 5(a), the Shortfall shall be calculated by multiplying the

average annual quantities of Water delivered by the City to Brazos Electric during the immediately preceding five (5) calendar years by ninety percent (90%).

(b) On or about the tenth (10^{th}) of each calendar month, beginning with the second (2^{nd}) month after the Effective Date, City shall email (acctspayable@brazoselectric.com) and mail or personally deliver to Brazos Electric an invoice ("City's Invoice") for amounts due to City for Water delivered to the Delivery Point during the previous month. City's Invoice shall state the quantity of Water delivered to the Delivery Point during the period covered by the City's Invoice, the Rate, the total amount due to City, and any additional information reasonably requested by Brazos Electric to determine the accuracy of the City's Invoice. The remittance address shall be such address as may be reflected on the City's Invoice from time to time.

(c) Brazos Electric shall pay the amount indicated on the City's Invoice within ten (10) days after receipt. Subject to the obligations of Brazos Electric to promptly pay, Brazos Electric may dispute the amount indicated on the City's Invoice and make payment "under protest" by notifying the City in a writing accompanying the payment. Any refund of an amount paid "under protest" shall bear interest at the Interest Rate (hereinafter defined in paragraph 5(e) from the date of payment until the date of the refund.

(d) In the event an error is discovered with respect to any City Invoice, or with respect to any payment made pursuant to any invoice, such error shall be adjusted within thirty (30) days following the discovery of the error.

(e) Any monthly invoice which is not paid when due shall bear interest from the due date until paid at the Interest Rate in effect on the first business day of each calendar month in which interest accrues under this Agreement. "Interest Rate" shall mean a rate equal to the lesser of (i) the maximum rate of interest permitted by law, and (ii) the Wall Street Journal Prime Rate (the lowest of

the benchmark rates of interest identified as the Prime or Base rate for commercial lending in the Wall Street Journal) as published on the date of the invoice that has gone unpaid (or the first day of publication thereafter).

(f) The City shall permit Brazos Electric or its designated representative to examine, audit and copy all of the City's records and information necessary to confirm the accuracy of any invoices submitted pursuant to this paragraph 5.

6. OTHER USERS. The Parties recognize that the City may have other customers desiring to purchase effluent water from the City's wastewater treatment facility and the City shall have the right to provide same to such other customers on the same terms as set forth in this Agreement., subject to the other provisions of this Agreement.

7. CONTINUITY OF SERVICE.

(a) Interruptions for Necessary Scheduled Maintenance. Upon receipt by Brazos Electric from City of written notice received by Brazos Electric ("Notice of Interruption") at least five (5) days prior to any scheduled suspension, interruption, delay, reduction or other interference of delivery of Water to the Delivery Point ("Interruption," "Interrupt" or "Interrupted"), City may temporarily Interrupt the delivery of Water to the Delivery Point for a period not to exceed forty-eight (48) hours to correct the reason for the Interruption. Whenever possible, a proposed Interruption shall be scheduled during a shut-down of the Plant. The Notice of Interruption shall specify the duration and extent of the proposed Interruption in the delivery of Water to the Delivery Point and the reason therefor. In the event the Water supply has not been restored within eight (8) hours after the forty-eight (48) hours from the initial Interruption, then the City will deliver "potable water" to the existing potable water point of service in place of the Water at the same Rate as set forth in Section 5(a) of this Agreement to allow Brazos Electric to have uninterrupted water service to the Plant in the quantities

set forth in Section 3(b) of this Agreement, until the Water service is restored provided, however, that the City's obligation to deliver to Brazos Electric potable water at the existing potable water point of service, in place of the delivery of Water to Brazos Electric at the Delivery Point at the same Rate, as applicable, as set forth in Section 5(a) of this Agreement shall expire thirty (30) days after the start of the Interruption for such Interruption. Thereafter, the City shall deliver potable water to Brazos Electric at the existing potable water point of service in place of the Water but at the rate generally applicable to such potable water, subject to future Interruptions, to which the provisions of his Section 7(a) shall apply.

(b) Interruption Due to Uncontrollable Force.

(i) If the delivery of Water to the Delivery Point is Interrupted as a result of an Excusable Interruption (as hereinafter defined), then during the Excusable Interruption the City shall not be obligated to deliver Water to Brazos Electric at the Delivery Point. The City will provide "potable water" to Brazos Electric at the existing potable water point of service in place of the Water at the same Rate as set forth in Section 5(a) of this Agreement, to allow Brazos Electric to have uninterrupted water service to the Plant until the Water service is restored; provided, however, that the City's obligation to deliver to Brazos Electric potable water at the existing potable water point of service, in place of the delivery of Water to Brazos Electric at the Delivery Point at the same Rate as set forth in Section 5(a) of this Agreement shall expire thirty (30) days after the start of the Excusable Interruption. Thereafter, the City shall deliver potable water to Brazos Electric at the existing potable water point of service in place of the Water but at the rate generally applicable to such potable water.

(ii) The term "Excusable Interruption" means acts of God; flood; earthquake; storm or other natural calamity; war; insurrection; riot; explosions or fires; curtailment, order,

regulation or restriction imposed by state or federal governmental authority; cutting of Water supply lines by third parties; or any other cause beyond the reasonable control of the Party affected.

(iii) In the event that either Party is rendered unable, wholly or in part, by Excusable Interruption, to carry out its obligations under this Agreement, except for those obligations requiring the payment of money, and if such Party gives notice stating the reasons therefor to the other Party as soon as practicable after the occurrence being claimed as an Excusable Interruption then, insofar as and to the extent and for such reasonable time that such obligations are so affected (not including those obligations requiring the payment of money) by the Excusable Interruption, the performance obligations of such Party shall be suspended. The suspension of the Party's performance obligations shall be for no longer period than that necessary to cause such inability to be remedied with reasonable dispatch.

(c) Interruption Due to Minimum Supply and Flow Requirement. The City shall not be obligated to deliver Water to the Delivery Point for the period of time during which doing so would make it reasonably impossible for the City to maintain a minimum flow of water as may be required by the City for its State and Federal discharge permit(s) ("Minimum Supply and Flow Requirement"). During the period of time during which delivery of Water by the City to the Delivery Point would make it reasonably impossible for the City to maintain due to the Minimum Supply and Flow Requirement, the City will provide "potable water" to Brazos at the existing potable water point of service in place of the Water at the same Rate as set forth in Section 5(a) of this Agreement, to allow Brazos Electric to have uninterrupted water service to the Plant until the Water service is restored; provided, however, that the City's obligation to deliver to Brazos Electric potable water at the existing potable water point of service, in place of the delivery of Water to Brazos Electric at the Delivery Point at the same Rate as set forth in Section 5(a) of this Agreement shall expire thirty (30) days after

the start of the Interruption caused by the Minimum Supply and Flow Requirement. Thereafter, the City shall deliver potable water to Brazos Electric at the existing potable water point of service in place of the Water but at the rate generally applicable to such potable water.

8. TAXES. Each Party, except to the extent it is exempt from doing so, shall pay any applicable sales, real or personal property taxes and assessments imposed on such Party pursuant to applicable law or local custom with respect to the activities of generation, transportation, delivery, sale, or use of Water.

9. ASSIGNMENT AND DELEGATION.

(a) Except as otherwise provided herein, no right or interest in this Agreement shall be assigned by either Brazos Electric or City without the written permission of the other Party and no delegation of any obligation or of the performance of any obligation by either Brazos Electric or City shall be made without the prior written permission of the other Party, which permissions shall not unreasonably be denied, withheld or delayed. Any attempted assignment or delegation shall be void and ineffective for all purposes unless made in conformity with this Section 9.

(b) Brazos Electric may assign its rights and delegate its obligations to any subsidiary of Brazos Electric provided that no such assignment or delegation releases Brazos Electric from any of its obligations.

(c) Notwithstanding this Paragraph 9, Brazos Electric, without approval of the City , may assign, transfer, mortgage or pledge this Agreement to create a security interest for the benefit of the United States of America, acting through the Administrator of the Rural Utilities Service ("RUS"), National Rural Utilities Cooperative Finance Corporation, or other secured party (directly or through an indenture trustee or other collateral agent; each, including such indenture trustee or other collateral agent, a "Secured Party"). Thereafter, a Secured Party, without the approval of the City, may (i) cause

this Agreement (and all obligations hereunder) to be sold, assigned, transferred or otherwise disposed of to a third party pursuant to the terms governing such security interest, or (ii) if RUS first acquires this Agreement pursuant to 7 U.S.C. §907 or any other Secured Party otherwise first acquires this Agreement, sell, assign, transfer or otherwise dispose of this Agreement (and all obligations hereunder) to a third party; provided, however, that in either case (A) Brazos Electric is in default of its obligations that are secured by such security interest and that the applicable Secured Party has given the City written notice of such default; and (B) the applicable Secured Party has given the City thirty (30) days' prior written notice of its intention to sell, assign, transfer or otherwise dispose of this Agreement (and all obligations hereunder) indicating the identity of the intended third-party assignee or purchaser.

10. RELEASE AND INDEMNITY.

(a) Brazos Electric agrees to release, defend, indemnify and hold harmless the City, its council members, officers, employees, agents and representatives (collectively "City Representatives") from that portion of any claims, actions, suits, losses, harm, liability, damages, costs and expenses, including, but not limited to, reasonable attorney's fees (collectively "Claim") arising out of the negligent act or omission of Brazos Electric in connection with this Agreement, however, Brazos Electric shall not be required to release, defend, indemnify or hold harmless City Representatives from any portion of a Claim, caused by or resulting from the negligence of a City Representative. Where negligence by the Parties is concurrent and contributes to the cause of the same Claim, then the Parties shall be responsible and liable in proportion to the degree of their own negligence. Nothing in this Agreement shall be construed to preclude either Party from pursuing any remedy against a third party.

(b) To the extent permitted by law, City agrees to release, defend, indemnify and hold harmless Brazos Electric, its directors, officers, members, employees, agents and representatives (collectively "Brazos Electric Representatives") from that portion of any claims, actions, suits, losses, harm, liability, damages, costs and expenses, including, but not limited to, reasonably attorney's fees (collectively "Claim") arising out of the negligent act or omission of City in connection with this Agreement and operation of the Water Facilities; provided, however, City shall not be required to release, defend, indemnify or hold harmless Brazos Electric Representatives from any portion of a Claim, caused by or resulting from the negligence of a Brazos Electric Representative. Where negligence by the Parties is concurrent and contributes to the cause of the same Claim, then the Parties shall be responsible and liable in proportion to the degree of their own negligence. Nothing in this Agreement shall be construed to preclude either Party from pursuing any remedy against a third party.

11. REPRESENTATIONS AND WARRANTIES. The representations and warranties made respectively by the Parties shall remain in existence during the Term of this Agreement.

Brazos Electric represents and warrants that: Brazos Electric is a Texas electric cooperative corporation organized and existing under and by virtue of the laws of the State of Texas and has the power and authority to own its properties and to carry on the business as presently conducted and as represented in this Agreement.

City represents and warrants that:

(a) City is a municipal corporation duly organized, validly existing and in good standing under and by virtue of the laws of the State of Texas and has the corporate power and authority to own its properties and to carry on its business as presently conducted and as represented in this Agreement; and

(b) City has lawful authority to sell and deliver Water to Brazos Electric at the Delivery Point as contracted for herein; and

(c) City has obtained or will obtain all permits necessary to comply with the terms and provisions of this Agreement; and

(d) City has had its City Council approve this Agreement so City has the authority to execute this Agreement and comply with the terms and provisions hereof.

12. LIMITS OF LIABILITY

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR, OR ENTITLED TO RECOVER FROM THE OTHER, SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUES, COST OF CAPITAL; PROVIDED, HOWEVER, THE FOREGOING SHALL NOT LIMIT A PARTY'S EXPRESSED OBLIGATIONS FOR CLAIMS OF THIRD PARTIES FOR DAMAGES FOR WHICH A PARTY HAS AN EXPRESSED INDEMNIFICATION OBLIGATION UNDER THIS AGREEMENT.

13. WAIVER OF SUBROGATION. Each Party shall ensure that any policy of insurance which it carries as insurance against property damage or against general liability for property damage or bodily injury (including death) that may occur in connection with the maintenance or operation of the Water Facilities or the Plant water system or any electrical system used in conjunction therewith shall either name the other Part as additional insured, or include a waiver of insurer's rights of subrogation against the other Party, its successors and assigns, and the respective directors, officers, employees, agents and representatives of such other Part and its successors and assigns. Further, to the extent permitted by such policies of insurance, each Party shall waive such rights of subrogation.

Notwithstanding the foregoing, nothing in this Section 13 shall affect the indemnity obligations of Section 10.

14. MISCELLANEOUS PROVISIONS.

(a) Notices. Except as otherwise provided in this paragraph, any notice, request, authorization, invoice, payment, direction or other communication as allowed or required under this Agreement shall be given in writing and be delivered in person or by first class United States certified mail, properly addressed, return receipt requested with the required postage prepaid, to the intended recipient as follows:

BRAZOS ELECTRIC POWER COOPERATIVE, INC.
ATTN: (Designated Representative) Executive Vice President and General Manager
7616 Bagby Avenue
Waco, Texas 76712
Phone (254)750-6500

CITY OF CLEBURNE, TEXAS
ATTN: (Designated Representative) City Manager
10 North Robinson Street
Cleburne, Texas 76033
Phone: (817) 645-0905

Invoices may be sent by email as aforestated and invoices and related payments may be sent by regular first class United States mail and are not subject to the requirement of being sent by certified mail. Invoices and payments may be sent to an address, different from the above, as may be specified upon thirty (30) days advance notice from time to time by the receiving Party. Such Party shall provide notice of its desired mailing address for invoices or payments as appropriate if different from the above address. Either Party may change its address or Designated Representative specified above by giving the other Party reasonable notice of such change in accordance with this paragraph. All notices, requests and authorization of directions or other communications by a Party shall be deemed delivered when mailed as provided in this paragraph or personally delivered to the other Party.

(b) Governmental Authority. This Agreement is subject to the rules, regulations, orders and other requirements, now or hereafter in effect, of all governmental authorities having jurisdiction over this Agreement, the Parties or either of them.

(c) No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, nor to impose any partnership obligations or liability on either Party. Furthermore, neither Party shall have any right, power or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of or to otherwise bind the other Party.

(d) Nonwaiver. The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.

(e) Entire Agreement. This Agreement sets forth the entire agreement and supersedes any and all prior agreements of the Parties with respect to the subject matter hereof.

(f) No Specified Third-Party Beneficiaries. Except as otherwise specifically provided in this Agreement, there are no third-party beneficiaries of this Agreement, and nothing contained in this Agreement is intended to confer any right or interest on anyone other than the Parties, their respective successors, assigns and legal representatives, and the third-party beneficiaries, if any, specifically identified in this Agreement.

(g) Amendment. No change, amendment or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by both Parties.

(h) Implementation. Each Party shall take such action (including, but not limited to, the execution, acknowledgement and delivery of documents) as may reasonably be requested by the other Party for the implementation or continuing performance of this Agreement.

(i) Invalid Provision. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted; and to this end the terms and provisions of this Agreement are agreed to be severable.

(j) Applicable Law. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Texas, except to the extent such laws may be preempted by the laws of the United States of America, and without regard for conflicts of law principles.

(k) Venue. The venue of any litigation arising out of this Agreement shall be in Johnson County, State of Texas, or such other place as the Parties may agree writing.

(l) Disputes/Default.

(A) Prior to either Party's right to claim that the other Party has defaulted or otherwise breached any obligation or other provision of this Agreement, the Parties shall first attempt to resolve the potential claim of default or breach in accordance with this subparagraph (l). Failure to adhere to this subparagraph (l) shall constitute a waiver of any right, remedy or relief provided by this Agreement to otherwise accrue as a result of such default or breach.

(B) In the event either Party claims the other is in material default or either Party disputes the validity of any agreement or warranty or representation under this Agreement or the other Party's interpretation or performance of any provision under this Agreement, including the other Party's failure to perform (any one or all such claims or disputes considered to be a "Dispute"), the disputing Party shall notify the other Party in writing that a Dispute exists, specifying the nature and

extent of the Dispute (the "Dispute Notice"). The Parties shall then make a good faith attempt to resolve the Dispute within thirty (30) days after the date of receipt of the Dispute Notice by the non-disputing Party, which Dispute resolution period may be extended by written agreement signed by the Parties ("Dispute Resolution Period"). During such attempted Dispute resolution, the Parties shall continue to proceed in good faith and diligently perform their respective obligations under this Agreement.

(C) In the event the Dispute is not resolved within the Dispute Resolution Period, the disputing Party may then take such action in law or equity as the disputing Party deems appropriate, in its sole discretion, subject to the restrictions and limitations imposed by this Agreement; provided, however, that, because the Parties agree that the nature and subject matter of this Agreement are so unique City and Brazos Electric shall also have available the remedy for specific performance and/or mandatory injunctive relief requiring the Parties to continue to proceed in good faith and diligently perform their respective obligations under this Agreement, pending final non-appealable order or judgment. The venue of any litigation arising out of this Agreement shall be in Johnson County, State of Texas, or such other place as both the parties may agree in writing.

(m) Interpretation and Fair Construction of Contract. This Agreement has been reviewed and approved by each of the Parties. In the event it should be determined that any provision of this Agreement is uncertain or ambiguous, the language in all parts of this Agreement shall be in all cases construed as a whole according to its fair meaning and not strictly construed for or against either Party.

15. TERMINATION. Brazos Electric may at any time in and at its sole discretion terminate this Agreement upon notice to the City ("Notice of Termination") provided that in the event of such termination Brazos Electric shall have the obligation to pay the City, on the date this Agreement

terminates, an amount sufficient to pay any unpaid invoiced amounts due and owing under this Agreement as of such date. These amounts shall include but not be limited to any fees that may result from a billing dispute that may result in a payment due to either party by either party to resolve the disputed amount. The Notice of Termination shall notify the City of Brazos Electric's decision to terminate this Agreement as of a date specified in the Notice of Termination. A decision to terminate made in accordance with this Section 15 shall be enforceable without obligations in the future for Brazos Electric, with the exception of Brazos Electric obligation to pay any claim arising prior to the termination date.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives all as of the Effective Date.

Attest:

By: _____
Ivy Peterson, City Secretary

CITY OF CLEBURNE, JOHNSON COUNTY, TEXAS

By: _____
Name: Steve Polasek
Title: City Manager
Date: 2-15-23

Attest:

By: _____
Candace Denton, Assistant Secretary

BRAZOS ELECTRIC POWER COOPERATIVE, INC.

By: _____
Name: Clifton Karnei
Title: Executive Vice-President and General Manager
Date: January 27, 2023

EXHIBITS

1. Exhibit "A" - Water Quality Requirements
2. Exhibit "B" – Delivery Point
3. Exhibit "C" – Illustration of Phase-In Calculation of Rate over Transition Period

EXHIBIT A
Water Quality Requirements

The City will produce reclaimed water that is compliant with and meets the minimum water quality standards as outlined in Texas Administrative Code, Title 30, Part 1, Chapter 210. Type II (A) reuse is the minimum standard that will be produced by the City. Although the quality of the reclaimed water will often meet the requirements of Type I, no guarantee is provided for water quality beyond that of the minimum standard.

§210.33. Quality Standards for Using Reclaimed Water.

The following conditions apply to the types of uses of reclaimed water. At a minimum, the reclaimed water producer shall only transfer reclaimed water of the following quality as described for each type of specific use:

(1) for Type I reclaimed water uses, reclaimed water on a 30-day average shall have a quality of:

Figure: 30 TAC §210.33(1)

BOD5 or CBOD5	5 mg/l
Turbidity	3 NTU
Fecal coliform or E. coli	20 CFU/100 ml*
Fecal coliform or E. coli	75 CFU/100 ml**
Enterococci	4 CFU/100 ml*
Enterococci	9 CFR/100 ml**

* 30-day geometric mean
** maximum single grab sample

(2) for Type II reclaimed water use, reclaimed water on a 30-day average shall have a quality of:

(A) for a system other than pond system:

Figure: 30 TAC §210.33(2)(A)

BOD5	20 mg/l
or CBOD5	15 mg/l
Fecal coliform or E. coli	200 CFU/100 ml*
Fecal coliform or E. coli	800 CFU/100 ml**
Enterococci	35 CFU/100 ml*
Enterococci	89 CFU/100 ml**

* 30-day geometric mean
** maximum single grab sample

Exhibit "B"

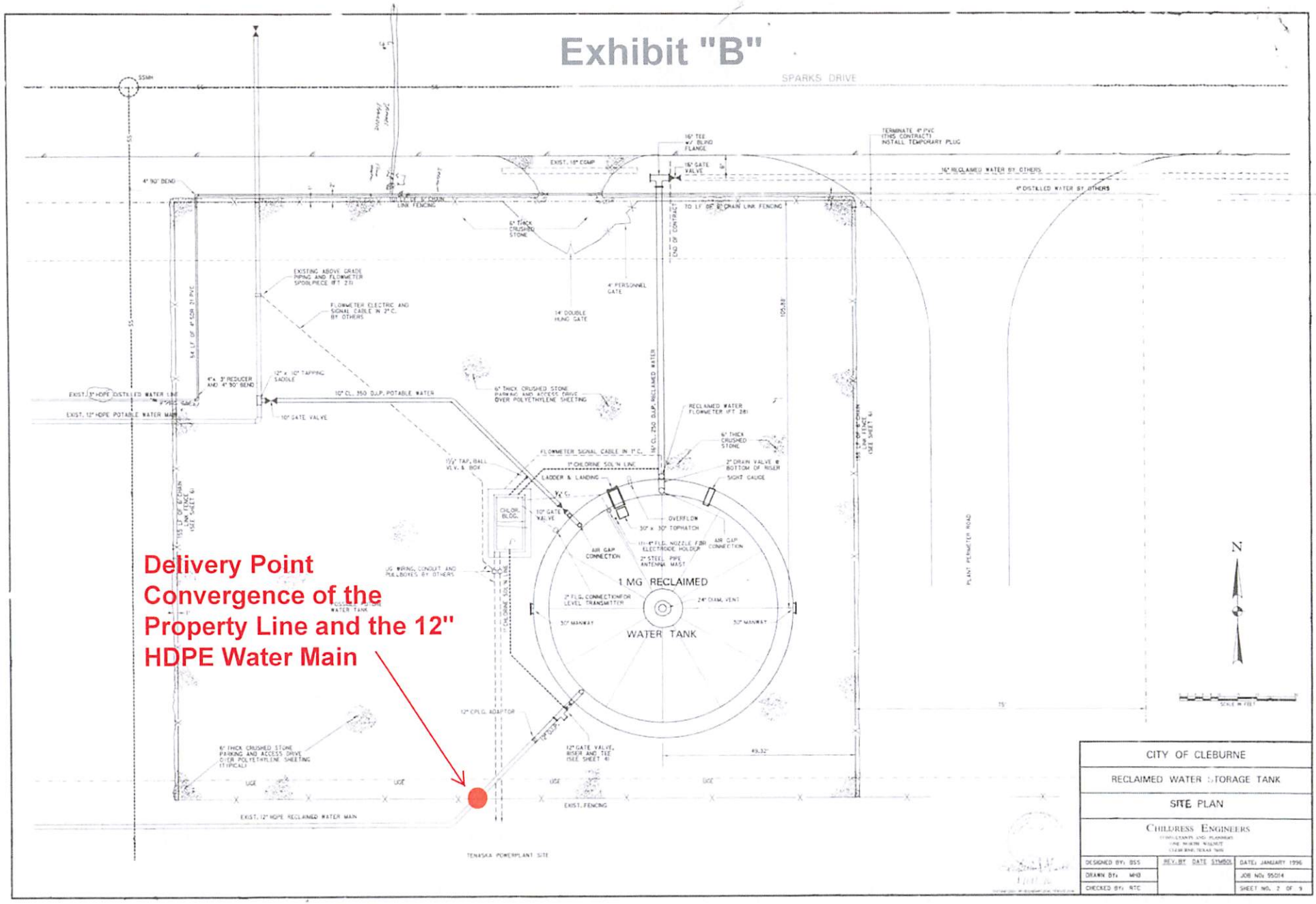

SPARKS DRIVE
SSMH
16" TEE W/ BLIND FLANGE
16" GATE VALVE
TERMINATE 4" PVC (THIS CONTRACT) INSTALL TEMPORARY PLUG
16" RECLAIMED WATER BY OTHERS
4" DISTILLED WATER BY OTHERS
4" 90° BEND
EXIST. 18" CORR.
6' THICK CRUSHED STONE
4" PERSONNEL GATE
14' DOUBLE SWING GATE
EXISTING ABOVE GRADE PIPING AND FLOWMETER SPOOLPIECE (FT 21)
FLOWMETER ELECTRIC AND SIGNAL CABLE IN 2" C. BY OTHERS
12" x 10" TAPPING SADDLE
4" x 3" REDUCER AND 4" 90° BEND
EXIST. 3" HDPE DISTILLED WATER LINE
EXIST. 12" HDPE POTABLE WATER MAIN
10" CL. 350 D.I.P. POTABLE WATER
10" GATE VALVE
6" THICK CRUSHED STONE PARKING AND ACCESS DRIVE OVER POLYETHYLENE SHEETING
RECLAIMED WATER FLOWMETER (FT 28)
6" THICK CRUSHED STONE
2" DRAIN VALVE @ BOTTOM OF RISER
SIGHT GAUGE
FLOWMETER SIGNAL CABLE IN 1" C.
1" CHLORINE SOLN LINE
LADDER & LANDING
CHLOR. BLDG.
OVERFLOW
30" x 30" TOPHATCH
AIR GAP CONNECTION
2" STEEL PIPE ANTENNA MAST
1 MG RECLAIMED
WATER TANK
2" FLG. CONNECTION FOR LEVEL TRANSMITTER
24" DIAM. VENT
30" MANWAY
Delivery Point
Convergence of the
Property Line and the 12"
HDPE Water Main
12" CPLG. ADAPTOR
12" GATE VALVE, RISER AND TEE (SEE SHEET 4)
EXIST. FENCING
EXIST. 12" HDPE RECLAIMED WATER MAIN
TENASKA POWERPLANT SITE
PLANT PERIMETER ROAD
N
SCALE IN FEET
CITY OF CLEBURNE
RECLAIMED WATER STORAGE TANK
SITE PLAN
CHILDRESS ENGINEERS
DESIGNED BY: BSS
DRAWN BY: MHD
CHECKED BY: RTC
REV. BY DATE SYMBOL
DATE: JANUARY 1996
JOB NO. 95014
SHEET NO. 2 OF 9

EXHIBIT C

Phase-In of Rate over Interim Charge Period

A. The following is an illustration of the phase-in of the Rate during the Interim Charge Period based on a beginning Rate of $.24 per one thousand (1,000) gallons in month one with a $.012 increase per month thereafter for the remaining eleven (11) months of the one year Amended and Restated Agreement for Sewer Effluent Water Purchase.

Year	Month	Interim Rate	Calculated Increase for Next Month
1	1	$0.2400	$0.0120
	2	$0.2520	$0.0120
	3	$0.2640	$0.0120
	4	$0.2760	$0.0120
	5	$0.2880	$0.0120
	6	$0.3000	$0.0120
	7	$0.3120	$0.0120
	8	$0.3240	$0.0120
	9	$0.3360	$0.0120
	10	$0.3480	$0.0120
	11	$0.3600	$0.0120
	12	$0.3720	N/A

The City intends that after the Term, the Rate for the Water will be a rate per 1,000 gallons of Water that may be set by City ordinance pursuant to Texas Water Code 13.042 as a codified rate to be charged to all purchasers of effluent water purchased from the City.

EXHIBIT D

Cleburne's 2023 and 2024 Budgets, Fund 65 Data

CITY OF CLEBURNE
BRAZOS ELECTRIC COOP INC
FUND 65
FY 2023

This fund uses Brazos Electric Coop proceeds for covering the City's expense operating the reuse water line.

	ACTUAL FY 2020	ACTUAL FY 2021	BUDGET FY 2022	ESTIMATE FY 2022	BUDGET FY 2023
BEGINNING FUND BALANCE	$ 179,462	$ 181,976	$ 174,710	$ 174,710	$ 184,619
REVENUES:	59,143	49,091	-	77,718	3,000
NON-OPERATING INCOME	55,474	48,805	-	75,265	-
INTEREST REVENUE	3,669	285	-	2,453	3,000
EXPENDITURES:	$ (56,629)	$ (56,356)	$ -	$ (67,810)	$ -
SUPPLIES AND MATERIALS	52,730	54,902	-	67,810	-
M&R - LAND, STRUCTURES AND	-	-	-	-	-
M&R - EQUIPMENT AND VEHICLES	3,774	1,454	-	-	-
CONTRACTURAL AND MISC	125	-	-	-	-
RESTRICTED FUND BALANCE	$ 181,976	$ 174,710	$ 174,710	$ 184,619	$ 187,619
COMMITTED FUND BALANCE	-	-	-	-	-
ASSIGNED FUND BALANCE	-	-	-	-	-
ENDING FUND BALANCE	**$ 181,976**	**$ 174,710**	**$ 174,710**	**$ 184,619**	**$ 187,619**

CITY OF CLEBURNE
BRAZOS ELECTRIC COOP INC
FUND 65
FY 2024

This fund uses Brazos Electric Corp proceeds for covering the City's expenses to operate the reuse water line.

	ACTUAL FY 2021	ACTUAL FY 2022	BUDGET FY 2023	ESTIMATE FY 2023	BUDGET FY 2024
BEGINNING FUND BALANCE	$ 181,976	$ 174,710	$ 365,414	$ 178,981	$ 141,642
REVENUES:	49,091	77,718	-	38,609	4,000
NON-OPERATING INCOME	48,805	75,265	-	24,369	-
INTEREST REVENUE	285	2,453	-	14,239	4,000
EXPENDITURES:	$ (56,356)	$ (73,447)	$ (365,414)	$ (75,947)	$ (145,642)
SUPPLIES AND MATERIALS	54,902	73,447	365,414	73,447	145,642
M&R - EQUIPMENT AND VEHICLES	1,454	-	-	2,500	-
RESTRICTED FUND BALANCE	$ 174,710	$ 178,981	$ -	$ 141,642	$ -
ENDING FUND BALANCE	**$ 174,710**	**$ 178,981**	**$ -**	**$ 141,642**	**$ -**

EXHIBIT E

July 11, 2024 Letter to Jeremy Hutt

Vinson&Elkins

Michael J. Tomsu mtomsu@velaw.com
Tel +1.512.542.8527 **Fax** +1.512.236.3211

July 11, 2024

Mr. Jeremy Hutt
Director of Public Works
10 N. Robinson
Cleburne, Texas 76033

Re: Water Rate Dispute between Johnson County Power, LLC, and the City of Cleburne

Dear Mr. Hutt:

I write to express significant concern regarding the untreated water supply rates that the City of Cleburne (the "City") has unilaterally imposed on our client, Johnson County Power, LLC ("Johnson County Power"). The 283 MW power generation facility operated by Johnson County Power serves as a vital economic engine for the City and ranks among the largest property taxpayers in the area. Just as importantly, Johnson County Power provides reliable, dispatchable electricity to the ERCOT grid when it is needed most.

Johnson County Power's ability to generate critical electricity for the ERCOT grid depends in part on maintaining reasonable operating costs. To that end, for many years the City has provided non-potable effluent water to Johnson County Power for use in the plant's cooling reservoir through mutually agreed long-term supply agreements. The latest extension of that water supply agreement, which expired earlier this year, provided for a contract rate of $0.24-$0.36 per 1,000 gallons of raw water. **Since that time, the City has imposed a rate of $4.50 per 1,000 gallons for the same water, an increase of 1250%.** The imposition of these unjust, unreasonable and discriminatory rates threatens Johnson County Power's ability to economically operate its power generation facility.

To the extent that the City's ordinances allow its utility manager to establish reasonable charges based on the cost of performing the underlying service, there does not appear to be any reasonable actual cost of service basis for the exorbitant rate that the City is charging for the provision and transportation of effluent water from its wastewater treatment facilities. Our client owns other similar power generation facilities in ERCOT, and the cooling water supply rates are similar to those found in the last supply contract with the City, and are a fraction of the rates charged by the City.

Prior to this unexpected and unsupported rate increase, the City has been a good and valued partner in the operations of the Johnson County Power facility. In the spirit of good faith and in an effort to mutually resolve this rate dispute, Johnson County Power respectfully requests an in-person meeting with the City to discuss a reasonable untreated water supply rate—one that accurately reflects both the unique type of service the City provides to Johnson County Power and the City's reasonable costs of providing this critically important service.

Johnson County Power would appreciate the courtesy of a prompt reply with a proposed meeting location and date at your earliest opportunity. We look forward to working with the City to reach an acceptable agreed resolution of this issue without having to pursue other legal remedies.

Best Regards,

Michael J. Tomsu
Vinson & Elkins LLP
Counsel for Johnson County Power, LLC

cc: Stephen Brownell, LS Power

EXHIBIT F

Certificate of Adjudication 12-4106 and Amendments

CERTIFICATE OF ADJUDICATION

CERTIFICATE OF ADJUDICATION: 12-4106

OWNER: City of Cleburne
c/o the Mayor
P. O. Box 657
Cleburne, Texas 76031

COUNTY: Johnson

PRIORITY DATES: August 6, 1962 and
March 29, 1976

WATERCOURSE: Nolan River, tributary of Brazos River

BASIN: Brazos River

WHEREAS, by final decree of the 91st Judicial District Court of Eastland County, in Cause No. 32,002, In Re: The Adjudication of Water Rights in the Brazos II River Segment of the Brazos River Basin, dated November 8, 1985, a right was recognized under Permit 2027A authorizing the City of Cleburne to appropriate waters of the State of Texas as set forth below;

NOW, THEREFORE, this certificate of adjudication to appropriate waters of the State of Texas in the Brazos River Basin is issued to the City of Cleburne, subject to the following terms and conditions:

1. IMPOUNDMENT

Owner is authorized to maintain an existing dam and reservoir on the Nolan River (Lake Pat Cleburne) and impound therein not to exceed 25,600 acre-feet of water. The dam is located in the J. W. Haynes Survey, Abstract 410 and the Lawrence W. Perry Survey, Abstract 671, Johnson County, Texas.

2. USE

A. Owner is authorized to divert and use not to exceed 240 acre-feet of water per annum from the aforesaid reservoir to irrigate a maximum of 80 acres of land out of that portion of a tract that lies northeast of Lake Pat Cleburne located in the J. Payne Survey, Abstract 681 and the T. J. Blythe Survey, Abstract 54, Johnson County, Texas, said tract being described as follows:

(1) BEGINNING at the northwest corner of the T. J. Blythe Survey, Abstract 54, Johnson County, Texas;

(2) THENCE N 60°E, 1388.2 feet to a point at an elevation of approximately 752.4 feet above mean sea level;

(3) THENCE generally with said contour as follows: S 25°E, 505.0 feet; N 60°E, 454.0 feet; S 50°E, 644.0 feet; S 02°W, 600 feet; S 30°E, 575.0 feet; N 50°E, 590.0 feet; S 66°E, 400.0 feet and S 06°10'W, 384.0 feet;

(4) THENCE N 56°E, 458.4 feet to the northeast line of said Payne Survey;

(5) THENCE S 29°30'E with the northeast line of said Payne Survey, 1639.0 feet to the north right-of-way of F.M. Hwy. 1718, 1699 feet approximately to the south R.O.W. of said Hwy. and 4050.0 feet in all to the southeast corner of this tract;

(6) THENCE S 60°W, 2750.0 feet approximately to the west line of the John Payne Survey, Abstract 681;

(7) THENCE Northwesterly with the southwest line of the John Payne Survey, Abstract 681 and the T. J. Blythe Survey, Abstract 54 to the place of beginning.

B. Owner is also authorized to divert and use not to exceed 5760 acre-feet of water per annum from the aforesaid reservoir for municipal purposes.

3. DIVERSION

A. Location

(1) At a point below the dam with water piped through the dam in the Lawrence W. Perry Survey, Abstract 671, Johnson County, Texas.

(2) At the perimeter of the aforesaid reservoir.

B. Maximum combined rate: 28.00 cfs (12,600 gpm).

4. PRIORITY

A. The time priority of owner's right is August 6, 1962 for the diversion of 5760 acre-feet of water for municipal purposes and the diversion rate of 28.00 cfs for municipal and irrigation purposes.

B. The time priority of owner's right is March 29, 1976 for the diversion of 240 acre-feet of water for the irrigation of 80 acres of land.

5. SPECIAL CONDITIONS

A. Owner shall maintain a suitable outlet in the aforesaid dam authorized herein to allow the free passage of water that owner is not entitled to divert or impound.

B. All water diverted which is not consumed for purposes specified herein shall be returned to Buffalo Creek, a tributary of the Nolan River.

The locations of pertinent features related to this certificate are shown on Page 23 of the Brazos II River Segment Certificates of Adjudication Maps, copies of which are located in the offices of the Texas Water Commission, Austin, Texas and the Johnson County Clerk.

This certificate of adjudication is issued subject to all terms, conditions and provisions in the final decree of the 91st Judicial District Court of Eastland County, Texas, in Cause No. 32,002, In Re: The Adjudication of Water Rights in the Brazos II River Segment of the Brazos River Basin, dated November 8, 1985, and supersedes all rights of the owner asserted in that cause.

This certificate of adjudication is issued subject to senior and superior water rights in the Brazos River Basin.

This certificate of adjudication is issued subject to the Rules of the Texas Water Commission and its continuing right of supervision of State water resources consistent with the public policy of the State as set forth in the Texas Water Code.

The irrigation water right is appurtenant to and is an undivided part of the above-described land within which irrigation is authorized. A transfer of any portion of the land described includes, unless otherwise specified, a proportionate amount of the water right owned by the owner or seller at the time of the transaction.

TEXAS WATER COMMISSION

Paul Hopkins

Paul Hopkins, Chairman

DATE ISSUED:

FEB 28 1986

ATTEST:

Mary Ann Hefner

Mary Ann Hefner, Chief Clerk

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

AMENDMENT TO CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 12-4106A APPLICATION NO. 12-4106A

Name	:	City of Cleburne	Address	:	PO Box 657 Cleburne, Texas 76031
Filed	:	April 9, 1996	Granted	:	OCT 11 1996
Purpose	:	Municipal, Irrigation, Industrial	County	:	Johnson
Watercourse	:	Nolan River, tributary of the Brazos River	Watershed	:	Brazos River Basin

WHEREAS, Certificate of Adjudication No. 12-4106, issued February 28, 1986 to the City of Cleburne (applicant), authorized the applicant to maintain an existing dam and reservoir on the Nolan River (Lake Pat Cleburne) and impound therein not to exceed 25,600 acre-feet of water; and

WHEREAS, the certificate further authorizes the diversion and use of not to exceed 240 acre-feet of water per annum from the aforesaid reservoir for irrigation of 80 acres of land and the diversion and use of not to exceed 5760 acre-feet of water per annum from the aforesaid reservoir for municipal purposes; and

WHEREAS, the authorized diversion points are from the perimeter of the aforesaid reservoir and at a point below the dam; and

WHEREAS, the authorized maximum combined diversion rate is 28.0 cfs (12,600 gpm) and the time priority of the owner's right is August 6, 1962 for the diversion of 5760 acre-feet of water for municipal purposes as well as for the diversion rate of 28 cfs for municipal and irrigation purposes, and the time priority is March 29, 1976 for the diversion of 240 acre-feet of water for the irrigation of 80 acres of land; and

WHEREAS, the applicant has submitted an amendment application to the Commission to amend the certificate by adding industrial use as an authorized use for the 5760 acre-feet of water authorized for municipal use; and

WHEREAS, a municipal water conservation plan has been submitted to the Commission; and

WHEREAS, the Texas Natural Resource Conservation Commission finds that jurisdiction over the application is established; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Natural Resource Conservation Commission in issuing this amendment.

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 12-4106 is issued to the City of Cleburne, subject to the following provisions:

1. USE

In addition to the existing use authorizations for 5760 acre-feet of municipal use water, owner is also authorized to use same water for industrial purposes, with a maximum combined diversion of not to exceed 5760 acre-feet of water per annum.

2. DIVERSION

The same diversion authorizations that apply to municipal use water, apply to industrial use water. The maximum combined diversion rate remains unchanged at 28 cfs (12,600 gpm).

3. WATER CONSERVATION

A. Certificate owner shall implement a water conservation plan that provides for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plan shall include a requirement in every wholesale water supply contract entered into, on or after the effective date of this permit, including any contract extension or renewal, that each successive wholesale customer develop and implement water conservations measures. If the customer intends to resell the water, then the contract for the resale of the water must have water conservation requirements so that each successive wholesale customer in the resale of the water will be required to implement water conservation measures.

B. Certificate owner shall complete a water conservation data form within 90 days of issuance of the permit and a water conservation plan progress report shall be completed each year for the next 3 years (1997, 1998, and 1999) with emphasis on quantifying actual water demand and supply.

4. SPECIAL CONDITIONS

Prior to the diversion of the water authorized herein, certificate owner shall require that all persons contracting water for industrial use, install a measurement device or utilize a method that measures within five percent (5%) accuracy and which accounts for the quantity of water diverted from Lake Pat Cleburne on the Nolan River.

5. TIME PRIORITY

The time priority of the owner's rights, as amended, shall remain the same as the original certificate.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate No. 12-4106, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Brazos River Basin.

Certificate owner agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Natural Resource Conservation Commission and to the right of continuing supervision of State water resources exercised by the Commission.

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

For the Commission

DATE ISSUED: OCT 11 1996

ATTEST:

Jamie M. Black

Jamie M. Black, Acting Chief Clerk

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

AMENDMENT TO CERTIFICATE OF ADJUDICATION

APPLICATION NO. 12-4106B CERTIFICATE NO. 12-4106B TYPE: §11.122, §11.042

Owner:	City of Cleburne	Address:	P. O. Box 657 Cleburne, Texas 76033
Filed:	March 16, 2000	Granted:	JAN 15 2002
Purpose:	Industrial, Irrigation, Municipal	County:	Johnson County
Watercourse:	Nolan River, tributary of the Brazos River	Basin:	Brazos River Basin

WHEREAS, Certificate of Adjudication No. 12-4106, as amended, authorizes owner to maintain an existing dam and reservoir (Pat Cleburne Lake) on the Nolan River, tributary of the Brazos River, Brazos River Basin, and to impound therein 25,600 acre-feet of water; and

WHEREAS, Certificate of Adjudication No. 12-4106, as amended, with a time priority of August 6, 1962, also authorizes owner to divert and use not to exceed 5,760 acre-feet of water per annum at a maximum diversion rate of 28.0 cfs (12,600 gpm) from the perimeter of the aforesaid reservoir, and at a point downstream of the dam, for municipal purposes; and

WHEREAS, Certificate of Adjudication No. 12-4106, as amended, with a time priority of March 29, 1976, also authorizes owner to divert and use not exceed 240 acre-feet of water per annum to irrigate 80 acres of land in Johnson County; and

WHEREAS, Certificate of Adjudication No. 12-4106, as amended, authorizes owner to additionally use the aforesaid 5,760 acre-feet of water per annum for industrial purposes; and

WHEREAS, on March 30, 1993, the Brazos River Authority (BRA) and the City of Cleburne (City) entered into a Water Sale Contract which, on May 13, 1997, was amended wherein the BRA, pursuant to its Certificate of Adjudication No. 12-5158, will provide water service to the City in the amount of 5,300 acre-feet of water per annum for municipal purposes from Lake Aquilla to be delivered via pipeline directly to the City's water treatment plant, or to Pat Cleburne Lake for subsequent diversion and treatment at the aforesaid plant; and

WHEREAS, applicant seeks to divert and use the 5,300 acre-feet of contracted water per annum purchased from BRA's Lake Aquilla authorization at the aforesaid treatment plant for municipal purposes; and

WHEREAS, on March 30, 1993, BRA and the City entered into a Water Sale Contract which, on

May 13, 1997, was amended wherein, pursuant to its Certificate of Adjudication No. 12-5157, BRA will also provide water service to the City in the amount of 4,700 acre-feet of water per annum from Lake Whitney to be diverted upstream of Lake Whitney at the currently authorized diversion points on the perimeter of Pat Cleburne Lake for municipal purposes; and

WHEREAS, applicant seeks to divert and use the 4,700 acre-feet of the aforesaid contracted water per annum, purchased from BRA's Lake Whitney authorization, at a point upstream of Lake Whitney, from the currently authorized diversion points on the perimeter of Pat Cleburne Lake for municipal purposes; and

WHEREAS, applicant also seeks to use the bed and banks of Pat Cleburne Lake to deliver the aforesaid contract water to the currently authorized diversion points from an outfall of a pipeline delivering water from Aquilla Lake in order to blend water sources for water quality purposes before subsequent diversion and treatment; and

WHEREAS, applicant also seeks to increase the diversion rate currently authorized in Certificate of Adjudication No. 12-4106, as amended, from 28.0 cfs (12,600 gpm) to 55.2 cfs (24,774 gpm); and

WHEREAS, the Texas Natural Resource Conservation Commission finds that jurisdiction over the application is established; and

WHEREAS, the Commission has determined that there are no water rights which may be affected by the granting of the requested amendment; and

WHEREAS, the Executive Director has determined that in order to protect the instream uses of the Nolan River, certain restrictions should apply to the diversion of water; and

WHEREAS, no person protested the granting of this application; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Natural Resource Conservation Commission in issuing this amendment.

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 12-4106, designated Certificate of Adjudication No. 12-4106B, is issued to the City of Cleburne subject to the following terms and conditions:

1. DIVERSION & USE

   a. In addition to the diversion and use authorizations included in Certificate of Adjudication Nos. 12-4106 and 12-4106A, owner is authorized to use the bed and banks of Pat Cleburne Lake to deliver purchased water (pursuant to a May 13, 1997 Water Sale Contract, amended, between the City of Cleburne and the Brazos River Authority (BRA) under BRA's Certificate of Adjudication No.12-5158) to the currently authorized diversion points on the perimeter of Pat Cleburne Lake. Pursuant to the aforesaid contract, owner is authorized to divert and use 5,300 acre-feet of

contracted water per annum from Pat Cleburne Lake to be delivered from Lake Aquilla via pipeline for municipal purposes.

b. In addition to the diversion and use authorizations included in Certificate of Adjudication Nos. 12-4106 and 12-4106A, owner is authorized to divert and use from Pat Cleburne Lake, for municipal purposes, 4,700 acre-feet of water per annum of Lake Whitney contract water (pursuant to a May 13, 1997 Water Sale Contract, amended, between the City of Cleburne and the BRA under BRA's Certificate of Adjudication No. 12-5157). Water will be diverted at the currently authorized points on the perimeter of Pat Cleburne Lake under Certificate of Adjudication No. 12-4106, as amended.

2. DIVERSION RATE

In lieu of the previous diversion rate authorization included in the certificate, owner is authorized to divert at a combined maximum diversion rate of 55.2 cfs (24,774 gpm).

3. WATER CONSERVATION

Owner shall implement a water conservation plan that provides for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, so that a water supply is made available for future or alternative uses. Such plan shall include a requirement in every wholesale water supply contract entered into, on or after the effective date of this permit, including any contract extension or renewal, that each successive wholesale customer develop and implement water conservation measures. If the customer intends to resell the water, then the contract for the resale of the water must have water conservation requirements so that each successive wholesale customer in the resale of the water will be required to implement water conservation measures.

4. SPECIAL CONDITIONS

a. In order to provide maintenance flows for existing instream uses and minimize the impact of its upstream diversion of Lake Whitney contract water, owner shall pass all inflows to Pat Cleburne Lake, up to and including the following inflows in the following months, but only to the extent that owner diverts its Lake Whitney contract water from Pat Cleburne Lake during such months:

- 2.2 cfs during February
- 3.5 cfs in March and April
- 5.7 cfs in May
- 1.5 cfs in June

b. The upstream diversion authorization contained herein, authorizing owner to divert and

use 4,700 acre-feet of its Lake Whitney contract water from Pat Cleburne Lake for municipal purposes, does not serve to increase the firm yield of Pat Cleburne Lake.

This amendment is issued subject to all superior and senior water rights in the Brazos River Basin.

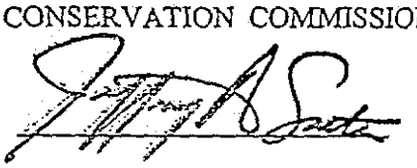
This amendment is issued subject to all terms, conditions and provisions contained in Certificate of Adjudication No. 12-4106, as amended, except as herein amended.

Owner agrees to be bound by the terms, conditions, and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Natural Resource Conservation Commission and to the right of continuing supervision of State water resources exercised by the Commission.

TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION



For the Commission

DATE ISSUED: JAN 15 2002

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AMENDMENT TO CERTIFICATE OF ADJUDICATION

APPLICATION NO. 12-4106C CERTIFICATE NO. 12-4106C TYPE: 11.122

Owner:	City of Cleburne	Address:	P.O. Box 657 Cleburne, Texas 76033
Filed:	August 20, 2004	Granted:	NOV 30 2005
Purposes:	Agricultural, Municipal, and Industrial	Counties:	Johnson
Watercourse:	West Buffalo Creek, tributary of Buffalo Creek, tributary of the Nolan River, tributary of the Brazos River	Watershed:	Brazos River Basin

WHEREAS, Certificate of Adjudication No. 12-4106 authorizes the City of Cleburne (City or applicant) to maintain a dam and reservoir, (known as Lake Pat Cleburne) on the Nolan River, tributary of the Brazos River and to impound 25,600 acre-feet of water. The City is also authorized to divert and use not to exceed 240 acre-feet of water from Lake Pat Cleburne for agricultural purposes to irrigate 80 acres of land in Johnson County with a time priority of March 29, 1976 and 5,760 acre-feet of water per year from Lake Pat Cleburne for municipal and industrial purposes with a time priority of August 6, 1962; and

WHEREAS, the City is further authorized to use the bed and banks of Lake Pat Cleburne to deliver 5,300 acre-feet of water (Lake Aquilla contract water) and 4,700 acre-feet of water (Lake Whitney contract water) per year pursuant to a contract between the City and the Brazos River Authority and to divert and use said water for municipal purposes from the diversion point authorized by the Certificate; and

WHEREAS, the maximum combined diversion rate for all water is 55.2 cfs (24,774 gpm). Special conditions apply; and

WHEREAS, Applicant seeks to amend Certificate of Adjudication No. 12-4106 to:

- Divert and reuse existing and future City return flows for agricultural, industrial, and municipal purposes within the City's service area in Johnson County,
- Use the bed and banks of West Buffalo Creek, Buffalo Creek, and the Nolan River to transport the discharged water to the diversion point(s) downstream of the outfalls/discharge points on the Nolan River or it's tributaries, and

- Divert up to a maximum combined total from the two outfalls/discharge points of 7.5 mgd (8,400 acre-feet of water per year) at a maximum diversion rate of 21.55 cfs (9,671.64 gpm); and

WHEREAS, treated effluent water will be discharged from two wastewater treatment outfalls authorized by TPDES Permit No. 10006-001 in segment 1227 of the Brazos River Basin described as follows:

- Outfall 1 discharges into Buffalo Creek at Latitude 32.312° N, Longitude 97.395° W, also bearing N 28.001° E, 1,531 feet from the southwest corner of the Thomas H. Magness Survey, Abstract No. 601, and

- Outfall 2 discharges into West Buffalo Creek at Latitude 32.396° N, Longitude 97.408° W, also bearing N 27.867° W, 1,516 feet from the southeast corner of the Keelen Williams Survey, Abstract No. 884; and

WHEREAS, the downstream diversion point is located 6.8 miles south from the City of Cleburne at Latitude 32.233° N, Longitude 97.397° W, also bearing S 67.666° E, 11,018 feet from the northwest corner of the Charles Sevier Survey, Abstract No. 752; and

WHEREAS, applicant indicates that there is 0.5% carriage loss per river mile for this watershed; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, the Executive Director recommends special conditions be included in the amendment; and

WHEREAS, no one protested the granting of this application; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment;

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 12-4106, designated Certificate of Adjudication No. 12-4106C, is issued to the City of Cleburne subject to the following terms and conditions:

1. USE

A. Owner is authorized to divert and reuse 8,400 acre-feet of existing and future return flows per year originating from two outfalls associated with TPDES Permit No. 10006-001 on West Buffalo Creek and the Nolan River in the Brazos River Basin for agricultural, industrial, and municipal purposes within the City's existing corporate boundaries, extra-territorial jurisdiction boundaries, and contiguous Certificate of Convenience and Necessity service areas in Johnson County.

B. Owner is authorized to use the bed and banks of West Buffalo Creek, Buffalo Creek, and the Nolan River to convey return flows to its downstream diversion point.

2. DISCHARGE AND DIVERSION

A. Water will be discharged from two wastewater treatment outfalls authorized by TPDES Permit No. 10006-001 in segment 1227 of the Brazos River Basin at a discharge rate of 7.5 MGD described as follows:

- Outfall 1 discharges into Buffalo Creek at Latitude 32.312° N, Longitude 97.395° W, also bearing N 28.001° E, 1,531 feet from the southwest corner of the Thomas H. Magness Survey, Abstract No. 601.
- Outfall 2 discharges into West Buffalo Creek at Latitude 32.396° N, Longitude 97.408° W, also bearing N 27.867° W, 1,516 feet from the southeast corner of the Keelen Williams Survey, Abstract No. 884.

B. In addition to the previous authorization, Owner is also authorized to divert the water between Outfall 1 and/or Outfall 2 and the downstream diversion point on the Nolan River located 6.8 miles south from the City of Cleburne at Latitude 32.233° N, Longitude 97.397° W, also bearing S 67.666° E, 11,018 feet from the northwest corner of the Charles Sevier Survey, Abstract No. 752 at a maximum combined diversion rate of 21.55 cfs (9,671.64 gpm).

3. TIME PRIORITY

The time priority for this right is August 20, 2004.

4. CONSERVATION

Owner shall implement a water conservation plan that provides for the utilization of those practices, techniques and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every wholesale water contract entered into, on or after the effective date of this permit, including any contract extension or renewal, that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water must have water conservation requirements so that each successive wholesale customer in the resale of the water be required to implement water conservation measures.

5. SPECIAL CONDITIONS

A. Owner shall install a measuring device capable of measuring flows within +/- 5% accuracy immediately downstream of the owner's diversion point. Owner shall allow representatives of the TCEQ reasonable access to the property to inspect the measuring device.

B. Owner shall only divert the historical average discharge of 3.29 MGD (3,684 acre-feet of the authorized 8,400 acre-feet of water) less carriage losses per day, when the streamflow at a reference device immediately downstream of the diversion point

equals or exceeds:

- 3.2 cfs during January and February,
- 8.1 cfs during March through May,
- 4.4 cfs in June, and
- 1.2 cfs during July through December.

As an alternative, Owner shall only divert the historical average discharge of 3.29 MGD (3,684 acre-feet of the authorized 8,400 acre-feet of water) less carriage losses per day, when the streamflow at USGS Gaging Station #08092000 (Nolan River at Blum) equals or exceeds:

- 4.8 cfs during January and February,
- 12.0 cfs during March through May,
- 6.6 cfs in June, and
- 1.9 cfs during July through December.

If Owner utilizes the USGS gage location to monitor the streamflow restrictions, Owner shall provide documentation to the Executive Director that the USGS gage is actively recording daily stream flows.

C. On a daily basis the historical average discharge of 3.29 MGD must be accounted for before diversion of the additional 4.21 MGD is authorized.

D. The first 3.29 MGD (3,684 acre-feet of the authorized 8,400 acre-feet) of diversions has a priority date of August 20, 2004, and is subject to call by senior water right holders in the basin.

E. The remaining 4.21 MGD (4,716 acre-feet of the authorized 8,400 acre-feet) of authorized water has a priority date of August 20, 2004, but is not subject to call by senior water right holders in the basin and not subject to the recommended instream flow restriction authorized in Special Condition 5.B.

F. Diversion of the 8,400 acre-feet of treated effluent from the Nolan River shall not occur at the rate or amount higher than that discharged from the City of Cleburne's waste water treatment plant less channel losses.

G. Owner shall implement the withdrawal and accounting plan approved by the Executive Director and maintain daily electronic records (in spreadsheet or database format) of diversion from each source of water used in the accounting, when applicable, and shall submit them to the Executive Director upon request.

H. Owner shall submit a water conservation and drought contingency plan pursuant to 30 TAC §§288.5 & 288.22 at least 180 days prior to the diversion of industrial water for wholesale purposes.

I. Prior to diversion of any future treated effluent return flows from its two (2) wastewater treatment outfalls in excess of the amount authorized to be diverted in Section 1.A. herein, Owner shall apply for an amendment to increase the diversion of any return flows.

This amendment is issued subject to all terms, conditions, and provisions contained in Certificate of Adjudication No. 12-4106, as amended, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Brazos River Basin.

Owner agrees to be bound by the terms, conditions, and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

For the Commission

Date Issued: NOV 30 2005

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AMENDMENT TO A
CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 12-4106D		TYPE:	§§ 11.122, 11.042
Owner:	City of Cleburne	Address:	10 N Robinson P.O. Box 677 Cleburne, Texas 76033
Filed:	February 9, 2017	Granted:	May 27, 2021
Purposes:	Municipal, Industrial, Mining, Agriculture, & Recreation	County:	Johnson
Watercourse:	Nolan River	Basin:	Brazos River Basin

WHEREAS, Certificate of Adjudication No. 12-4106 authorizes the City of Cleburne (City) to maintain an existing dam and reservoir (Lake Pat Cleburne) on the Nolan River, Brazos River Basin, and impound therein not to exceed 25,600 acre-feet of water; and

WHEREAS, the City is also authorized to divert and use from Lake Pat Cleburne not to exceed 240 acre-feet of water per year for agricultural purposes to irrigate 80 acres of land, and to divert and use from Lake Pat Cleburne not to exceed 5,760 acre-feet of water per year for municipal and industrial purposes in Johnson County; and

WHEREAS, the City is further authorized to use the bed and banks of Lake Pat Cleburne pursuant to Certificate of Adjudication 12-4106, as amended, to deliver 5,300 acre-feet of water (Lake Aquilla contract water) and to divert 4,700 acre-feet of water (Lake Whitney contract water) per year pursuant to a contract between the City and the Brazos River Authority and to divert and use said water for municipal purposes; and

WHEREAS, the City is also authorized to use the bed and banks of West Buffalo Creek, Buffalo Creek, and the Nolan River to convey 8,400 acre-feet of return flows per year for subsequent diversion and use for agricultural, industrial, and municipal purposes within the City's existing corporate boundaries, extra-territorial jurisdiction boundaries, and contiguous Certificate of Convenience and Necessity service areas in Johnson County; and

WHEREAS, the maximum combined diversion rate for all water is 55.2 cfs (24,774 gpm), and multiple time priorities and special conditions apply; and

WHEREAS, the City seeks to amend Certificate of Adjudication No. 12-4106 to authorize use of the bed and banks of the Nolan River (Lake Pat Cleburne), to convey not to exceed 6,739 acre-feet of return flows, authorized by TPDES Permit No. WQ0010006001, for subsequent

diversion and use for municipal, industrial, recreation, mining, and agricultural purposes in Johnson County; and

WHEREAS, the return flows will be discharged at a point on Lake Pat Cleburne being at Latitude 32.325211° N, Longitude 97.440608° W, at a maximum rate of 37.13 cfs (16,666 gpm), in Johnson County and will be subsequently diverted from the perimeter of Lake Pat Cleburne at a maximum combined diversion rate of 55.2 cfs (24,774 gpm) with all authorizations in Certificate of Adjudication No. 12-4106, as amended; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment;

NOW, THEREFORE, this Application No. 12-4106, designated Certificate of Adjudication No. 12-4106D, is issued to the City of Cleburne, subject to the following terms and conditions:

1. USE

In addition to previous authorizations; Owner is authorized to use the bed and banks of the Nolan River (Lake Pat Cleburne), Brazos River Basin, to convey 6,739 acre-feet of return flows for subsequent diversion and use for municipal, industrial, recreation, mining, and agricultural purposes in Johnson County.

2. DISCHARGE

The return flows will be discharged to the Nolan River (Lake Pat Cleburne) at a point being at Latitude 32.325211° N, Longitude 97.440608° W, at a maximum rate of 37.13 cfs (16,666 gpm), in Johnson County.

3. DIVERSION

Owner is authorized to divert the return flows authorized for reuse in this amendment from anywhere along the perimeter of Lake Pat Cleburne at a maximum combined diversion rate of 55.2 cfs (24,774 gpm) with all authorizations in Certificate of Adjudication No. 12-4106, as amended.

4. TIME PRIORITY

The time priority of this amendment is February 9, 2017.

5. CONSERVATION

Owner shall implement water conservation plans that provide for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, and prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every water supply contract entered into, on or after the effective date of this permit, including any contract extension or renewal, that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water shall have water conservation

requirements so that each successive customer in the resale of the water will be required to implement water conservation measures.

6. SPECIAL CONDITIONS

A. Owner shall submit water conservation and drought contingency plans pursuant to 30 TAC §§288.3, 288.5, and 288.22 at least 180 days prior to the diversion of industrial and/or mining water for retail or wholesale purposes.

B. Owner shall implement reasonable measures in order to reduce impacts to aquatic resources due to entrainment or impingement. Such measures shall include, but shall not be limited to, the installation of screens at any new diversion structures.

C. Diversions authorized under this amendment are dependent upon potentially interruptible return flows or discharges and are conditioned on the availability of those discharges. The right to divert the discharged return flows is subject to revocation if discharges become permanently unavailable for diversion and may be subject to reduction if the return flows are not available in quantities and qualities sufficient to fully satisfy the amendment. Should the discharges become permanently unavailable for diversion, Owner shall immediately cease diversion and use of return flows authorized by this amendment and either apply to amend the certificate, or voluntarily forfeit the amendment. If Owner does not amend the certificate or forfeit the amendment, the Commission may begin proceedings to cancel this amendment.

D. Owner shall only divert daily flows that are actually discharged.

E. Owner shall only divert and use return flows pursuant to Paragraph 1. USE and Paragraph 3. DIVERSION in accordance with the most recently approved accounting plan (*City of Cleburne Revised Accounting Plan Certificate of Adjudication 12-4106, as Amended*). Any modifications to the accounting plan shall be approved by the Executive Director. Any modification to the accounting plan that changes the permit terms must be in the form of an amendment to the certificate. Should Owner fail to maintain the accounting plan or notify the Executive Director of any modifications to the plan, Owner shall immediately cease diversion of discharged return flows under this amendment, and either apply to amend the certificate, or voluntarily forfeit the amendment. If Owner fails to amend the accounting plan or forfeit the amendment, the Commission may begin proceedings to cancel the amendment. Owner shall immediately notify the Executive Director upon modification of the accounting plan and provide copies of the appropriate documents effectuating such changes.

F. Prior to diversion and use of any return flows in excess of the amount currently authorized by TPDES Permit No. WQ0010006001, Owner shall apply for and be granted the right to reuse those return flows.

G. Owner shall install and maintain a measuring device which accounts for, within 5% accuracy, the quantity of water diverted from the point(s) authorized in this Certificate of Adjudication and maintain measurement records.

H. Owner shall allow representatives of the Brazos Watermaster reasonable access to the property to inspect the measuring device and records.

I. Owner shall contact the Brazos Watermaster prior to diversion of water authorized by this amendment.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate of Adjudication No. 12-4106, as amended, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Brazos River Basin.

Owner agrees to be bound by the terms, conditions, and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.

For the Commission

Date Issued: **May 27, 2021**

EXHIBIT G

May 2024 Proposed Contract

AGREEMENT FOR SEWER EFFLUENT WATER PURCHASE, (this "Agreement**"**) dated the 1st day of May ___, 2024 ("**Effective Date**") is entered into between the **CITY OF CLEBURNE, JOHNSON COUNTY, TEXAS**, a municipal corporation, hereinafter sometimes referred to as "City", and **JOHNSON COUNTY POWER, LLC**, a Texas limited liability company organized and existing under the laws of the State of Delaware, hereinafter sometimes referred to as "Johnson County Power". City and Johnson County Power are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS:

WHEREAS, Johnson County Power, LLC operates a power generation plant and associated facilities in the Cleburne Industrial Park in Cleburne, Johnson County, Texas ("Plant"). The Plant's operations require a substantial quantity of water for various internal Plant requirements; and

WHEREAS, Johnson County Power, LLC acquired the Plant from Johnson County Power Power Cooperative, Inc. in 2023, subject to an amended and restated agreement for the City's sale of effluent water to the Plant ("Prior Water Agreement"), which expired in February 2024; and

WHEREAS, the Parties desire to establish a new ten-year contract on the terms and conditions set forth in this Agreement for the City's sale to Johnson County Power, LLC of effluent water from the City's wastewater treatment facility (hereinafter such effluent water is referred to as "Wate*r*") for use at the Plant; and

WHEREAS. The Parties intend for this Agreement to completely replace the Prior Water Agreement as of the Effective Date.

NOW, THEREFORE, subject to the terms and conditions of this Agreement, the Parties agree as follows:

1. **PURPOSE**. The purpose of this Agreement is to establish the terms and conditions for the City's sale of Water to Johnson County Power, LLC for use at the Plant for a five-year term commencing on the Effective Date, and to define the Parties' contractual rights and obligations relative to the supply and use of Water at the Plant during the Term of this Agreement, as hereafter defined.

2. **TERM OF AGREEMENT**. The initial term of this Agreement shall be for five (5) years, which shall commence on the Effective Date hereof and shall extend until the day before the fifth anniversary of the Effective Date (the "Initial Term"). Following the expiration of the Initial Term, this Agreement shall automatically renew for successive one (1) year periods (each, a "Renewal Term" and together with the Initial Term, the "Term"), unless either party provides written notice of its intention not to renew the Agreement at least ninety (90) days prior to the expiration of the then-current Term or unless earlier terminated in accordance with the provisions of paragraph 14.

3. **SERVICE TO BE RENDERED**. Services to be rendered shall include the following:

    a. Water Facilities O&M. The City shall continually own, maintain and operate the Water Facilities during the Term of this Agreement. "Water Facilities" means facilities necessary to provide, transport, and deliver Water to the Delivery Point specified in paragraph 4(a), together with facilities necessary to store approximately one million (1,000,000) gallons of Water adjacent to the Plant on land owned by the City. The City shall maintain the Water

Facilities in good working order and condition, and shall make all necessary repairs, replacements, and upgrades to ensure the reliable and uninterrupted delivery of Water to the Plant.

b. Full Requirements and Minimum Supply and Flow Requirements. Subject to the City being able to maintain its Minimum Supply and Flow Requirement (defined in paragraph 7(c)), at all times during the term of this Agreement, the City will deliver to the Delivery Point and sell to Johnson County Power the quantity of Water (and if necessary in accordance with Section 5(a) a supplement of potable water in lieu of Water) required for use at the Plant as needed ("Full Requirements"). Water delivered to the Delivery Point shall be of a quality that meets or exceeds the requirements specified on Exhibit "A" attached hereto. The City shall regularly test the Water to ensure compliance with such quality requirements and shall promptly remedy any non-compliance.

c. Standards of Performance. The City shall continually operate and maintain the Water Facilities in a manner consistent with:

   i. the terms and provisions of this Agreement,

   ii. the plans and specifications of the Water Facilities

   iii. industry best practices, and

   iv. all applicable laws, statutes, regulations and codes.

d. Planned O&M. The City shall provide Johnson County Power with reasonable advance notice of any planned maintenance, repairs, or upgrades that may interrupt or limit the delivery of Water, and shall use commercially reasonable efforts to minimize any such interruptions or limitations. In the event of any unplanned interruption or limitation, the City shall promptly notify Johnson County Power and shall use all reasonable efforts to restore full delivery as soon as possible.

4. **DELIVERY POINT AND METERING**.

a. Delivery Point. The Delivery Point shall be at the convergence of the property line and the twelve-inch (12") HDPE Reclaimed Water Main located generally southwest of the existing approximately one (1) million-gallon tank (as shown in Exhibit "B"). Johnson County Power will bear the responsibility for maintaining the Water quality following receipt by Johnson County Power of Water at the Delivery Point, provided that the Water meets the quality requirements specified in Exhibit "A" at the Delivery Point.

b. Metering. The City shall own and continually operate and maintain, test, calibrate and adjust metering equipment located between the Water Facilities and the Delivery Point. The metering equipment shall provide accurate and continuous measurements and recording of the quantity of Water delivered by the City to the Delivery Point and the City shall provide Johnson County Power with real-time access to such measurements and recordings through a secure online portal or other mutually agreeable method. The metering equipment shall be tested for accuracy at least once annually in accordance with the standards for testing cold water meters as prescribed by the American Water Works Association. Acceptable accuracy shall be within plus or minus one percent (1%) of any given rate of flow within the turndown range of the meter for fluid velocities greater

than one foot per second (1.0 fps). If such metering equipment is found to be in error by more than one percent (l%), then the City shall promptly adjust the metering equipment to record accurately and shall reimburse Johnson County Power for any overpayments made by Johnson County Power as a result of such error during the period affected by such error, up to a maximum of twelve (12) months. City and Johnson County Power shall have the right to have a representative present at the time of any such testing. Additional testing of the meter, beyond the annual inspection, shall be performed at the request and expense of Johnson County Power.

c. Technical Audit Rights. The City and Johnson County Power shall each have, upon reasonable notice, in no event more than five (5) business days, the ongoing right to have their respective representatives examine and audit the other Party's records concerning quantities and quality of Water (including test records performed on the metering equipment and the test results of Water) delivered by the City to Johnson County Power at the Delivery Point. The City shall maintain such records for at least five (5) years.

d. TCEQ Filings. The City shall provide Johnson County Power, upon request by Johnson County Power, a copy of all regulatory chemical analysis reports submitted by or on behalf of the City to Texas Commission on Environmental Quality ("TCEQ") or its successor from the date of such request until the end of the Term. In the event Johnson County Power desires, a more comprehensive chemical analysis of the Water delivered to the Delivery Point, the City shall promptly perform such analysis at Johnson County Power's expense and provide the results to Johnson County Power.

e. Emergencies. Each of the Parties shall immediately notify the other Party's Designated Representative (as identified in the notice provision of this Agreement) of any emergency or condition of which the notifying Party knows or reasonably should know which may affect the quality or quantity of Water in either Party's system. The City shall be responsible for any damages or losses incurred by Johnson County Power as a result of the City's failure to provide such notice.

5. **RATES, INVOICING AND PAYMENT.** City shall render an invoice to Johnson County Power on or about the tenth (10th) day of each month for Water delivered to the Delivery Point during the previous month in an amount equal to the Rate, as defined in paragraph 5(a)) all in accordance with the provisions of paragraphs 5(b), (c), (d), (e), and (f).

a. For each month during the Term the City will invoice and Johnson County Power will pay to the City a rate of $0.84/1,000 gallons of Water delivered to the Delivery Point during the previous month of the Term , adjusted, as follows (the "Rate"): During the Term the Parties agree that the Rate in this Section 5(a) shall be expressed as a rate in US dollars per thousand gallons of Water and increased each month during the Term by $0.012/1,000 gallons of Water, so that during any month of the Term, the Rate shall be $0.012/1,000 gallons of Water more than the previous month; provided, however, the Rate will remain at $0.096 for the duration of Contract Year 5. An illustration of the calculation of the Rate during the Term is set forth on Exhibit C, attached hereto. The City intends that after the Term, the Rate for the Water will be a rate per 1,000 gallons of Water that may be set by City ordinance pursuant to Texas Water Code 13.042 as a codified rate to be charged to all purchasers of effluent water purchased from the City. During the Term of this Agreement the quantity of Water delivered to the Delivery Point during each such month shall be

determined by the metering equipment. In the event the City does not, other than if caused by an Excusable Interruption or Minimum Supply or Flow Requirement, deliver Water to Johnson County Power at the Delivery Point, as contracted for in Section 3(b) of this Agreement, during any Contract Ycar an amount/quantity equal to at least ninety percent (90%) of the Water required to be delivered in Section 3(b) of this Agreement ("Shortfall"), then the City will, as soon as is reasonably practical, but in no event later than the next Contract Year, provide Johnson County Power with a credit against any outstanding amounts owed by Johnson County Power to the City, the actual cost paid by Johnson County Power of potable water for the Shortfall. "Contract Year" means a year beginning on the Effective Date and ending on the day before Effective Date anniversary. For purposes of this Section 5(a), the Shortfall shall be calculated by multiplying the average annual quantities of Water delivered by the City to Johnson County Power during the immediately preceding five (5) calendar years by ninety percent (90%).

b. On or about the tenth (I0th) of each calendar month, beginning with the second (2nd) month after the Effective Date, City shall email (_____) and mail or personally deliver to Johnson County Power an invoice ("City's Invoice") for amounts due to City for Water delivered to the Delivery Point during the previous month. City's Invoice shall state the quantity of Water delivered to the Delivery Point during the period covered by the City's Invoice, the Rate, the total amount due to City, and any additional information reasonably requested by Johnson County Power to determine the accuracy of the City's Invoice. The remittance address shall be such address as may be reflected on the City's Invoice from time to time.

c. Payment. Johnson County Power shall pay the undisputed portion of the amount indicated on the City's Invoice within thirty (30) days after receipt. Johnson County Power may dispute any portion of the City's Invoice by providing written notice to the City within fifteen (15) days of receipt of the City's Invoice, specifying in detail the basis for the dispute. The City shall promptly provide any additional documentation or information reasonably requested by Johnson County Power to resolve the dispute. Any disputed amounts shall be paid within fifteen (15) days of resolution of the dispute. Any refund of an amount paid by Johnson County Power shall bear interest at the Interest Rate (hereinafter defined in paragraph 5(d)) from the date of payment until the date of the refund.

d. Disputed Invoices. In the event an error is discovered with respect to any City Invoice, or with respect to any payment made pursuant to any invoice, such error shall be adjusted within thirty (30) days following the discovery of the error. If the error results in an overpayment by Johnson County Power, the City shall promptly refund the overpayment plus interest at the Interest Rate from the date of the overpayment until the date of the refund.

e. Interest on Late Payments. Any monthly invoice which is not paid when due shall bear interest from the due date until paid at the Interest Rate in effect on the first business day of each calendar month in which interest accrues under this Agreement. "Interest Rate" shall mean a rate equal to the lesser of (i) the maximum rate of interest permitted by law, and (ii) the Wall Street Journal Prime Rate (the lowest of the benchmark rates of interest identified as the Prime or Base rate for commercial lending in the Wall Street Journal) as published on the date of the invoice that has gone unpaid (or the first day of publication thereafter).

f. Payment Audit Rights. The City shall permit Johnson County Power or its designated representative to examine, audit and copy, at Johnson County Power's expense, all of the City's records and information necessary to confirm the accuracy of any invoices submitted pursuant to this paragraph 5. Such examination and audit rights may be exercised at any time during the Term and for a period of two (2) years thereafter.

6. **OTHER USERS.** The Parties recognize that the City may have other customers desiring to purchase effluent water from the City's wastewater treatment facility and the City shall have the right to provide same to such other customers, subject to the following conditions:

a. Plant Priority. The City shall at all times prioritize its obligations to provide Water to Johnson County Power under this Agreement, and shall not enter into any agreements or commitments with other customers that could reasonably be expected to impair or limit the City's ability to meet such obligations;

b. Prior Notice of Additional Sales. The City shall provide Johnson County Power with written notice of any proposed sale of effluent water to other customers, including the terms and conditions of such proposed sale, at least sixty (60) days prior to entering into any binding agreement for such sale; and

c. Discriminatory Terms and Rates Prohibited. The City shall not sell effluent water to other customers at rates lower than the Rates charged to Johnson County Power under this Agreement or on terms and conditions more favorable to any new customer.

7. CONTINUITY OF SERVICE.

a. Interruptions for Necessary Scheduled Maintenance. Upon receipt by Johnson County Power from City of written notice received by Johnson County Power ("Notice of Interruption") at least sixty (60) days prior to any scheduled suspension, interruption, delay, reduction or other interference of delivery of Water to the Delivery Point ("Interruption," "Interrupt" or "Interrupted"), City may temporarily Interrupt the delivery of Water to the Delivery Point for a period not to exceed twenty-four (24) hours to correct the reason for the Interruption. Whenever possible, a proposed Interruption shall be scheduled during a shut-down of the Plant, and the City shall use all reasonable efforts to accommodate Johnson County Power's schedule. The Notice of Interruption shall specify the duration and extent of the proposed Interruption in the delivery of Water to the Delivery Point and the reason therefor. In the event the Water supply has not been restored within two (2) hours after the twenty-four (24) hours from the initial Interruption, then the City will deliver "potable water" to the existing potable water point of service in place of the Water at the same Rate to allow Johnson County Power to have uninterrupted water service to the Plant in the quantities set forth in Section 3(b) of this Agreement, until the Water service is restored. The City's obligation to deliver potable water to Johnson County Power in place of the Water shall continue until the Water service is fully restored, regardless of the duration of the Interruption.

b. Interruption Due to Uncontrollable Force.

i. Excusable Interruptions and Replacement Water. If the delivery of Water to the Delivery Point is Interrupted as a result of an Excusable Interruption (as hereinafter defined), then during the Excusable Interruption the City shall not be obligated to

deliver Water to Johnson County Power at the Delivery Point. However, the City will provide "**potable water**" to Johnson County Power at the existing potable water point of service in place of the Water at the same Rate to allow Johnson County Power to have uninterrupted water service to the Plant until the Water service is restored, regardless of the duration of the Excusable Interruption.

ii. Excusable Interruptions Defined. The term "**Excusable Interruption**" means acts of God; flood; earthquake; storm or other natural calamity; war; insurrection; riot; explosions or fires; curtailment, order, regulation or restriction imposed by state or federal governmental authority; sabotage; terrorism; or any other cause beyond the reasonable control of the City. Excusable Interruption shall not include equipment failures, labor disputes, financial difficulties, or other causes within the City's reasonable control. iii. In the event that either Party is rendered unable, wholly or in part, by Excusable Interruption, to carry out its obligations under this Agreement, except for those obligations requiring the payment of money, and if such Party gives notice stating the reasons therefor to the other Party as soon as practicable after the occurrence being claimed as an Excusable Interruption then, insofar as and to the extent and for such reasonable time that such obligations are so affected (not including those obligations requiring the payment of money) by the Excusable Interruption, the performance obligations of such Party shall be suspended. The suspension of the Party's performance obligations shall be for no longer period than that necessary to cause such inability to be remedied with all reasonable dispatch.

iii. Interruption Due to Minimum Supply and Flow Requirement. The City shall not be obligated to deliver Water to the Delivery Point for the period of time during which doing so would make it reasonably impossible for the City to maintain a minimum flow of water as may be required by the City for its State and Federal discharge permit(s) ("**Minimum Supply and Flow Requirement**"). During the period of time during which delivery of Water by the City to the Delivery Point would make it reasonably impossible for the City to maintain due to the Minimum Supply and Flow Requirement, the City will provide "potable water" to Brazos at the existing potable water point of service in place of the Water at the same Rate as set forth in Section 5(a) of this Agreement, to allow Johnson County Power to have uninterrupted water service to the Plant until the Water service is restored; provided, however, that the City's obligation to deliver to Johnson County Power potable water at the existing potable water point of service, in place of the delivery of Water to Johnson County Power at the Delivery Point at the same Rate as set forth in Section 5(a) of this Agreement shall expire thirty (30) days after the start of the Interruption caused by the Minimum Supply and Flow Requirement. Thereafter, the City shall deliver potable water to Johnson County Power at the existing potable water point of service in place of the Water but at the rate generally applicable to such potable water.

8. **TAXES**.

a. Sales Taxes. The City shall be solely responsible for any and all sales, use, excise, value-added, gross receipts, or similar taxes, fees, or assessments imposed by any governmental

authority on the sale, transportation, delivery, or use of Water under this Agreement, regardless of whether such taxes, fees, or assessments are imposed on the City or on Johnson County Power. The City shall indemnify, defend, and hold Johnson County Power harmless from any liability, cost, or expense (including attorneys' fees) arising from the City's failure to pay any such taxes, fees, or assessments.

b. Real and Personal Property Taxes. Each Party shall be responsible for its own real and personal property taxes and assessments imposed on such Party's respective property and facilities used in connection with this Agreement. However, to the extent that any real or personal property taxes or assessments are imposed on Johnson County Power's property or facilities as a result of the City's activities under this Agreement (including the transportation and delivery of Water to the Delivery Point), the City shall promptly reimburse Johnson County Power for such taxes or assessments upon receipt of an invoice therefor.

c. Tax Indemnification. In the event that Johnson County Power is assessed or held liable for any taxes, fees, or assessments that are the responsibility of the City under this Section, Johnson County Power shall have the right to offset such amounts (plus interest at the Interest Rate) against any payments due to the City under this Agreement until Johnson County Power is fully reimbursed.

9. **ASSIGNMENT AND DELEGATION**.

a. Generally. Except as otherwise provided herein, no right or interest in this Agreement shall be assigned by either Johnson County Power or City without the written permission of the other Party and no delegation of any obligation or of the performance of any obligation by either Johnson County Power or City shall be made without the prior written permission of the other Party, which permissions shall not unreasonably be denied, withheld or delayed. Any attempted assignment or delegation shall be void and ineffective for all purposes unless made in conformity with this Section 9.

b. Permitted Assignments.

i. Johnson County Power may assign its rights and delegate its obligations to any subsidiary of Johnson County Power provided that no such assignment or delegation releases Johnson County Power from any of its obligations.

ii. Johnson County Power may assign, transfer, mortgage or pledge this Agreement to create a security interest for the benefit of the United States of America, acting through the Administrator of the Rural Utilities Service ("**RUS**"), National Rural Utilities Cooperative Finance Corporation, or other secured party (directly or through an indenture trustee or other collateral agent; each, including such indenture trustee or other collateral agent, a "**Secured Party**"). Thereafter, a Secured Party, without the approval of the City, may cause this Agreement (and all obligations hereunder) to be sold, assigned, transferred or otherwise disposed of to a third party pursuant to the terms governing such security interest, or if RUS first acquires this Agreement pursuant to 7 U.S.C. §907 or any other Secured Party otherwise first acquires this Agreement, sell, assign, transfer or otherwise dispose

of this Agreement (and all obligations hereunder) to a third party; provided, however, that in either case

A. Johnson County Power is in default of its obligations that are secured by such security interest and that the applicable Secured Party has given the City written notice of such default; and

B. the applicable Secured Party has given the City thirty (30) days' prior written notice of its intention to sell, assign, transfer or otherwise dispose of this Agreement (and all obligations hereunder) indicating the identity of the intended third-party assignee or purchaser.

10. **RELEASE AND INDEMNITY**.

a. City Indemnification. The City agrees to release, defend, indemnify and hold harmless Johnson County Power, its affiliates, and their respective directors, officers, members, employees, agents and representatives (collectively "**Johnson County Power Indemnitees**") from and against any and all claims, actions, suits, losses, harm, liability, damages, costs and expenses, including, but not limited to, reasonable attorney's fees (collectively "**Claims**") arising out of or in connection with

i. the negligent acts or omissions of the City or its council members, officers, employees, agents or representatives (collectively "**City Representatives**") in connection with this Agreement or the Water Facilities,

ii. any breach by the City of its obligations, representations or warranties under this Agreement, or

iii. any violation by the City of any applicable laws, regulations, permits or orders in connection with its performance under this Agreement, in each case regardless of any negligence or other fault of Johnson County Power Indemnitees.

The City's indemnification obligations under this Section 10(a) shall not be limited by any limitations on the amount or type of damages, compensation or benefits payable by or for the City under workers' compensation acts, disability benefit acts or other employee benefit acts.

b. Johnson County Power Indemnification. Johnson County Power agrees to release, defend, indemnify and hold harmless the City and City Representatives from and against any Claims to the extent arising out of the negligent acts or omissions of Johnson County Power or Johnson County Power Representatives in connection with this Agreement; provided, however, that Johnson County Power shall not be required to release, defend, indemnify or hold harmless the City or City Representatives from any portion of a Claim caused by or resulting from the negligence, breach or violation of the City or City Representatives as described in Section 10(a) above. Johnson County Power's indemnification obligations under this Section 10(b) shall be limited to the extent of Johnson County Power's relative degree of fault.

c. Survival. The indemnification obligations under this Section 10 shall survive the expiration or termination of this Agreement.

d. Third Party Claims. Nothing in this Agreement shall be construed to preclude either Party from pursuing any Claims against third parties. Each Party shall reasonably cooperate with the other Party in the defense of any third-party Claims.

11. **REPRESENTATIONS AND WARRANTIES.**

a. Johnson County Power Representations and Warranties. Johnson County Power represents and warrants to the City that, as of the Effective Date and throughout the Term of this Agreement:

i. Johnson County Power is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and is duly qualified and authorized to do business in the State of Texas.

ii. The execution, delivery and performance of this Agreement by Johnson County Power have been duly authorized by all necessary limited liability company action and do not and will not require any further consents or approvals or violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Johnson County Power or the certificate of formation or limited liability company agreement of Johnson County Power.

iii. This Agreement constitutes a legal, valid and binding obligation of Johnson County Power, enforceable against Johnson County Power in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

b. City Representations and Warranties. The City represents and warrants to Johnson County Power that, as of the Effective Date and throughout the Term of this Agreement:

i. The City is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Texas and has the power and authority to own its properties and to carry on its business as presently conducted and as contemplated by this Agreement.

ii. The execution, delivery and performance of this Agreement by the City have been duly authorized by all necessary action of the City Council and do not and will not require any further consents or approvals or violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the City or the City's charter, ordinances or resolutions.

iii. This Agreement constitutes a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

iv. The City has lawful authority to sell and deliver Water to Johnson County Power at the Delivery Point as provided in this Agreement, and such sale and delivery will not conflict with or result in a breach of any agreement, contract or obligation to which the City is a party or by which it is bound.

v. The City has obtained or will obtain in a timely manner all permits, approvals, consents, and authorizations necessary for the City to perform its obligations under this Agreement. The City shall maintain all such permits, approvals, consents, and authorizations in full force and effect throughout the Term.

vi. The Water sold and delivered by the City to Johnson County Power under this Agreement shall meet or exceed all applicable quality standards and requirements, including without limitation the requirements set forth in Exhibit A, and shall be fit for the purposes intended by Johnson County Power. The City shall regularly test the Water to confirm compliance with such standards and requirements and shall provide the test results to Johnson County Power upon request.

c. Materiality. The representations and warranties set forth in this Section 11 are material and have been relied upon by the Parties in entering into this Agreement. Each Party shall promptly notify the other Party in writing if any of its representations or warranties cease to be true and correct in all material respects during the Term.

12. LIMITATION OF LIABILITY

b. Waiver of Consequential Damages. Except as expressly provided in Section 12(b), neither Party shall be liable to the other Party for any special, punitive, exemplary, incidental, indirect, or consequential damages arising out of or in connection with this Agreement, whether based on contract, tort, strict liability, or otherwise, including without limitation loss of profits or revenues, cost of capital, loss of goodwill, loss of use, or claims of customers, in each case even if such Party has been advised of the possibility of such damages.

c. Exceptions. Notwithstanding Section 12(a), the limitations of liability set forth therein shall not apply to:

i. The City's indemnification obligations under Section 10(a) with respect to third-party Claims;

ii. The City's liability for any damages, losses, costs or expenses incurred by Johnson County Power arising out of or resulting from

A. the City's gross negligence or willful misconduct,

B. the City's intentional breach of this Agreement, or

C. the City's failure to deliver Water in accordance with the quantity, quality and other requirements set forth in this Agreement;

iii. Either Party's obligation to pay amounts expressly due and owing under this Agreement, including without limitation the City's obligation to refund amounts paid by Johnson County Power in the event of inaccurate metering or billing; or

iv. Either Party's liability for damages, losses, costs or expenses that are covered by insurance proceeds actually received by such Party (or that would have been received but for such Party's failure to maintain the insurance required under this Agreement).

d. Essential Basis of the Bargain. Each Party acknowledges and agrees that the limitations of liability set forth in this Section 12 are an essential basis of the bargain between the Parties and that the Parties would not have entered into this Agreement but for such limitations of liability. The Parties further acknowledge and agree that the limitations of liability set forth in this Section 12 shall survive the expiration or termination of this Agreement.

13. WAIVER OF SUBROGATION.

a. [Insurance Coverage Requirements? State explicitly]

b. Subrogation. Each Party shall ensure that any policy of insurance which it carries as insurance against property damage or against general liability for property damage or bodily injury (including death) that may occur in connection with the maintenance or operation of the Water Facilities or the Plant water system or any electrical system used in conjunction therewith shall either name the other Party as additional insured, or include a waiver of insurer's rights of subrogation against the other Party, its successors and assigns, and the respective directors, officers, employees, agents and representatives of such other Party and its successors and assigns. Further, to the extent permitted by such policies of insurance, each Party shall waive such rights of subrogation. Notwithstanding the foregoing, nothing in this Section 13 shall affect the indemnity obligations of Section 10.

14. TERMINATION

a. For Material Breach. Either Party may terminate this Agreement upon written notice to the other Party if such other Party materially breaches any of its obligations under this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice from the non-breaching Party specifying the nature of the breach; provided, however, that if the breach is not reasonably capable of being cured within such 30-day period, the breaching Party shall have such additional time as may be reasonably necessary to cure the breach, not to exceed ninety (90) days in the aggregate, so long as the breaching Party commences the cure within the initial 30-day period and diligently prosecutes the cure to completion.

b. Process. Upon any termination of this Agreement, the City shall promptly refund to Johnson County Power any amounts prepaid by Johnson County Power for Water not delivered as of the effective date of termination. Johnson County Power shall also pay to the City, within thirty (30) days after the effective date of termination, any other unpaid amounts due and owing to the City under this Agreement as of the effective date of termination, including any amounts owed pursuant to the resolution of billing disputes in accordance with Section 5. The City's payment obligations under this Section 14(c) shall survive the termination of this Agreement.

c. No Liquidated Damages. Johnson County Power shall have no obligation to pay the City any termination fees, liquidated damages, or other amounts in connection with any termination of this Agreement, except for amounts due and owing for Water delivered by the City prior to the effective date of termination.

d. Survival. The termination of this Agreement shall not relieve either Party of any liabilities or obligations arising prior to the effective date of termination, except as expressly provided herein. The applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to provide for final billing, billing adjustments and payments, and the resolution of any billing disputes. Sections 10, 12, 14, and 15, and any other provisions that by their nature are intended to survive, shall also survive the termination of this Agreement.

15. MISCELLANEOUS PROVISIONS.

a. Notices. Except as otherwise provided in this paragraph, any notice, request, authorization, invoice, payment, direction or other communication as allowed or required under this Agreement shall be given in writing and be delivered in person or by first class United States certified mail, properly addressed, return receipt requested with the required postage prepaid, to the intended recipient as follows:

JOHNSON COUNTY POWER, LLC
ATTN: (Designated Representative)
[Address]
[City, State Zip]
Phone: [Number]

CITY OF CLEBURNE, TEXAS
ATTN: (Designated Representative) City Manager
10 North Robinson Street
Cleburne, Texas 76033
Phone: (817) 645-0905

Invoices may be sent by email as aforestated and invoices and related payments may be sent by regular first-class United States mail and are not subject to the requirement of being sent by certified mail. Invoices and payments may be sent to an address different from the above, as may be specified upon thirty (30) days advance notice from time to time by the receiving Party. Such Party shall provide notice of its desired mailing address for invoices or payments as appropriate if different from the above address. Either Party may change its address or Designated Representative specified above by giving the other Party reasonable notice of such change in accordance with this paragraph. All notices, requests and authorization of directions or other communications by a Party shall be deemed delivered when mailed as provided in this paragraph or personally delivered to the other Party.

b. Governmental Authority. This Agreement is subject to the rules, regulations, orders and other requirements, now or hereafter in effect, of all governmental authorities having jurisdiction over this Agreement, the Parties or either of them.

c. No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, nor to impose any partnership obligations or liability on either Party. Furthermore, neither Party shall have any right, power or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of or to otherwise bind the other Party.

d. Nonwaiver. The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.

e. Entire Agreement. This Agreement sets forth the entire agreement and supersedes any and all prior agreements of the Parties with respect to the subject matter hereof.

f. No Specified Third-Party Beneficiaries. Except as otherwise specifically provided in this Agreement, there are no third-party beneficiaries of this Agreement, and nothing contained in this Agreement is intended to confer any right or interest on anyone other than the

Parties, their respective successors, assigns and legal representatives, and the third-party beneficiaries, if any, specifically identified in this Agreement.

g. Amendment. No change, amendment or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by both Parties.

h. Implementation. Each Party shall take such action (including, but not limited to, the execution, acknowledgement and delivery of documents) as may reasonably be requested by the other Party for the implementation or continuing performance of this Agreement.

i. Invalid Provision. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted; and to this end the terms and provisions of this Agreement are agreed to be severable.

j. Applicable Law. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Texas, except to the extent such laws may be preempted by the laws of the United States of America, and without regard for conflicts of law principles.

k. Venue. The venue of any litigation arising out of this Agreement shall be in Harris County, State of Texas, or such other place as the Parties may agree in writing.

l. Disputes Resolution**.**

i. Binding. Prior to either Party's right to claim that the other Party has defaulted or otherwise breached any obligation or other provision of this Agreement, the Parties shall first attempt to resolve the potential claim of default or breach in accordance with this subparagraph (l). Failure to adhere to this subparagraph (l) shall constitute a waiver of any right, remedy or relief provided by this Agreement to otherwise accrue as a result of such default or breach.

ii. Process. In the event either Party notifies the other Party of a dispute of any kind ("**Dispute**"), the disputing Party shall notify the other Party in writing that a Dispute exists, specifying the nature and extent of the Dispute (the "**Dispute Notice**"). The Parties shall then make a good faith attempt to resolve the Dispute within thirty (30) days after the date of receipt of the Dispute Notice by the non-disputing Party, which Dispute resolution period may be extended by written agreement signed by the Parties ("**Dispute Resolution Period**"). During such attempted Dispute resolution, the Parties shall continue to proceed in good faith and diligently perform their respective obligations under this Agreement.

iii. Continuing Dispute. In the event the Dispute is not resolved within the Dispute Resolution Period, the disputing Party may then take such action in law or equity as the disputing Party deems appropriate, in its sole discretion, subject to the restrictions and limitations imposed by this Agreement; provided, however, that, because the Parties agree that the nature and subject matter of this Agreement are so unique City and Johnson County Power shall also have available the remedy for specific performance and/or mandatory injunctive relief requiring the Parties to continue to proceed in good faith and diligently perform their respective obligations under this Agreement, pending final non-appealable order or judgment.

m. Interpretation and Fair Construction of Contract. This Agreement has been reviewed and approved by each of the Parties. In the event it should be determined that any provision of this Agreement is uncertain or ambiguous, the language in all parts of this Agreement shall be in all cases construed as a whole according to its fair meaning and not strictly construed for or against either Party.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives all as of the Effective Date.

JOHNSON COUNTY POWER, LLC

By:_____

Name:
Title:
Date:

CITY OF CLEBURNE, JOHNSON COUNTY, TEXAS

By:_____

Name:
Title:
Date:

EXHIBITS

1. Exhibit "A" – Water Quality Requirements
2. Exhibit "B" – Delivery Point
3. Exhibit “C” – Rate Schedule

EXHIBIT C

Illustration of Phase-In Calculation of Rate over Transition Period

A. The following is an illustration of the phase-in of the Rate during the Transition Period.

The method of calculating the new monthly Transition Rate during the Transition Period, assumed over five (5) years, will result in the last payment of the fifth (5th) year being at the Rate.

B. Equation

IR = Interim Rate of Water of $0.3840 per one thousand (1,000) gallons

TR = Transition Rate of Water per one thousand (1,000) gallons

R = Rate as defined in Section 5(a)

CT = Contract Term remaining after the Interim Rate Period

C. Example (assumptions)

TRcurrent month = [(R – IR) / (CT*12)] + IR or TR previous month

Assumptions:

IRmonth0 = $0.3840/1,000 gallons

R = $0.96/1,000 gallons

CT = 5 years

Calculation (1st month of Transition Period):

Monthly increase: TRcurrent month = $0.012 / 1000 gallons increase each month

TRmonth1 = IRmonth0 + Monthly increase

TRmonth1 = $0.3840 + $0.012

TRmonth1 = $0.3960 / 1,000 gallons per month

In this revised example, the monthly increase is set at $0.012 per 1,000 gallons, and the Transition Rate for the first month (TRmonth1) is calculated by adding the monthly increase to the Interim Rate (IRmonth0), resulting in a Transition Rate of $0.3960 per 1,000 gallons for the first month.

EXHIBIT C (cont.)

Year	Month	Interim Rate	Calculated Increase for next month
1	1	0.3840	
	2	0.3960	0.012
	3	0.4080	0.012
	4	0.4200	0.012
	5	0.4320	0.012
	6	0.4440	0.012
	7	0.4560	0.012
	8	0.4680	0.012
	9	0.4800	0.012
	10	0.4920	0.012
	11	0.5040	0.012
	12	0.5160	0.012
2	13	0.5280	0.012
	14	0.5400	0.012
	15	0.5520	0.012
	16	0.5640	0.012
	17	0.5760	0.012
	18	0.5880	0.012
	19	0.6000	0.012
	20	0.6120	0.012
	21	0.6240	0.012
	22	0.6360	0.012
	23	0.6480	0.012
	24	0.6600	0.012
3	25	0.6720	0.012
	26	0.6840	0.012
	27	0.6960	0.012
	28	0.7080	0.012
	29	0.7200	0.012
	30	0.7320	0.012
	31	0.7440	0.012
	32	0.7560	0.012
	33	0.7680	0.012
	34	0.7800	0.012
	35	0.7920	0.012
	36	0.8040	0.012

Year	Month	Interim Rate	Calculated Increase for next month
4	37	0.8160	0.012
	38	0.8280	0.012
	39	0.8400	0.012
	40	0.8520	0.012
	41	0.8640	0.012
	42	0.8760	0.012
	43	0.8880	0.012
	44	0.9000	0.012
	45	0.9120	0.012
	46	0.9240	0.012
	47	0.9360	0.012
	48	0.9480	0.012
5	49	0.9600	0.000
	50	0.9600	0.000
	51	0.9600	0.000
	52	0.9600	0.000
	53	0.9600	0.000
	54	0.9600	0.000
	55	0.9600	0.000
	56	0.9600	0.000
	57	0.9600	0.000
	58	0.9600	0.000
	59	0.9600	0.000
	60	0.9600	0.000

EXHIBIT H

October 2024 Proposed Contract

AGREEMENT FOR THE PURCHASE AND SALE OF EFFLUENT REUSE WATER

This **AGREEMENT FOR PURCHASE AND SALE OF EFFLUENT REUSE WATER**, (this "Agreement") dated the 1st day of October, 2024 ("Effective Date") is entered into by and between the **CITY OF CLEBURNE, JOHNSON COUNTY, TEXAS**, a municipal corporation organized under the laws of the State of Texas, hereinafter sometimes referred to as "City", and **JOHNSON COUNTY POWER, LLC**, a Texas limited liability company organized and existing under the laws of the State of Delaware, hereinafter sometimes referred to as "Johnson County Power". The City and Johnson County Power are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS:

WHEREAS, Johnson County Power operates a power generation plant and associated facilities in the Cleburne Industrial Park (the "Power Plant") within the boundaries of the City, and the Power Plant's operations require a substantial quantity of water for various internal Power Plant requirements, including cooling; and

WHEREAS, Johnson County Power acquired the Power Plant from Brazos Electric Power Cooperative, Inc. in 2023, subject to an amended and restated agreement for the City's sale of non-potable wastewater effluent reuse water to the Power Plant (the "Prior Reuse Water Agreement"), which expired in February 2024; and

WHEREAS, the Parties desire to establish a new multi-year contract in accordance with the terms and conditions set forth in this Agreement for the City's sale of effluent reuse water ("Reuse Water") to Johnson County Power and delivery for use at the Power Plant; and

WHEREAS, the Parties intend for this Agreement to supersede all prior agreements and understandings between the Parties for the sale and purchase and delivery of Reuse Water as of the Effective Date.

NOW, THEREFORE, subject to the terms and conditions of this Agreement, the Parties agree as follows:

1. **PURPOSE**. The purpose of this Agreement is to establish the terms and conditions for the City's sale of Reuse Water to Johnson County Power, LLC for use at the Power Plant for a multi-year term commencing on the Effective Date, and to define the Parties' contractual rights and obligations relative to the supply, delivery, and use of Reuse Water at the Power Plant during the Term of this Agreement, as hereafter defined.

2. **TERM OF AGREEMENT**. The initial term of this Agreement shall be for [five (5)] years, which shall commence on the Effective Date hereof and shall extend until 11:59 p.m. on the day before the fifth anniversary of the Effective Date (the "Initial Term"). Following the expiration of the Initial Term, this Agreement shall automatically renew for successive one (1) year periods (each, a "Renewal Term" and together with the Initial Term, the "Term"), unless Johnson County Power provides written notice to the City of its intention not to renew the Agreement at least ninety (90) days prior to the expiration of the then-current Term or unless earlier terminated in accordance with the provisions of Section 14.

3. **OBLIGATIONS OF THE CITY**. The City agrees to undertake the following obligations:

   a. Reuse Water Facilities O&M. The City shall continually own, maintain and operate the Reuse Water Facilities during the Term of this Agreement. The term "Reuse Water Facilities" means all facilities necessary to provide, transport, deliver and measure Reuse Water to Johnson County Power at the Delivery Point in the amounts specified in Section 3(b), including the facilities necessary to store approximately one million (1,000,000) gallons of Reuse Water adjacent to the Power Plant on land owned by the City. The City shall operate and maintain the Reuse Water Facilities in good working order and condition and conduct all operations and maintenance of the Reuse Water Facilities in a manner that is consistent with the standards set forth in Section 3(c), and shall make all necessary repairs, replacements, and upgrades to ensure the reliable and uninterrupted delivery of Reuse Water to the Power Plant.

   b. Power Plant Reuse Water Full Requirements Supply and Delivery. Subject to the terms of Section 7(b)(iii), at all times during the Term of this Agreement, the City will deliver to the Delivery Point and sell to Johnson County Power its full requirements for Reuse Water required for Johnson County Power's operations at the Power Plant ("Full Requirements"); provided, however, under no circumstances shall the City's Reuse Water supply and delivery obligation in any 24-hour period exceed [_____] gallons. Reuse Water delivered to the Delivery Point shall be of a quality that meets or exceeds the requirements specified on Exhibit "A" attached hereto. The City shall regularly test the Reuse Water to ensure compliance with such quality requirements and shall promptly remedy any non-compliance. To the extent that the City is unable to supply and deliver Johnson County Power's Full Requirements for its operations at the Power Plant, the City may supplement any deficiency in the amount of Reuse Water with potable treated water from any of the City's water treatment facilities ("Supplemental Water"), and the rates paid by Johnson County Power for any such Supplemental Water shall be in accordance with Section 5(a).

   c. Standards of Performance. The City shall continually operate and maintain the Reuse Water Facilities in a manner consistent with:

      i. the terms and provisions of this Agreement;

      ii. the plans and specifications of the Reuse Water Facilities;

      iii. industry best practices; and

      iv. all applicable laws, statutes, regulations and codes.

   d. Planned O&M. The City shall provide Johnson County Power with reasonable advance notice of any planned maintenance, repairs, or upgrades that may interrupt or limit the delivery of Reuse Water, and shall use commercially reasonable efforts to minimize any such interruptions or limitations and to coordinate the timing of such planned outages with Johnson County Power. In the event of any unplanned interruption or limitation in the amount of Reuse Water available for delivery to Johnson County Power, the City shall promptly notify Johnson County Power and shall use all reasonable efforts to restore delivery of Reuse Water as soon as possible.

4. **DELIVERY POINT AND METERING**.

a. Delivery Point. The Delivery Point shall be at the convergence of the property line and the twelve-inch (12") HDPE Reclaimed Water Main located generally southwest and downstream of the City's existing approximately one (1) million-gallon tank (as shown in Exhibit "B"). Johnson County Power will bear the responsibility for maintaining the quality of the Reuse Water following receipt by Johnson County Power of Water at the Delivery Point, provided that the Water meets the quality requirements specified in Exhibit "A" at the Delivery Point.

b. Metering. The City shall own and continually operate and maintain, test, calibrate and adjust metering equipment located at the Delivery Point. The metering equipment shall provide accurate and continuous measurements and separate recording of the quantity of each of the Reuse Water and Supplemental Water delivered by the City to the Delivery Point, and the City shall provide Johnson County Power with real-time access to such measurements and recordings through a secure online portal or other mutually agreeable method. The metering equipment shall be tested for accuracy at least once annually in accordance with the standards for testing cold water meters as prescribed by the American Water Works Association. Acceptable accuracy shall be within plus or minus one percent (1%) of any given rate of flow within the turndown range of the meter for fluid velocities greater than one foot per second (1.0 fps). If such metering equipment is found to be in error by more than one percent (1%), then the City shall promptly adjust the metering equipment to record accurately and shall adjust the subsequent invoice as a result of such error during the period affected by such error, up to a maximum of twelve (12) months. The City and Johnson County Power shall each have the right to have a representative present at the time of any such testing. Additional testing of the meter, beyond the annual inspection, shall be performed at the request and expense of Johnson County Power.

c. Technical Audit Rights. Each of the Parties shall have, upon reasonable notice of five (5) business days, the ongoing right to have their respective representatives examine and audit the other Party's records concerning the quantities and quality of both the Reuse Water and Supplemental Water (including test records performed on the metering equipment and the test results for Reuse Water and Supplemental Water) delivered by the City to Johnson County Power at the Delivery Point. The City shall maintain such records during the Term of this Agreement and for at least an additional [two (2)] years following the expiration or termination of this Agreement.

d. TCEQ Filings. The City shall provide Johnson County Power a copy of all regulatory chemical analysis reports submitted by or on behalf of the City to the Texas Commission on Environmental Quality ("TCEQ") or its successor for deliveries made during the Term. In the event Johnson County Power desires a more comprehensive chemical analysis of the Water delivered to the Delivery Point, the City shall promptly perform such analysis at Johnson County Power's expense and provide the results to Johnson County Power.

e. Emergencies. The City shall immediately notify Johnson County Power's Designated Representative (as identified in Section 15(a) of this Agreement) of any emergency or condition of which the City knows or reasonably should know which may affect the quality or quantity of Reuse Water or Supplemental Water in their system.

5. **RATES, INVOICING AND PAYMENT**. The City shall render an invoice to Johnson County Power on or about the tenth (10th) day of each month for Reuse Water and Supplemental Water delivered to the Delivery Point during the previous calendar month in an amount equal to the Rate, as defined in Section 5(a), all in accordance with the provisions of Sections 5(b), (c), (d), (e), (f) and (g).

    a. Rate. For each month during the Term, the City will invoice and Johnson County Power will pay to the City a base rate of [$0.36/1,000 gallons] for Reuse Water and Supplemental Water delivered to the Delivery Point during the previous month of the Term, adjusted, as follows (the "Rate"): During the Term the Parties agree that the Rate in this Section 5(a) shall be expressed as a rate in US dollars per one thousand gallons of water, and the annual adjustment will be applied on each anniversary of the Effective Date proportional to the fourth quarter (current year) to fourth quarter (prior year) percentage change in the national Consumer Price Index (CPI) published by the United States Department of Labor, Bureau of Labor Statistics. An illustration of the calculation of the annual adjustment in the Rate during the Term is set forth on Exhibit "C", attached hereto. The Parties agree that the Rate set forth herein as mutually agreed by the Parties during the Term of this Agreement supersedes any general rate set by City ordinance.]

    b. Supplemental Water Rate. To the extent that the City is unable to provide Johnson County Power's Full Requirements for Reuse Water in any month during the Term, the City will charge Johnson County Power for such Supplemental Water at the same Rate for Reuse Water; provided, however, for any Supplemental Water provided in excess of the Full Requirements 24-hour period limitation set forth in Section 3(b), Johnson County Power shall pay for such excess Supplemental Water at the then-current tariffed City rate for potable treated water.

    c. Invoicing. On or about the tenth (10th) of each calendar month, beginning with the second (2nd) month after the Effective Date, City shall email and mail or personally deliver to Johnson County Power's Designated Representative an invoice (the "City's Invoice") for amounts due to City for Reuse Water and Supplemental Water delivered to the Delivery Point during the previous month. The City's Invoice shall state the quantity of Reuse Water and the quantity of Supplemental Water delivered to the Delivery Point during the period covered by the City's Invoice, the Rate appliable to each, the specific time periods and consumption levels during which the City charged the Supplemental Water Rate at the tariffed City rate for potable treated water as set forth in Section 5(b) (if applicable), the total amount due to the City, and any additional information reasonably requested by Johnson County Power to determine the accuracy of the City's Invoice. The remittance address shall be such address as may be reflected on the City's Invoice from time to time.

    d. Payment. Johnson County Power shall pay the undisputed portion of the amount indicated on the City's Invoice within thirty (30) days after receipt. Johnson County Power may dispute any portion of the City's Invoice by providing written notice to the City within fifteen (15) days of receipt of the City's Invoice, specifying in detail the basis for the dispute. The City shall promptly provide any additional documentation or information reasonably requested by Johnson County Power to resolve the dispute. Any disputed amounts shall be paid within fifteen (15) days of resolution of the dispute. Any refund of an amount paid by Johnson County Power shall bear interest at the Interest Rate (hereinafter defined in Section 5(f)) from the date of payment until the date of the refund.

e. Disputed Invoices. In the event an error is discovered with respect to any City Invoice, or with respect to any payment made pursuant to any invoice, such error shall be adjusted within thirty (30) days following the discovery of the error.

f. Interest on Late Payments. Any monthly invoice which is not paid when due (unless subject to a good faith dispute under Section 5(e)) shall bear interest from the due date until paid at the Interest Rate in effect on the first business day of each calendar month in which interest accrues under this Agreement. The term "Interest Rate" shall mean a rate equal to the lesser of (i) the maximum rate of interest permitted by law, and (ii) the Wall Street Journal Prime Rate (the lowest of the benchmark rates of interest identified as the Prime or Base rate for commercial lending in the Wall Street Journal) as published on the date of the invoice that has gone unpaid (or the first day of publication thereafter).

g. Payment Audit Rights. The City shall permit Johnson County Power or its designated representative to examine, audit and copy, at Johnson County Power's expense, all of the City's records and information necessary to confirm the accuracy of any invoices submitted pursuant to this Section 5. Such examination and audit rights may be exercised at any time during the Term and for a period of two (2) years thereafter.

6. **OTHER USERS.** The Parties recognize that the City may have other customers desiring to purchase reuse or effluent water from the City's wastewater treatment facility and the City shall have the right to provide same to such other customers, subject to the following conditions:

a. Power Plant Priority. The City shall at all times prioritize its obligations to provide Reuse Water to Johnson County Power under this Agreement, and shall not enter into any agreements or commitments with other customers that could reasonably be expected to impair or limit the City's ability to meet its Full Requirements obligations hereunder;

b. Prior Notice of Additional Sales. The City shall provide Johnson County Power with written notice of any proposed sale of reuse or effluent water to other customers, including the terms and conditions of such proposed sale, at least sixty (60) days prior to entering into any binding agreement for such sale; and

c. Discriminatory Terms and Rates Prohibited. The City shall not sell Reuse Water to other customers at rates lower than the Rate charged to Johnson County Power under this Agreement or on terms and conditions more favorable to any new customer.

7. CONTINUITY OF SERVICE.

a. Interruptions for Necessary Scheduled Maintenance. Upon receipt by Johnson County Power from City of written notice received by Johnson County Power ("Notice of Interruption") at least sixty (60) days prior to any scheduled suspension, interruption, delay, reduction or other interference of delivery of Reuse Water to the Delivery Point (an "Interruption"), the City may temporarily Interrupt the delivery of Reuse Water to the Delivery Point for a period not to exceed twenty-four (24) hours to correct the reason for the Interruption. Whenever possible, a proposed Interruption shall be scheduled during a shut-down of the Power Plant, and the City shall use all reasonable efforts to accommodate Johnson County Power's schedule. The Notice of Interruption shall specify the duration and extent of the proposed Interruption in the delivery of Reuse Water to the Delivery Point and the reason therefor. In the event the Reuse Water supply has not been restored within

two (2) hours after twenty-four (24) hours from the initial Interruption has elapsed, then the City will deliver Supplemental Water to the existing potable treated water point of service in place of the Reuse Water at the same Rate to allow Johnson County Power to have uninterrupted water service to the Power Plant in the quantities set forth in Section 3(b) of this Agreement, until the Reuse Water service is restored. The City's obligation to deliver Supplemental Water to Johnson County Power in place of the Reuse Water shall continue until the Reuse Water service is fully restored, regardless of the duration of the Interruption.

b. Interruption Due to Uncontrollable Force.

i. Excusable Interruptions and Replacement Water. If the delivery of Reuse Water to the Delivery Point is Interrupted as a result of an Excusable Interruption (as hereinafter defined), then during the Excusable Interruption the City shall not be obligated to deliver Reuse Water to Johnson County Power at the Delivery Point. However, the City will provide Supplemental Water to Johnson County Power at the existing potable treated water point of service in place of the Reuse Water at the Rate set forth herein to allow Johnson County Power to have uninterrupted water service to the Power Plant until the Reuse Water service is restored, regardless of the duration of the Excusable Interruption.

ii. Excusable Interruptions Defined. The term "Excusable Interruption" means acts of God; flood; earthquake; storm or other natural calamity; war; insurrection; riot; explosions or fires; curtailment, order, regulation or restriction imposed by state or federal governmental authority; sabotage; terrorism; or any other cause beyond the reasonable control of the City. Excusable Interruption shall not include equipment failures, labor disputes, financial difficulties, or other causes within the City's reasonable control.

iii. Suspension of Obligations. In the event that either Party is rendered unable, wholly or in part, by Excusable Interruption, to carry out its obligations under this Agreement, except for those obligations requiring the payment of money, and if such Party gives notice stating the reasons therefor to the other Party as soon as practicable after the occurrence being claimed as an Excusable Interruption then, insofar as and to the extent and for such reasonable time that such obligations are so affected (not including those obligations requiring the payment of money) by the Excusable Interruption, the performance obligations of such Party shall be suspended. The suspension of the Party's performance obligations shall be for no longer period and to no greater extent than that necessary to cause such inability to be remedied with all reasonable dispatch.

iv. Interruption Due to Minimum Supply and Flow Requirement. The City shall not be obligated to deliver Reuse Water to the Delivery Point for the period of time during which doing so would make it reasonably impossible for the City to maintain a minimum flow of water as may be required by the City's State and Federal discharge permit(s) ("Minimum Supply and Flow Requirement"). During the period of time during which delivery of Reuse Water by the City to the Delivery Point would make it reasonably impossible for the City to maintain due to the Minimum Supply and Flow Requirement, the City will provide Supplemental

Water to Johnson County Power at the Delivery Point in place of the Reuse Water as set forth in Section 5(b) of this Agreement, to allow Johnson County Power to have uninterrupted water service to the Power Plant until the Reuse Water service is restored; provided, however, that the City's obligation to deliver to Johnson County Power potable treated water at the existing potable treated water point of service, in place of the delivery of Reuse Water to Johnson County Power at the Delivery Point at the same Rate as set forth in Section 5(b) of this Agreement, shall expire thirty (30) days after the start of the Interruption caused by the Minimum Supply and Flow Requirement. Thereafter, the City shall deliver potable treated water to Johnson County Power at the existing potable treated water point of service in place of the Reuse Water but at the tariffed rate generally applicable to such potable treated water.

8. **TAXES**.

a. Sales Taxes. The City shall be solely responsible for any and all sales, use, excise, value-added, gross receipts, or similar taxes, fees, or assessments imposed by any governmental authority on the sale, transportation, delivery, or use of Reuse Water under this Agreement, regardless of whether such taxes, fees, or assessments are imposed on the City or on Johnson County Power. To the greatest extent allowed by applicable law, the City shall indemnify, defend, and hold Johnson County Power harmless from any liability, cost, or expense (including attorneys' fees) arising from the City's failure to pay any such taxes, fees, or assessments.

b. Real and Personal Property Taxes. Each Party shall be responsible for its own real and personal property taxes and assessments imposed on such Party's respective property and facilities used in connection with this Agreement. However, to the extent that any real or personal property taxes or assessments are imposed on Johnson County Power's property or facilities as a result of the City's activities under this Agreement (including the transportation and delivery of Reuse Water to the Delivery Point and ownership or operation of the City's water tank storage facilities), the City shall promptly reimburse Johnson County Power for such taxes or assessments upon receipt of an invoice therefor.

c. Tax Indemnification Offset. In the event that Johnson County Power is assessed or held liable for any taxes, fees, or assessments that are the responsibility of the City under this Section, Johnson County Power shall have the right to offset such amounts (plus interest at the Interest Rate) against any payments due to the City under this Agreement until Johnson County Power is fully reimbursed.

9. **ASSIGNMENT AND DELEGATION**.

a. Generally. Except as otherwise provided herein, no right or interest in this Agreement shall be assigned by either Johnson County Power or the City without the written permission of the other Party, and no delegation of any obligation or of the performance of any obligation by either Johnson County Power or City shall be made without the prior written permission of the other Party, which permissions shall not unreasonably be denied, withheld or delayed. Any attempted assignment or delegation shall be void and ineffective for all purposes unless made in conformity with this Section 9.

b. Permitted Assignments. Johnson County Power may assign its rights and/or delegate its obligations to any subsidiary of Johnson County Power without the City's prior written permission, provided that no such assignment or delegation releases Johnson County Power from any of its obligations.

10. **RELEASE AND INDEMNITY**.

a. City Indemnification. To the greatest extent allowed by applicable law, the City agrees to release, defend, indemnify and hold harmless Johnson County Power, its affiliates, and their respective directors, officers, members, employees, agents and representatives (collectively "Johnson County Power Indemnitees") from and against any and all claims, actions, suits, losses, harm, liability, damages, costs and expenses, including, but not limited to, reasonable attorney's fees (collectively "Claims") arising out of or in connection with:

i. the negligent acts or omissions of the City or its council members, officers, employees, agents or representatives (collectively "City Representatives") in connection with this Agreement or the Reuse Water Facilities,

ii. any breach by the City of its obligations, representations or warranties under this Agreement, or

iii. any violation by the City of any applicable laws, regulations, permits or orders in connection with its performance under this Agreement, in each case regardless of any negligence or other fault of Johnson County Power Indemnitees.

The City's indemnification obligations under this Section 10(a) shall not be limited by any limitations on the amount or type of damages, compensation or benefits payable by or for the City under workers' compensation acts, disability benefit acts or other employee benefit acts.

b. Johnson County Power Indemnification. Johnson County Power agrees to release, defend, indemnify and hold harmless the City and City Representatives from and against any Claims to the extent arising out of the negligent acts or omissions of Johnson County Power or Johnson County Power Representatives in connection with this Agreement; provided, however, that Johnson County Power shall not be required to release, defend, indemnify or hold harmless the City or City Representatives from any portion of a Claim caused by or resulting from the negligence, breach or violation of the City or City Representatives as described in Section 10(a) above. Johnson County Power's indemnification obligations under this Section 10(b) shall be limited to the extent of Johnson County Power's relative degree of fault.

c. Survival. The indemnification obligations under this Section 10 shall survive the expiration or termination of this Agreement.

d. Third Party Claims. Nothing in this Agreement shall be construed to preclude either Party from pursuing any Claims against third parties. Each Party shall reasonably cooperate with the other Party in the defense of any third-party Claims.

e. Claims Indemnification Offset. In the event that Johnson County Power is assessed or held liable for any Claims or indemnity obligations that are the responsibility of the City under this Section, Johnson County Power shall have the right to offset such amounts (plus

interest at the Interest Rate) against any payments due to the City under this Agreement until Johnson County Power is fully reimbursed.

11. **REPRESENTATIONS AND WARRANTIES.**

a. Johnson County Power Representations and Warranties. Johnson County Power represents and warrants to the City that, as of the Effective Date and throughout the Term of this Agreement:

i. Johnson County Power is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and is duly qualified and authorized to do business in the State of Texas.

ii. The execution, delivery and performance of this Agreement by Johnson County Power have been duly authorized by all necessary limited liability company action and do not and will not require any further consents or approvals or violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Johnson County Power or the certificate of formation or limited liability company agreement of Johnson County Power.

iii. This Agreement constitutes a legal, valid and binding obligation of Johnson County Power, enforceable against Johnson County Power in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

b. City Representations and Warranties. The City represents and warrants to Johnson County Power that, as of the Effective Date and throughout the Term of this Agreement:

i. The City is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Texas and has the power and authority to own its properties and to carry on its business as presently conducted and as contemplated by this Agreement.

ii. The execution, delivery and performance of this Agreement by the City have been duly authorized by all necessary action of the City Council and do not and will not require any further consents or approvals or violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the City or the City's charter, ordinances or resolutions.

iii. This Agreement constitutes a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

iv. The City has lawful authority to sell and deliver Reuse Water to Johnson County Power at the Delivery Point as provided in this Agreement, and such sale and delivery will not conflict with or result in a breach of any agreement, contract or obligation to which the City is a party or by which it is bound.

v. The City has obtained or will obtain in a timely manner all permits, approvals, consents, and authorizations necessary for the City to perform its obligations under this Agreement. The City shall maintain all such permits, approvals, consents, and authorizations in full force and effect throughout the Term.

vi. The Water sold and delivered by the City to Johnson County Power under this Agreement shall meet or exceed all applicable quality standards and requirements, including without limitation the requirements set forth in Exhibit "A", and shall be fit for the purposes intended by Johnson County Power. The City shall regularly test the Reuse Water to confirm compliance with such standards and requirements and shall provide the test results to Johnson County Power upon request.

c. Materiality. The representations and warranties set forth in this Section 11 are material and have been relied upon by the Parties in entering into this Agreement. Each Party shall promptly notify the other Party in writing if any of its representations or warranties cease to be true and correct in all material respects during the Term.

12. LIMITATION OF LIABILITY

a. Waiver of Consequential Damages. Except as expressly provided in Section 12(b), neither Party shall be liable to the other Party for any special, punitive, exemplary, incidental, indirect, or consequential damages arising out of or in connection with this Agreement, whether based on contract, tort, strict liability, or otherwise, including without limitation loss of profits or revenues, cost of capital, loss of goodwill, loss of use, or claims of customers, in each case even if such Party has been advised of the possibility of such damages.

b. Exceptions. Notwithstanding Section 12(a), the limitations of liability set forth therein shall not apply to:

i. The City's indemnification obligations under Section 10(a) with respect to third-party Claims;

ii. The City's liability for any damages, losses, costs or expenses incurred by Johnson County Power arising out of or resulting from

A. the City's gross negligence or willful misconduct,

B. the City's intentional breach of this Agreement, or

C. the City's failure to deliver Reuse Water in accordance with the quantity, quality and other requirements set forth in this Agreement;

iii. Either Party's obligation to pay amounts expressly due and owing under this Agreement, including without limitation the City's obligation to refund amounts paid by Johnson County Power in the event of inaccurate metering or billing; or

iv. Either Party's liability for damages, losses, costs or expenses that are covered by insurance proceeds actually received by such Party (or that would have been received but for such Party's failure to maintain the insurance required under this Agreement).

c. Essential Basis of the Bargain. Each Party acknowledges and agrees that the limitations of liability set forth in this Section 12 are an essential basis of the bargain between the Parties and that the Parties would not have entered into this Agreement but for such limitations of

liability. The Parties further acknowledge and agree that the limitations of liability set forth in this Section 12 shall survive the expiration or termination of this Agreement.

13. WAIVER OF SUBROGATION.

a. [Address Insurance Coverage Requirements]

b. Subrogation. Each Party shall ensure that any policy of insurance which it carries as insurance against property damage or against general liability for property damage or bodily injury (including death) that may occur in connection with the maintenance or operation of the Reuse Water Facilities or the Power Plant water system or any electrical system used in conjunction therewith shall either name the other Party as additional insured, or include a waiver of insurer's rights of subrogation against the other Party, its successors and assigns, and the respective directors, officers, employees, agents and representatives of such other Party and its successors and assigns. Further, to the extent permitted by such policies of insurance, each Party shall waive such rights of subrogation. Notwithstanding the foregoing, nothing in this Section 13 shall affect the indemnity obligations of Section 10.

14. TERMINATION

a. For Material Breach. Either Party may terminate this Agreement upon written notice to the other Party if such other Party materially breaches any of its obligations under this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice from the non-breaching Party specifying the nature of the breach; provided, however, that if the breach is not reasonably capable of being cured within such 30-day period, the breaching Party shall have such additional time as may be reasonably necessary to cure the breach, not to exceed ninety (90) days in the aggregate, so long as the breaching Party commences the cure within the initial 30-day period and diligently prosecutes the cure to completion.

b. Process. Upon any termination of this Agreement, the City shall promptly refund to Johnson County Power any amounts prepaid by Johnson County Power for Reuse Water not delivered as of the effective date of termination. Johnson County Power shall also pay to the City, within thirty (30) days after its receipt of such invoice following termination, any other unpaid amounts due and owing to the City under this Agreement as of the effective date of termination, including any amounts owed pursuant to the resolution of billing disputes in accordance with Section 5. The City's payment obligations under this Section 14(c) shall survive the termination of this Agreement.

c. No Liquidated Damages. Johnson County Power shall have no obligation to pay the City any termination fees, liquidated damages, or other amounts in connection with any termination of this Agreement, except for amounts due and owing for Reuse Water delivered by the City prior to the effective date of termination.

d. Survival. The termination of this Agreement shall not relieve either Party of any liabilities or obligations arising prior to the effective date of termination, except as expressly provided herein. The applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to provide for final billing, billing adjustments and payments, and the resolution of any billing disputes. Sections 10, 12, 14, and 15, and any other provisions that by their nature are intended to survive, shall also survive the termination of this Agreement.

15. MISCELLANEOUS PROVISIONS.

a. Notices. Except as otherwise provided in this Section, any notice, request, authorization, invoice, payment, direction or other communication as allowed or required under this Agreement shall be given in writing and be delivered in person or by first class United States certified mail, properly addressed, return receipt requested with the required postage prepaid, to the intended recipient as follows:

JOHNSON COUNTY POWER, LLC
ATTN: (Designated Representative)
[Address]
[City, State Zip]
Phone: [Phone Number]
Email: [Email Address]

CITY OF CLEBURNE, TEXAS
ATTN: (Designated Representative) City Manager
10 North Robinson Street
Cleburne, Texas 76033
Phone: (817) 645-0905
Email: [Email Address]

Invoices may be sent by email as set forth herein and invoices and related payments may be sent by regular first-class United States mail and are not subject to the requirement of being sent by certified mail. Invoices and payments may be sent to an address different from the above, as may be specified upon thirty (30) days advance notice from time to time by the receiving Party. Such Party shall provide notice of its desired mailing address for invoices or payments as appropriate if different from the above address. Either Party may change its address or Designated Representative specified above by giving the other Party reasonable notice of such change in accordance with this Section. All notices, requests and authorization of directions or other communications by a Party shall be deemed delivered when mailed as provided in this Section or personally delivered to the other Party.

b. Governmental Authority. This Agreement is subject to the generally applicable rules, regulations, orders and other requirements, now or hereafter in effect, of all governmental authorities having jurisdiction over this Agreement, the Parties or either of them.

c. No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, nor to impose any partnership obligations or liability on either Party. Furthermore, neither Party shall have any right, power or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of or to otherwise bind the other Party.

d. Nonwaiver. The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.

e. Entire Agreement. This Agreement sets forth the entire agreement and supersedes any and all prior agreements of the Parties with respect to the subject matter hereof.

f. No Specified Third-Party Beneficiaries. Except as otherwise specifically provided in this Agreement, there are no third-party beneficiaries of this Agreement, and nothing contained

in this Agreement is intended to confer any right or interest on anyone other than the Parties, their respective successors, assigns and legal representatives, and the third-party beneficiaries, if any, specifically identified in this Agreement.

g. Amendment. No change, amendment or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by both Parties.

h. Implementation. Each Party shall take such action (including, but not limited to, the execution, acknowledgement and delivery of documents) as may reasonably be requested by the other Party for the implementation or continuing performance of this Agreement.

i. Invalid Provision. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted; and to this end the terms and provisions of this Agreement are agreed to be severable.

j. Applicable Law. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Texas, except to the extent such laws may be preempted by the laws of the United States of America, and without regard for conflicts of law principles.

k. Venue. The venue of any litigation arising out of this Agreement shall be in state or federal courts in Johnson County, State of Texas, or such other place as the Parties may agree in writing.

l. Dispute Resolution**.**

i. Binding. Prior to either Party's right to claim that the other Party has defaulted or otherwise breached any obligation or other provision of this Agreement, the Parties shall first attempt to resolve the potential claim of default or breach in accordance with this Section 15(l). A party must exhaust the procedures set forth in this Section 15(l) prior to invoking any other right, remedy or relief provided by this Agreement to otherwise accrue as a result of such default or breach.

ii. Process. In the event either Party notifies the other Party of a dispute of any kind ("Dispute"), the disputing Party shall notify the other Party in writing that a Dispute exists, specifying the nature and extent of the Dispute (the "Dispute Notice"). The Parties shall then make a good faith attempt to resolve the Dispute within thirty (30) days after the date of receipt of the Dispute Notice by the non-disputing Party, which Dispute resolution period may be extended by written agreement signed by the Parties (the "Dispute Resolution Period"). During such attempted Dispute resolution, the Parties shall continue to proceed in good faith and diligently perform their respective obligations under this Agreement.

iii. Continuing Dispute. In the event the Dispute is not resolved within the Dispute Resolution Period, the disputing Party may then take such action in law or equity as the disputing Party deems appropriate, in its sole discretion, subject to the restrictions and limitations imposed by this Agreement; provided, however, that, because the Parties agree that the nature and subject matter of this Agreement are so unique, City and Johnson County Power shall also have available the remedy for specific performance and/or mandatory injunctive relief requiring the Parties to continue to proceed in good faith and diligently perform their respective obligations under this Agreement, pending final non-appealable order or judgment.

m. Interpretation and Fair Construction of Contract. This Agreement has been jointly drafted, reviewed and approved by each of the Parties. In the event it should be determined that any provision of this Agreement is uncertain or ambiguous, the language in all parts of this Agreement shall be in all cases construed as a whole according to its fair meaning and not strictly construed for or against either Party.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives all as of the Effective Date.

JOHNSON COUNTY POWER, LLC

By:_____

Name:
Title:
Date:

CITY OF CLEBURNE, JOHNSON COUNTY, TEXAS

By:_____

Name:
Title:
Date:

EXHIBITS

1. Exhibit "A" – Reuse Water Quality Requirements
2. Exhibit "B" – Delivery Point
3. Exhibit "C" – Annual Rate Adjustment Calculation

TCEQ DOCKET NO. 2025-0521-WR

PETITION OF JOHNSON COUNTY POWER, LLC FOR REVIEW OF UNREASONABLE WATER RATES CHARGED BY THE CITY OF CLEBURNE, TEXAS	**§**	**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

CITY OF CLEBURNE'S RESPONSE TO PETITION AND MOTION TO DISMISS

COMES NOW, the City of Cleburne, Texas ("City"), by and through its undersigned attorneys of record, and files this Response to Petition and Motion to Dismiss ("Motion") in response to the Petition filed by Johnson County Power, LLC ("Petitioner" or "JCP") requesting review of reclaimed water rates charged by the City, and would respectfully show the following:

I. BACKGROUND & PROCEDURAL HISTORY

On March 21, 2025, Petitioner filed a petition under Texas Water Code Section 11.041, alleging that the City failed or refused to supply water which Petition is entitled to receive at rates that are reasonable and just. As noted by Petitioners, the water at issue in this matter is not potable drinking water but instead reclaimed, non-potable, stored or conserved cooling water previously supplied to Petitioner and its predecessors through agreements with the City, and currently the subject of ongoing contract negotiations with the City.[1] On September 11, 2007, the City Council established a codified reclaimed water rate by passing Am. Ord. 09-2007-46, amending the City's Ordinance § 51.030 relating to rates.[2] When Petitioner purchased the plant from its predecessor in June 2023, Petitioner assumed the obligations under a 2023 agreement between the previous plant operator and the City regarding reclaimed water, which included provisions to transition Petitioner's predecessor from its original reclaimed water rate to the 2007 Ordinance rate by monthly increases in rates assessed on reclaimed water usage.[3] Following the expiration of the 2023 transitional agreement, the City has invoiced, and JCP has paid, the 2007 Ordinance rate for reclaimed water. Despite ongoing negotiations to enter into a new agreement for reclaimed water usage, JCP filed its Petition initiating these proceedings.

[1] Petition, 1-2.
[2] City of Cleburn Ordinance § 51.030.
[3] Petition, 4.

II. RESPONSE TO PETITION & MOTION TO DISMISS

The City objects to TCEQ and the State Office of Administrative Hearings ("SOAH") taking jurisdiction of the Petition because Texas Water Code Section 11.041 does not apply to reclaimed water. A user, such as Petitioner, does not have a right to demand a reclaimed water supply under Section 11.041. Nor does TCEQ have the authority to hear an appeal of rates set for reclaimed water under 11.041. For the reasons set forth below, the Commission should dismiss the petition for lack of jurisdiction, or in the alternative, refer the limited issue of jurisdiction to SOAH.

1. The Petition is about reclaimed water, the direct non-potable reuse of the City's wastewater effluent subject to Title 30, Texas Administrative Code, Chapter 210

On the face of its Petition, JCP complains of the City's rate for "reclaimed, non-potable" water that JCP describes as "wastewater that has been treated by Cleburne's wastewater treatment plant" and delivered to JCP for use as cooling water for JCP's natural gas fired power plant.[4] The treatment, use, and disposal of wastewater as described in the Petition is regulated by TCEQ pursuant to its authority under the Texas Water Code Chapters 5 and 26 and Title 30, Chapter 210 of the Texas Administrative Code.[5] Chapter 210 defines reclaimed water as "domestic or municipal *wastewater* which has been treated to a quality suitable for a beneficial use…"[6]; and the term "beneficial use" for the purposes of reclaimed water is further defined as "[a]n economic use of *wastewater* in accordance with the purposes, applicable requirements, and quality criteria of this chapter, and *which takes the place of potable and/or raw water* that could otherwise be needed from another source."[7] Thus, the reclaimed water service, as described in the Petition, is an alternative to the provision of potable and/or raw water. It is the delivery of treated wastewater generated at the City's wastewater treatment plant and piped directly to the power plant. As required by Chapter 210, the City has received authorization from the TCEQ Executive Director to produce and deliver reclaimed water.[8]

2. Section 11.041 does not apply to reclaimed water

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[4] Petition, 1-2

[5] Tex. Water Code §§ 5.102, 5.103, and 26.011 (empowers TCEQ to "establish the level of quality to be maintained in, and shall control the quality of, the water in this state…" and providing that "waste discharges or impending waste discharges covered by the provisions of this chapter are subject to reasonable rules … in the public interest). 30 Tex. Admin. Code, Chapter 210 (Use of Reclaimed Water).

[6] 30 Tex. Admin. Code §210.3(25) emphasis added.

[7] 30 Tex. Admin. Code § 210.3(2) emphasis added.

[8] *See* Attachment A.

JCP cites to no statutory provision that grants TCEQ appellate jurisdiction over the rates set by a municipality for reclaimed water. Rather, JCP attempts to fit its complaint into the framework of Chapter 11 of the Texas Water Code governing the administration of surface water rights supporting raw water supplies. Section 11.041 allows any "person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir or lake or from any conserved or stored supply" to file a petition with the Commission complaining of a water supplier's failure to provide a supply of such water and/or the price of such water.[9] However, there is nothing in the language or context of Chapter 11 that would extend the scope of 11.041 to reclaimed water (wastewater put to a beneficial use as an alternative to a raw or potable water supply).

It is well-settled that the statutory origins of 11.041 are found in the Irrigation Act of 1913 and that the statute has been recognized by reviewing courts as extending to municipal wholesale potable water supply disputes.[10] In those cases, reviewing courts have recognized that it is appropriate for TCEQ to exercise power under 11.041 to review rates for raw or potable water where (1) the water supplier holds permits to appropriate state water under Chapter 11, and (2) it is alleged the supplier holds a monopoly-like power over the source of supply. In *City of San Antonio v. Texas Water Comm'n*, the Texas Supreme Court responded to the City of San Antonio's objection to the issuance of a competing water right to Guadalupe Blanco River Authority ("GBRA") by observing that San Antonio could avail itself of the petition process under 11.041 should GBRA refuse to provide water to the San Antonio at a reasonable price.[11] In *Texas Water Rights Commission v. City of Dallas*, the Austin Court of Appeals relied on the observation made by the Texas Supreme Court in *City of San Antonio v. Tex. Water Comm'n* and confirmed the jurisdiction of the Commission's predecessor agency in a dispute between Dallas and two of its wholesale potable water customers, again focusing on Dallas' duties as a water rights holder.[12]

The facts in these cases are not analogous to those raised by the Petition. The City continues to make a potable supply of water available to JCP at rates that are not in dispute. Rather,

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[9] Tex. Water Code §11.041.

[10] Acts 1913, 33rd Leg., ch. 171, p.358; *Texas Water Rights Comm'n v. City of Dallas*, 591 S.W.2d 609, 612 (Tex. Civ. App—Austin, 1979); (writ refused n.r.e).

[11] *San Antonio v. Texas Water Comm'n*, 407 S.W.2d 752, 768 (Tex. 1966).

[12] *Texas Water Rights Comm'n v. City of Dallas*, 591 S.W.2d 609, 612 (Tex. Civ. App—Austin, 1979); (writ refused n.r.e). Although the Texas Supreme Court has held that the TCEQ's predecessor agency had jurisdiction to consider a wholesale water supply rate dispute regardless of whether the supplier was an appropriator, this holding was based on the Court's interpretation of a different statutory provision, Texas Water Code § 12.013(a). *Tex. Water Comm'n v Brushy Creek Mun. Util. Dist*. 917 S.W.2d 19, 22 (Tex. 1996). Jurisdiction over water rate appeals under Texas Water Code § 12.013 have since been transferred by the Texas Legislature to the Public Utility Commission of Texas, and Texas Water Code § 12.013 is not raised in this Petition. Acts 2013, 83rd Leg., Chapter 170 (H.B.1600) §2.07.

JCP complains of the price set by the City for reclaimed water, which is an *alternative* supply of treated *wastewater* made available to JCP at the City's discretion. In fact, Cleburne's water rights expressly contemplate the City's discretion in managing the use of its treated wastewater effluent by authorizing diversion of return flows discharged from its wastewater treatment plant. As described in the Petition, the City's Certificate of Adjudication 12-4106C allows the City to divert up to 8,400 acre-feet of existing and future return flows per year from its two outfalls associated with TPDES Permit. No. 10006-001, which is the same facility that is the source of reclaimed water described in the Petition.[13]

3. TCEQ should not accept jurisdiction of the Petition, or in the alternative, refer the limited issue of jurisdiction to SOAH

What JCP is asking is that the Commission stretch 11.041 beyond current precedent to review rates set by a municipality for reclaimed water, which would imply a duty by the City to provide reclaimed water through a direct potable reuse project in the absence of a contract for such service. No such duty exists under statute or case law. JCP and its predecessor entities enjoyed a favorable rate for the City's production and delivery of reclaimed water for approximately 30 years. However, those contracts have expired.[14] The City is free to determine whether to continue with the delivery of reclaimed water through a direct reuse project to JCP or use the effluent to augment other water supply needs as contemplated by the authorization in its water rights for diversion based on its return flows. While the City continues to provide water service to JCP, it is under no duty or obligation to deliver *reclaimed* water. The policy considerations discussed in the relevant cases interpreting 11.041 are not applicable under these facts, and the Commission should dismiss the petition for lack of jurisdiction. In the alternative, any referral to SOAH should be limited to the ALJ's consideration of and recommendation on the Commission's jurisdiction to consider a complaint regarding the delivery of an alternative supply of reclaimed water under Section 11.041.

4. The City denies JCP's allegations that the rate set by City ordinance for reclaimed water is not "reasonable and just."

Section VII of the Petition includes several pages of arguments on the merits as to why the City's current reclaimed water rate is not "reasonable and just." For the purposes of this Response,

[13] *See* Petition, 8 (and attached copy of Certificate of Adjudication 12-4106C in Attachment A).
[14] Petition, 4.

the City denies these allegations, reserves its right to make detailed responses to these allegations, if necessary, over its jurisdictional objection, and re-urges its request that the Commission dismiss the Petition for lack of jurisdiction for the reasons provided above.

III. CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, the City objects to TCEQ and SOAH taking jurisdiction of the Petition because Texas Water Code Section 11.041 does not apply to reclaimed water. A user does not have a right to demand a reclaimed water supply under Section 11.041. Nor does TCEQ have the authority to hear an appeal of rates set for reclaimed water under 11.041. For the reasons set forth above, the Commission should dismiss the petition for lack of jurisdiction, or in the alternative, refer to the limited issue of jurisdiction to SOAH. The City further requests any additional relief to which it may be entitled.

Respectfully submitted,

LLOYD GOSSELINK ROCHELLE & TOWNSEND, P.C.

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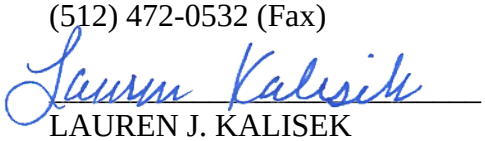

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ATTORNEYS FOR CITY OF CLEBURNE

CERTIFICATE OF SERVICE

I certify that on April 21, 2025, a true and correct copy of the City of Cleburne's Motion to Dismiss has been provided to all parties of record via electronic mail in accordance with applicable rules.

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Via e-file

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LAUREN J. KALISEK

Attachment A

Authorization No. R10006-001

AUTHORIZATION FOR RECLAIMED WATER

Producer: City of Cleburne
P.O. Box 657
Cleburne, Texas 76033-0657

Provider: City of Cleburne
P.O. Box 657
Cleburne, Texas 76033-0657

Users: The Permittee that the City of Cleburne, permitted as distributors and bulk users of the reclaimed water.

Location: The plant site is located approximately located on the north side of Buffalo Creek, approximately 1 mile southwest of the intersection of State Highway 174 and State Highway 171 in Johnson County, Texas.

Authorization: Reclaimed water from the City of Cleburne's Wastewater Treatment Plant (Permit No. 10006-001), to be used for cooling tower makeup water, process water for the owners and operators oil and gas wells, and irrigation of a municipal sports complex.

This authorization contained the conditions that apply for the uses of the reclaimed water.

Issued Date: March 4, 2005

Chris Linendoll, Manager
Wastewater Permitting Section
Water Quality Division

TCEQ DOCKET NO. 2025-0521-WR
SOAH DOCKET NO. 582-25-17419

PETITION OF JOHNSON COUNTY POWER, LLC FOR REVIEW OF UNREASONABLE WATER RATES CHARGED BY THE CITY OF CLEBURNE, TEXAS	**§**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

OPPOSITION TO CITY OF CLEBURNE'S RESPONSE TO PETITION AND MOTION TO DISMISS

Johnson County Power, LLC ("***Petitioner***" or "***Johnson County Power***") files this Opposition to the City of Cleburne's Response to Petition and Motion to Dismiss ("***Motion***"). In support, Petitioner respectfully shows as follows:

I. Introduction and Summary

Johnson County Power initiated this proceeding under Texas Water Code §11.041 to review rates for stored or conserved water. *See* Original Petition Challenging Non-Potable Water Rates Under Texas Water Code §11.041 (the "***Petition***"). The Petition alleges that the City of Cleburne ("***Cleburne***") is charging unreasonable rates for "reclaimed, non-potable, stored or conserved cooling water" (the "***reuse water***") and asks the Texas Commission on Environmental Quality ("***TCEQ***") to review and set reasonable rates for the stored or conserved water. Petition at 1. The TCEQ's executive director completed its initial review on March 31, 2025, and found that the Petition meets the requirements of the TCEQ's rules, and requested the Petition be referred to the State Office of Administrative Hearings ("***SOAH***"). *See* March 31, 2025 *Texas Commission on Environmental Quality Interoffice Memorandum* (the "Initial Review Memo").

In its Motion filed with TCEQ ***three weeks after*** the initial review was completed, Cleburne now contends that the TCEQ lacks jurisdiction.

First, Cleburne's Motion is moot and procedurally improper. The TCEQ executive director has already determined that the Petition is sufficient, and forwarded the request to SOAH pursuant to mandatory procedural rules. 30 Tex. Admin. Code §291.131. Cleburne filed its Motion with the TCEQ only at 1:12 pm CT on April 21, 2025. The TCEQ filed a Request to Docket with SOAH on April 21, 2025 at 5:09 pm CT, which was accepted on April 22, 2025. *See* SOAH Docket No. 582-25-17419.[1] The Motion is untimely and should be denied.

Second, Cleburne admits in its Motion that the water at issue is "stored or conserved cooling water." Motion at 1. That admission should resolve the Motion because Water Code §11.041 explicitly authorizes the TCEQ to review rates for any "conserved or stored" water (and Cleburne does not object to jurisdiction on any other basis). Nonetheless, Cleburne argues that Water Code §11.041 does not apply to "reclaimed water," Motion at 2. Cleburne does not identify any textual basis for that exception, and instead appears to be adding words to the statute. But statutes must be interpreted as written, and the Legislature did not include any exceptions for "reclaimed water" in Water Code §11.041.

Moreover, the central thesis of Cleburne's argument is that Cleburne can charge water customers whatever rates it wishes for conserved or stored water that is reclaimed, and deprive customers of service for that water for any reason. Motion at 3-4. Cleburne contends that customers have no right to be served by stored or conserved water that is reclaimed, and Cleburne has full "discretion" over how to operate such water and can "determine whether to continue with the delivery of reclaimed water" in the future. Motion at 4. But Texas law has long recognized that water utilities must serve all customers, and at reasonable rates. *See Tex. Water Rights Comm'n v. City of Dallas*, 591 S.W.2d 609, 610 (Tex. App.—Austin 1979, writ ref'd n.r.e.). This stored or

[1] Johnson County Power has not yet received any notice of docketing at SOAH, but located the docket through a search for SOAH records on April 30, 2025.

conserved water is no less a public good, and Cleburne cannot avoid bedrock utility law with respect to such water. Water Code §11.041 is the mechanism the Legislature created to require water rights holders like Cleburne to provide water at reasonable rates, and the TCEQ has jurisdiction over this dispute.

II. The TCEQ has already forwarded the Petition to SOAH.

The Motion should be denied because it is moot and procedurally improper because the TCEQ has no discretion to grant a motion to dismiss a petition that has been forwarded to SOAH. The TCEQ's rules require the executive director to review a petition and "determine within ten days of the filing of the petition whether the petition" is complete. 30 Tex. Admin. Code §291.131. If the executive director determines in that period that the Petition "meet[s] the requirements," the "executive director *shall* forward the petition to the State Office of Administrative Hearings for an evidentiary hearing." 30 Tex. Admin. Code §291.131 (emphasis added). Similarly, Rule 291.130 requires that after the executive director completes a "preliminary investigation," and "determines that probable grounds exist for the complaint," the TCEQ "shall enter an order setting a time and place for a hearing on the petition[.]" 30 Tex. Admin. Code §291.130. The rules are mandatory, and require the Petition be forwarded to SOAH.

Here, the TCEQ's executive director completed the required preliminary review and properly referred the Petition to SOAH. Initial Review Memo at 2-3. The Initial Review Memo reports that the executive director completed the "preliminary review," "concluded that Johnson County Power's petition meets the requirements of 30 Tex. Admin. Code Section 291.129," and accordingly directed the "petition be referred to SOAH for a hearing[.]" Initial Review Memo at 2-3. Under both Rule 291.130 and 291.131, the TCEQ "shall," and in fact did, direct the Petition to be referred to SOAH. 30 Tex. Admin. Code §§291.130(d); 291.131. The TCEQ then forwarded the Petition to SOAH on April 21, 2025, and the Petition was accepted on April 22, 2025. The

TCEQ therefore has no discretion to re-evaluate its jurisdiction.[2] Cleburne's belated and procedurally improper Motion should be rejected.

III. The TCEQ has jurisdiction over this dispute regarding "conserved or stored" water under Water Code Section 11.041.

The TCEQ has jurisdiction over this rate dispute under Texas Water Code §11.041. Section 11.041 authorizes "any person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir, or lake or from any conserved or stored supply," to petition for review of the rates for such water. Tex. Water Code §11.041(a). Here, Cleburne acknowledges that the water is "stored or conserved cooling water." Motion at 1. The TCEQ has original jurisdiction over this dispute.

The TCEQ's jurisdiction is determined by statute, and is governed by rules of statutory construction. *Subaru of Am., Inc. v. David McDavid Nissan, Inc.*, 84 S.W.3d 212, 220 (Tex. 2002). When construing statutes, the presumption is that "the Legislature included words that it intended to include and omitted words it intended to omit." *Union Carbide Corp. v. Synatzske*, 438 S.W.3d 39, 52 (Tex. 2014). Statutory text should be given the "plain meaning of those words 'unless a different meaning is apparent from the context or the plain meaning leads to absurd or nonsensical results.'" *KMS Retail Rowlett, LP v. City of Rowlett*, 593 S.W.3d 175, 183 (Tex. 2019). Further, the words should be considered using "definitions the legislature has prescribed" as well as "any technical or particular meaning the words have acquired." *Id.* Here, the plain language of Section 11.041 provides the TCEQ with jurisdiction over this dispute.

[2] Cleburne only filed its Motion with the TCEQ, and has not presented that Motion to SOAH. The Motion is also ineffective and procedurally improper under the SOAH rules, as it was filed before SOAH acquired jurisdiction. 1 Tex. Admin. Code §155.51(d) (authorizing motions only "[a]fter SOAH acquires jurisdiction" of the case).

a. The water at issue is "conserved or stored" water.

The central jurisdictional inquiry is whether the water at issue is "conserved or stored." Tex. Water Code §11.041(a). Here, the water is both conserved and stored.

First, the reuse water is "conserved" in both the statutory and ordinary meanings of the word. *KMS Retail Rowlett*, 593 S.W.3d at 183. The statutory definition of "conserved water" includes "water saved by a holder of an existing permit, certified filing, or certificate of adjudication through practices, techniques, and technologies that would otherwise be irretrievably lost to all consumptive beneficial uses arising from storage, transportation, distribution, or application." Tex. Water Code §11.002(9). Reuse water meets that definition. The reuse water is "saved by a holder of an existing permit," (Cleburne, Motion Att. A—Authorization No. R10006-001) and the water is saved through "practices, techniques, and technologies," such as water filtration and treatment so that the water can be reused. Tex. Water Code §11.002(9). The TCEQ's definitions of "reclaimed water" reinforce that the water is "conserved" by defining reclaimed water as "domestic or municipal wastewater which has been treated to a quality suitable for a beneficial use." 30 Tex. Admin. Code §210.3(25). Reclaimed water fits the plain definition in the Water Code of water that is saved for other "beneficial uses." Tex. Water Code §11.002(9).

Likewise, the plain meaning of "conserve" reinforces that the reuse water is conserved. Conserve means "to avoid wasteful or destructive use of." Conserve, Merriam Webster Online, https://www.merriam-webster.com/dictionary/conserve; Black's Law Dictionary (12th Ed. 2024) ("2. To protect from change, destruction, or depletion."); New Oxford American Dictionary (3d Ed. 2010) ("prevent the wasteful or harmful overuse of (a resource)"). Reuse water would otherwise be discharged into the waters of the state or lost, and is thus conserved under a plain and ordinary meaning of that term.

Second, the reuse water is "stored." Tex. Water Code §11.041(a). The reuse water is held in various places, including a 1 million gallon storage tank adjacent to Johnson County Power's property. *See* Petition at 2; Declaration of Joe Booth, ¶9. Cleburne has recognized in its past contracts that Cleburne's facilities "store approximately one million (1,000,000) gallons of Water adjacent to the Plant." Pet. Ex. A, 1995 Contract §3(a); Pet. Ex. C, 2023 Contract §3(a). Reuse water is also stored in Lake Pat Cleburne under Cleburne's Certificate of Adjudication 12-4106D, which authorizes Cleburne to divert up to 6,739 acre-feet per year to Lake Pat Cleburne for subsequent use. *See* Petition Ex. F, Certificate of Adjudication 12-4106D. Indeed, there is no real dispute that the water is stored and conserved.

b. There is no statutory exception to Section 11.041 for "reclaimed water."

Cleburne contends that Water Code §11.041 does not apply to reclaimed water, but there is no statutory basis for that exception. Motion at 3-4. The plain text of Section 11.041 makes no distinction between different categories of water, but simply applies to "water . . . from ***any*** stored or conserved supply." Tex. Water Code §11.041(a) (emphasis added). Cleburne's attempts to add additional words to Section 11.041 thus fails. *Union Carbide*, 438 S.W.3d at 52 (presuming "the Legislature included words that it intended to include and omitted words it intended to omit."). Cleburne argues that two decisions cited in the Petition "are not analogous" to the facts here, but that argument does nothing to explain why the plain text of Section 11.041 does not apply. Motion at 3. Cleburne's atextual arguments cannot overcome the plain text.

But in fact, the two decisions cited in the Petition that Cleburne attempts to distinguish *are* analogous to the facts here. In *Tex. Water Rights Comm'n v. City of Dallas*, the City of Dallas demanded unreasonably high rates for water that the Texas Water Rights Commission had authorized the City of Dallas to appropriate. 591 S.W.2d 609, 610 (Tex. App.—Austin 1979, writ ref'd n.r.e.). There, the City of Dallas's customers could not turn to alternative suppliers, and both

the TCEQ's predecessor agency and the Austin Court of Appeals concluded that the relevant statutes authorized administrative review of the water rates to ensure that rates charged were reasonable. 591 S.W.3d at 613. Similarly, in *City of San Antonio v. Texas Water Commission*, the Texas Supreme Court allayed fears about future monopolistic pricing by a river authority in the event the river authority "should seek to fix an unreasonable price for municipal water." 407 S.W.2d 752, 768 (Tex. 1966). The Supreme Court concluded water rights holders are obligated by both the common law and statutory law to "serve the public without discrimination" and held that the statutes authorized an administrative remedy to "fix reasonable rates to be charged by [the river authority] for all purposes." 407 S.W.2d at 768. In both cases, the sole supplier of water in the region was capable of charging monopolistic and unreasonable fees, and both courts recognized that Texas law does not permit such abuse of a vital resource like water.

At its core, Cleburne's Motion presents the concerning argument that Cleburne is under no duty to serve the public with conserved or stored reuse water. Motion at 3. Cleburne contends that such water is made available "at the City's discretion," and Cleburne is "free to determine whether to continue with the delivery of reclaimed water." Motion at 4. In other words, Cleburne contends that it can charge whatever price it wants for stored or conserved reuse water, regardless of how unreasonable the price is, or can choose to withhold water arbitrarily. And Cleburne argues that the TCEQ has no jurisdiction to review such unreasonable or arbitrary charges. But Texas law does not allow water providers like Cleburne to arbitrarily charge unreasonable rates or deny customers service on which they have relied for many years.

Texas law has long recognized that utilities are "under a duty to serve the public without discrimination." *City of Dallas*, 591 S.W.2d at 613. Indeed, the rule goes back over 100 years, when courts recognized that "[t]he organization supplying water or light, whether it be a municipal

or a private corporation, is under a duty to consumers to supply the water or light impartially to all reasonably within the reach of its pipes, mains, and wires." *Allen v. Park Place Water, Light & Power Co.*, 266 S.W. 219, 223 (Tex. App.—Galveston 1924, writ ref'd)[3] (citation omitted). Thus, decisions like *City of Dallas* recognize that municipalities are subject to the same rules as other utilities that "furnish[] water from any 'conserved or stored supply'" and must do so at reasonable rates. 591 S.W.2d at 614. Here, Water Code §11.041 provides a mechanism to enforce compliance with those requirements, and the allegations in the Petition fall plainly within the scope of that provision.

Johnson County Power seeks only what Texas law has always guaranteed: a reasonable price for available water. Petition at 10.[4] The rates charged by Cleburne for stored or conserved reuse water currently provide a 1,200% return on the East Loop Pipeline, and such rates are far beyond the bounds of reasonableness for a municipality or any other entity. The TCEQ has jurisdiction over this dispute, and the Motion should be denied.

IV. Relief Requested

Johnson County Power respectfully requests the TCEQ deny the Motion to dismiss and maintain its referral of the Petition to the State Office of Administrative Hearings for an evidentiary hearing. Johnson County Power further prays the TCEQ grant such other and further relief to which Johnson County Power is entitled.

[3] While this opinion was designated "writ refused" by the Texas Supreme Court, that designation did not necessarily indicate that the Texas Supreme Court fully agreed with the judgment at the time. *See* The Greenbook, Texas Rules of Form (13th Ed. 2015) at 132.

[4] In its Motion, Cleburne contends that contract negotiations for water rates are "ongoing." Motion at 1. Johnson County Power welcomes such negotiations, and turned to the TCEQ only when Cleburne refused to negotiate a new agreement. Petition at 5. A new agreement providing reasonable rates would bring this Petition to a swift and amicable resolution.

Respectfully submitted,

/s/ *Marisa S. Giles*

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Counsel for Petitioner,
Johnson County Power, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing petition was sent via email and/or electronic filing to the following on May 2, 2025.

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Marisa S. Giles
Marisa Giles

CERTIFICATE OF ADJUDICATION

CERTIFICATE OF ADJUDICATION: 12-4106

OWNER: City of Cleburne
c/o the Mayor
P. O. Box 657
Cleburne, Texas 76031

COUNTY: Johnson

PRIORITY DATES: August 6, 1962 and
March 29, 1976

WATERCOURSE: Nolan River, tributary of Brazos River

BASIN: Brazos River

WHEREAS, by final decree of the 91st Judicial District Court of Eastland County, in Cause No. 32,002, In Re: The Adjudication of Water Rights in the Brazos II River Segment of the Brazos River Basin, dated November 8, 1985, a right was recognized under Permit 2027A authorizing the City of Cleburne to appropriate waters of the State of Texas as set forth below;

NOW, THEREFORE, this certificate of adjudication to appropriate waters of the State of Texas in the Brazos River Basin is issued to the City of Cleburne, subject to the following terms and conditions:

1. IMPOUNDMENT

Owner is authorized to maintain an existing dam and reservoir on the Nolan River (Lake Pat Cleburne) and impound therein not to exceed 25,600 acre-feet of water. The dam is located in the J. W. Haynes Survey, Abstract 410 and the Lawrence W. Perry Survey, Abstract 671, Johnson County, Texas.

2. USE

A. Owner is authorized to divert and use not to exceed 240 acre-feet of water per annum from the aforesaid reservoir to irrigate a maximum of 80 acres of land out of that portion of a tract that lies northeast of Lake Pat Cleburne located in the J. Payne Survey, Abstract 681 and the T. J. Blythe Survey, Abstract 54, Johnson County, Texas, said tract being described as follows:

(1) BEGINNING at the northwest corner of the T. J. Blythe Survey, Abstract 54, Johnson County, Texas;

(2) THENCE N 60°E, 1388.2 feet to a point at an elevation of approximately 752.4 feet above mean sea level;

(3) THENCE generally with said contour as follows: S 25°E, 505.0 feet; N 60°E, 454.0 feet; S 50°E, 644.0 feet; S 02°W, 600 feet; S 30°E, 575.0 feet; N 50°E, 590.0 feet; S 66°E, 400.0 feet and S 06°10'W, 384.0 feet;

(4) THENCE N 56°E, 458.4 feet to the northeast line of said Payne Survey;

(5) THENCE S 29°30'E with the northeast line of said Payne Survey, 1639.0 feet to the north right-of-way of F.M. Hwy. 1718, 1699 feet approximately to the south R.O.W. of said Hwy. and 4050.0 feet in all to the southeast corner of this tract;

(6) THENCE S 60°W, 2750.0 feet approximately to the west line of the John Payne Survey, Abstract 681;

(7) THENCE Northwesterly with the southwest line of the John Payne Survey, Abstract 681 and the T. J. Blythe Survey, Abstract 54 to the place of beginning.

B. Owner is also authorized to divert and use not to exceed 5760 acre-feet of water per annum from the aforesaid reservoir for municipal purposes.

3. DIVERSION

A. Location

(1) At a point below the dam with water piped through the dam in the Lawrence W. Perry Survey, Abstract 671, Johnson County, Texas.

(2) At the perimeter of the aforesaid reservoir.

B. Maximum combined rate: 28.00 cfs (12,600 gpm).

4. PRIORITY

A. The time priority of owner's right is August 6, 1962 for the diversion of 5760 acre-feet of water for municipal purposes and the diversion rate of 28.00 cfs for municipal and irrigation purposes.

B. The time priority of owner's right is March 29, 1976 for the diversion of 240 acre-feet of water for the irrigation of 80 acres of land.

5. SPECIAL CONDITIONS

A. Owner shall maintain a suitable outlet in the aforesaid dam authorized herein to allow the free passage of water that owner is not entitled to divert or impound.

B. All water diverted which is not consumed for purposes specified herein shall be returned to Buffalo Creek, a tributary of the Nolan River.

The locations of pertinent features related to this certificate are shown on Page 23 of the Brazos II River Segment Certificates of Adjudication Maps, copies of which are located in the offices of the Texas Water Commission, Austin, Texas and the Johnson County Clerk.

This certificate of adjudication is issued subject to all terms, conditions and provisions in the final decree of the 91st Judicial District Court of Eastland County, Texas, in Cause No. 32,002, In Re: The Adjudication of Water Rights in the Brazos II River Segment of the Brazos River Basin, dated November 8, 1985, and supersedes all rights of the owner asserted in that cause.

This certificate of adjudication is issued subject to senior and superior water rights in the Brazos River Basin.

This certificate of adjudication is issued subject to the Rules of the Texas Water Commission and its continuing right of supervision of State water resources consistent with the public policy of the State as set forth in the Texas Water Code.

The irrigation water right is appurtenant to and is an undivided part of the above-described land within which irrigation is authorized. A transfer of any portion of the land described includes, unless otherwise specified, a proportionate amount of the water right owned by the owner or seller at the time of the transaction.

TEXAS WATER COMMISSION

Paul Hopkins

Paul Hopkins, Chairman

DATE ISSUED:

FEB 28 1986

ATTEST:

Mary Ann Hefner

Mary Ann Hefner, Chief Clerk

0163

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

AMENDMENT TO CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 12-4106A APPLICATION NO. 12-4106A

Name	:	City of Cleburne	Address	:	PO Box 657 Cleburne, Texas 76031
Filed	:	April 9, 1996	Granted	:	OCT 11 1996
Purpose	:	Municipal, Irrigation, Industrial	County	:	Johnson
Watercourse	:	Nolan River, tributary of the Brazos River	Watershed	:	Brazos River Basin

WHEREAS, Certificate of Adjudication No. 12-4106, issued February 28, 1986 to the City of Cleburne (applicant), authorized the applicant to maintain an existing dam and reservoir on the Nolan River (Lake Pat Cleburne) and impound therein not to exceed 25,600 acre-feet of water; and

WHEREAS, the certificate further authorizes the diversion and use of not to exceed 240 acre-feet of water per annum from the aforesaid reservoir for irrigation of 80 acres of land and the diversion and use of not to exceed 5760 acre-feet of water per annum from the aforesaid reservoir for municipal purposes; and

WHEREAS, the authorized diversion points are from the perimeter of the aforesaid reservoir and at a point below the dam; and

WHEREAS, the authorized maximum combined diversion rate is 28.0 cfs (12,600 gpm) and the time priority of the owner's right is August 6, 1962 for the diversion of 5760 acre-feet of water for municipal purposes as well as for the diversion rate of 28 cfs for municipal and irrigation purposes, and the time priority is March 29, 1976 for the diversion of 240 acre-feet of water for the irrigation of 80 acres of land; and

WHEREAS, the applicant has submitted an amendment application to the Commission to amend the certificate by adding industrial use as an authorized use for the 5760 acre-feet of water authorized for municipal use; and

WHEREAS, a municipal water conservation plan has been submitted to the Commission; and

WHEREAS, the Texas Natural Resource Conservation Commission finds that jurisdiction over the application is established; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Natural Resource Conservation Commission in issuing this amendment.

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 12-4106 is issued to the City of Cleburne, subject to the following provisions:

1. USE

In addition to the existing use authorizations for 5760 acre-feet of municipal use water, owner is also authorized to use same water for industrial purposes, with a maximum combined diversion of not to exceed 5760 acre-feet of water per annum.

2. DIVERSION

The same diversion authorizations that apply to municipal use water, apply to industrial use water. The maximum combined diversion rate remains unchanged at 28 cfs (12,600 gpm).

3. WATER CONSERVATION

A. Certificate owner shall implement a water conservation plan that provides for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plan shall include a requirement in every wholesale water supply contract entered into, on or after the effective date of this permit, including any contract extension or renewal, that each successive wholesale customer develop and implement water conservations measures. If the customer intends to resell the water, then the contract for the resale of the water must have water conservation requirements so that each successive wholesale customer in the resale of the water will be required to implement water conservation measures.

B. Certificate owner shall complete a water conservation data form within 90 days of issuance of the permit and a water conservation plan progress report shall be completed each year for the next 3 years (1997, 1998, and 1999) with emphasis on quantifying actual water demand and supply.

4. SPECIAL CONDITIONS

Prior to the diversion of the water authorized herein, certificate owner shall require that all persons contracting water for industrial use, install a measurement device or utilize a method that measures within five percent (5%) accuracy and which accounts for the quantity of water diverted from Lake Pat Cleburne on the Nolan River.

5. TIME PRIORITY

The time priority of the owner's rights, as amended, shall remain the same as the original certificate.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate No. 12-4106, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Brazos River Basin.

Certificate owner agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Natural Resource Conservation Commission and to the right of continuing supervision of State water resources exercised by the Commission.

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

For the Commission

DATE ISSUED: OCT 11 1996

ATTEST:

Jamie M. Black

Jamie M. Black, Acting Chief Clerk

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

AMENDMENT TO CERTIFICATE OF ADJUDICATION

APPLICATION NO. 12-4106B CERTIFICATE NO. 12-4106B TYPE: §11.122, §11.042

Owner:	City of Cleburne	Address:	P. O. Box 657 Cleburne, Texas 76033
Filed:	March 16, 2000	Granted:	JAN 15 2002
Purpose:	Industrial, Irrigation, Municipal	County:	Johnson County
Watercourse:	Nolan River, tributary of the Brazos River	Basin:	Brazos River Basin

WHEREAS, Certificate of Adjudication No. 12-4106, as amended, authorizes owner to maintain an existing dam and reservoir (Pat Cleburne Lake) on the Nolan River, tributary of the Brazos River, Brazos River Basin, and to impound therein 25,600 acre-feet of water; and

WHEREAS, Certificate of Adjudication No. 12-4106, as amended, with a time priority of August 6, 1962, also authorizes owner to divert and use not to exceed 5,760 acre-feet of water per annum at a maximum diversion rate of 28.0 cfs (12,600 gpm) from the perimeter of the aforesaid reservoir, and at a point downstream of the dam, for municipal purposes; and

WHEREAS, Certificate of Adjudication No. 12-4106, as amended, with a time priority of March 29, 1976, also authorizes owner to divert and use not exceed 240 acre-feet of water per annum to irrigate 80 acres of land in Johnson County; and

WHEREAS, Certificate of Adjudication No. 12-4106, as amended, authorizes owner to additionally use the aforesaid 5,760 acre-feet of water per annum for industrial purposes; and

WHEREAS, on March 30, 1993, the Brazos River Authority (BRA) and the City of Cleburne (City) entered into a Water Sale Contract which, on May 13, 1997, was amended wherein the BRA, pursuant to its Certificate of Adjudication No. 12-5158, will provide water service to the City in the amount of 5,300 acre-feet of water per annum for municipal purposes from Lake Aquilla to be delivered via pipeline directly to the City's water treatment plant, or to Pat Cleburne Lake for subsequent diversion and treatment at the aforesaid plant; and

WHEREAS, applicant seeks to divert and use the 5,300 acre-feet of contracted water per annum purchased from BRA's Lake Aquilla authorization at the aforesaid treatment plant for municipal purposes; and

WHEREAS, on March 30, 1993, BRA and the City entered into a Water Sale Contract which, on

May 13, 1997, was amended wherein, pursuant to its Certificate of Adjudication No. 12-5157, BRA will also provide water service to the City in the amount of 4,700 acre-feet of water per annum from Lake Whitney to be diverted upstream of Lake Whitney at the currently authorized diversion points on the perimeter of Pat Cleburne Lake for municipal purposes; and

WHEREAS, applicant seeks to divert and use the 4,700 acre-feet of the aforesaid contracted water per annum, purchased from BRA's Lake Whitney authorization, at a point upstream of Lake Whitney, from the currently authorized diversion points on the perimeter of Pat Cleburne Lake for municipal purposes; and

WHEREAS, applicant also seeks to use the bed and banks of Pat Cleburne Lake to deliver the aforesaid contract water to the currently authorized diversion points from an outfall of a pipeline delivering water from Aquilla Lake in order to blend water sources for water quality purposes before subsequent diversion and treatment; and

WHEREAS, applicant also seeks to increase the diversion rate currently authorized in Certificate of Adjudication No. 12-4106, as amended, from 28.0 cfs (12,600 gpm) to 55.2 cfs (24,774 gpm); and

WHEREAS, the Texas Natural Resource Conservation Commission finds that jurisdiction over the application is established; and

WHEREAS, the Commission has determined that there are no water rights which may be affected by the granting of the requested amendment; and

WHEREAS, the Executive Director has determined that in order to protect the instream uses of the Nolan River, certain restrictions should apply to the diversion of water; and

WHEREAS, no person protested the granting of this application; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Natural Resource Conservation Commission in issuing this amendment.

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 12-4106, designated Certificate of Adjudication No. 12-4106B, is issued to the City of Cleburne subject to the following terms and conditions:

1. DIVERSION & USE

   a. In addition to the diversion and use authorizations included in Certificate of Adjudication Nos. 12-4106 and 12-4106A, owner is authorized to use the bed and banks of Pat Cleburne Lake to deliver purchased water (pursuant to a May 13, 1997 Water Sale Contract, amended, between the City of Cleburne and the Brazos River Authority (BRA) under BRA's Certificate of Adjudication No.12-5158) to the currently authorized diversion points on the perimeter of Pat Cleburne Lake. Pursuant to the aforesaid contract, owner is authorized to divert and use 5,300 acre-feet of

contracted water per annum from Pat Cleburne Lake to be delivered from Lake Aquilla via pipeline for municipal purposes.

b. In addition to the diversion and use authorizations included in Certificate of Adjudication Nos. 12-4106 and 12-4106A, owner is authorized to divert and use from Pat Cleburne Lake, for municipal purposes, 4,700 acre-feet of water per annum of Lake Whitney contract water (pursuant to a May 13, 1997 Water Sale Contract, amended, between the City of Cleburne and the BRA under BRA's Certificate of Adjudication No. 12-5157). Water will be diverted at the currently authorized points on the perimeter of Pat Cleburne Lake under Certificate of Adjudication No. 12-4106, as amended.

2. DIVERSION RATE

In lieu of the previous diversion rate authorization included in the certificate, owner is authorized to divert at a combined maximum diversion rate of 55.2 cfs (24,774 gpm).

3. WATER CONSERVATION

Owner shall implement a water conservation plan that provides for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, so that a water supply is made available for future or alternative uses. Such plan shall include a requirement in every wholesale water supply contract entered into, on or after the effective date of this permit, including any contract extension or renewal, that each successive wholesale customer develop and implement water conservation measures. If the customer intends to resell the water, then the contract for the resale of the water must have water conservation requirements so that each successive wholesale customer in the resale of the water will be required to implement water conservation measures.

4. SPECIAL CONDITIONS

a. In order to provide maintenance flows for existing instream uses and minimize the impact of its upstream diversion of Lake Whitney contract water, owner shall pass all inflows to Pat Cleburne Lake, up to and including the following inflows in the following months, but only to the extent that owner diverts its Lake Whitney contract water from Pat Cleburne Lake during such months:

- 2.2 cfs during February
- 3.5 cfs in March and April
- 5.7 cfs in May
- 1.5 cfs in June

b. The upstream diversion authorization contained herein, authorizing owner to divert and

use 4,700 acre-feet of its Lake Whitney contract water from Pat Cleburne Lake for municipal purposes, does not serve to increase the firm yield of Pat Cleburne Lake.

This amendment is issued subject to all superior and senior water rights in the Brazos River Basin.

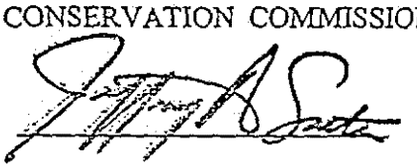
This amendment is issued subject to all terms, conditions and provisions contained in Certificate of Adjudication No. 12-4106, as amended, except as herein amended.

Owner agrees to be bound by the terms, conditions, and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Natural Resource Conservation Commission and to the right of continuing supervision of State water resources exercised by the Commission.

TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION



For the Commission

DATE ISSUED: JAN 15 2002

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AMENDMENT TO CERTIFICATE OF ADJUDICATION

APPLICATION NO. 12-4106C CERTIFICATE NO. 12-4106C TYPE: 11.122

Owner:	City of Cleburne	Address:	P.O. Box 657 Cleburne, Texas 76033
Filed:	August 20, 2004	Granted:	NOV 30 2005
Purposes:	Agricultural, Municipal, and Industrial	Counties:	Johnson
Watercourse:	West Buffalo Creek, tributary of Buffalo Creek, tributary of the Nolan River, tributary of the Brazos River	Watershed:	Brazos River Basin

WHEREAS, Certificate of Adjudication No. 12-4106 authorizes the City of Cleburne (City or applicant) to maintain a dam and reservoir, (known as Lake Pat Cleburne) on the Nolan River, tributary of the Brazos River and to impound 25,600 acre-feet of water. The City is also authorized to divert and use not to exceed 240 acre-feet of water from Lake Pat Cleburne for agricultural purposes to irrigate 80 acres of land in Johnson County with a time priority of March 29, 1976 and 5,760 acre-feet of water per year from Lake Pat Cleburne for municipal and industrial purposes with a time priority of August 6, 1962; and

WHEREAS, the City is further authorized to use the bed and banks of Lake Pat Cleburne to deliver 5,300 acre-feet of water (Lake Aquilla contract water) and 4,700 acre-feet of water (Lake Whitney contract water) per year pursuant to a contract between the City and the Brazos River Authority and to divert and use said water for municipal purposes from the diversion point authorized by the Certificate; and

WHEREAS, the maximum combined diversion rate for all water is 55.2 cfs (24,774 gpm). Special conditions apply; and

WHEREAS, Applicant seeks to amend Certificate of Adjudication No. 12-4106 to:

- Divert and reuse existing and future City return flows for agricultural, industrial, and municipal purposes within the City's service area in Johnson County,
- Use the bed and banks of West Buffalo Creek, Buffalo Creek, and the Nolan River to transport the discharged water to the diversion point(s) downstream of the outfalls/discharge points on the Nolan River or it's tributaries, and

- Divert up to a maximum combined total from the two outfalls/discharge points of 7.5 mgd (8,400 acre-feet of water per year) at a maximum diversion rate of 21.55 cfs (9,671.64 gpm); and

WHEREAS, treated effluent water will be discharged from two wastewater treatment outfalls authorized by TPDES Permit No. 10006-001 in segment 1227 of the Brazos River Basin described as follows:

- Outfall 1 discharges into Buffalo Creek at Latitude 32.312° N, Longitude 97.395° W, also bearing N 28.001° E, 1,531 feet from the southwest corner of the Thomas H. Magness Survey, Abstract No. 601, and

- Outfall 2 discharges into West Buffalo Creek at Latitude 32.396° N, Longitude 97.408° W, also bearing N 27.867° W, 1,516 feet from the southeast corner of the Keelen Williams Survey, Abstract No. 884; and

WHEREAS, the downstream diversion point is located 6.8 miles south from the City of Cleburne at Latitude 32.233° N, Longitude 97.397° W, also bearing S 67.666° E, 11,018 feet from the northwest corner of the Charles Sevier Survey, Abstract No. 752; and

WHEREAS, applicant indicates that there is 0.5% carriage loss per river mile for this watershed; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, the Executive Director recommends special conditions be included in the amendment; and

WHEREAS, no one protested the granting of this application; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment;

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 12-4106, designated Certificate of Adjudication No. 12-4106C, is issued to the City of Cleburne subject to the following terms and conditions:

1. USE

A. Owner is authorized to divert and reuse 8,400 acre-feet of existing and future return flows per year originating from two outfalls associated with TPDES Permit No. 10006-001 on West Buffalo Creek and the Nolan River in the Brazos River Basin for agricultural, industrial, and municipal purposes within the City's existing corporate boundaries, extra-territorial jurisdiction boundaries, and contiguous Certificate of Convenience and Necessity service areas in Johnson County.

B. Owner is authorized to use the bed and banks of West Buffalo Creek, Buffalo Creek, and the Nolan River to convey return flows to its downstream diversion point.

2. DISCHARGE AND DIVERSION

A. Water will be discharged from two wastewater treatment outfalls authorized by TPDES Permit No. 10006-001 in segment 1227 of the Brazos River Basin at a discharge rate of 7.5 MGD described as follows:

- Outfall 1 discharges into Buffalo Creek at Latitude 32.312° N, Longitude 97.395° W, also bearing N 28.001° E, 1,531 feet from the southwest corner of the Thomas H. Magness Survey, Abstract No. 601.
- Outfall 2 discharges into West Buffalo Creek at Latitude 32.396° N, Longitude 97.408° W, also bearing N 27.867° W, 1,516 feet from the southeast corner of the Keelen Williams Survey, Abstract No. 884.

B. In addition to the previous authorization, Owner is also authorized to divert the water between Outfall 1 and/or Outfall 2 and the downstream diversion point on the Nolan River located 6.8 miles south from the City of Cleburne at Latitude 32.233° N, Longitude 97.397° W, also bearing S 67.666° E, 11,018 feet from the northwest corner of the Charles Sevier Survey, Abstract No. 752 at a maximum combined diversion rate of 21.55 cfs (9,671.64 gpm).

3. TIME PRIORITY

The time priority for this right is August 20, 2004.

4. CONSERVATION

Owner shall implement a water conservation plan that provides for the utilization of those practices, techniques and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every wholesale water contract entered into, on or after the effective date of this permit, including any contract extension or renewal, that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water must have water conservation requirements so that each successive wholesale customer in the resale of the water be required to implement water conservation measures.

5. SPECIAL CONDITIONS

A. Owner shall install a measuring device capable of measuring flows within +/- 5% accuracy immediately downstream of the owner's diversion point. Owner shall allow representatives of the TCEQ reasonable access to the property to inspect the measuring device.

B. Owner shall only divert the historical average discharge of 3.29 MGD (3,684 acre-feet of the authorized 8,400 acre-feet of water) less carriage losses per day, when the streamflow at a reference device immediately downstream of the diversion point

equals or exceeds:

- 3.2 cfs during January and February,
- 8.1 cfs during March through May,
- 4.4 cfs in June, and
- 1.2 cfs during July through December.

As an alternative, Owner shall only divert the historical average discharge of 3.29 MGD (3,684 acre-feet of the authorized 8,400 acre-feet of water) less carriage losses per day, when the streamflow at USGS Gaging Station #08092000 (Nolan River at Blum) equals or exceeds:

- 4.8 cfs during January and February,
- 12.0 cfs during March through May,
- 6.6 cfs in June, and
- 1.9 cfs during July through December.

If Owner utilizes the USGS gage location to monitor the streamflow restrictions, Owner shall provide documentation to the Executive Director that the USGS gage is actively recording daily stream flows.

C. On a daily basis the historical average discharge of 3.29 MGD must be accounted for before diversion of the additional 4.21 MGD is authorized.

D. The first 3.29 MGD (3,684 acre-feet of the authorized 8,400 acre-feet) of diversions has a priority date of August 20, 2004, and is subject to call by senior water right holders in the basin.

E. The remaining 4.21 MGD (4,716 acre-feet of the authorized 8,400 acre-feet) of authorized water has a priority date of August 20, 2004, but is not subject to call by senior water right holders in the basin and not subject to the recommended instream flow restriction authorized in Special Condition 5.B.

F. Diversion of the 8,400 acre-feet of treated effluent from the Nolan River shall not occur at the rate or amount higher than that discharged from the City of Cleburne's waste water treatment plant less channel losses.

G. Owner shall implement the withdrawal and accounting plan approved by the Executive Director and maintain daily electronic records (in spreadsheet or database format) of diversion from each source of water used in the accounting, when applicable, and shall submit them to the Executive Director upon request.

H. Owner shall submit a water conservation and drought contingency plan pursuant to 30 TAC §§288.5 & 288.22 at least 180 days prior to the diversion of industrial water for wholesale purposes.

I. Prior to diversion of any future treated effluent return flows from its two (2) wastewater treatment outfalls in excess of the amount authorized to be diverted in Section 1.A. herein, Owner shall apply for an amendment to increase the diversion of any return flows.

This amendment is issued subject to all terms, conditions, and provisions contained in Certificate of Adjudication No. 12-4106, as amended, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Brazos River Basin.

Owner agrees to be bound by the terms, conditions, and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

For the Commission

Date Issued: NOV 30 2005

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AMENDMENT TO A
CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 12-4106D			TYPE: §§ 11.122, 11.042
Owner:	City of Cleburne	Address:	10 N Robinson P.O. Box 677 Cleburne, Texas 76033
Filed:	February 9, 2017	Granted:	May 27, 2021
Purposes:	Municipal, Industrial, Mining, Agriculture, & Recreation	County:	Johnson
Watercourse:	Nolan River	Basin:	Brazos River Basin

WHEREAS, Certificate of Adjudication No. 12-4106 authorizes the City of Cleburne (City) to maintain an existing dam and reservoir (Lake Pat Cleburne) on the Nolan River, Brazos River Basin, and impound therein not to exceed 25,600 acre-feet of water; and

WHEREAS, the City is also authorized to divert and use from Lake Pat Cleburne not to exceed 240 acre-feet of water per year for agricultural purposes to irrigate 80 acres of land, and to divert and use from Lake Pat Cleburne not to exceed 5,760 acre-feet of water per year for municipal and industrial purposes in Johnson County; and

WHEREAS, the City is further authorized to use the bed and banks of Lake Pat Cleburne pursuant to Certificate of Adjudication 12-4106, as amended, to deliver 5,300 acre-feet of water (Lake Aquilla contract water) and to divert 4,700 acre-feet of water (Lake Whitney contract water) per year pursuant to a contract between the City and the Brazos River Authority and to divert and use said water for municipal purposes; and

WHEREAS, the City is also authorized to use the bed and banks of West Buffalo Creek, Buffalo Creek, and the Nolan River to convey 8,400 acre-feet of return flows per year for subsequent diversion and use for agricultural, industrial, and municipal purposes within the City's existing corporate boundaries, extra-territorial jurisdiction boundaries, and contiguous Certificate of Convenience and Necessity service areas in Johnson County; and

WHEREAS, the maximum combined diversion rate for all water is 55.2 cfs (24,774 gpm), and multiple time priorities and special conditions apply; and

WHEREAS, the City seeks to amend Certificate of Adjudication No. 12-4106 to authorize use of the bed and banks of the Nolan River (Lake Pat Cleburne), to convey not to exceed 6,739 acre-feet of return flows, authorized by TPDES Permit No. WQ0010006001, for subsequent

diversion and use for municipal, industrial, recreation, mining, and agricultural purposes in Johnson County; and

WHEREAS, the return flows will be discharged at a point on Lake Pat Cleburne being at Latitude 32.325211° N, Longitude 97.440608° W, at a maximum rate of 37.13 cfs (16,666 gpm), in Johnson County and will be subsequently diverted from the perimeter of Lake Pat Cleburne at a maximum combined diversion rate of 55.2 cfs (24,774 gpm) with all authorizations in Certificate of Adjudication No. 12-4106, as amended; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment;

NOW, THEREFORE, this Application No. 12-4106, designated Certificate of Adjudication No. 12-4106D, is issued to the City of Cleburne, subject to the following terms and conditions:

1. USE

In addition to previous authorizations; Owner is authorized to use the bed and banks of the Nolan River (Lake Pat Cleburne), Brazos River Basin, to convey 6,739 acre-feet of return flows for subsequent diversion and use for municipal, industrial, recreation, mining, and agricultural purposes in Johnson County.

2. DISCHARGE

The return flows will be discharged to the Nolan River (Lake Pat Cleburne) at a point being at Latitude 32.325211° N, Longitude 97.440608° W, at a maximum rate of 37.13 cfs (16,666 gpm), in Johnson County.

3. DIVERSION

Owner is authorized to divert the return flows authorized for reuse in this amendment from anywhere along the perimeter of Lake Pat Cleburne at a maximum combined diversion rate of 55.2 cfs (24,774 gpm) with all authorizations in Certificate of Adjudication No. 12-4106, as amended.

4. TIME PRIORITY

The time priority of this amendment is February 9, 2017.

5. CONSERVATION

Owner shall implement water conservation plans that provide for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, and prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every water supply contract entered into, on or after the effective date of this permit, including any contract extension or renewal, that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water shall have water conservation

requirements so that each successive customer in the resale of the water will be required to implement water conservation measures.

6. SPECIAL CONDITIONS

A. Owner shall submit water conservation and drought contingency plans pursuant to 30 TAC §§288.3, 288.5, and 288.22 at least 180 days prior to the diversion of industrial and/or mining water for retail or wholesale purposes.

B. Owner shall implement reasonable measures in order to reduce impacts to aquatic resources due to entrainment or impingement. Such measures shall include, but shall not be limited to, the installation of screens at any new diversion structures.

C. Diversions authorized under this amendment are dependent upon potentially interruptible return flows or discharges and are conditioned on the availability of those discharges. The right to divert the discharged return flows is subject to revocation if discharges become permanently unavailable for diversion and may be subject to reduction if the return flows are not available in quantities and qualities sufficient to fully satisfy the amendment. Should the discharges become permanently unavailable for diversion, Owner shall immediately cease diversion and use of return flows authorized by this amendment and either apply to amend the certificate, or voluntarily forfeit the amendment. If Owner does not amend the certificate or forfeit the amendment, the Commission may begin proceedings to cancel this amendment.

D. Owner shall only divert daily flows that are actually discharged.

E. Owner shall only divert and use return flows pursuant to Paragraph 1. USE and Paragraph 3. DIVERSION in accordance with the most recently approved accounting plan (*City of Cleburne Revised Accounting Plan Certificate of Adjudication 12-4106, as Amended*). Any modifications to the accounting plan shall be approved by the Executive Director. Any modification to the accounting plan that changes the permit terms must be in the form of an amendment to the certificate. Should Owner fail to maintain the accounting plan or notify the Executive Director of any modifications to the plan, Owner shall immediately cease diversion of discharged return flows under this amendment, and either apply to amend the certificate, or voluntarily forfeit the amendment. If Owner fails to amend the accounting plan or forfeit the amendment, the Commission may begin proceedings to cancel the amendment. Owner shall immediately notify the Executive Director upon modification of the accounting plan and provide copies of the appropriate documents effectuating such changes.

F. Prior to diversion and use of any return flows in excess of the amount currently authorized by TPDES Permit No. WQ0010006001, Owner shall apply for and be granted the right to reuse those return flows.

G. Owner shall install and maintain a measuring device which accounts for, within 5% accuracy, the quantity of water diverted from the point(s) authorized in this Certificate of Adjudication and maintain measurement records.

H. Owner shall allow representatives of the Brazos Watermaster reasonable access to the property to inspect the measuring device and records.

I. Owner shall contact the Brazos Watermaster prior to diversion of water authorized by this amendment.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate of Adjudication No. 12-4106, as amended, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Brazos River Basin.

Owner agrees to be bound by the terms, conditions, and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.

_____
For the Commission

Date Issued: **May 27, 2021**